

AGENDA

MEETING OF THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE AND/OR OF THE BOARD OF DIRECTORS

SAN ANTONIO RIVER AUTHORITY

December 8, 2010, 1:30 p.m.

**Estimated Presentation Time: 1.25 hours*



GENERAL AND CEREMONIAL ITEMS:

Estimated Presentation Time: 5 minutes

1. **CALL TO ORDER BY THE CHAIRMAN, MR. GAYLON J. OEHLKE**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL BY THE SECRETARY, MR. ROBERTO G. RODRÍGUEZ**
 - Terry E. Baiamonte

 - Sally Buchanan

 - A.D. Kollodziej, Jr.

 - Hector R. Morales

 - Roberto G. Rodríguez

 - Gaylon J. Oehlke

4. **CERTIFICATION OF A QUORUM BY THE SECRETARY**

5. **INTRODUCTION OF VISITORS**

6. **CITIZENS TO BE HEARD**

**Represents the time staff anticipate that it will take to make presentations or give briefings; does not include an estimate of the time required for discussions generated by Board members.*

7. **APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON NOVEMBER 10, 2010**
8. **DISCUSSION AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, AND REPORTING OF THE FISCAL INDEX**
9. **DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE**
10. **EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**
11. **PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**
12. **DISCUSSION AND APPROPRIATE ACTION REGARDING THE NEXT MEETING DATE**
13. **GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:**
 - **UPCOMING EVENTS CALENDAR,**
 - **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
 - **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**
14. **ITEMS FOR FUTURE CONSIDERATION**
15. **ADJOURN**

Estimated Presentation Time: 1.25 Hours

SAN ANTONIO RIVER AUTHORITY
General Statements

This meeting is wheelchair accessible. Accessible parking is located at 100 E. Guenther Street. Requests for an interpreter for the hearing impaired must be received at least 48 hours prior to the meeting, or, to arrange for special assistance to attend this meeting, please call the Operator at 210-227-1373.

The Board of Directors' Executive Committee of the San Antonio River Authority may discuss and/or take action on any item listed in this agenda while convened in open session. The Board of Directors of the San Antonio River Authority may also meet in Executive Session, pursuant to Section 551.071 of the Texas Government Code, to receive advice from legal counsel on any item listed in this agenda.

Date: 12/08/2010

Approval of the Minutes

Submitted By: Lupe Sanchez, Executive
Offices

Division: Executive Offices

Submitted For: Suzanne B. Scott

Department:

Information

CAPTION

**APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING
HELD ON NOVEMBER 10, 2010**

Presenter

Mr. Oehlke, Committee Chairman

Estimated Presentation Time: 5 minutes

Recommendation

Motion to approve the minutes of the Executive Committee meeting held on November 10, 2010, as presented.

Discussion

Vote

Attachments

Link: November 10, 2010, Executive Committee Meeting Minutes

MINUTES

MEETING OF THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE

SAN ANTONIO RIVER AUTHORITY

November 10, 2010, 1:00 p.m.



GENERAL AND CEREMONIAL ITEMS:

1. **CALL TO ORDER WAS MADE BY THE CHAIRMAN, MR. GAYLON J. OEHLKE, AT 1:05 P.M.**
2. **PLEDGE OF ALLEGIANCE WAS RECITED**
3. **THE COMMITTEE SECRETARY, MR. ROBERTO G. RODRÍGUEZ, CALLED THE ROLL AND REPORTED THE FOLLOWING COMMITTEE MEMBERS PRESENT:**

- Terry E. Baiamonte (absent)
- Sally Buchanan (1:13 p.m. arrival)
- A.D. Kollodziej, Jr.
- Hector R. Morales
- Roberto G. Rodríguez
- Gaylon J. Oehlke

4. **CERTIFICATION OF A QUORUM WAS ANNOUNCED BY THE SECRETARY, MR. RODRÍGUEZ**
5. **INTRODUCTION OF VISITORS**

Ms. Sanchez announced the visitors who were present in the audience.

6. **CITIZENS TO BE HEARD**

Ms. Sanchez announced that there were no citizens signed up to speak.

7. **APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON OCTOBER 13, 2010**

Staff recommended a motion to approve the minutes of the Executive Committee meeting held on October 13, 2010, as presented.

Motion made by A.D. Kollodziej, Jr.

Seconded by Hector R. Morales

Motion passed unanimously

8. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, AND REPORTING OF THE FISCAL INDEX

There being no action taken on this item, Mr. Oehlke called for Agenda Item 9.

9. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, AND REPORTING OF THE RIVER HEALTH INDEX

There being no action taken on this item, Mr. Oehlke called for Agenda Item 10.

10. PRESENTATION AND DISCUSSION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND A REPORT ON LOCAL, STATE AND FEDERAL ELECTION RESULTS

There being no action taken on this item, Mr. Oehlke called for Agenda Item 11.

11. EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

At the suggestion of the attorney and with no objections from other members of the Committee, Mr. Oehlke tabled this item and called for Agenda Item 12.

12. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

There being no action taken on this item, Mr. Oehlke called for Agenda Item 13.

13. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE SAN ANTONIO RIVER AUTHORITY BOARD OF DIRECTORS HOSTING A HOLIDAY GATHERING

By majority, the Committee decided that the SARA Board of Directors would not host a holiday party this year.

14. GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

There being no action taken on this item, Mr. Oehlke called for Agenda Item 15.

15. ITEMS FOR FUTURE CONSIDERATION

Mr. Oehlke requested to see a report or presentation at next month's Committee meeting regarding the project index, with possible options the Board can choose from. Ms. Scott also informed the Board that staff would report on the Legislative Luncheon at the December Committee meeting.

16. NEXT MEETING DATE

After committee discussion, it was decided that the next Executive Committee meeting will be Wednesday, December 8, 2010, at 1:30 p.m.

17. ADJOURN

There being nothing further to report, Mr. Oehlke adjourned the Executive Committee meeting at 3:04 p.m.

**PREPARED AND RECOMMENDED FOR COMMITTEE APPROVAL BY THE
MANAGER.**

SUZANNE B. SCOTT, General Manager

**APPROVED BY THE BOARD OF DIRECTORS AT THE EXECUTIVE COMMITTEE
MEETING HELD ON DECEMBER 8, 2010.**

GAYLON J. OEHLKE, Board Chairman

ATTEST:

ROBERTO G. RODRÍGUEZ, Board Secretary

Executive Committee
Date: 12/08/2010
Fiscal Index Update

Individual Item 8.

Submitted By: Lupe Sanchez, Executive
Offices

Division: Support Services

Submitted For: Larry Anderson

Department:

Information

CAPTION

**DISCUSSION AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT,
APPLICATION, AND REPORTING OF THE FISCAL INDEX**

Presenter

Larry Anderson

Estimated Presentation Time: 15 minutes

In an effort to measure the River Authority's performance in obtaining its goals and long-term thrusts, two Key Performance Indicators (KPI's) have been developed. One is the Financial Leverage Index (FLI) and the other is the River Health Index (RHI).

The FLI is designed to provide information indicating the extent to which the financial resources of the San Antonio River Authority (SARA) are being leveraged. Part of being prudent financial managers is making sure that we generate the maximum amount of funding from our available resources. The FLI will focus on that portion of our funding over which the staff exerts the greatest influence.

The details of the FLI and the trend over the past several years were discussed at the last Executive Committee meeting held on November 10, 2010. Staff will provide an update of its progress to the Committee.

Recommendation

Motion to be crafted, if necessary, after Committee discussion.

Discussion

Vote

Date: 12/08/2010

State Legislative Activities Update

Submitted By: Brian Mast,
Intergovernmental and
Comm Relations

Division: Intergovernmental and
Comm Relations

Department: Intergovernmental Relations

Information

CAPTION

**DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES
ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE**

Presenter

Brian Mast

Estimated Presentation Time: 20 minutes

November 8th was the first day to pre-file bills for the 82nd Legislative Session. A brief overview of any bills impacting the San Antonio River Authority or its District, as well as any action from interim legislative committees, will be discussed.

Attached is a draft copy of the Bexar Met Legislative Oversight Committee Report released on November 17, 2010.

Recommendation

Motion to be crafted if necessary after committee discussion.

Discussion

Vote

Attachments

Link: [Draft Bexar Met Legislative Oversight Committee Report](#)

INTRODUCTION

The Bexar Metropolitan Water District (District) was created by the Texas Legislature in 1945 to provide retail water service to historically underserved areas of the San Antonio metropolitan area. It has grown from fewer than 4,800 residential connections in 1945 to almost 90,000 residential and commercial connections today. In that time, its service area has grown from an area of South San Antonio to include territory all over Bexar County and in three adjacent counties. This growth, much of which occurred through purchases in the late 1980s and early 1990s, has left the utility with widespread, disconnected systems that need upgrades to infrastructure and have proven difficult to manage.

With the explosive growth of the District, it began to encounter management problems, and its customers have complained in recent years of inadequate service, unsafe water conditions, excessive rates and financial mismanagement. Certain employees of the District have been accused of unethical conduct, irresponsible and illegal business practices and financial mismanagement. Two general managers have been fired, one of them after his indictment for allegedly illegally wiretapping managers of the company, among other charges. The District has shown poor economic performance and violated bond covenants at least twice, potentially raising borrowing costs for its customers. Its board recently went against a community referendum and San Antonio city ordinance when it decided to save money on operating costs by suspending fluoridation of its water supplies, which was a community initiative undertaken to protect public health.

Water districts in Texas play an important role in protecting water resources and the public health, facilitating economic growth and job creation, and providing a high quality of life for the residents who live within their boundaries. As entities created by the legislature, these districts remain accountable to the State for the proper exercise of their powers and duties. The performance and integrity of local water districts affect much more than the local communities they serve. Poorly performing districts can call into question the entire public policy framework that has been set up to protect and provide access to this precious and essential natural resource for all Texans.

The Bexar Metropolitan Water District has suffered for years from a poor relationship between management and its elected board of directors. The ongoing distrust between some members of the board and key management personnel significantly complicates efforts to improve service for existing customers, as well as provide service to new residents and businesses in the rapidly growing portions of the District's service area.

These continuing concerns prompted legislative intervention in the 80th Regular Session of the Texas Legislature [House Bill 1565 (Puente/Uresti)]. HB 1565 created the Joint Committee on Oversight of the Bexar Metropolitan Water District to monitor operations, management and governance of the District and to recommend further reform measures to the legislature for its consideration. The bill also required the District to prepare various reports detailing its operations to the Texas Commission on Environmental Quality (TCEQ) and to this oversight committee.

House Bill 1565 included other provisions intended to scrutinize past and current financial and management practices and policies of the District, including a financial and managerial audit of the District to be completed by the State Auditor's Office. The bill required the TCEQ to conduct an on-site evaluation of the District.

The State Auditor's Office audit found in part:

The Bexar Metropolitan Water District's (District) Board and its management did not establish adequate management and financial controls to safeguard the District's assets and ensure that the District's expenditures were reasonable and necessary. The District does not keep an official, Board-approved budget and overspent its fiscal year 2007 operating budget by \$8.8 million without amending the budget.

Although the District's procurement policies comply with state law, the District did not consistently implement these policies in fiscal years 2007 and 2008. The District also did not adequately track and monitor its contracts, and it was unable to provide auditors with the total number and value of all current contracts. The District lacked adequate controls over its expenditures, and it made a number of unnecessary or questionable expenditures in fiscal years 2007 and 2008, including \$2.4 million in legal service payments and settlement claims.

Although the District's external auditor identified significant control weaknesses in the District's procurement, inventory and payroll functions since at least fiscal year 2006, the District did not develop a formal plan to address these weaknesses. (State Auditor's Office, Bexar Metropolitan Water District Audit Report, 2008)

The TCEQ report stated the following, in part:

BexarMet has a poorly defined management structure. Departmental reporting lines are frequently changing and poorly communicated to and not well understood by employees. With few organizational performance measures there is little accountability for managers and staff. BexarMet has neither a long-range strategic plan nor an asset management plan and lacks stated goals, objectives and performance measures. Hence, BexarMet operates almost entirely in

a reactive mode; day-to-day issues are elevated to crisis status instead of being addressed in a systematic, prioritized manner..."

The failure of the board of directors of BexarMet to have a common understanding of their individual and collective roles and responsibilities has created a climate of friction and distrust which has led to an internal atmosphere of low morale and an external impression that BexarMet is, at best, poorly managed and, at worst, corrupt. Staff presentations to the board often do not adequately and completely articulate the complete range of viable alternatives and the consequences of "no action." This combination of lack of understanding of responsibilities, climate of distrust, and poorly presented information leads to ineffective or inappropriate decisions and decreases the public confidence in and public accountability of the board of directors...

BexarMet's financial policies and practices lack sufficient internal controls in the areas of budgeting, purchasing and contract management. The budget is not used as an internal control mechanism and individual line items are frequently exceeded. Departments are not held accountable for budget overruns. BexarMet's debt coverage ratio (a measure of capacity to cover debt service from current operations) is much lower than comparable entities examined by the project team. This may affect the District's ability to meet future debt payments. The District's debt to equity ratio (a measure of liquidity) is much higher than all four of the entities compared. This may affect the District's ability to issue additional bonds and maintain its financial integrity and bond ratings...

BexarMet implemented a new rate structure in 2007 based on the recommendation of its consultant, but failed to institute practices that could minimize the risk to revenue stability and BexarMet's bond rating. BexarMet has begun the process of increasing its reserve funds including a rate stabilization fund that would benefit its cash flow during periods of low usage or other variables in revenue. BexarMet's impact fees have been and continue to be insufficient and not representative of cost recovery. (TCEQ, Final Report on Bexar Metropolitan Water District, 2008)

As the 81st Regular Session of the Legislature prepared to meet and consider bills that could affect the future of the District, the BexarMet staff undertook a program to implement the dozens of recommendations made in the reports by the SAO and TCEQ. The staff had put many of the recommendations in place by September, 2010, improving controls on its internal operations.

Unfortunately, these improvements have done nothing to relieve the climate of friction and distrust between the board and management and among the individual board members. The

board frequently appears to be incapable of acknowledging and acting favorably upon the improvements recommended to be implemented by staff.

The Oversight Committee recommended to the 81st Legislature a number of reform options, including various forms of conservatorship, a receivership or mandatory auditing and supervision. Various bills, some of them providing for a conservatorship, were filed in the legislature. A version filed by Sen. Carlos Uresti that made it to a conference committee won Senate approval but failed to win approval in the House on the final day of the session. That bill would have allowed BexarMet customers to vote for dissolution of the District under a conservatorship.

Against this backdrop, the Oversight Committee began work leading to this report to the 82nd Regular Session of the Texas Legislature. During this interim, the committee met seven times, hearing from dozens of witnesses in invited and public testimony.

The testimony revealed a company in constant and continuing turmoil. Three of the four board members who testified at the Committee's September 2010 hearing expressed frustration and testified that they supported the idea of bringing in a conservator.

The board spent 15 months looking for a general manager before unanimously hiring a replacement in December, 2009, but the distrust between board members and management and among board members continued. Indicative of this atmosphere of suspicion was an item appearing on the board's May 24, 2010, agenda to rescind the TCEQ-recommended reform approved the previous year allowing the general manager to spend up to \$25,000 without board approval. The item, which was pulled from the agenda, would have lowered the spending limit back to \$5,000, effectively requiring the general manager to seek board approval for even the most mundane of decisions.

The utility's staff recommended in May, 2010, that the board approve the installation of equipment to inject fluoride into the public water supply from three new pump stations. The staff justification was that it was consistent with the utility's practice and necessary to comply with a San Antonio city ordinance requiring fluoridation of public water supplies. During discussion, the board questioned the expense and whether customers wanted fluoride and eventually tabled the matter indefinitely, without so much as seeking customer input on the fluoride issue.

But four months later, in September, 2010, the board voted 4-to-1, again without any public input, to stop purchasing the fluoride that is added to the water supplies it furnishes to its customers. Although acknowledging that the practice was required as a result of a city referendum and subsequent San Antonio city ordinance, the board's stated justification was the

cost of the practice and uncertainty about whether the utility's customers really wanted fluoride in their water.

This willful disobedience of a valid San Antonio city ordinance by the board is another example of a governing body that remains out of touch with its responsibilities, and whose decisions often run counter to advice from staff and are made without adequate input from its customers.

Indeed, many of this committee's recommendations are aimed at a governing board whose members are constantly at odds with each other and with management. Board discussion of many agenda items is tinged with overt expressions of distrust of management and staff. Despite findings from state audits that the board did not know its role well – that it is a policy-making group and hires a manager to run the day-to-day operations – and assertions that most of the board attended training sessions to better understand their role, the Committee heard testimony from numerous witnesses to indicate that the board continues to interfere in day-to-day District operations.

Moreover, the board can let important matters linger for months or years without a decision. The District went 15 months — from September 2008 to December 2009 — without hiring a new general manager after the indictment and firing of its chief executive. And it took years, several of them under a Texas Commission on Environmental Quality mandate to act, before the board finally chose a location and started construction on additional water storage capacity for customers in its northern service areas.

One of the primary responsibilities of the board and one of the recommendations from the State Auditor's Office is a periodic evaluation of the general manager's performance against pre-established objectives to ensure that the general manager is meeting performance objectives. Hired in December 2009, and scheduled for an evaluation in June 2010, the new general manager was not evaluated until late October 2010.

Simply put, the Board of Directors is incapable of functioning as a policy-making body. Some of its members have established relationships with specific employees and supervisory personnel from whom they elicit information and to whom they issue directives. For these board members, any semblance of a chain of command or viable path for accountability is invisible. This pattern of behavior is deeply ingrained into the culture of BexarMet and is apparently not affected by board turnover through the normal electoral processes.

The Joint Committee on Oversight of the Bexar Metropolitan Water District finds the governing body of the District to be dysfunctional to the extent that it is not capable of either fulfilling its responsibilities to its customers or rehabilitating itself to the extent that it can do so.

The remainder of this report provides a brief background on the District and the Committee's policy recommendations for the consideration of the 82nd legislature.

BEXAR METROPOLITAN WATER DISTRICT BACKGROUND

The District was formed by an Act of the Texas Legislature in 1945 to provide water services to historically underserved areas of the San Antonio metropolitan area. The District has grown from an initial subscriber base of 4,765 residential connections to almost 90,000 residential and commercial connections. More than 260,000 people in Bexar, Atascosa, Comal and Medina counties depend on the District for their water needs.

The District is governed by a board composed of seven members, all of whom are elected from single-member districts to four-year terms. As of this writing, the board's members and officers are:

Guadalupe Lopez — President - District 1 — term expires Nov. 2012

Gregory Elliot — Director - District 2 — term expires Nov. 2014

Yvonne Cardona — Director - District 3 — term expires Nov. 2014

John Shackelford — Treasurer - District 4 — term expires Nov. 2012

Vanessa Ybarra — Director - District 5 — term expires Nov. 2012

Lesley Wenger — Director - District 6 — term expires Nov. 2012

Jerry Gonzales — Director - District 7 — term expires Nov. 2014

The District's day-to-day management is the responsibility of a general manager hired by the board. The general manager currently is Victor Mercado.

OVERSIGHT COMMITTEE COMPOSITION AND PROCEEDINGS

Since the initial report was issued to the 81st Legislature in January 2009, and as required by HB 1565, the five-member oversight committee has included State Senator Carlos Uresti and State Representative Frank J. Corte Jr. as co-chairmen. The committee also has included since its inception gubernatorial appointee Don Durden. Bexar County Commissioner Kevin Wolff was named to the committee by Bexar County Commissioners Court on Aug. 18, 2009. Rhonda E. Harris was appointed to the committee by the Governor on Sept. 15, 2009.

The committee conducted the following public hearings to receive public testimony regarding the management, operations and governance of the District and the services and rates its subscribers encountered. The dates and locations of these hearings are listed below.

September 1, 2009, 9 a.m.
San Antonio Central Library Auditorium, San Antonio

November 18, 2009, 9 a.m.
Bexar County Commissioners Court, San Antonio

May 10, 2010, 10 a.m.
San Antonio Central Library Auditorium, San Antonio

September 27, 2010, 9 a.m.
San Antonio Central Library Auditorium, San Antonio

October 21, 2010, 9 a.m.
Bexar County Commissioners Court, San Antonio

November 17, 2010, 9 a.m.
San Antonio City Council Chamber, San Antonio

December 6, 2010, 9 a.m.
XXXXXXXXXXXXXXXXXXXXXXX

Note: For access to these hearing postings and the associated minutes and witness lists, please see: <http://www.senate.state.tx.us/75r/senate/commit/c875/c875.htm> and click on "Schedule and Bills Referred to Committee."

RECOMMENDATIONS

Voting Rights — The Committee finds the BexarMet board to be at the heart of the District's dysfunction: BexarMet board members are elected by its customers, and theoretically, those customers are likely to act in their own self interest, electing board members to represent their interests as they relate to the price they pay for water, the quality of that water provided, and the level of service they receive. While that is a plausible theory, history has shown that the normal turnover in board membership has done little, if anything, to improve the board's effectiveness or diminish the level of acrimony and distrust among board members and between the board and management. This could be due to the fact that board members are elected by district, and the individual districts, which are not necessarily contiguous, are scattered throughout Bexar County, and, in fact, include areas in three counties adjacent to Bexar County. These districts frequently have competing and conflicting agendas, and the incentive for the elected board members to cooperate and compromise is minimized, while the incentive to promote the self interest of the customers in each district is maximized, leading to a chronically fragmented and dysfunctional board.

A healthy, prudent board would be capable of reorganizing the District to better serve all of its customers, but the chronically fragmented BexarMet board, short of divesting itself of a couple of small, remote systems, has proven incapable of pursuing this to any meaningful extent for an extended period of time. This situation compels the Oversight Committee to recommend extraordinary measures that may result in a radically different Bexar Metropolitan Water District: To allow the customers of BexarMet to vote on whether to dissolve the District by merging it with the other major water purveyor in Bexar County — the San Antonio Water System (SAWS).

Theoretically, the voting rights of BexarMet customers who reside within the corporate limits of the City of San Antonio would be preserved because they would be voting for City Council members who appoint SAWS board members. However, questions have been raised (or at least inferred) as to the effect of a vote to merge BexarMet with SAWS on the voting rights of BexarMet customers who reside outside the corporate limits of the City of San Antonio and those who reside in BexarMet service areas outside Bexar County. More specifically: 1) Would an election of all BexarMet customers on the question of BexarMet's merger with SAWS need to be cleared by the U.S. Department of Justice Voting Rights Division? and 2) If an election in which all BexarMet customers had the opportunity to vote on a proposition to merge with SAWS results in a decision to merge with SAWS, would that decision be upheld if challenged?

Clearly, these questions can be answered only by trial (i.e., not necessarily in the legal context, but in the vein of pursuing a course of action and then seeing what happens). The Committee is

keenly aware of the law of unintended consequences, and is compelled to mitigate adverse consequences through the imposition of an alternate, interim management entity to serve as an objective and stabilizing influence on the District during any transition period prior to or subsequent to such an election. In addition, the Committee recognizes that the BexarMet customers may elect to not merge with SAWS. Should that be the situation, the Committee recommends certain changes in board member qualifications and reform measures be mandated by the legislature.

Considering the difficulties that were encountered in moving legislation regarding BexarMet through the 81st Legislature, the Committee recommends that two separate bills be filed.

First of all, the committee recommends a bill that would allow BexarMet customers who are registered voters to vote on the question of whether the board of the Bexar Metropolitan Water District should be abolished. This legislation also should provide a mechanism to place the utility under a conservatorship, either through an individual or a board. This conservator would advise the board, and, in the event of an affirmative vote on dissolution, would transition to a receiver to oversee dissolution of the company's assets, ensuring that all customers receive continued, uninterrupted service. Secondly, the Committee recommends a bill to address governance reform issues.

The committee recommends the following measures:

LEGISLATIVE BILL NO. 1

OPTION 1. INDIVIDUAL CONSERVATORSHIP FOLLOWED BY A VOTE ON DISSOLUTION OF BOARD OF DIRECTORS AND, IN THE EVENT OF AN AFFIRMATIVE VOTE, THE MERGER OF BEXARMET WITH ONE OR MORE PUBLIC UTILITIES.

- Amend BexarMet's legislation to require that the Texas Commission on Environmental Quality appoint as conservator an individual with expertise in water utility management and who has no financial interest: 1) in the District; or 2) in any entity that has a contract with the District; or 3) that is likely to develop a contractual relationship with the District.
- The TCEQ shall appoint a conservator within 30 days of the effective date of this legislation. The conservator shall appoint a team to carry out the duties assigned to the conservator. The conservator's term shall expire on the earlier of the date of 60 days after the appointment of a Receiver or when the TCEQ determines that the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers.

- The salary and reasonable and necessary expenses of the conservator and the team appointed by the conservator shall be paid by the District.
- Until such time as the board is abolished pursuant to an election, the conservator shall advise the board on policy matters relating to the District's rehabilitation. The board shall work cooperatively with the conservator to improve the board's ability to oversee the management of the District in a professional manner.
- The conservator shall complete or cause to be completed an inventory and assessment of each of the utility's distinct water systems, identify any assets the sale of which would be likely to improve the District's ability to serve its remaining customers, and develop a comprehensive rehabilitation plan for the District.
- The conservator shall report quarterly to the TCEQ on the progress the conservator has made in carrying out the conservator's duties.
- On the next uniform election date following the 60th day after the date of preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c), the District shall hold an election on the question of dissolving the board and merging BexarMet with one or more appropriate public utilities. If the appropriate entity (TCEQ, the board or the conservator) determines that preclearance is not required, the District shall hold the election on the next uniform election date that falls at least 60 days after the date the determination is made.
- If a majority of the votes in the election favor dissolution of the board and merger with one or more public utilities, the TCEQ shall find that the board is dissolved, and the term of each board director expires on the date of the canvass of the election. The TCEQ shall, within 60 days of the dissolution of the board, appoint a Receiver, which may be the Conservator, to dispose of the District's assets and obligations. The Conservator shall continue to manage the District for a period not to exceed 60 days after the appointment of a Receiver. The Receiver may at its discretion hire, at the District's expense, an independent, third-party management entity to manage the daily operations of the District. This management entity shall have full authority over District personnel for all matters related to the daily management and operations of the utility during the term of the receivership, including human resource issues, subject only to the direction of the Receiver. This management entity shall be ineligible to take over assets should the Receiver transfer assets to other public entities.
- Under the TCEQ's oversight, the Receiver shall assign or transfer the rights and duties of the District associated with the provision of water services, including existing contracts, assets, and liabilities, to one or more appropriate public entities in such a manner that service to the existing customers is not interrupted and that provision of service to new customers is not unreasonably denied or delayed. If any funds remain after payment of all the District's debts, the Receiver shall issue funds into a replacement reserve account to each entity in proportion to the number of active residential customers transferred to the

appropriate public entity or entities in an amount sufficient to deplete the remaining funds.

- If a majority of the votes in the election do not favor dissolution, the Conservator shall continue to manage the District until such time as the TCEQ determines that the District is comprehensively rehabilitated, at which time the conservatorship shall end.
- For a public entity to be eligible to assume any part of BexarMet, that entity must have a bond rating that is equal to or higher than the bond ratings for the District at the time the bill becomes effective.
- Any entity assuming any part of BexarMet shall equalize rates of BexarMet customers with those of its existing customers within three years of the assumption.
- Any entity assuming any part of BexarMet shall be prohibited from selling any part of the assumed system within three years of the date of assumption except for the systems in Medina and Comal counties.
- Any employee earning a salary of \$50,000 or less and who is vested in the District's retirement plan on the effective date of this legislation shall be protected from termination without cause by a conservator, receiver or successor entity. The number of such employees shall be reduced only through retirement, voluntary resignation or termination for cause. Such employees terminated for cause shall be entitled to a reasonable appeals process. This section expires Sept. 1, 2014.

OPTION 2. BOARD CONSERVATORSHIP FOLLOWED BY DISSOLUTION VOTE.

- Same as Option 1, except that individual conservator is replaced by a board whose membership is specified in the legislation. The conservator entity may be a public entity or may be a board made up of elected officials and appointed citizens having knowledge and experience in water utility operations and management and regional water issues. This entity shall follow the same process set forth above for an individual conservator.

LEGISLATIVE BILL NO. 2

Committee recommendations for elements in the second bill include:

- Board candidate qualifications — residency requirement and \$250 filing fee or petition with signatures of 200 registered voters living in District. To be eligible as a candidate or to be elected, a person must have resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot. The person seeking office must also pay a filing fee of \$250 or submit a petition containing the

signatures of 200 registered voters living in the District. The petition must satisfy the requirements prescribed by Section 141.062, Election Code.

- Political contribution limits — \$500 limit per contributor per election cycle. A contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of director, opposing the candidate's opponent or assisting the candidate as an officeholder is considered to be a contribution to the candidate.
- Board training requirements — can't vote until complete management training program each term. Any person elected or appointed to office as a director may not vote, deliberate or be counted as a member in attendance at meeting of the board until the person completes a training program on District management issues each term. The training program must provide information regarding the District's enabling act, the operation of the District, the role and functions of the board, the rules of the board, the District's current budget, the most recent audit results, requirements of the open meetings law, open records law, administrative procedure law and conflict of interest laws, and any applicable ethics policies adopted by the board of the Texas Ethics Commission.
- Board member recall provisions — establishing methods to remove board members by petition and election. A board member may be recalled for incompetency or official misconduct, a felony conviction, incapacity, failure to file a financial statement as required, failure to complete a training program as required or failure to maintain residency in the District. If at least 10 percent of the voters in the District submit a petition to the board requesting the recall of a director, the board within 10 days shall mail a written notice of the petition to each registered voter in the District and within 30 days shall order an election on the question of recalling a director. If a majority of voters favor the recall, the director is recalled and ceases to be a member of the board. The remaining members may but are not required to appoint a replacement who will serve until the next regularly scheduled election.
- Ethics provisions — ethics requirements and financial disclosure requirements. A director may not accept any gift, favor or service over \$25. A director may not accept or solicit a gift, favor or service or employment that might reasonably influence the director in the discharge of an official duty or that the director knows or should know is being offered with the intent to influence the director's official conduct. A director shall annually file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024 and 572.0252, Government Code.

- Term limits — three 2-year terms or 7 years total if appointed. Changes from four-year terms and establishes a limit. Would apply to all elections/terms from passage forward.
- Fees of office — Would prohibit board members from claiming fees for attending meetings in a different fiscal year.

APPENDIX

The following materials are available via the Internet hyperlinks listed below or are attached:

- I. SAO Audit Report (<http://www.sao.state.tx.us/reports/main/09-010.html>)
- II. TCEQ Reports (<http://www.senate.state.tx.us/75r/Senate/commit/c875/c875.htm>)
- III. [House Bill 1565, creating the Bexar Metropolitan Oversight Committee](#)
- IV. Status of implementation of audit report recommendations as of May 5, 2010

APPENDIX IV

BexarMet Water District
 Status of Implementation of Audit Recommendations
 TCEQ - BexarMet Management and Performance Review Dated August 29, 2008
 As of May 5, 2010

No.	Recommendation	Contact	Fully Implemented
9.1 - Recommendations For Management Structure, Policies, and Procedures			
1	Develop Clear Organizational Structure and Communicate it to Employees	Director of Administration Edna Wigfall Crute'	
2	Conduct a Thorough Search for Qualified Candidates for General Manager	Human Resource Manager Caryn Geller	√
3	Conduct a Thorough Search for All Vacant Management Positions	Human Resource Manager Caryn Geller	√
4	Develop Clear Strategic Plan	Director of Administration Edna Wigfall Crute'	√
5	Develop a Comprehensive Safety Program	Director of Administration Edna Wigfall Crute'	
6	Develop a Comprehensive Source Water Protection Program	Senior Policy Analyst Al Rocha	
7	Develop a Comprehensive Emergency Preparedness Plan	Director of Operations Roger Placencia	√
8	Develop and Implement an Asset Management Program	District Planner Kerry McCollough Director of Operations Roger Placencia	
9	Develop Goals and Metrics to Measure Performance for Each Department	Director of Administration Edna Wigfall Crute'	
10	Develop Method to Validate Capital Improvement projects	Int Dir of Eng Rob Villarreal	√
9.2 - Recommendations for Improving Decision-Making Policies and Procedures			
1	Clearly Define the Role of the Board of Directors and the Role of BexarMet Management	Director of Administration Edna Wigfall Crute'	
2	Develop and Implement Training for Current and the New Board Members	Director of Administration Edna Wigfall Crute'	√
3	Develop Consistent Message to Customers, Public, and Press	Director of Public Affairs Mike Lopez	√
4	Revise Procedure for Creating Board Minutes	Director of Administration Edna Wigfall Crute'	√

5	Revise Process for Presenting Information to the Board	Director of Administration Edna Wigfall Crute'	
9.3 - Recommendations for Improving Regulatory Compliance			
1	Develop and Implement a Preventive Maintenance Program	District Planner Kerry McCollough Interim Director of Operation Roger Placencia	
2	Aggressively Investigate All Health - Based Concerns	Director of Operations Roger Placencia Director of Public Affairs Mike Lopez	√
3	Provide More Public Education Regarding Compliance and Water Quality	Director of Operations Roger Placencia Director of Public Affairs Mike Lopez	
9.4 - Recommendations Regarding Financial Policies and Practices and Debt			
1	Complete the Organizational Structure of the Accounting Department	Director of Finance Jesse Morin	√
2	Update Standard Operating Procedures	Director of Finance Jesse Morin	√
3	Implement the Budget as a Firm Control	Director of Finance Jesse Morin	√
4	Update Accounting Software	Director of Finance Jesse Morin	
5	Centralize Purchasing and Procurement	Director of Finance Jesse Morin	√
6	Control Expenditures Through Risk Management	Director of Administration Edna Wigfall Crute'	
7	Develop and Implement a Budget Amendment Process	Director of Finance Jesse Morin	√
8	Increase the Dollar Amount Requiring Board Approval	Director of Finance Jesse Morin	√
9	Limit Contractual Commitments	Director of Finance Jesse Morin	√
10	Listen to Staff Recommendations	Director of Finance Jesse Morin	√
11	Reduce Debt to Equity Ratio	Director of Finance Jesse Morin	
12	Complete funding of cash reserve accounts	Director of Finance Jesse Morin	
13	Allow Continued Use of Commercial Paper	Director of Finance Jesse Morin	√

9.5 - Recommendations Regarding Rate Structure			
1	Shift Focus of Goals for Rate Setting	Director of Finance Jesse Morin	√
2	Increase Impact Fees	Director of Finance Jesse Morin Interim Director of Engineering Rob Villarreal	√
Totals			20

Percentage % of Total 61%

BexarMet Water District
Status of Implementation of Audit Recommendations
TCEQ - Final Engineering Report Dated August 28, 2008
As of May 5, 2010

No.	Recommendation	Contact	Fully Implemented
Issues 1-4			
1	Develop and implement an asset management plan that considers risks and alternatives as a basis for developing a strategic capital improvement plan and budget.	District Planner Kerry McCollough Int Dir of Eng Rob Villarreal	
2	Complete and maintain an infrastructure inventory and system map for use in developing the asset management plan.	District Planner Kerry McCollough Int Dir of Eng Rob Villarreal	√
3	Develop and implement a work order system that allows the District to properly track operations maintenance and for rapid trend analysis to address real-time distribution system problems, such as pressure drops or widespread dirty water complaints, in a timely manner.	Director of Operations Roger Placencia	√
4	Develop and implement a systematic distribution system flushing program that considers the condition of the system, its hydraulic capacity, types of treatment, water quality implications, and water conservation.	Director of Operations Roger Placencia	√
5	Bring undersized and otherwise substandard distribution systems into compliance with regulatory requirements and AWWA standards. Consider adding peripheral storage and pump stations to meet peak water demand resupply needs. Consider creating redundancy of water supply by interconnecting systems within the District or using interconnections to other water purveyors where water supply or delivery issues are creating health and/or conveyance problems.	Int Dir of Eng Rob Villarreal	

6	Educate District staff and the public about existing water conservation regulations and enforce those regulations to curtail excessive demand during peak use periods.	Manager - Water Eff & Com Relations Nathan Riggs	√
Issue 1			
1	Reduce the debt ratio/debt burden. The District should consider selling assets in areas with limited growth potential or in areas where the cost to serve is excessive, providing an appropriate buyer can be found.	Director of Finance Jesse Morin	
Issue 3			
1	Quickly resolve the acute and chronic health risk issues that are currently unresolved, and ensure that maintenance crews adequately disinfect water lines after construction and maintenance.	Director of Operations Roger Placencia	√
Issue 4			
1	Develop and implement a method of tracking all authorized water use, including a standardized method of documentation. Coordinate with all District water users, municipal public works departments, and area fire departments.	Director of Operations Roger Placencia	√
2	Develop and implement a comprehensive leak detection and repair program that includes goals for loss reduction and an action plan to respond if the goals are not met.	Director of Operations Roger Placencia	√

Totals 7

Percentage % of Total 70%

Date: 12/08/2010

Executive Session: Whooping Crane Lawsuit

Submitted By: Linda Whitaker, Technical Services

Division: Technical Services

Submitted For: Steve Raabe

Department:

Information

CAPTION

EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Discussion

Date: 12/08/2010

Whooping Crane Lawsuit Briefing

Submitted By: Linda Whitaker, Technical Services

Division: Technical Services

Submitted For: Steve Raabe

Department:

Information

CAPTION

PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 10-40633 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Recommendation

Motion to be crafted, if necessary, after Board discussion.

Discussion

Vote

Executive Committee

Individual Items 12. - 14.

Date: 12/08/2010

Next Meeting Date / GM's Report / Items for Future Consideration

Submitted By: Lupe Sanchez, Executive
Offices

Division: Executive Offices

Submitted For: Suzanne B. Scott

Department:

12.

Information

CAPTION

DISCUSSION AND APPROPRIATE ACTION REGARDING THE NEXT MEETING DATE

Presenter

Lupe Sanchez

Estimated Presentation Time: 5 minutes

Due to a conflict in the General Manager's and Chairman's January 12 schedules, the Committee will need to discuss whether to reschedule or cancel its January 2011 meeting.

Discussion

Information

13.

CAPTION

GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

Presenter

Suzanne B. Scott

Estimated Presentation Time: 5 minutes

Discussion

14.

Information

CAPTION

ITEMS FOR FUTURE CONSIDERATION

Presenter

Mr. Oehlke, Committee Chair

Estimated Presentation Time: 5 minutes

Discussion

Executive Committee

15.

Date: 12/08/2010

Adjourn

Submitted By: Lupe Sanchez, Executive
Offices

Division: Executive Offices

Department:

Information

CAPTION

ADJOURN

Presenter

Mr. Oehlke, Committee Chair
