

JOINT COMMITTEE ON OVERSIGHT OF BEXAR METROPOLITAN WATER DISTRICT

**Report to the 82nd Texas Legislature
December 20, 2010**

**Co-Chairmen:
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BEXAR METROPOLITAN WATER DISTRICT OVERSIGHT COMMITTEE

December 20, 2010

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P.O. Box 12068
Capitol Station
Austin, Texas 78711

The Honorable Allan Ritter
Chairman of the House Committee on Natural Resources
Room E2.104, Capitol Extension
Austin, Texas 78701

Dear Gentlemen:

The Joint Committee on Oversight of Bexar Metropolitan Water District (District) respectfully submits the following interim report. We hope this document will assist the Texas legislature as it considers urgently needed reforms of the District during the 82nd Regular Session.

Respectfully yours,


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EXECUTIVE SUMMARY

The Bexar Metropolitan Water District (District), created by the Texas Legislature in 1945, has suffered for years from a poor relationship between management and its elected board of directors. This ongoing distrust between some members of the board and key management personnel significantly complicates efforts to improve retail water 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.

Its customers have complained in recent years of inadequate service, unsafe water conditions and excessive rates. Continuing concerns about the District's inability to resolve customer complaints prompted legislative intervention in 2007. The legislature created the Joint Committee on Oversight of Bexar Metropolitan Water District (Committee) to monitor operations, management and governance of the District and to recommend further reform measures to the legislature for its consideration. Financial and management audits by the State Auditor's Office and the Texas Commission on Environmental Quality in 2008 found significant deficiencies and made dozens of recommendations for improvements. The Committee made significant recommendations for reform to the 81st Legislature, but legislators were given assurances by District officials that they would reform the District from within. The committee continued to meet during 2009 and 2010 and found action on the recommendations was slow to be taken. As of December 2010, only 75 percent of the recommendations were complete.

The Committee finds that with the growth of the District through a series of acquisitions and a period of rapid development in the late 1980s through the 1990s, the District began to encounter management problems. 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 District. The District has shown poor economic performance and violated bond covenants at least twice, potentially raising borrowing costs for its customers.

After continuing to receive numerous letters, telephone calls, and hours of testimony from District officials, water policy experts, and concerned District customers, the Committee finds that the Board of Directors is incapable of functioning as a policy-making body.

The Joint Committee on Oversight of 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 Oversight Committee recommends that the legislature take action to provide District customers an opportunity to vote to dissolve the District while ensuring the District's customers are not without water service. As the District is currently governed by a seven-member elected board, the Oversight Committee recommends that the legislature take action to permit District customers, who are registered voters, to vote on the question of whether the board of the Bexar Metropolitan Water District should be abolished. This would permit all District customers to have a voice in whether or not they believe the District can serve their best interests both now and into the future. This option should provide a mechanism to place the District under a conservatorship, either through an individual or a board, before the actual election is held. The 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 District's assets, ensuring that all customers receive continued, uninterrupted service.

The Oversight Committee recommends a legislative action be taken to address governance reform issues, so they would be in place if the District customers vote to retain the District's board or if the will of the legislature or other occurrences do not permit the customers of the District to hold an election.

INTRODUCTION

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. As entities created by the legislature and despite their customers being given the right to vote for board representatives, these entities remain subject to the right of the legislature to reform, recreate or abolish a district if it feels it is not adequately and appropriately performing the functions for which it was created.

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 2007, in the 80th Regular Session of the Texas Legislature, [House Bill 1565 (Puente/Uresti)] (see Appendix III for link to bill). HB 1565 created the Joint Committee on Oversight of Bexar Metropolitan Water District (Committee) to monitor operations, management and governance of the District and to recommend further reform measures to the legislature for its consideration.

The need for oversight of the District was necessary again in 2009 and oversight by the Committee continued. This report is a culmination of the Committee's work.

HISTORY

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 4,765 residential connections in 1945 to almost 91,000 residential and commercial connections today. In that time, its service area has grown from an area of South San Antonio to include territory over widespread areas of Bexar County and in three adjacent counties — Medina, Atascosa and Comal. (The District is scheduled to divest itself of all Comal County public water supply systems by mid-January 2011.) (See District map at Appendix VIII.) More than 260,000 people depend on the District for their water needs.

The District's enabling act required it to hold annexation elections by new customers when it acquired new territory. This provision was ignored as the District in the late 1980s through the 1990s rapidly acquired 20 other utility systems. This failure to comply with the District's legislation was eventually resolved by a federal judge in a 1996 federal Voting Rights Act lawsuit filed by a member of the public seeking to initiate single-member voting districts within the District. The federal judge ordered that the District's boundaries were co-extensive with the areas where it provides water service. The judge's order also changed the District's board makeup from five members elected at-large to seven members elected from single-member districts.

This growth has left the District with wide-ranging, disconnected systems that need upgrades to infrastructure and have proven difficult to manage.

With the growth of the District through these acquisitions and rapid development, 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. Three general managers have been fired, one of them after his indictment for allegedly illegally wiretapping managers of the District, 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 decided to save money on operating costs by failing for several months to approve a new contract to purchase fluoride. Failure to fluoridate water supplies, which was a community initiative undertaken to protect public health, would go against a community referendum and San Antonio city ordinance (Ordinance #92255). Under threat of action by city authorities, the board on Dec. 20, 2010, approved purchase of additional fluoride supplies shortly before exhausting its existing supplies.

BACKGROUND

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

- Guadalupe Lopez — President - District 1 — term expires Nov. 2012
- Gregory Elliot — Secretary - District 2 — term expires Nov. 2014
- Yvonne Cardona — Vice President - District 3 — term expires Nov. 2014
- John Shackelford — Director - 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 — Treasurer - 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.

As of December 2, 2010, the District had 343 employees with 253 earning less than \$40,000 per year (See table at Appendix V).

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 also required the TCEQ to conduct an on-site evaluation of the District.

The State Auditor's Office audit issued in October 2008 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) (see Appendix I for link to full report)

The TCEQ report issued in September 2008 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) (see Appendix II for link to full report)

As the 81st Regular Session of the Legislature prepared to meet in January 2009, and consider bills that could affect the future of the District, the District's staff undertook a program to implement the dozens of recommendations made in the reports by the SAO and TCEQ.

However, by December 2010, only about 75 percent of the recommendations had been implemented. The recommendations that were put in place addressed many procedural deficiencies, improved controls on the District's internal operations and provided a new impact fee structure that is calculated to be sufficient to recover costs of installing new service (see Appendix IV for status of recommendations implementation).

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 unanimous Senate approval but failed to come to a House vote on the final day of the session. That bill would have allowed District customers to vote for dissolution of the District under a conservatorship.

Against this backdrop, the Oversight Committee reinitiated its work leading to this report to the 82nd Regular Session of the Texas Legislature. During this interim (September 2009 to December 2010), the Committee met seven times, hearing from dozens of witnesses in invited and public testimony.

The testimony revealed a District 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.

ISSUES AND FINDINGS

The District has faced a number of issues in recent times.

Chronic low pressure problems resulting from infrastructure deficiencies in the District's northern service areas forced the District into emergency purchases of water from the San Antonio Water System for two summers in a row in 2005 and 2006. Customers in other areas those summers were forced to boil their water before drinking because of drained storage tanks resulting from demand that could not be met.

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 and routine of decisions.

The District'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 District'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 its water supplies. 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 District's customers really wanted fluoride in their water. After the election of three new board members in November 2010, the board at its Dec. 20, 2010, regularly scheduled meeting again took up the issue of purchasing fluoride shortly before its stored supplies of fluoride were exhausted, and decided to purchase supplies of fluoride to avoid a confrontation with city officials.

This willful disregard for 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's evaluation was not started 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 the District and has not been affected by board turnover through the normal electoral processes.

The Joint Committee on Oversight of 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.

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 I. 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 A. 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 Chambers, San Antonio

December 6, 2010, 9 a.m.
Bexar County Commissioners Court, San Antonio

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

The Joint Committee on Oversight of Bexar Metropolitan Water District was first established in 2007 and among its primary purposes was to provide recommendations to the 81st Legislature. The legislature experienced difficulties in implementing an amenable solution to the District's situation in 2009, but the Oversight Committee was able to continue its work and explore solutions the legislature could implement during the 82nd Legislative Session. With this in mind, the Oversight Committee recommends two approaches.

After receiving numerous letters, phone calls, and hours of testimony from District officials, water policy experts, and concerned District customers for the past four years, the Committee believes it would be in the best interest of those individuals living in the District to benefit from a functional, competitive, and structurally sound water district. In the past, the Oversight Committee has recommended that the State Auditor's Office and the Texas Commission on Environmental Quality provide independent assessments of the District's status or performance. Both entities agreed that changes needed to be made and provided recommendations. Yet, over the course of more than two years, the District has been able to implement only 74 percent of those recommendations. Reform is absolutely needed if the District is to adequately carry out the purpose legislatively bestowed upon it.

The Oversight Committee recommends that the legislature take action to provide District customers an opportunity to vote to dissolve the District while ensuring the District's customers are not without water service. As the District is currently governed by a seven-member elected board, the Oversight Committee recommends that the legislature take action to permit District customers, who are registered voters, to vote on the question of whether the board of the Bexar Metropolitan Water District should be abolished. This would permit all District customers to have a voice in whether or not they believe the District can serve their best interests both now and into the future. This option should provide a mechanism to place the District under a conservatorship, either through an individual or a board, before the actual election is held. The 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 District's assets, ensuring that all customers receive continued, uninterrupted service.

If the District customers vote to retain the District's board, or the will of the legislature or other occurrences do not permit the customers of the District to hold an election, the Oversight Committee recommends a legislative action be taken to address governance reform issues.

The Oversight Committee finds the District's board to be at the heart of the District's dysfunction: District 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 District board, short of divesting itself of a few small, remote systems, has proven itself 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 the District to vote on whether to dissolve the District and merge it with one or more other appropriate public entities, for example, the San Antonio Water System (SAWS).

Under a scenario where District customers approved a ballot measure to merge with SAWS, theoretically, the voting rights of District 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. Only about 60 percent of the District's customers live within the city limits of San Antonio. Questions have been raised as to the effect of a vote to merge the District with SAWS on the voting rights of the approximately 40 percent of District customers who reside outside the corporate limits of the City of San Antonio and those who reside in District service areas outside Bexar County. (The District is scheduled to divest itself of all public water supply systems in Comal County by mid-January 2011. As of December 10, 2010, the District had 210 or 0.23% of its accounts served by a stand-alone water supply system in a subdivision in Medina County and 1,099 or 1.21% of its accounts in Atascosa County, served by the District's Southside public water system.) More specifically: 1) Would an election of all District customers on the question of the District'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 the District's 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 and/or subsequent to such an election. In addition, the Committee recognizes that the District's customers may elect to not merge with another entity. Should that be the situation, the Committee recommends certain changes in board member qualifications and reform measures be mandated by the legislature.

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 THE DISTRICT WITH ONE OR MORE APPROPRIATE PUBLIC ENTITIES.

- Amend the District'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 or its executive director shall appoint a conservator within 60 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 180 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 District'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 and the Oversight Committee 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 the District with one or more appropriate public entities. 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 appropriate public entities, 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. In the event the Receiver is not the Conservator, the Conservator shall continue to manage the District for a period not to exceed 180 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 District 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 appropriate 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 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 advise the District's board until such time as the TCEQ determines that the District is comprehensively rehabilitated, at which time the conservatorship shall end.
- For an appropriate public entity to be eligible to assume any part of the District, 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 the District shall equalize rates of District customers with those of its existing customers within three years of the assumption.

- Any entity assuming any part of the District shall be prohibited from selling any part of the assumed system within three years of the date of assumption except for the system in Medina County.
- 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. The training program must be held within 30 days of the election or appointment as a director.

- 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 a single-member district submit a petition to the board requesting the recall of the director representing that district, the board within 10 days shall mail a written notice of the petition to each registered voter in the single-member district and within 30 days shall order an election on the question of recalling the 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. Would require documentation of official District meetings, as publicly posted in accordance with the Texas Open Meetings Act, and as defined in Robert's Rules of Order, for reimbursements of expenses associated with such meetings.

- Oversight continued — would continue the Oversight Committee until Jan. 1, 2013, with membership expanded to seven members. Members would include two senators who represent districts that include territory within the Bexar Metropolitan Water District, appointed by the Lieutenant Governor; two representatives who represent House districts that include territory within the District, appointed by the Speaker of the House of Representatives; one member with special expertise in the operation of public water utilities appointed by the Governor; one member appointed by the Governor to represent the public; and a member of the Bexar County Commissioners Court who represents a precinct in which customers of the District reside.

APPENDIX

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

- 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 or
<http://www.legis.state.tx.us/tlodocs/80R/billtext/html/HB01565F.htm>
- IV. Status of implementation of audit report recommendations as of Dec. 1, 2010
- V. Number of Employees and salary range
- VI. Number of Accounts in BexarMet districts, Senate districts and House districts
- VII. Bexar Metropolitan Water District water supplies and usage 2007-9
- VIII. Bexar Metropolitan Water District map

APPENDIX IV

Bexar Metropolitan Water District
 Status of Implementation of Audit Recommendations
 TCEQ - BexarMet Management and Performance Review Dated August 29, 2008
 As of December 1, 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	Target Date July 2011
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	Target Date April 2011
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'	Ongoing
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	Target Date April 2011
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	Target Date January 2011
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	Board Action Pending
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	Ongoing. Latest ratio is 72.5%.
12	Complete funding of cash reserve accounts	Director of Finance Jesse Morin	Ongoing. 90 days in cash reserves. Goal is 120 days.

13	Allow Continued Use of Commercial Paper	Director of Finance Jesse Morin	v
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9.5 - Recommendations Regarding Rate Structure

1	Shift Focus of Goals for Rate Setting	Director of Finance Jesse Morin	v
2	Increase Impact Fees	Director of Finance Jesse Morin Interim Director of Engineering Rob Villarreal	v

Total Tasks Completed 25

Percentage % of Total 76%

Bexar Metropolitan Water District
 Status of Implementation of Audit Recommendations
 TCEQ - Final Engineering Report Dated August 28, 2008
 As of December 1, 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	Target Date June 2011
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	v
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	v
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	v

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	Capital Improvement Plan (CIP) Target Date 2018
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	Ongoing. Ratio is at 72.5%
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	√

Total Tasks Completed 7
Percentage % of Total 70%

Appendix V

Bexar Metropolitan Water District Salary List and Employee Count

12/02/10

<u>Salary Amount</u>	<u>Employee Count</u>
\$15,000-19,999	0
\$20,000-\$24,999	79
\$25,000-\$29,999	75
\$30,000-\$34,999	56
\$35,000-\$39,999	43
\$40,000-\$44,999	26
\$45,000-\$49,999	17
\$50,000-\$59,999	13
\$60,000-\$69,999	13
\$70,000-\$79,999	11
\$80,000-\$89,999	1
\$90,000-\$99,999	6
\$100,000-\$109,999	1
\$110,000-\$119,999	1
\$120,000-\$189,999	0
<u>\$190,000</u>	<u>1</u>
Total	343

Employees by Senate and House Districts

Name	District	Number of Employees
<u>Senators</u>		
Carlos I. Uresti	19	171
Judith Zaffirini	21	24
Jeff Wentworth	25	18
Leticia Van de Putte	26	120
<u>House Members</u>		
Jose Aliseda	35	9
Doug Miller	73	0
Tracy O. King	80	5
Trey Martinez Fischer	116	17
Juan Garza	117	60
Joe Farias	118	85
Roland Gutierrez	119	35
Ruth Jones McClendon	120	12
Joe Straus III	121	12
Lyle Larson	122	9
Michael Villarreal	123	10
Jose Menendez	124	54
Joaquin Castro	125	23

Appendix VI

Number of Accounts in Each District of BexarMet Board, Senate and House of Representatives

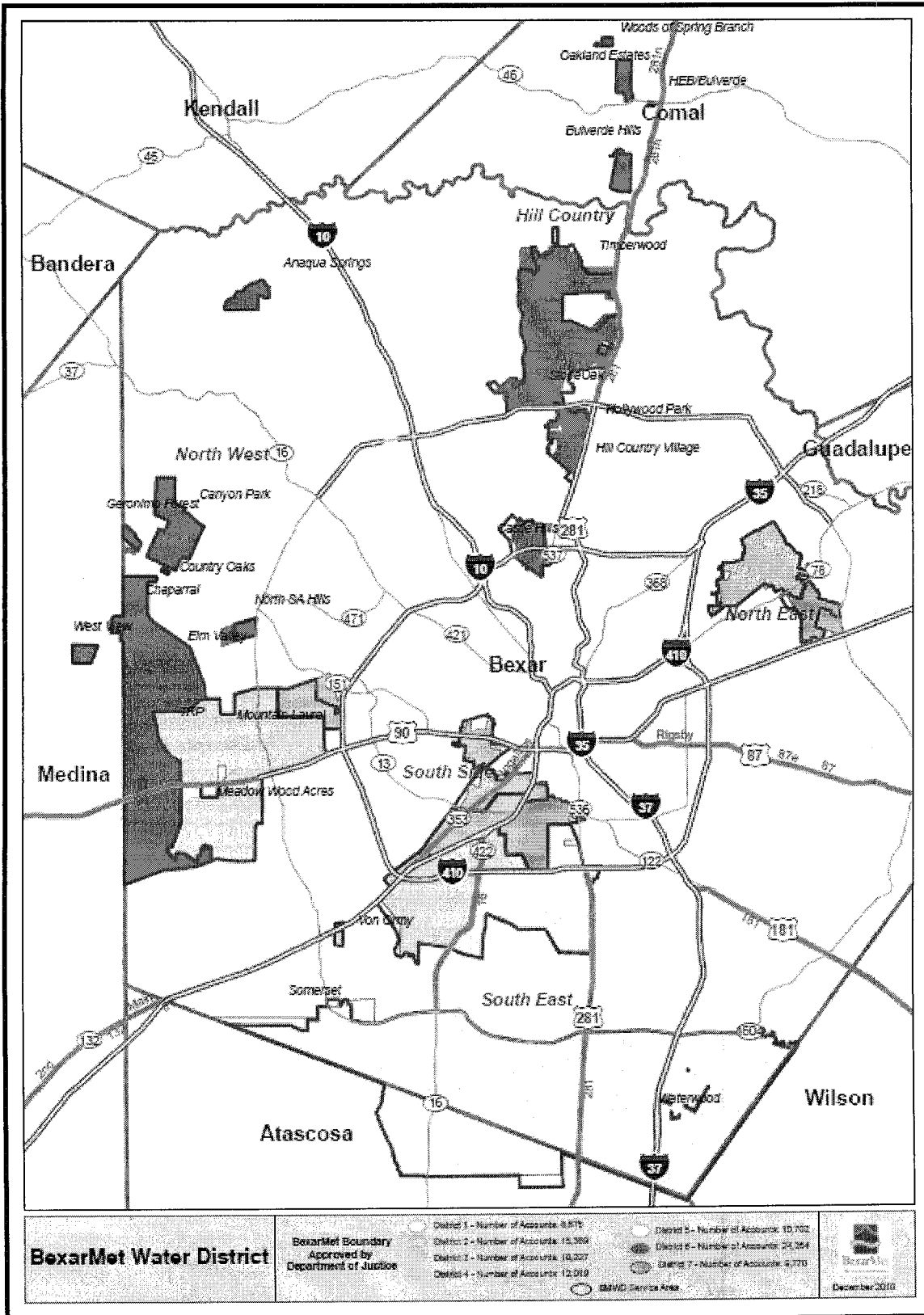
<u>BexarMet Board</u>	<u>District</u>	<u>Number of Accounts</u>	<u>% of Total</u>
Guadalupe I. Lopez	1	8,575	9
Greg M. Elliot	2	15,389	17
Yvonne Cardona	3	10,227	11
John Shackelford	4	12,019	13
Vanessa Ybarra	5	10,702	12
Lesley Wenger	6	24,354	27
Jerry G. Gonzales	7	9,970	11
Total		90,955	100

<u>Senate</u>	<u>District</u>	<u>Number of Accounts</u>	<u>% of Total</u>
Carlos I. Uresti	19	34,554	38
Judith Zaffirini	21	20,415	22
Jeff Wentworth	25	20,617	22
Leticia Van de Putte	26	15,819	18
Total		90,955	100

<u>House</u>	<u>District</u>	<u>Number of Accounts</u>	<u>% of Total</u>
Jose Aliseda	35	1,034	1.1
Doug Miller	73	486	0.5
Tracy O. King	80	290	0.3
Trey Martinez Fischer	116	0	0
Juan Garza	117	16,612	18.3
Joe Farias	118	21,295	23.4
Roland Gutierrez	119	1,717	1.9
Ruth Jones McClendon	120	11,313	12.5
Joe Straus III	121	1,766	2.0
Lyle Larson	122	20,487	22.5
Michael Villarreal	123	450	0.5
Jose Menendez	124	14,314	15.7
Joaquin Castro	125	1,191	1.3
Total		90,955	100

Source: Bexar Metropolitan Water District

BexarMet Water Sources in acre-feet from 2007-2009												
Year	Edwards		Trinity		Canyon L.		Medina L.		Lake Dunlap		Carrizo	
	(Own)	(Lease)	BMWD (Capacity)	WECO Agreement	CLWS Agreement	BMA Agreement	(Own)	(Lease)	CRWA Agreement	Bexar County	Total Available	
2007	23,578.5	10,168.2	4,933	17,500	560	19,974	7,866.0	3,156.0	4,000	968	92,704	
2008	23,578.5	12,890.5	4,933	17,500	560	19,974	7,866.0	3,156.0	4,000	968	95,426	
2009	23,578.5	12,710.5	4,933	17,500	560	19,974	7,866.0	1,656.0	4,000	968	93,746	
Total Production From All BexarMet Sources (in acre-feet)												
Year	Edwards		Trinity		Canyon L.		Medina L.		Lake Dunlap		Carrizo	
2007	20,440.0		2,153.8		163.4	0	9,961.8		3,747.8	238.6	36,705.4	
2008	25,506.8		3,958.9		190.1	0	11,533.9		2,894.4	340.2	44,424.3	
2009	22,256.0		2,796.6		195.6	0	12,974.8		3,146.7	191.4	41,561.1	
Source: Bexar Metropolitan Water District												



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Report to the 82nd Legislature by the Joint Committee on Oversight of the Bexar Metropolitan Water District
 January 2011