

## **“NO” VOTE REQUESTED ON SB 533, HOUSE FLOOR AMENDMENT #6**

Last session, SAWS tried and failed –on *sine die*-- to end run the Legislature to benefit its Vista Ridge water supply project. Today we believe SAWS is trying a similar end run for Vista Ridge in both the Bexar County 285<sup>th</sup> State District Court, and in a Joint Conference Committee in the Legislature. The Committee is considering, *inter alia*, House Floor **Amendment 6** to **SB 533** (“Amendment 6”) that would amend the statutory bid process for so-called “design-build” projects by governmental entities with populations or service areas of more than 100,000. (All House floor amendments to SB 533 were rejected by the Senate; copy of Amendment 6, amending Govt. Code Sec. 2269.361(a), is attached.)

SAWS has *no* immediate need for either the expedited declaratory judgment/permanent injunction they seek in Court, or the statutory change they seek in the Legislature. In particular, they are burdening the legislative system unnecessarily. *Floor Amendment 6 should be stripped from SB 533 in Conference Committee to avoid a statutory amendment of broad application.* SAWS instead should return to Court, where they have assured the Judge they should prevail and get the benefit SAWS, and SAWS alone, seeks in both venues. An amendment to Govt. Code Sec. 2269.361(a) is unnecessary.

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We don’t believe either the Court or legislators are aware SAWS is asking for two different versions of the same thing. We believe SAWS helped induce the introduction of HB3188 in March, 2017, well before the Court action, to the same effect that they now seek as Amendment 6. However, their original Petition to the Court says nothing about already being in the Legislature to, in effect, second-guess the Judge. SAWS’ objective in the San Antonio court is to induce a State District Judge to enter an expedited declaratory Judgment and permanent injunction, under Government Code Ch. 1209 (the “Expedited Declaratory Judgment Act” or “EDJA”). In this case, getting that result will depend on the Judge’s acceptance of SAWS’ interpretation of *current* Sec. 2269.361(a). **SAWS assured the Court in its original Petition that SAWS is asking for a very “reasonable” interpretation of that statute *as it now exists*.**

SAWS seeks a ruling that interprets Sec. 2269.361(a)’s 180-day bid process for design-build projects to allow governmental entities to arbitrarily set a shorter deadline for bids (to allow SAWS to essentially “hurry along” with building SAWS’ hookup to the non-existent Vista Ridge pipeline).

SAWS has agreed to myriad amendments to the Vista Ridge contract, giving concessions and deadline extensions to their private partner Garney Construction, often to help Garney avoid a contractual default. There is no guarantee the private Vista Ridge pipeline will ever be built, yet SAWS seems desperate to accept a bid from a pre-approved contractor, issue securities backed by their ratepayers to finance the hookup, and build infrastructure that may never be needed, at the expense of their ratepayers. They seem desperate to “save” this supposedly great project.

**Why then do they need to change the language of this statute, *for all similar governmental entities and invite potential bidding abuses in high-dollar projects*, to fit the interpretation they seek from a judge as reasonable and sufficient, on the face of the statute now, to induce a declaratory judgment/permanent injunction that bars any third party --- perhaps a disgruntled bidder or ratepayer --- from later challenging either SAWS’ bid process or the City of San Antonio’s issuance of commercial paper notes to finance the project? SAWS should be held to their own argument before the Court –there is no reason for a change in law of broad application.**

FLOOR AMENDMENT 6 TO SB 533

Amend SBA533 (house committee report) as follows:

(1)AAOn page 9, between lines 19 and 20, insert the following appropriately lettered subsection:

(\_\_\_\_) Notwithstanding the other provisions of this Act, Section 269.361(a), Government Code, as amended by this Act, applies to a contract entered into on or after the effective date of this Act and for which a bid or other solicitation was submitted after June 21, 2017.

(2)AAA Add the following appropriately numbered SECTION to the bill:

SECTIONA\_\_\_\_.AASection 2269.361(a), Government Code, is amended to read as follows:

(a)AAA governmental entity shall request proposals from design-build firms identified under Section 2269.359(c). A response to a request for detailed proposals must be submitted on or before the earlier of the time for submission requested by the governmental entity or ~~{firm must submit a proposal not later than}~~ the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms. AAThe request for proposals must include:

(1)AAa design criteria package;

(2)AAif the project site is identified, a geotechnical baseline report or other information that provides the design-build, etc. [remainder of Section unchanged.]

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