

AN ORDINANCE **75803**

APPROVING THE COMPROMISE AND SETTLEMENT OF THE PENDING LITIGATION CAUSE NO. 91-CI-06830, STYLED NELDA WEATHERLY, ET AL. VS. THE CITY OF SAN ANTONIO; PROVIDING FOR A POLICY THAT THE FUTURE OF THE APPLEWHITE PROJECT SHALL BE DETERMINED IN LIGHT OF THE PENDING STATE AND FEDERAL LITIGATION, REPORTS AND STUDIES REGARDING THE NEED FOR A RESERVOIR OR SIMILAR PROJECT AND A VOTE OF THE ELECTORATE TO APPROVE OR REJECT; DIRECTING THAT THE DISTRICT COURT BE ADVISED THAT ALL ISSUES ARE SETTLED AND THAT THE SUIT BE DISMISSED; FURTHER PROVIDING THAT NO FURTHER WORK IS TO TAKE PLACE OTHER THAN THAT NECESSARY TO PRESERVE THE TEXAS WATER COMMISSION PERMIT AND U.S. CORPS OF ENGINEERS 404 PERMIT AND REQUIRED BY STATE AND FEDERAL LAW; FURTHER PROVIDING FOR THE COMPLETION OF LITIGATION IN PROGRESS ON MAY 4, 1991, INCLUDING CONDEMNATIONS AND ACQUISITION OF LAND FOR THE PROJECT; AMENDING ORDINANCE 73583 AND RESOLUTION NO. 91-20-31 TO THE EXTENT THAT THEY ARE INCONSISTENT WITH THIS ORDINANCE; APPROVING THE TERMS AND CONDITIONS FOR SETTLEMENT CONTAINED IN THIS ORDINANCE; AND DECLARING AN EMERGENCY.

* * *

WHEREAS, the City Council of the City of San Antonio, by Resolution No. 79-35-74, passed and approved on July 19, 1979, authorized the construction of the Applewhite Reservoir ("the Project"); and

WHEREAS, on the 4th day of May, 1991, the voters in a 63,258 to 59,833 vote decided to abandon the project; and

WHEREAS, the trustees of the San Antonio Water Works ("CWB") brought suit to contest the validity of the election; and

WHEREAS, the City Council has the authority, under Section 44 of the City Charter, to repeal, amend or modify the initiative ordinance after the passage of six (6) months and thereby reinstitute the project as originally designed, or in some modified design, or to put the property to use for some other related or unrelated public purpose; and

WHEREAS, the City Council has respected the voters' decision to not build the Project; and

WHEREAS, the City Council wishes to establish a policy that no action will be taken with regard to the future of the Applewhite Reservoir Project or use of the site for a similar project until the issue is put to the qualified electors of the City for approval or rejection; and

WHEREAS, there is continuing litigation and agency action by the Guadalupe-Blanco River Authority, the Sierra Club, the U.S. Fish and Wildlife Service and the Texas Water Commission to restrict the use of the waters in the Edwards Aquifer; and

WHEREAS, the City is vigorously defending itself on all fronts; and

WHEREAS, there is great uncertainty with respect to the water supply for the City of San Antonio; and

WHEREAS, due to the uncertainty and changed conditions, there is a need for the City to maintain all possible options through the flexibility to respond as necessary to the actions pending before the state and federal courts and agencies; and

WHEREAS, the City Council wishes that the newly created and soon to take office San Antonio Water System Board of Trustees re-evaluate the Applewhite Reservoir Project in light of all the pending actions of state and federal agencies, litigation and the results of pending studies and reports and to report to the City Council as to the recommended disposition of the project and the permits; and

WHEREAS, the City feels it necessary and prudent to maintain the various state and federal permits for the construction of the Project until December, 1995, so that the City's long range water management plan can be developed; and

WHEREAS, the City Council wishes to have the Board seek application to amend the Texas Water Commission Permit No. 3914 to allow for the extension of time limits so that the City Council and the Board can determine what the water needs will be under the long term water management plan; and

WHEREAS, the City Council wishes to approve the terms and conditions of the settlement and compromise of the case styled Nelda Weatherly, et al v. the City of San Antonio; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council will continue to respect the voters' decision and will not proceed with the construction of the project at this time, but will continue to preserve the permits for the Project until 1995 pending a decision by the state or federal courts and agencies or the legislature regarding the Edwards Aquifer and pending the decision by the Texas Water Commission regarding inter-basin transfers.

SECTION 2. The City Council directs that the decision to proceed with the Project will be made only upon a mandate of the voters of the City of San Antonio by establishing a policy that no action will be taken with regard to the future of the Applewhite Reservoir Project or use of the site for a similar project until the issue is put to the qualified electors of the City for approval or rejection; and

SECTION 3. The City Manager is authorized to direct the City Attorney and the City's outside counsel to immediately turn off the clock on any further trial preparation on the suit styled Nelda Weatherly, et al v. the City of San Antonio until all the parties make a determination on the settlement offer, and upon acceptance by the parties, the Court shall be advised that all issues in controversy have been settled.

SECTION 4. The City Council hereby directs the San Antonio Water System Board of Trustees to re-evaluate the Applewhite Reservoir Project in light of the Emergency Rules and Proposed Permanent Rules of the Texas Water Commission relating to regulation of the Edwards Aquifer, the Citizens' Water Committee Report, pending litigation, and other ongoing and contemplated water studies.

SECTION 5. The City Council hereby directs the San Antonio Water System Board of Trustees to make application to amend the "Time Limitations" provision of Permit No. 3914 issued by the Texas Water Commission to the Water System Board of Trustees of San Antonio to repeal the existing language and to provide that the San Antonio Water System Board of Trustees have until December 31, 1995, to make a decision of whether to forfeit the permit, proceed under the permit, or to modify, revise or convert the Project to other water uses in light of initiatives by the Texas Water Commission, legislative action, pending litigation or studies undertaken by the City of San Antonio. The San Antonio Water System Board of Trustees is further directed to take all action, but only that action, necessary to preserve the state and federal permits related to the Project.

SECTION 6. The City Council further directs the Water System Board of Trustees to terminate all construction and other contracts for the completion of the Applewhite Reservoir Project and further directs that no further work will take place other

than work consistent with the directions in this ordinance required to preserve the Texas Water Commission permit and U.S. Corps of Engineers Sec. 404 permit and required by applicable state and federal laws relating to environmental or archaeological issues and completion of litigation in progress on May 4, 1991, including condemnations and acquisition of land for the Project.

SECTION 7. The City Council hereby directs the Water System Board of Trustees to complete the eminent domain proceedings pending in Court on May 4, 1991, so that the portion of the site then being acquired can be available for use as originally intended or for some modified version of the project, but only upon approval of the voters, or in the event that the project is not to be constructed for any reason, then the site can be put to some unrelated public use by decision of the City Council and the Board; and

SECTION 8. The City Council hereby declares that to the extent Ordinance 73583 and Resolution No. 91-20-31 are inconsistent with these directions, they are amended accordingly.

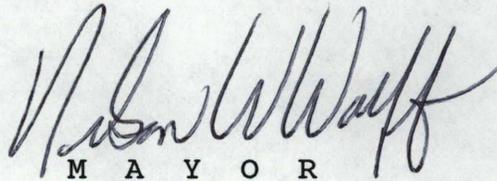
SECTION 9. The City Council hereby directs and authorizes the City Manager and City Attorney to prepare and execute a judgment of dismissal to be entered in the above litigation as follows:

- a. Reciting that the Plaintiffs' terms as Trustees will expire on or before trial on the merits and the litigation as to them is moot;
- b. Reciting that the Trustees were authorized to bring and brought the litigation in good faith to determine their fiduciary responsibilities and to protect themselves from individual liability in light of the substantial sums of money expended on the Project and that the Court finds no basis for imposing any liability on the Board or its members, officers, employees or agents;
- c. Reciting that the issue of whether the initiative provisions of the San Antonio City Charter can be legally utilized to require the abandonment of a project after it has been authorized by the City Council and implementation commenced by the Board remains an open issue and was not decided in this litigation by Final Judgment.
- d. Reciting that all authorizations, contracts, permits and actions by the City of San Antonio and the Board were legal and valid and the Board was legally authorized to acquire property for the Project through purchase and eminent domain proceedings; and
- e. Reciting that all reasonable and necessary costs and expenses of the litigation by the City of San Antonio will

be borne by the Board as a project expense necessary to preserve the permits.

SECTION 10. In order to allow the opportunity for acceptance of the offer by the Board on May 19, 1992, and communication with the Judge by the imposed deadline of May 22, 1992, and submittal on May 29, 1992, so that the City can move forward the development of water conservation and management plans, an emergency is declared so that this ordinance shall become effective immediately upon the affirmative vote of at least eight (8) members of the City Council; otherwise, such ordinance shall become effective in ten (10) days after passage.

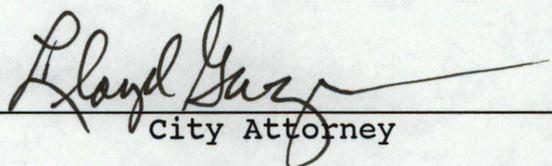
PASSED AND APPROVED this 14TH day of May, 1992.


M A Y O R

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

92-21

SETTLEMENT OF
 DWB LAWSUIT;
 APPLEWHITE
 RESERVOIR

ITEM NO. 53

DATE: MAY 14 1992

MEETING OF THE CITY COUNCIL

MOTION BY: Wing

SECONDED BY: Thornton

75803

ORD. NO. _____ ZONING CASE _____

RESOL. _____ PETITION _____

ARTS & CULTURAL AFFAIRS
AVIATION
BUILDING INSPECTIONS
BUILDING INSPECTIONS HOUSE NUMBER
CITY ATTORNEY
MUNICIPAL COURT (HOLLIS YOUNG)
REAL ESTATE (FASSNIDGE)
REAL ESTATE (HUBBARD)
REAL ESTATE (WOOD)
TRIAL SECTION
CITY MANAGER
TRAVIS BISHOP, ASST. TO MGR.
CODE COMPLIANCE
INTERGOVERNMENTAL RELATIONS
CITY PUBLIC SERVICE-GENERAL MGR.
CITY PUBLIC SERVICE-MAPS/RECORDS
CITY WATER BOARD-GENERAL MGR.
COMMERCIAL RECORDER
COMMUNITY DEVELOPMENT (BASEMENT)
COMMUNITY INITIATIVES
CC
CC
DC
EC
FI
FI
HO
IN
IN
LI
MA
MA
MA
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORP. (PUBLICATION)
MUNICIPAL COURTS
PARKS & RECREATION
PLANNING
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
POLICE DEPT.-GROUND TRANSPORTATION
PUBLIC INFORMATION OFFICE
PUBLIC UTILITIES
PUBLIC WORKS
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE (BILL TOUDOUZE)
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING & GENERAL SERVICES
WASTEWATER MANAGEMENT

**EMERGENCY
 8 VOTES NEEDED**

	ROLLCALL	AYES	NAYS
ROGER PEREZ PLACE 1		✓	
FRANK PIERCE PLACE 2			X
LYNDA BILLA BURKE PLACE 3		ABSENT	
FRANK D. WING PLACE 4		✓	
JUAN F. SOLIS III PLACE 5		✓	
HELEN AYALA PLACE 6		✓	
YOLANDA VERA PLACE 7		✓	
BILL THORNTON PLACE 8		✓	
WEIR LABATT PLACE 9		✓	
LYLE LARSON PLACE 10			X
NELSON WOLFF PLACE 11 (MAYOR)		✓	

AMENDS ORD. NO. 75803 OF 5-6-91 *and filed*
 AMENDS ~~RES~~ NO 91-20-31 OF 5991!

92-21

FILE (original) "DWB"-GENERAL #7
 (copy) "APPLEWHITE"