

## **Exhibit A**

### **Contracts with Fort Bliss**

The Department of Defense (DOD) was reluctant to expand Fort Bliss because it would "likely require purchase or development of new potable water sources, to include, perhaps desalination technology."<sup>1</sup> On May 27, 2004 the El Paso Water Utilities Public Service Board (PSB) promised DOD that PSB would build the world's largest inland desalination plant on Fort Bliss property to allow Fort Bliss to keep its' existing wells in reserve as a strategic buffer.<sup>2</sup>

The Base Realignment and Closure Commission announced plans to expand Fort Bliss on May 13, 2005. Later that same day, the PSB General Manager signed an agreement (right of entry) to build the desalination plant on Fort Bliss property.<sup>3</sup> The agreement guaranteed PSB nothing in return. Fort Bliss retained the right to cancel the agreement at will. PSB agreed to execute, accept and be bound by an easement and "to such terms and conditions which the Department of the Army may deem to be reasonable and proper to protect its interest."

On July 24, 2009, PSB signed an easement with Fort Bliss.<sup>12</sup> The easement can be cancelled upon thirty day notice. Thus Fort Bliss can cancel the easement and require PSB to remove the plant at any time. This gave Fort Bliss the power to dictate the terms of all agreements related to the plant. PSB had to sign the easement because they had built the plant on Fort Bliss property and Fort Bliss could cancel the right of entry at will.

On August 18, 2009, PSB announced plans to execute a water purchase contract<sup>5</sup> with Fort Bliss. PSB must purchase feed stock water from Fort Bliss in order to effectively operate the plant.<sup>5</sup> Feed stock cannot be readily obtained from any other source.<sup>5</sup> The contract allows Fort Bliss to terminate feed stock sales to PSB upon 30 day notice.<sup>5</sup> Such termination would render the plant useless and PSB's \$61Million investment in the plant would be lost. PSB had to sign the water purchase contract because they had built the plant on Fort Bliss property and Fort Bliss could cancel the easement upon thirty days notice

On August 26, 2009, PSB amended the water purchase contract to provide for a wholesale rate of \$.64 per CCF on sales of water from PSB to Fort Bliss.<sup>4</sup> It is important to note that the water purchase contract does not provide for the sales of water from PSB to Fort Bliss. The water purchase contract provides for sales of water from Fort Bliss to PSB.

PSB regulations<sup>14</sup> require that contracts for the sale of water at wholesale rates must specify "contract time, maximum quantity desired, cost of service and other conditions of service." The water purchase contract does not specify any such conditions. Yet it was amended to provide for the sale of water from PSB to Fort Bliss at a wholesale rate.

Furthermore, PSB rules and regulations limit wholesale contracts to properties that are on the tax-rolls of El Paso County. Therefore PSB cannot sell water to Fort Bliss at wholesale rates, but they will do it anyway. PSB had to agree to a \$.64 per CCF wholesale rate because they had built the plant on Fort Bliss property and Fort Bliss could cancel the easement upon thirty days notice.

PSB had been selling water to Fort Bliss at the same rates charged to customers inside the city limits. These rates ranged from \$1.45 to \$4.87 per CCF.<sup>8</sup>

PSB agreed to reduce the rate to a flat \$.64 per CCF,<sup>4</sup> a discount of between \$.81 per CCF (\$1.45 - \$.64) and \$4.23 per CCF (\$4.87-\$0.64). If Fort Bliss elects to keep its' existing wells in reserve as a strategic buffer, PSB will be forced to supply 4.4 Million CCF a year (9MGD)<sup>7</sup> to Fort Bliss at a total discount of between \$178 Million<sup>10</sup> and \$930 Million<sup>11</sup> over the life of the plant. PSB will raise the price of water to El Paso Citizens to make up the difference. PSB also agreed to pay Fort Bliss \$20.5 Million for the easement that had already been negotiated and signed on July 24, 2009.<sup>12</sup>

PSB will pay \$3.21 per CCF<sup>13</sup> to replace the water that it sells to Fort Bliss for \$.64 per CCF. This will result in a liability of \$565 Million<sup>9</sup> if Fort Bliss elects to keep their wells in strategic reserve. PSB carries the plant and learning center on their books as an asset worth \$100 Million.

PSB is required to take corrective action if water production lowers the water table on Fort Bliss.<sup>6</sup> An increase in water production will lower the water table and PSB may have to deepen or drill new wells for the exclusive use of Fort Bliss.

**Conclusion: The desalination plant was a gift to the DOD to entice the BRAC Commission to expand Fort Bliss. The purpose of the gift was to promote economic development. PSB can not include this cost in their rates because it is not a cost of service. PSB can not shut off a customers' water because the customer is unable to pay for a subsidy to the U. S. Army. Bondholders have a lien on PSB revenues. This lien has been impaired by as much as \$930 Million.**

**1. Impact study [http://www.brac.gov/ShowPubDoc.aspx?Doc\\_st=USA-0221v4\\_Criteria\\_8\\_Army\\_SSEI.pdf&Path\\_st=BRAC\RPT&DocID\\_in=185](http://www.brac.gov/ShowPubDoc.aspx?Doc_st=USA-0221v4_Criteria_8_Army_SSEI.pdf&Path_st=BRAC\RPT&DocID_in=185) page 2**

**2. Team Bliss BRAC Commission Familiarization Briefing 27 May 05, Slide 51. [http://www.brac.gov/ShowPubDoc.aspx?Doc\\_st=Fort\\_Bliss\\_Installation\\_Familiarization\\_Briefing\\_\(27\\_May\\_04\).pdf&Path\\_st=BRAC\OTHER&DocID\\_in=9864](http://www.brac.gov/ShowPubDoc.aspx?Doc_st=Fort_Bliss_Installation_Familiarization_Briefing_(27_May_04).pdf&Path_st=BRAC\OTHER&DocID_in=9864)**

**3. Immediate Right-of-Entry No. DACA63-9-05-0535 DATED May 11, 2005 [http://www.citizensmakethecall.com/restricted/tinymce/jscripts/tiny\\_mce/plugins/filemanager/files/Note10.pdf](http://www.citizensmakethecall.com/restricted/tinymce/jscripts/tiny_mce/plugins/filemanager/files/Note10.pdf)**

**4. PSB Water Supply Contract to Fort Bliss**

**[http://www.epwu.org/public\\_info/agenda/attachments/Item6082609.pdf](http://www.epwu.org/public_info/agenda/attachments/Item6082609.pdf)**

**5.PSB Water Purchase Contract from Fort Bliss Contract**

**[http://www.epwu.org/public\\_info/agenda/attachments/Item7082609.pdf](http://www.epwu.org/public_info/agenda/attachments/Item7082609.pdf)**

6. [http://www.citizensmakethecall.com/restricted/tiny\\_mce/plugins/filemanager/files/Note2.pdf](http://www.citizensmakethecall.com/restricted/tiny_mce/plugins/filemanager/files/Note2.pdf)

7. [http://www.citizensmakethecall.com/restricted/tiny\\_mce/plugins/filemanager/files/ResponsetoJ.JanacekemailfromE.Archuleta7-24-09.pdf](http://www.citizensmakethecall.com/restricted/tiny_mce/plugins/filemanager/files/ResponsetoJ.JanacekemailfromE.Archuleta7-24-09.pdf)

8. [http://www.citizensmakethecall.com/restricted/tiny\\_mce/plugins/filemanager/files/ORRresponseToJanacekInvoicesFtBlissWtrService.pdf](http://www.citizensmakethecall.com/restricted/tiny_mce/plugins/filemanager/files/ORRresponseToJanacekInvoicesFtBlissWtrService.pdf)

**9. 4.4 Million CCF per year X (\$3.21 replacement cost-\$0.64 sales price) X 50years**

**10. 4.4 Million CCF per year X \$0.81 discount X 50 years**

**11. 4.4 Million CCF per year X \$4.23 discount X 50 years**

12.

[http://www.citizensmakethecall.com/restricted/tiny\\_mce/plugins/filemanager/files/ORRdocToJanacekFtBlissEasementOnly16Sept2009.pdf](http://www.citizensmakethecall.com/restricted/tiny_mce/plugins/filemanager/files/ORRdocToJanacekFtBlissEasementOnly16Sept2009.pdf)

**13. <http://www.ibwc.state.gov/Files/ibwc080907.pdf> p66 (435.6 Ccf per acre foot)**

**14. EPWU Rules and Regulations No. 11. [http://www.epwu.org/pdf/rules\\_regs.pdf](http://www.epwu.org/pdf/rules_regs.pdf)**