

Executive Summary – Enforcement Matter – Case No. 47794

City of Austin

RN101220085

Docket No. 2013-1920-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Austin Water & Wastewater, located at the intersection of San Jacinto Boulevard between 26th Street and 19th Street, Austin, Travis County

Type of Operation:

Public water supply with an associated water main

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: February 14, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$7,125

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$7,125

Name of SEP: Travis Audubon Society, Inc.

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 47794
City of Austin
RN101220085
Docket No. 2013-1920-WQ-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: July 23, 2013
Date(s) of NOE(s): September 16, 2013

Violation Information

Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By July 24, 2013 the Respondent implemented the following corrective measures at the Facility:

- a. Repaired the ruptured water line and fire hydrant;
- b. Located the adjacent isolation valve and updated valve location in mapping system in order to properly isolate future discharges;
- c. Updated operational guidance and conducted employee training to ensure proper isolation of discharges is conducted following the discovery of a fish kill; and
- d. Ensured dead fish from Waller Creek were properly removed and disposed of.

Technical Requirements:

The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 47794
City of Austin
RN101220085
Docket No. 2013-1920-WQ-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Remington Burklund, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2611; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

Respondent: Greg Meszaros, Director, Austin Water Utility, City of Austin, P.O. Box 1088, Austin, Texas 78767

Respondent's Attorney: N/A

Attachment A
Docket Number: 2013-1920-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Austin
Penalty Amount:	Seven Thousand One Hundred Twenty-Five Dollars (\$7,125)
SEP Offset Amount:	Seven Thousand One Hundred Twenty-Five Dollars (\$7,125)
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Travis Audubon Society, Inc.
Project Name:	<i>Baker Sanctuary Fence Project Phase III</i>
Location of SEP:	Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Travis Audubon Society, Inc.** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the SEP Project between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Administrator owns the Baker Sanctuary, which is a 690-acre habitat preserve located in northwest Travis County for the state and federally endangered Golden-Cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-Cheeked Warblers need to survive. Additionally, the large

population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Administrator shall minimize disturbance to the Golden-Cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-Cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make check payable to **Travis Audubon Society SEP** and shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; and shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	27-Sep-2013	Screening	1-Oct-2013	EPA Due	
	PCW	4-Oct-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Austin
Reg. Ent. Ref. No.	RN101220085
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	47794	No. of Violations	1
Docket No.	2013-1920-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Remington Burklund
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
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Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,500
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Notes: Enhancement for one order with a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,875
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1
 Approx. Cost of Compliance: \$4,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$7,125**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,125
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$7,125
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Screening Date 1-Oct-2013

Docket No. 2013-1920-WQ-E

PCW

Respondent City of Austin

Policy Revision 3 (September 2011)

Case ID No. 47794

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101220085

Media [Statute] Water Quality

Enf. Coordinator Remington Burklund

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one order with a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 1-Oct-2013
Respondent City of Austin
Case ID No. 47794
Reg. Ent. Reference No. RN101220085
Media [Statute] Water Quality
Enf. Coordinator Remington Burklund

Docket No. 2013-1920-WQ-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(2)

Violation Description

Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state, as documented during an investigation conducted on July 23, 2013. Specifically, a potable water main on Duval Street near 32nd Street was ruptured causing a discharge of chlorinated drinking water into Waller Creek at San Jacinto Boulevard and 26th Street, killing approximately 925 fish.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> **Programmatic Matrix**

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels protective of environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One daily event is recommended from the date of the discharge (July 23, 2013) to the date of compliance (July 24, 2013).

Good Faith Efforts to Comply

25.0% Reduction

\$1,875

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent returned to compliance on July 24, 2013.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$7,125

This violation Final Assessed Penalty (adjusted for limits) \$7,125

Economic Benefit Worksheet

Respondent City of Austin
Case ID No. 47794
Reg. Ent. Reference No. RN101220085
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$3,500	23-Jul-2013	24-Jul-2013	0.00	\$0	\$1	\$1
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$1,000	23-Jul-2013	24-Jul-2013	0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the fire hydrant and connected water main, ensure the nearby isolation valve is accessible, update Facility operational guidance and conducted employee training to ensure proper isolation of discharges is conducted and notification is provided to the TCEQ, and to collect and properly dispose of the dead aquatic life. Date required is the date the unauthorized discharge occurred. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$4,500	TOTAL	\$1
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The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

Customer, Respondent, or Owner/Operator: CN600135198, City of Austin
Classification: SATISFACTORY **Rating:** 2.26

Regulated Entity: RN101220085, CITY OF AUSTIN WATER & WASTEWATER
Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: Located at Waller Creek on San Jacinto Boulevard between 26th Street and 19th Street in Austin, Travis County, Texas.

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
2270001

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: October 01, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 01, 2008 to October 01, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Remington Burklund

Phone: (512) 239-2611

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 05/09/2010 ADMINORDER 2009-1734-PWS-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)
Description: Failure to maintain a minimum pressure of 35 psi throughout the distribution system under normal operating conditions.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

- Item 1 August 31, 2011 (944207)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF AUSTIN
RN101220085

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-1920-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Austin ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply with an associated water main located at the intersection of San Jacinto Boulevard between 26th Street and 19th Street in Austin, Travis County, Texas (the "Site").

2. The Respondent has discharged a pollutant into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on July 23, 2013, TCEQ staff documented that a potable water main on Duval Street near 32nd Street was ruptured causing a discharge of chlorinated drinking water into Waller Creek at San Jacinto Boulevard and 26th Street, killing approximately 925 fish.
4. The Respondent received notice of the violations on September 20, 2013.
5. The Executive Director recognizes that by July 24, 2013 the Respondent implemented the following corrective measures at the Facility:
 - a. Repaired the ruptured water line and fire hydrant;
 - b. Located the adjacent isolation valve and updated valve location in mapping system in order to properly isolate future discharges;
 - c. Updated operational guidance and conducted employee training to ensure proper isolation of discharges is conducted following the discovery of a fish kill; and
 - d. Ensured dead fish from Waller Creek were properly removed and disposed of.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(2).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) as set forth in Section II, Paragraph No. 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Austin, Docket No. 2013-1920-WQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not

effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Navin
For the Executive Director

4/3/14
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Austin. I am authorized to agree to the attached Agreed Order on behalf of the City of Austin, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Austin waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

12/19/13
Date

Greg Meszanas
Name (Printed or typed)
Authorized Representative of
City of Austin

Director Austin Water
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2013-1920-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Austin
Penalty Amount:	Seven Thousand One Hundred Twenty-Five Dollars (\$7,125)
SEP Offset Amount:	Seven Thousand One Hundred Twenty-Five Dollars (\$7,125)
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Travis Audubon Society, Inc.
Project Name:	<i>Baker Sanctuary Fence Project Phase III</i>
Location of SEP:	Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Travis Audubon Society, Inc.** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the SEP Project between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Administrator owns the Baker Sanctuary, which is a 690-acre habitat preserve located in northwest Travis County for the state and federally endangered Golden-Cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-Cheeked Warblers need to survive. Additionally, the large

population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Administrator shall minimize disturbance to the Golden-Cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-Cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. Respondent shall make check payable to **Travis Audubon Society SEP** and shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

3. **Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; and shall make the check payable to "Texas Commission on Environmental Quality;" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. **Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.