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April 17, 2006

VIA HAND DELIVERY AND FACSIMILE

Ms. LaDonna Castañuela
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 APR 17 PM 3:29
CHIEF CLERKS OFFICE

Re: North Texas Municipal Water District's Reply to the Executive Director's Response to Hearing Requests and the Office of Public Interest Counsel's Response to a Request for a Contested Case Hearing, *Application by Wynne-Jackson, Inc., and the West Foundation for TPDES Permit No. WQ0014535001*, TCEQ Docket No. 2005-1094-MWD

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced proceeding is an original and eleven copies of *North Texas Municipal Water District's Reply to the Executive Director's Response to Hearing Requests and the Office of Public Interest Counsel's Response to a Request for a Contested Case Hearing*. Please accept this for filing on behalf of the North Texas Municipal Water District in the above-referenced matter.

If you have any questions, please telephone me at the above number.

Sincerely,



Angela K. Moorman

ENCLOSURE

cc: Service List
Mr. James M. Parks
Mr. Randel Dobbs

TCEQ DOCKET NO. 2005-1094-MWD

APPLICATION BY WYNNE-
JACKSON, INC., AND THE WEST
FOUNDATION FOR TPDES PERMIT
NO. WQ0014535001

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2006 APR 17 PM 3: 31
BEFORE THE
TEXAS COMMISSION ON
OFFICE
ENVIRONMENTAL QUALITY

**NORTH TEXAS MUNICIPAL WATER DISTRICT'S REPLY
TO THE EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS
AND THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO A REQUEST FOR A CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW the North Texas Municipal Water District (the "District" or "NTMWD") and hereby submits this, its *Reply to the Executive Director's Response to Hearing Requests and the Office of Public Interest Counsel's Response to a Request for a Contested Case Hearing*, in support of the recommendations made by the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or the "Commission") and the Office of Public Interest Counsel ("OPIC") of the Commission to grant the District's request for contested case hearing filed with the Commission in the above-styled matter, and would respectfully show the Commissioners as follows:

I. BACKGROUND

NTMWD is a regional conservation district, created pursuant to Article XVI, Section 59 of the Texas Constitution, which currently owns and/or operates fifteen wastewater treatment plants north and east of Dallas.¹ Applicant, Wynne-Jackson, Inc., and the West Foundation ("Applicant") have applied for a TPDES permit for a small wastewater treatment plant that will serve the limited population of the West Foundation development. Applicant's proposed

¹ At the time NTMWD submitted the original request for contested case hearing in January 2005, NTMWD owned or operated 19 wastewater treatment plants. Four small wastewater treatment plants have been closed since the completion of the Buffalo Creek Interceptor pipeline, with flow from those four plants being diverted to the South Mesquite Regional WWTP. The four plants that have been closed are the Rush Creek WWTP, the Shepherds Glen WWTP, the Southside WWTP, and the Terry Lane WWTP. All four plants served the City of Heath.

wastewater treatment plant is located adjacent to the City of Forney's ("Forney") northern extraterritorial jurisdictional ("ETJ") area – an area that is within the service area of NTMWD's 25 million gallon per day ("MGD") South Mesquite Regional Wastewater Treatment Plant ("WWTP").²

In recent months, NTMWD has finished construction of the Buffalo Creek Interceptor pipeline project. The Buffalo Creek Interceptor pipeline runs from the southern limits of the City of Rockwall, through the cities of Heath and Forney, and then to a pump station that will transport the flow across the East Fork of the Trinity River to the South Mesquite Regional WWTP. The Buffalo Creek Interceptor pipeline facilitates the provision of regional wastewater treatment services to communities in the area, including the cities of Forney, Heath, and Rockwall. Through development of the Buffalo Creek Interceptor pipeline, NTMWD is able to regionalize wastewater treatment services for this area and thus close other smaller wastewater treatment plants. Since completion of the Buffalo Creek Interceptor pipeline, NTMWD has been able to close four small wastewater treatment plants that it previously operated in the area.³ Forney is a participant in the Buffalo Creek Interceptor pipeline project.

II. ARGUMENT AND AUTHORITIES

As identified in the responses to hearing requests filed by the Executive Director and OPIC, the District's request for contested case hearing meets the requirements of Texas Administrative Code Title 30, Section 55.201. In addition, the District has clearly demonstrated that it is an "affected person" as that term is used in Texas Administrative Code Title 30,

² NTMWD's South Mesquite Regional WWTP is currently permitted at 25 MGD. While the plant has adequate capacity for the current population served, including the population associated with Applicant's proposed permit, in anticipation of future growth in the plant's service area, NTMWD recently submitted an amendment application to the Commission to increase the permitted capacity of the South Mesquite Regional WWTP to 41 MGD in 8 MGD increments. *See* Letter from James M. Parks, Executive Director, NTMWD, to Mr. Glenn Shankle, Executive Director, TCEQ (Mar. 30, 2006) (transmitting application to amend TPDES Permit No. 10221-001).

³ *See supra* note 1.

Sections 55.201(d) and 55.203. As identified in the Executive Director's Response, the South Mesquite Regional WWTP is located approximately seven miles southwest of the West Foundation development.⁴ Additionally, the Buffalo Creek Interceptor line runs within approximately 5,700 feet to the west of the West Foundation development. The District, as a TCEQ-recognized regional wastewater provider, has requested a contested case hearing pursuant to Texas Water Code Section 26.0282, which states:

In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provision of this subchapter. . . .⁵

NTMWD has raised the issue of regional wastewater treatment service as opposed to a proliferation of small wastewater treatment plants that are more costly, less efficient, and less protective of the environment. The existence of a regional provider with adequate capacity has a bearing on the Commission's decision on the application because of the issues to be considered under Texas Water Code Section 26.0282, thus raising a fact issue appropriate for contested case hearing.

Both state law and Commission policy favor providing regional service as opposed to a proliferation of small wastewater treatment plants that are more costly, less efficient, and less protective of the environment. Regional issues must be taken into consideration by the Commission in order to ensure that regional providers such as the District continue to have the ability to effectively serve rapidly growing areas of the State. The regionalization issue raised by the District with regard to the application that is the subject of this proceeding is an issue of fact

⁴ See Executive Director's Response to Hearing Requests, *Application by Wynne-Jackson, Inc., and the West Foundation for TPDES Permit No. WQ0014535-001*, TCEQ Docket No. 2005-1094-MWD, at 4 & Att. E (Jan. 2, 2006).

⁵ TEX. WATER CODE ANN. § 26.0282 (West 2000).

and thus is a justiciable interest raised by an affected person and therefore should be referred to contested case hearing.

The District requests that the duration of the contested case hearing – the time period between the preliminary hearing and the presentation of the proposal for decision – be seven months.

III. CONCLUSION

The North Texas Municipal Water District is an affected person as contemplated by Commission regulations and has identified a justiciable interest protected by State law, and thus its request for contested case hearing should be granted. The District respectfully requests that the Honorable Commissioners of the Texas Commission on Environmental Quality grant the District's request for contested case hearing relating to Proposed TPDES Permit No. WQ0014535001.

Respectfully submitted,

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ANGELA K. MOORMAN
State Bar No. 24007700

By: 

**ATTORNEYS FOR THE NORTH TEXAS
MUNICIPAL WATER DISTRICT**

SERVICE LIST

I hereby certify that on this the 17th day of April, 2006, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, Federal Express overnight delivery, or hand delivery to the following:

Docket Clerk TCEQ Office of the Chief Clerk, MC-105 P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-3311	
Mr. Derek Seal, General Counsel TCEQ Office of General Counsel, MC-101 P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-5533	For the Office of General Counsel
Mr. John Williams, Staff Attorney TCEQ Environmental Law Division, MC-173 P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-0606	For the Executive Director of the Texas Commission on Environmental Quality
Ms. Mary Alice McKaughan TCEQ Office of Public Interest Counsel, MC-103 P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-6377	For the Office of Public Interest Counsel of the Texas Commission on Environmental Quality
Ms. Jody Henneke TCEQ Office of Public Assistance, MC-108 P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-4007	For the Office of Public Assistance of the Texas Commission on Environmental Quality
Mr. Kelton Tonn Coats Rose 3 Greenway Plaza, Suite 2000 Houston, Texas 77046 Fax: 713/651-0220	For the Applicant

<p>Mr. Kyle Lucas Alternative Dispute Resolution, MC-222 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 Fax: 512/239-4015</p>	<p>For Alternative Dispute Resolution</p>
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ANGELA K. MOORMAN