

# Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

April 13, 2007

*Via Facsimile and U.S. Mail*

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OPA *H*

APR 17 2007

BY *J*

CHIEF CLERK'S OFFICE

2007 APR 16 AM 11:10

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Application No. 5913 by the City of College Station

Dear Ms. Castañuela:

On behalf of the Brazos River Authority (BRA), I protest the above-referenced application and request that a contested case hearing be held on the application.

BRA holds the following water rights: Certificate No. 12-5155 (Possum Kingdom Lake); Certificate No. 12-5156 (Lake Granbury); Certificate No. 12-5157 (Lake Whitney); Certificate No. 12-5158 (Lake Aquilla); Certificate No. 12-5159 (Lake Proctor); Certificate No. 12-5160 (Lake Belton); Certificate No. 12-5161 (Lake Stillhouse Hollow); Certificate No. 12-5162 (Lake Georgetown); Certificate No. 12-5163 (Lake Granger); Certificate No. 12-5164 (Lake Somerville); Certificate No. 12-5165 (Lake Limestone); and Permit No. 2925A (proposed Allens Creek Reservoir). One or more of these rights may be impaired if the application is granted.

It is possible that special conditions may be included in the permit that will prevent any such impairment and, if such conditions are included, BRA will withdraw its protest. Until BRA has had the opportunity to review and determine the adequacy of any such conditions, however, it is necessary to protest.

Thank you for your attention to this matter. I request that the Brazos River Authority be placed on all notice lists so that it may receive notice of all further actions with regard to this application.

Sincerely,

*Douglas G. Caroom*  
Douglas G. Caroom

cc: Lauralee Vallon  
David Wheelock  
Brazos River Authority

*MW*

*WR  
55587*

# Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

*WR*  
*55587*

April 13, 2007

Via Facsimile and U.S. Mail

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OPA  
H APR 13 2007  
BY     *a*    

CHIEF CLERKS OFFICE

2007 APR 13 AM 9:21

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Application No. 5913 by the City of College Station

Dear Ms. Castañuela:

On behalf of the Brazos River Authority (BRA), I protest the above-referenced application and request that a contested case hearing be held on the application.

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Thank you for your attention to this matter. I request that the Brazos River Authority be placed on all notice lists so that it may receive notice of all further actions with regard to this application.

Sincerely,  
*Douglas Caroom*  
Douglas G. Caroom

cc: Lauralee Vallon  
David Wheelock  
Brazos River Authority

*ma*

# Bickerstaff, Heath, Pollan & Caroom, L.L.P.

*A Registered Limited Liability Partnership*

816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2443  
Telephone: (512) 472-8021  
<http://www.bickerstaff.com>

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 APR 13 AM 9:20  
CHIEF CLERKS OFFICE

*The information contained in this facsimile is privileged & confidential. It is intended only for the use of the individual or entity named below. If you have received this transmission in error, please notify us by telephone collect and return it to us at the above address. Thank you.*

DATE: April 13, 2007

CLIENT #: 2882-01

## TELECOPIER COVER SHEET

Fax Number: (512) 320-5638

TELECOPIER NUMBER: 239-3311

SEND TO: LaDonna Castañuela

FIRM/COMPANY: TCEQ - Chief Clerk

In case of transmission problems -  
TELEPHONE NUMBER: 239-3300

FROM: Douglas G. Caroom

TOTAL PAGES INCLUDING COVER SHEET: 2

ORIGINAL WILL FOLLOW VIA U.S. MAIL       ORIGINAL WILL NOT FOLLOW

TELECOPIER OPERATOR: \_\_\_\_\_ TIME: \_\_\_\_\_ a.m./p.m.

*Please contact the fax center at 512-472-8021 if complete FAX is not received.*

### MESSAGE:

Re: Application No. 5913 by the City of College Station

WR  
55587



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

April 20, 2007

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2007 APR 20 PM 3:45

CHIEF CLERKS OFFICE

**By Hand**

Ms. LaDonna Castanuela  
Chief Clerk (MC105)  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F, 1st Floor  
Austin, Texas 78753

OPA H  
APR 23 2007

BY 

Re: **Protest and Request for Public Hearing**; Regarding City of **College Station**;  
Bed and Banks Application No. 5913 in Brazos River Basin (the "Application")

Dear Ms. Castanuela:

This letter is written in response to a "Notice of Water Rights Application" (the "Notice") by the City of College Station (the "City"). A copy of the Notice is attached as Exhibit "A" hereto.

This firm represents Wellborn Special Utility District ("Wellborn"), a conservation and reclamation district, located in Brazos County, Texas. Wellborn is adversely affected by the Application of the City.

In response to the items set forth in the Notice, Wellborn states the following:

1. Wellborn is represented by Mr. Leonard H. Dougal of Jackson Walker L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701; Phone (512) 236-2000; Fax (512) 391-2112.
2. The City is the applicant; Water Rights Application No. 5913.
3. Wellborn requests a public (contested case) hearing on the application. At the hearing, the City should be required to prove up the source of water claimed by the City, how the City proposes to account for the water, and each element of the City's application for a bed and banks permit.
4. Wellborn is adversely affected by the Application, as follows:
  - A. Wellborn is the provider of potable water to approximately 3100 customer connections in Brazos County, including areas in and near the City of College Station. Wellborn has a contract with the Brazos River Authority to divert and use 4000 acre-feet per year of water from the Navasota River at a location which is downstream of one or more of the discharge points of the City. Specifically, Wellborn is the owner of a 24 acre tract of land fronting on the Navasota River, at

*MW*

Ms. LaDonna Castanuela  
April 20, 2007  
Page 2

which location Wellborn has designed and is planning to construct an intake structure and surface water treatment plant (the "Plant Property"). The Plant Property is located approximately 10 river miles downstream from the City's discharge point. The Application will adversely affect Wellborn's ability to divert and use water from the Navasota River.

B. Wellborn is also concerned that the Application does not identify the conditions to be placed on the proposed Bed and Banks permit to distinguish between the water Wellborn is entitled to divert and the water the City claims a right to convey and reuse. In this regard Wellborn notes that the public notice of the Application included the following statement:

*"If this application is granted, unlawful diversion and taking of such water in transit may result in administrative penalties, criminal penalties, or the applicant may elect to pursue private civil remedies as provided by law."*

Proper identification and accounting in the Bed and Banks permit for the volume of water discharged by the City, the source of such water, and carriage and channel losses in the river will be necessary to protect the rights of other water users such as Wellborn. Wellborn believes that there will need to be special conditions placed on any permit and Wellborn desires the opportunity to provide input on those conditions, so as to protect Wellborn's interests.

C. Finally, some of Wellborn's privately owned groundwater ends up in the City's wastewater treatment plants from those customers of Wellborn who are connected to the City sewer system. As such, a portion of the reuse water which the City is seeking to claim in the Application as the City's privately owned groundwater is actually groundwater which has been developed and is privately owned by Wellborn. Hence, Wellborn is adversely affected by the City's claim in the Application that the groundwater at issue is solely the City's private water.

Should you have any questions concerning this request please contact the undersigned.

Sincerely,

  
Leonard H. Dougal

LHD/  
Enclosure

Ms. LaDonna Castanuela

April 20, 2007

Page 3

cc: Mr. Stephen Cast  
General Manager  
Wellborn Special Utility District  
P. O. Box 250  
Wellborn, Texas 77881

Mr. James B. Bond  
Attorney at Law  
9218 Brookwater Circle  
College Station, Texas 77845

Mr. Jim Mathews  
Mathews and Freeland, LLP  
PO Box 1568  
Austin, Texas 78768-1568

**EXHIBIT "A"**  
(Notice of Application)

ber 1, 2005. The facility is located on Farm-to-Market Road 896, 0.5 mile south of State Highway Business 121 in Fannin County, Texas.

THOMPSON WATER COMPANY, INC. has applied for a renewal of TPDES Permit No. 11508-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of 19.2 acres of non-public access agricultural land. The facility is located approximately 0.2 mile east-northeast of the intersection of U.S. Highway 84 and Farm-to-Market Road 1580 in Freestone County, Texas.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701118

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 21, 2007



#### Notice of Water Rights Application

Notices issued March 14, 2007 and March 20, 2007

APPLICATION NO. 12131; Jefferson County Drainage District No. 6, P.O. Box 20078, Beaumont, Texas 77720-0078, has applied for a Water Use Permit to divert flood flows from the South Fork of Mayhaw Bayou, Neches-Trinity Coastal Basin, into an excavated diversion channel for diversion to Spindletop Bayou and the Gulf Intercoastal Waterway for flood control purposes in Jefferson County. The application and fees were received on November 29, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 5, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5912; The City of Bryan, applicant, P.O. Box 1000, Bryan, Texas 77805-1000, has applied for authorization to use the bed and banks of several watercourses to transport current and future groundwater-based return flows and to divert and reuse those flows for municipal, industrial, and agricultural purposes in all or part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin. The application and partial fees were received on August 5, 2005. Additional information and fees were received on April 14, 2006, July 6, 2006, and August 22, 2006. The Executive Director returned the application and fees for failure to supply requested information on September 21, 2006. On October 16, 2006 Applicant filed a Motion to Overturn. The Applicant's motion was considered and granted by the Commission on December 13, 2006. The application is considered administratively complete as of December 20, 2006. This application is being filed with the Office of the Chief Clerk on February 9, 2007. Written public comments and

requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 23, 2007.

APPLICATION NO. 5913; The City of College Station, applicant, P.O. Box 9960, College Station, Texas 77842-0960, has applied for authorization to use the bed and banks of several watercourses to transport current and future groundwater-based return flows and to divert and reuse those flows for municipal, industrial, and agricultural purposes in all or part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin. The application and partial fees were received on August 5, 2005. Additional information and fees were received on April 14, 2006; July 7, 2006; and August 22, 2006. The Executive Director returned the application and fees for failure to supply requested information on September 21, 2006. On October 16, 2006 Applicant filed a Motion to Overturn. The Applicant's motion was considered and granted by the Commission on December 13, 2006. The application is considered administratively complete as of December 20, 2006. This application is being filed with the Office of the Chief Clerk on February 9, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by April 23, 2007. The Texas Commission on Environmental Quality (TCEQ) may grant a contested case hearing on this application if a written hearing request is filed by April 23, 2007.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701119