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Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Blas J. Coy, Jr., *Public Interest Counsel*

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

February 25, 2008

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

Re: **ORANGEFIELD WATER SUPPLY CORPORATION**  
**TCEQ DOCKET NO. 2008-0151-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eli Martinez".

Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

**TCEQ DOCKET NO. 2008-0151-MWD**

**IN THE MATTER OF THE  
APPLICATION BY  
ORANGEFIELD WATER  
SUPPLY CORPORATION  
FOR TPDES PERMIT NO.  
WQ0014772001**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO REQUEST FOR RECONSIDERATION**

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas  
Commission on Environmental Quality (the Commission or TCEQ) and files this  
Response to Request for Reconsideration in the above-referenced matter, and would  
respectfully show the following:

**I. INTRODUCTION**

Orangefield Water Supply Corporation has applied to the TCEQ for a new permit  
to authorize the discharge of treated domestic wastewater at a daily average flow not to  
exceed 750,000 gallons per day. The treated effluent will be discharged directly to Cow  
Bayou Tidal in Segment No. 0511 of the Sabine River Basin. The designated uses for  
Segment No. 0511 are contact recreation and high aquatic life use. The facility will be  
located west of the city of Pinehurst and northwest of Bridge City, bounded on the north  
by Farm-to-Market Road 105, to the west by Farm-to-Market Road 408 (west boundary  
is approximately 276 feet from the center of Farm-to-Market Road 408) and to the south  
by Cormier Lane in Orange County, Texas.

The application for a new permit was received on January 4, 2007 and declared administratively complete on February 16, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on March 3, 2007 in the *Orange Leader*. The TCEQ Executive Director completed the technical review of the application, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on August 8, 2007 in the *Orange Leader*. The public comment period ended on September 7, 2007. A timely request for reconsideration of the Executive Director's (ED) decision was filed by Ms. Bonnie Brauer. For the reasons discussed below, the OPIC recommends that the Commission deny the pending request for reconsideration.

## II. REQUIREMENTS OF APPLICABLE LAW

Because the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code Chapter 5, Subchapter M, Environmental Permitting Procedures, §§5.551 to 5.556, added by Acts 1999, 76<sup>th</sup> Leg., ch 1350 (commonly known as "House Bill 801"). House Bill 801 created a procedural mechanism whereby, following the executive director's technical review and consideration of comments, a person may file a request for reconsideration or a request for contested case hearing, or both. The request for reconsideration in particular allows the Commission to review and reconsider the executive director's decision on an application. TEXAS WATER CODE §5.556; 30 TEXAS ADMINISTRATIVE CODE ("TAC") §55.201(e).

Any person may file a request for reconsideration of the executive director's decision. 30 TAC 55.201(e). The request for reconsideration must state the reasons why

the Executive Director's decision should be reconsidered. 30 TAC 55.201(e). Responses to requests for reconsideration should address the issues raised in the request. 30 TAC §55.209(f).

### III. DISCUSSION

Ms. Brauer raises several concerns regarding potential effects of the permitted activity on the water quality of Cow Bayou, her personal water well, and property. We are sympathetic to the concerns raised in Ms. Brauer's request for reconsideration. However, as discussed below, OPIC cannot recommend granting the request.

Ms. Brauer raises the concern that accidental discharges may occur due to human error or technical failures. The Executive Director's Response to Comments states that the Applicant is required to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during power failures. Further, the proposed draft permit requires planning for expansion or upgrading of facilities when flow averages reach 75% of the permitted daily average flow for three consecutive months, and that an application for authorization to construct additional facilities be submitted to the Commission when flow averages reach 90% of permitted daily average flow for three consecutive months. Unauthorized discharges must furthermore be reported to the Commission within 24 hours under the terms of the draft permit. Without further factual development of the record as to why such safeguards against accidental discharges are insufficient, OPIC cannot recommend denying the authorization based on requests for additional measures not required by the permit.

Ms. Brauer is also concerned that the permitted activity will result in elevated levels of bacteria and viruses in water sources affected by the effluent stream. The

Executive Director's Response to Comments states the proposed draft permit requires disinfection via chlorination of the treated effluent to reduce pathogenic organisms. Moreover, chlorination of the treated effluent is monitored daily by grab sampling. Without more, OPIC cannot recommend denying the authorization based solely on a contention that such provisions are insufficient to control bacteria and protect human health.

Ms. Brauer raises the concern that the permitted activity will pollute her personal water well. Ms. Brauer's property is located upstream and upgradient of the proposed discharge. The Executive Director does not believe that Ms. Brauer's well will be impacted due to this topographical characteristic and the natural geology of the clay-rich Beaumont Formation on which the well is situated. Without further information clarifying why Ms. Brauer's well is at risk of being polluted by treated sewage under such conditions, OPIC cannot recommend denying authorization.

Ms. Brauer further raises the concern that the permitted activity will generally result in increased levels of pollution in Cow Bayou. The proposed draft permit states that "the permittee shall ensure that connections to the wastewater treatment plant consist of an appropriate mix of existing on-site treatment systems...and new construction such that the loading of oxygen-demanding substances to Cow Bayou is not increased."<sup>1</sup> According to the Executive Director's Response to Comments, many on-site sewage facilities operating within the City of Orangefield are failing and contributing to the pollution of Cow Bayou. The Applicant will take over approximately 1,400 of these connections and remove them from the Cow Bayou Tidal. The remaining approximately 1,100 connections Applicant will take over are currently being treated at other plants. As

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<sup>1</sup> See Draft TPDES Permit No. 0014772001, p. 24.

mandated in the draft permit, however, the mix of existing and new connections will be such that increase of oxygen-demanding substances to Cow Bayou Tidal will not be increased. Without development of the record demonstrating that the contemplated mix of old and new connections will exacerbate bacteria levels, low pH, depressed dissolved oxygen levels, or other indicia of pollution in Cow Bayou, OPIC cannot recommend denial of the permit.

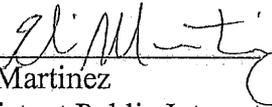
Finally, Ms. Brauer contends that the Applicant's activities will reduce her property values and exacerbate flooding issues on her property. Flooding and property values are not addressed by the substantive law governing this application and fall outside the scope of TCEQ jurisdiction to maintain and protect water quality of the state under Texas Water Code Chapter 26. OPIC therefore cannot recommend denial of permit authorization based on these issues.

#### **IV. CONCLUSION**

In the absence of a record further substantiating the concerns brought to bear by Ms. Brauer, the OPIC cannot recommend granting the pending request for reconsideration. Such a record could only be developed through the hearing process, and neither Ms. Brauer nor anyone else has requested a contested case hearing on this application.

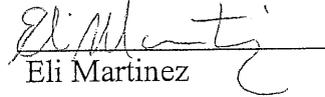
Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Eli Martinez  
Assistant Public Interest Counsel  
State Bar No. 24056591  
(512)239.3974 PHONE  
(512)239.6377 FAX

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2008 the original and eleven true and correct copies of the Office of the Public Counsel's Response to Request for Reconsideration were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Eli Martinez

**MAILING LIST**  
**ORANGEFIELD WATER SUPPLY CORPORATION**  
**TCEQ DOCKET NO. 2008-0151-MWD**

FOR THE APPLICANT:

Leo Bland / Phillip Rickenbrode  
Orangefield Water Supply Corporation  
P.O. Box 398  
Orangefield, Texas 77639  
Tel: (409) 735-9422  
Fax: (409) 735-9684

Benito A. Garcia, Jr.  
J.F. Fontaine & Associates, Inc.  
P.O. Box 530540  
Harlingen, Texas 78553  
Tel: (956) 797-3411  
Fax: (956) 797-3400

FOR THE EXECUTIVE DIRECTOR:

Timothy J. Reidy, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

Mary Ann Airey, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4521  
Fax: (512) 239-4114

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE

RESOLUTION:

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTER:

Bonnie Brauer  
7608 Del Monte Drive  
Houston, Texas 77063-1909