

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



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 28, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 APR 28 PM 1:39
CHIEF CLERKS OFFICE

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: **GUADALUPE-BLANCO RIVER AUTHORITY**
TCEQ DOCKET NO. 2008-0353-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 that reads "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2008-0353-MWD

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION BY	§	
GUADALUPE-BLANCO RIVER	§	TEXAS COMMISSION ON
AUTHORITY FOR TPDES PERMIT	§	
NO. WQ0011496001	§	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

Guadalupe-Blanco River Authority has applied to the Texas Commission on
Environmental Quality for a major amendment to TPDES Permit No. WQ0011496001 to
authorize an increase in the discharge of treated domestic wastewater from a daily
average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed
180,000 gallons per day in the Interim II Phase, and a daily average flow not to exceed
260,000 gallons per day in the Final Phase. The current permit authorizes the discharge
of treated domestic wastewater at a daily average flow not exceed 100,000 gallons per
day.

The facility is located at 350 Parkview Drive, in Comal County, Texas. The
treated effluent is discharged to an unnamed creek; thence to Canyon Lake in Segment

No. 1805 of the Guadalupe River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed creek. The designated uses for Segment No. 1805 are exceptional aquatic life uses, public water supply and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, the Executive Director performed an antidegradation review. The review preliminarily concluded that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review was also performed, and likewise preliminarily concluded that no significant degradation of water quality is expected in Canyon Lake.

The permit application was received on July 9, 2007 and declared administratively complete on August 23, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 29, 2007 in the *Times Guardian*. The Notice of Application and Preliminary Decision (NAPD) was published on November 21, 2007 in the *Times Guardian*. The public comment period ended on December 21, 2007. The Executive Director's Response to Comments was filed on January 22, 2008. One timely request for reconsideration of the Executive Director's (ED) decision was filed by Ms. Lois Marie Duggan on February 1, 2008.¹ For the reasons discussed below, OPIC recommends that the Commission deny the pending request for reconsideration.

¹ Written comments were additionally submitted by Dr. Seth Parker, whose subsequent correspondence to the Commission indicates that he is not requesting a "public hearing" and that his concerns have been "satisfactorily answered" by the applicant.

II. REQUIREMENTS OF APPLICABLE LAW

The application was declared administratively complete after September 1, 1999 and 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, 76th Leg., ch 1350 (commonly known as “House Bill 801”). House Bill 801 created the request for reconsideration as a procedural mechanism which allows the Commission to review and reconsider the Executive Director’s decision on an application without a contested case hearing. Following the Executive Director’s technical review and issuance of the Executive Director’s decision and response to comments, a person may file a request for reconsideration or a request for contested case hearing, or both. 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. Duggan states in her request that there are undisclosed “relevant and material facts” which were not taken into consideration by the Executive Director of the TCEQ which affect “the integrity of [the] TCEQ.”² Ms. Duggan contends that these facts, once

² See Ms. Duggan’s “Request for Reconsideration of Executive Director’s Decision” dated February 21, 2008.

revealed, will result in the “overturn of the Executive Decision.”³ Ms. Duggan does not articulate which facts form the basis of her request, but rather only identifies that some facts of great import exist. The request states that Ms. Duggan intends to present this information to the Commission at the appropriate public meeting. As discussed below, OPIC cannot recommend granting the request.

Under 30 TAC 55.201(e) a request for reconsideration “must state the reasons why the Executive Director’s decision should be reconsidered.” OPIC finds that these reasons must be disclosed in the request itself so that all interested persons and commissioners have adequate notice of the basis of the request. OPIC cannot recommend denial of the permit authorization based on allegations that unspecified facts will be provided in the future.

The Draft Permit contains numerous safeguards to ensure the safety of waters of the State, and the Executive Director’s technical review has determined that existing uses will be maintained and protected. Under the terms of the permit, the Applicant is required to analyze the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results of the analyses. Outflow must be sampled five times per week by instantaneous measurement to ensure effluent limitations for CBOD₅, TSS, and NH₃-N are in compliance. The Applicant must also test minimum dissolved oxygen once per week and the chlorine residual five times per week by grab sample.

Further, the Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For instance, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources,

³ Id.

standby generators, or retention of inadequately treated wastewater. The Applicant must also report any unauthorized discharge to the TCEQ within 24 hours or be subject to enforcement proceedings. TCEQ and other local governmental entities will determine whether nearby residents need to be notified of any leak or runoff based on the severity and potential health impact at the time of the discharge.

TCEQ conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. The TCEQ investigates all complaints, and if a facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to possible enforcement actions. The pending request states no reasons why such safeguards are insufficient. Therefore, OPIC cannot recommend denial of the authorization.

IV. CONCLUSION

Because of the above-stated deficiencies in the request, OPIC cannot recommend granting the pending request for reconsideration.

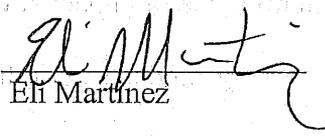
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 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
GUADALUPE-BLANCO RIVER AUTHORITY
TCEQ DOCKET NO. 2008-0353-MWD

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