

1984 *25 Years* 2009

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February 2, 2009

Ms. LaDonna Castañuela  
Chief Clerk  
ATTN: Agenda Docket Clerk (MC 105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**VIA HAND DELIVERY**

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 FEB - 2 PM 2: 5  
CHIEF CLERKS OFFICE

Re: Farmersville Investors, L.P. Application for TPDES Permit No. WQ0014778001  
TCEQ Docket No. 2008-1305-MWD (446-13)

Dear Ms. Castañuela:

Enclosed please find the original and eleven (11) copies for filing of North Texas Municipal Water District's Reply to the Executive Director, Office of Public Interest Counsel, and Farmersville Investor's Response to North Texas Municipal Water District's Hearing Request in the above-referenced matter. If you have any questions, please feel free to contact me or Martin Rochelle (512-322-5810). Thank you.

Sincerely,  
  
Michelle Maddox Smith

MMS/ldp  
446\13\ltr090201mms  
ENCLOSURES

cc: Service List

TCEQ DOCKET NO. 2008-1305-MWD

2009 FEB -2 PM 2: 51

APPLICATION BY FARMERSVILLE	§	BEFORE THE	CHIEF CLERKS OFFICE
INVESTORS, L.P. TO THE TEXAS	§		
COMMISSION ON ENVIRONMENTAL	§	TEXAS COMMISSION ON	
QUALITY FOR PROPOSED TPDES	§		
PERMIT NO. WQ0014778001	§	ENVIRONMENTAL QUALITY	

**NORTH TEXAS MUNICIPAL WATER DISTRICT'S REPLY TO THE EXECUTIVE  
DIRECTOR, OFFICE OF PUBLIC INTEREST COUNSEL, AND FARMERSVILLE  
INVESTOR'S RESPONSE TO NORTH TEXAS MUNICIPAL WATER DISTRICT'S  
HEARING REQUEST**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY:

COMES NOW, North Texas Municipal Water District ("NTMWD"), and files its reply to the responses of the Executive Director ("ED"), Office of Public Interest Counsel ("OPIC"), and Farmersville Investors, L.P. (the "Applicant") to NTMWD's request for a contested case hearing. The contested case hearing is requested by NTMWD to address the Applicant's application for a new TPDES Permit No. WQ0014778001 to authorize the discharge of up to 0.5 million gallons per day (in the final phase) of domestic wastewater to an unnamed tributary, thence to the Elm Creek Arm of Lavon Lake in Segment No. 0821 of the Trinity River Basin (the "Application"). NTMWD filed a timely request for a contested case hearing regarding the Application on July 20, 2007. In its request, NTMWD raised concerns regarding regionalization and water quality impacts the Application may have on Lavon Lake, the primary source of drinking water for the 1.5 million customers served by NTMWD.

**I. REPLY TO THE ED RESPONSE**

NTMWD agrees with the recommendations identified in the Executive Director's Response to Hearing Requests and Motion for Reconsideration. NTMWD adopts the ED's recommendation that the Commission find that NTMWD is an affected person because

NTMWD meets the criteria identified in 30 TAC § 55.203. Additionally, NTMWD adopts the ED's recommendation that the Commission refer the following issues to the State Office of Administrative Hearings ("SOAH") for a contested case hearing:

1. Whether a discharge under the terms of the draft permit will be protective of the Texas Surface Water Quality Standards? (ED issue No. 2).
2. Whether there is a need for the facility and whether any additional terms or conditions should be included in the permit based upon the Commission's consideration of need under Texas Water Code § 26.0282? (ED issue No. 4).

## **II. REPLY TO THE OPIC RESPONSE**

NTMWD agrees with the recommendations identified in the Office of Public Interest Counsel's Response to Request for Hearing. NTMWD adopts OPIC's recommendation that the Commission find NTMWD an affected party because 1) NTMWD has expressed interests not common to members of the general public in its request for a contested case hearing; 2) there exists a reasonable relationship between the interests claimed by NTMWD in its request for a contested case hearing and the impact of the proposed permit on those interests; 3) NTMWD is a governmental entity with authority to provide drinking water and wastewater services in the area impacted by the Application; and 4) NTMWD has an interest in maintaining Lavon Lake, which is impacted by the Application, as a source for drinking water and in maintaining water quality in the area generally. Additionally, NTMWD adopts OPIC's recommendation that the Commission refer the following issues to SOAH for a contested case hearing:

1. Will the proposed permit adversely affect Texas water quality? (OPIC issue No. 1).
2. Will the proposed permit impact designated uses of receiving waters beyond a *de minimus* amount? (OPIC issue No. 3).

3. Does the proposed permit adequately address regionalization concerns?  
(OPIC issue No. 5).

### III. REPLY TO THE APPLICANT RESPONSE

NTMWD disagrees with the Applicant's contention that the issues raised in NTMWD's hearing request do not "make a threshold showing of a valid justiciable interest that will be affected by the Application." In its request, NTMWD raises the issues of regionalization and water quality protection, both of which are issues identified in the Texas Water Code and TCEQ regulations to be addressed by TCEQ when evaluating and issuing TPDES permits. Because the proposed discharge in the Application is to a tributary of Lavon Lake, the primary source of drinking water for NTMWD's customers, NTMWD has a significant interest in ensuring that the water quality of Lavon Lake and its watershed is maintained and in preventing any unnecessary pollutant loadings to the same.

#### **Regionalization**

The Applicant's response suggests that because no application for a regional facility has been filed, TCEQ cannot evaluate the possibility of a future regional plant when issuing the permit. This contention is inconsistent with the Texas Water Code. As highlighted by both the ED and OPIC in their responses, Texas Water Code § 26.0282 provides that "in considering the issuance...of a permit to discharge waste, the commission may deny or *alter the terms and conditions of the proposed permit*...based on consideration of need, including the expected volume and quality of the influent and the availability of existing *or proposed* areawide or regional waste collection, treatment, and disposal systems..." (emphasis added). NTMWD and the cities of Farmersville, Nevada, Lavon, and Wylie are currently evaluating the construction of a regional wastewater treatment facility to serve the area located northeast of Lavon Lake, including the area to be served by the Applicant's proposed wastewater treatment facility. The

Applicant has been involved in the discussions regarding such a regional facility. NTMWD asserts that this is an issue that should be referred to SOAH so as to evaluate the need for the Applicant's proposed wastewater treatment facility or the need for a special condition in the proposed permit regarding the proposed regional wastewater treatment facility.

### **Water Quality**

The Applicant inaccurately concludes that NTMWD's concern regarding water quality is based only on "speculation of the cumulative effect of other permits issued to other future applicants." Although NTMWD is concerned about the substantial cumulative impact the Applicant's proposed discharge may have on Lavon Lake when combined with the discharge from other development projects in this area (if such discharges are associated with individual package wastewater treatment plants), NTMWD has concerns regarding the quality of the Applicant's discharge independent of potential cumulative impacts. The proposed effluent limitations identified in the draft TPDES permit are less stringent than the current limits associated with NTMWD's Wilson Creek Regional Wastewater Treatment Plant (TPDES Permit No. 12446-001), which discharges into Segment No. 0821 of Lavon Lake. Thus, the proposed permit associated with the Application may have significant impacts on the water quality of Lavon Lake, may result in violations of the Texas Surface Water Quality Standards for Lavon Lake, and may impact the existing designated uses of Lavon Lake. NTMWD asserts that the issue of water quality impacts associated with the Application should be referred to SOAH for further evaluation.

## **IV. ISSUES AND REQUESTS**

NTMWD requests that the Commission find NTMWD is an affected person pursuant to 30 TAC § 55.203. NTMWD believes the issues identified by the ED and OPIC for referral to SOAH are appropriate issues for a contested case hearing regarding the Application. NTMWD

respectfully requests that they be granted a contested case hearing regarding the Application and that the matter be referred to SOAH to address the following issues:

1. Whether a discharge under the terms of the draft permit will be protective of the Texas Surface Water Quality Standards? (ED issue No. 2).
2. Whether the proposed permit will adversely affect Texas water quality? (OPIC issue No. 1).
3. Whether the proposed permit will impact designated uses of receiving waters beyond a *de minimus* amount? (OPIC issue No. 3).
4. Whether there is a need for the facility and whether any additional terms or conditions should be included in the permit based upon the Commission's consideration of need under Texas Water Code § 26.0282? (ED issue No. 4 and OPIC issue No. 5).

Respectfully submitted,



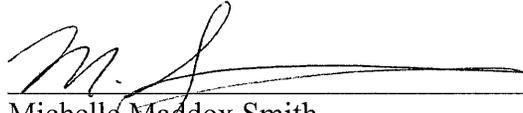
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**ATTORNEYS FOR NORTH TEXAS  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on this the 2<sup>nd</sup> day of February, 2009, the original and eleven (11) true and correct copies of this document were filed with the Chief Clerk of the TCEQ and a true and correct copy of this document has been sent via Hand Delivery, First-Class Mail or Facsimile to each of the persons listed on the attached Mailing List.

  
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Michelle Maddox Smith

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 FEB -2 PM 2:52

CHIEF CLERKS OFFICE

**MAILING LIST**  
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**DOCKET NO. 2008-1305-MWD; PERMIT NO. WQ0014778001**

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