Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 11, 2009

TO: Persons on the attached mailing list.

RE: Aqua Water Supply Corporation
TPDES Permit No. WQ0014833001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at http://www.tceq.state.tx.us/about/comments.html or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela

LaDonna Castañuela
Chief Clerk

LDC/ka

Enclosures

MAILING LIST
for
Aqua Water Supply Corporation
TPDES Permit No. WQ0014833001

FOR THE APPLICANT:

Carol Kostelka
Aqua Water Supply Corporation
P.O. Box P
Bastrop, Texas 78602-1989

David Klein
Lloyd Gosselink Rochelle & Townsend
816 Congress Avenue, Suite 1900
Austin, Texas 78701

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Celia Castro, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Michael Redda, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
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Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

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

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CEDAR CREEK TX 78612-3394

BERNASCONI , MARCY
534 COLORADO DR
CEDAR CREEK TX 78612

BERNASCONI, MARCY & PENDELL,BILL
PO BOX 3485
AUSTIN TX 78764-3485

CARROLL , DARREN S
295 COLORADO DR
CEDAR CREEK TX 78612-3488

CARROLL , NELL
RIVER CROSSING
295 COLORADO DR
CEDAR CREEK TX 78612-3488

CLEMENS , RICK
142 LLANO CT
CEDAR CREEK TX 78612-3405

COOK , THE HONORABLE ROBERT L "ROBBY"
TEXAS HOUSE OF REPRESENTATIVES
PO BOX 2910
AUSTIN TX 78768-2910

CZORA , DEE
BASTROP COUNTY DEVELOPMENT
806 WATER ST
BASTROP TX 78602-3832

EAGLE, SONJA & PIPE,ROBERT
138 TRINITY ST
CEDAR CREEK TX 78612-3563

GILLUM , MR & MRS EARL
179 PALO DURO DR
CEDAR CREEK TX 78612-3415

GONZALES , DAVID
384 COLORADO DR
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HELLER , DON
130 SABINE DR
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CEDAR CREEK TX 78612-3490

LUBINSKI , SHELLEY & STEFAN
161 COLORADO DR
CEDAR CREEK TX 78612-3401

MARTIN , CHAD & GWEN
229 ESTATE ROW
CEDAR CREEK TX 78612-3902

MARTIN , CHAD
229 ESTATE ROW
CEDAR CREEK TX 78612-3902

MARTINEZ , ROBERT
207 PAVILION DR
CEDAR CREEK TX 78612-3907

MENDES , FREDERICK
111 TRINITY ST
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PENDELL , DARLENE
205 SABINE DR
CEDAR CREEK TX 78612

PENDELL , DARLENE & WILLIAM
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CEDAR CREEK TX 78612-3585

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143 COLORADO BLUFF
CEDAR CREEK TX 78612

REID , KAY
456 POPE BEND N
CEDAR CREEK TX 78612

ROBERSON , LANCE
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SALEM, JULIE & STEVENSON,REGIS
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WALLACE , BENNIE & ELIZABETH F
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CEDAR CREEK TX 78612-3580

WIELAND , GREG
222 COLORADO DR
CEDAR CREEK TX 78612-3488

ZIMMERMAN , LORI
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 MAY -8 PM 2: 1

CHIEF CLERKS OFFICE

PROPOSED TPDES PERMIT NO. WQ0014833001

APPLICATION BY AQUA WATER SUPPLY CORPORATION	§ § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on Aqua Water Supply Corporation's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No.WQ0014833001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (TAC) § 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely filed comment letters and comments at the public meeting from the following persons:

> Shirley Adams; Darren S. Carroll; Rick Clemens; the Honorable Robert L. "Robby" Cook (U.S. House of Representatives); Madison Jechow; Jeff Long; Chad Martin; Darlene Pendell representing the Double Eagle Research Committee (DERC); William and Darlene Pendell; the River Crossing Improvement Association (RCIA) represented by Catherine Roberts, Bryce A. Johnson, Marcy Bernasconi, Bill Pendell, and Dinah Van Peski; the Lower Colorado River Authority (LCRA) represented by Leigh Sebastian; Deena Spellman; Regis Stevenson and Julie Salem; Bennie and Elizabeth Wallace; and Lori Zimmerman.

This Response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

TCEQ received an application on July 9, 2007 from South Central Water Company for a new permit, proposed TPDES Permit No. WQ0014833001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day (gpd). On November 19, 2008, TCEQ received an amended application from Aqua Water Supply Corporation, listing Aqua Water Supply Corporation as the sole Applicant. The Applicant also amended the application by reducing the daily average flow from three phases (50,000, 150,000, and 750,000 gpd) to two phases (50,000 gpd in the interim phase and 250,000 gpd in the final phase). The proposed wastewater treatment facility would serve the Double Eagle Ranch Service Area and would be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas.

The Double Eagle Ranch Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units would include bar screens, aeration basins, final clarifiers, sludge digesters, and a chlorine contact chamber. The Applicant has not constructed the facility. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 5 mg/l Carbonaceous Biochemical Oxygen Demand ($CBOD_5$), 5 mg/l Total Suspended Solids (TSS), 2 mg/l Ammonia-Nitrogen (NH_3-N), 1 mg/l Total Phosphorus, 126 colonies *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention

time of at least 20 minutes based on peak flow. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent would be discharged to Moss Branch; then to Dry Creek; then to the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply, and contact recreation. A Tier 1 antidegradation review has preliminarily determined 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 has preliminarily determined that no significant degradation of water quality is expected in Segment No. 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected.

Procedural Background

TCEQ received the original permit application from South Central Water Company on July 9, 2007, and declared it administratively complete on July 20, 2007. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on August 25, 2007 in *The Bastrop Advertiser*. The Notice of Application and Preliminary Decision (NAPD) was published October 11, 2007 in *The Bastrop Advertiser*. TCEQ held a public meeting on July 15, 2008, and the public comment period ended at the close of the meeting. Due to significant public interest, Aqua Water Supply Corporation filed an amended application on November 19, 2008, listing itself as the sole Applicant. On February 5, 2009, the Applicant published a combined NORI and NAPD in Spanish in *Ahora si!* and in English in *The Bastrop Advertiser*. The Applicant also published the combined notice on February 6, 2009 in the *Austin American-*

Statesman. The extended public comment period ended on March 9, 2009. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Shirley Adams; Darren S. Carroll; Rick Clemens; Jeff Long; Chad Martin; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman stated that the treated wastewater discharge will affect water quality, damage the ecosystem, impair recreational uses, and cause health problems.

RESPONSE 1:

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. In this case, the unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply, and contact recreation. The draft permit includes effluent limitations and monitoring requirements to ensure that the proposed limits will not violate the Texas Surface Water Quality Standards (TSWQS). The TSWQS protects surface water, groundwater, aquatic and terrestrial life, and human health. The draft permit also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility.

In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the TSWQS, TCEQ staff performed an antidegradation review of the receiving waters. A Tier 1 antidegradation review has preliminarily determined 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 has preliminarily determined that no significant degradation of water quality is expected in Segment No. 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected.

No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses should be maintained and protected as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements of the draft permit. If TCEQ receives new information, staff can re-examine and modify the preliminary determination.

COMMENT 2:

Shirley Adams and Deena Spellman expressed concern that the treated wastewater discharge will negatively affect water wells.

RESPONSE 2:

According to 30 TAC § 309.13(c), a wastewater treatment plant unit may not be located closer than 500 feet from a public water well or 250 feet from a private water well. These separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. During the permitting process, the ED conducted a detailed review and found no public or private water wells within the buffer zone radius specified in the rule.

COMMENT 3:

The Hon. Robert L. "Robby" Cook; Shirley Adams; Darren S. Carroll; Rick Clemens; Jeff Long; Chad Martin; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman are concerned about noise, vibration, and aesthetic impacts that may be caused by the proposed wastewater treatment plant, thereby limiting the use and enjoyment of their property and overall quality of life.

RESPONSE 3:

TCEQ does not address these issues in the wastewater permitting process. The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ cannot consider quality of life concerns (such as noise and vibrations) when reviewing wastewater applications and preparing draft permits.

However, the issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route.

Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 4:

Bennie and Elizabeth Wallace expressed concern about potential odor from the proposed treatment facility.

RESPONSE 4:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors (30 TAC § 309.13(e)). These rules

provide three options to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control plan.

In this case, the Applicant meets the buffer zone requirements by owning the buffer zone in accordance with the requirements of 30 TAC § 309.13(a)-(d). In addition to owning the required buffer zone area, the Applicant is required to comply with the requirements of 30 TAC § 309.13(e). If the TCEQ issues the permit and you have complaints about the facility, please contact the TCEQ at 1-888-777-3186 or the TCEQ Region 11 office in Austin at (512) 339-2929. You may also file citizen complaints on-line at http://www.tceq.state.tx.us/compliance/complaints/index.html. Noncompliance with the permit may result in an enforcement action against the Applicant.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 5:

Jeff Long and Shirley Adams expressed their concern on the likely consequences of inadequate funding, including improper operation and maintenance. Jeff Long also requested that the Applicant post a bond to mitigate any hazards that the proposed facility may cause. Deena Spellman asked if the proposed facility contains any environmental easement.

RESPONSE 5:

According to TCEQ rules, the Applicant is not required to post a bond to ensure that adequate funds are available to construct and operate the wastewater treatment facility. TCEQ also does not require an applicant to provide any environmental easement except the buffer requirements covered under RESPONSE 2 and RESPONSE 4.

COMMENT 6:

Jeff Long expressed concern as to the method of operation for the wastewater treatment facility.

RESPONSE 6:

The Applicant is responsible for operating the facility; however, the Applicant may contract with an individual operator, company, or other entity to operate the facility. Anyone who operates a domestic wastewater facility is required to hold a current wastewater operator license issued by the TCEQ.

TCEQ rules require a licensed wastewater operator to hold a specific level of license based on the type of treatment and permitted daily average flow. The rules state that the chief operator or operator with the required level of license or higher must be present at the facility five days per week and available by phone or pager seven days per week. The ultimate responsibility for the maintenance and operation of the plant lies with the permittee. It is the duty of the permittee to operate the plant in accordance with the TCEQ rules and the draft permit.

General complaints about the facility or suspected incidents of noncompliance with the permit or TCEQ rules may be reported to the TCEQ Region 11 office in Austin at (512) 339-2929 or by calling the Environmental Violations Hotline at 1-888-777-3186. Citizens can also

file a complaint online at www.tceq.state.tx.us/compliance/complaints/index.html or via email at cmplaint@tceq.state.tx.us .

COMMENT 7:

Jeff Long expressed his concern regarding the proper operation and maintenance of the proposed facility. He was also concerned about how the Applicant would handle an accidental discharge. Darren Carroll and Lori Zimmerman also expressed their concern on the treatment efficiency and commented whether the Applicant should use a better technology, i.e. Membrane Bioreactor (MBR).

RESPONSE 7:

TCEQ does not require an applicant to use a particular type of treatment technology. However, prior to construction of the treatment facility, the Applicant must submit plans and specifications to the TCEQ Wastewater Permitting Section in accordance with the requirements in 30 TAC § 217.6. TCEQ does not require that the Applicant submit plans and specifications prior to issuance of the permit (30 TAC § 217.6(a)). The Applicant must clearly show how the treatment system will meet the permitted effluent limitations. The proposed Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units would include bar screens, aeration basins, final clarifiers, sludge digesters and chlorine contact chamber. This technology has been used extensively in the State and is believed to be able to meet the required effluent limitations if the plant is properly designed, built, and operated.

Additionally, the Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, 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, standby generators, or retention of inadequately treated wastewater.

The Applicant is required to report any unauthorized discharge to the TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to the TCEQ within the prescribed time, it will be subject to enforcement action. The TCEQ conducts periodic inspections of wastewater treatment facilities and investigations based on complaints received from the public. To report complaints about the facility, please contact the Austin Regional Office at (512) 339-2929, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. You may also file citizen complaints on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If the facility does not comply with the terms and conditions of the draft permit, the Applicant will be subject to investigation and possible enforcement action.

COMMENT 8:

Bennie and Elizabeth Wallace commented that the Applicant should consider a different outfall location. The DERC also requested that several entities (TCEQ, LCRA, the City of Bastrop, Bastrop County, and the developer) share the cost to direct the effluent to the McKinney Roughs wastewater treatment plant owned by the LCRA.

RESPONSE 8:

TCEQ rules do not allow the ED to determine or mandate a different facility or discharge location, alternative means of conveyance and disposal, or different type of wastewater treatment plant if the proposed facility complies with the applicable rules and statutes. The ED evaluates the outfalls in the proposed locations, determines the appropriate effluent limitations, and determines whether water quality standards will be maintained. If the Applicant were to request a

change of the discharge location, the ED would review the new proposal using the same standards.

Texas Water Code (TWC), § 26.0282, provides that in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions based on consideration of need. These conditions include the expected volume and quality of the effluent and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater. The TWC, § 26.081, authorizes the TCEQ to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."

The Domestic Technical Report requires information concerning regionalization of wastewater treatment plants. The Applicant is required to review a three-mile area surrounding the proposed facility to determine if there are wastewater treatment plants or sewer collection lines with sufficient existing capacity to accept the proposed volume of wastewater. The Applicant identified two existing wastewater treatment facilities within three miles. The LCRA owns both the McKinney Rough and the Windmill Ranch facilities. However, neither plant has sufficient existing capacity to accept the proposed volume of wastewater.

COMMENT 9:

Darlene and William Pendell are concerned about the flood conditions in the area.

RESPONSE 9:

TCEQ does not address flooding issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding.

The permit application indicates the facility is located above the 100-year flood plain. In addition, the maximum proposed flow of 250,000 gpd, assuming a uniform discharge over 24 hours, is equal to a flow of 0.387 cubic feet per second (cfs). Less than 1cfs flow is not expected to cause any significant increase in the water flow in the gully.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help locating the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

COMMENT 10:

Jeff Long and Deana Spellman commented that South Central Water Company did not publish the notice in a newspaper with a wider circulation. They added that they should have published the notice in the *Austin American-Statesman* or the *New York Times* rather than the *Bastrop Advertiser*.

RESPONSE 10:

Available records indicate that South Central Water Company published the Notice of Application and Intent to Obtain Water Quality Permit (NORI) on August 25, 2007 in *The Bastrop Advertiser*. The Notice of Application and Preliminary Decision (NAPD) was published October 11, 2007 in *The Bastrop Advertiser*. On a Public Notice Verification Form dated August

25, 2007, South Central Water Company verified that a copy of the complete water quality application, and any revisions, were available for review and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas for the duration of the public comment period.

Following comments received during the public meeting on July 15, 2008, Aqua Water Supply Corporation became the sole Applicant in this matter. The Applicant then published a combined NORI and NAPD on February 6, 2009 in the *Austin American-Statesman* as well as on February 5, 2009 in *Ahora Si!* and *The Bastrop Advertiser*. On a Public Notice Verification Form dated February 11, 2009, the Applicant verified that a copy of the complete water quality application, draft permit, and any revisions were available for review and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas for the duration of the extended public comment period.

In response to the comments received at the public meeting, the Applicant published the combined NORI and NAPD in the commenters' newspaper of choice – the *Austin American-Statesman.* A review of the published notices in this case indicates that the Applicant complied with the notice requirements in Chapter 39 of the Commission rules.

COMMENT 11:

Chad Martin commented that the antidegradation review was unsatisfactory and did not address human health and ecological risks.

RESPONSE 11:

TCEQ staff conducts an antidegradation review on new permit applications and permit amendments that would increase pollution loading to a water body. In Texas, there are three levels of antidegradation reviews. A Tier 1 antidegradation review applies to all water bodies and ensures that an increase in pollution loading will not impair existing water quality uses and will

maintain the criteria associated with those uses. A Tier 2 antidegradation review applies to water bodies that have intermediate, high, or exceptional aquatic life uses and a contact recreation use. This review ensures that water quality that exceeds the normal range of fishable/swimmable criteria will be maintained unless lowering it is necessary for important economic or social development. A Tier 3 antidegradation review was not done in this case because "outstanding national resource waters" are not implicated. *See* 30 TAC § 307.5(b).

During the water quality standards review, TCEQ staff assigns appropriate uses and criteria to the receiving waters. TCEQ uses these standards to determine effluent limits and other requirements necessary to protect and maintain water quality. For the antidegradation review, TCEQ staff follows the guidance for antidegradation implementation contained in the TSWQS and its implementation procedures. The TSWQS protects surface water, aquatic and terrestrial life, and human health. TCEQ also uses the pollutant analysis of treated effluent, the Texas Water Quality Inventory, and characteristics of the water body and local aquatic communities, when conducting an antidegradation review. TCEQ evaluates potential parameters of concern typically associated with the type of proposed effluent discharge to determine whether sufficient potential for degradation exists. In the Tier 1 review, TCEQ staff preliminarily determines if the proposed permit action will impair existing uses. In the Tier 2 review, they also determine if there will be significant degradation of water quality in water bodies with exceptional, high, or intermediate aquatic life uses. In addition, they evaluate any draft permit associated with the permit application to ensure compliance with the TSWQS.

Based on these evaluations, a Tier 1 antidegradation review has preliminarily determined 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 has preliminarily

determined that no significant degradation of water quality is expected in Segment No.1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. TCEQ can reexamine and may modify the preliminary determination if it receives new information.

COMMENT 12:

Shirley Adams commented that the LCRA fined the developer for Double Eagle Estates, Mr. Parker, $5000.00 for polluting Lick Creek and wanted assurance that there would not be similar occurrences. She also wanted to know the Applicant's compliance history.

RESPONSE 12:

The application does not indicate that Mr. Parker is the owner, co-owner, or operator of the proposed facility; therefore, Mr. Parker was not part of the review process. However, the Applicant owns and operates many wastewater treatment facilities in the State. In this instance, the Applicant has not begun discharging and there are no compliance issues. Therefore, the site rating is "average by default." Using an assigned customer number, TCEQ was able to review an entire compliance history that includes all types of facilities authorized by the TCEQ and operated by the Applicant. The classification for the Applicant is "average" with a rating of 0.59.

The ED determined that the proposed draft permit is protective of the environment, water quality, and human health. If the Applicant operates and maintains the facility as required by the proposed permit and regulations, the draft permit will meet TCEQ rules and requirements. To report complaints about this facility should the TCEQ issue the permit, please contact the Austin Regional Office at (512) 339-2929, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. You may also file citizen complaints on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ's regional staff investigates

citizen complaints and the commission takes appropriate enforcement action if the investigator documents a violation of the permit terms or the regulations.

COMMENT 13:

Shirley Adams commented that the application's physical description of the facility's location was vague and that she believed that the Applicant intended to relocate the facility.

RESPONSE 13:

The Domestic Administrative Report in the application states that the facility is proposed to be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas. TCEQ staff physically visited the site and did not find the location description to be vague. The Applicant will be required to comply with all applicable notice requirements under the Commission rules if the Applicant proposes to change the location of the facility or the discharge route.

COMMENT 14:

Shirley Adams commented that the Applicant had not listed or properly notified all the adjacent landowners in the permit application. She also asked that TCEQ list all notified adjacent landowners in the Response. Regis Stevenson and Julie Salem stated they were adjacent landowners and that the Applicant did not notify them.

RESPONSE 14:

For new permit and major amendment applications, the Applicant must provide a list of affected landowners and a map showing their location. The Applicant is required to provide notice to landowners owning property located adjacent to the facility and those with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. The Applicant is required to certify that the submitted application is accurate. The

TCEQ mails notice of the application to the affected landowners and others on the mailing list for the application. The TCEQ's Office of the Chief Clerk maintains the mailing list.

Additionally, for all applications (new, major amendment, and renewals), the agency prepares two public notices; the NORI and the NAPD. The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit, and the ED's Preliminary Decision in a public place for viewing and copying.

As part of the original permit application, South Central Water Company provided a map and list of adjacent landowners that named the Development Association of Central Texas and South Central Water Company. The TCEQ notified both of them.

COMMENT 15:

The LCRA indicated that it holds a Certificate of Convenience and Necessity (CCN) for the service area that includes the proposed location of the Double Eagle Ranch Wastewater Treatment Facility. LCRA stated that South Central Water Company had not contacted them about the possibility of service from LCRA's facilities.

RESPONSE 15:

South Central Water Company, in their application, indicated that no portion of the proposed service area was located inside another utility's CCN area. By submitting a signed and completed application, an applicant certifies that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event an applicant becomes aware that it failed to submit any relevant facts or submitted incorrect information in an application or in any report to the ED, it must promptly submit such facts or information.

COMMENT 16:

Bennie and Elizabeth Wallace were concerned that the discharge would cause surface erosion.

RESPONSE 16:

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The treated effluent authorized in the draft permit will be discharged into Moss Branch which flows into Dry Creek which flows into the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. Absent a natural disaster that could inundate the creeks and river, surface erosion is not expected to occur as a result of this permit action. Downstream erosion related to flooding is not typically addressed in the wastewater permitting process. However, the permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 17:

Darren S. Carroll; Rick Clemens; Deena Spellman; the RCIA; Bennie and Elizabeth Wallace; and Lori Zimmerman requested that TCEQ require more stringent effluent limitations.

RESPONSE 17:

TCEQ conducted an analysis of the discharge using the QUAL-TX model for Moss Branch and Dry Creek, and Colorado River for effluent flows of 50,000 gpd and 250,000 gpd. TCEQ staff used headwater flows consistent with the Water Quality Standards for Moss Branch

and Dry Creek and a headwater flow of 105 cfs for the Colorado River. Based on model results, an effluent set of 5 mg/L $CBOD_5$, 5 mg/L TSS, 2 mg/L NH_3-N, 1 mg/L P, and 4 mg/L DO is adequate for both flows to comply with the Colorado River Watershed Protection Rule. The effluent set is also adequate to ensure that the dissolved oxygen level will be maintained above the criteria established by the Water Quality Standards Team for Moss Branch (5 mg/L), Dry Creek (5 mg/L), and the Colorado River Below Town Lake (6 mg/L for headwater flows of 150 cfs or greater and 5 mg/L for headwater flows between 150 cfs and the critical low-flow of 105 cfs).

It is not the usual practice to increase permit sampling frequencies unless TCEQ staff observe noncompliance issues. Since the Applicant has not begun discharging and there are no compliance issues, it is not necessary to increase the sampling and testing frequencies at this time.

COMMENT 18:

Darren S. Carroll; Rick Clemens; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman opposed the application or asked that it be denied.

RESPONSE 18:

An applicant is required to operate in compliance with the TWC, TCEQ's rules, and the terms of the proposed draft permit. TCEQ may issue a permit if the application meets all administrative and technical requirements to protect water quality. The Executive Director has determined that the application complied with the requisite rules and regulations governing water quality and wastewater discharge permits.

COMMENT 19:

Shirley Adams asked who the site owner is.

RESPONSE 19:

Based on the amended permit application received on November 19, 2008, Aqua Water Supply Corporation is the site owner.

COMMENT 20:

Jeff Long and Chad Martin indicated that Moss Branch, a tributary of the Colorado River, is dry in summer months and they do not agree with the creek's description as intermittent.

RESPONSE 20:

Based on information from the 2004 Digital Ortho Imagery Quarter Quadrangles and the USGS topographical map submitted with the application, Moss Branch and Dry Creek appear to be perennial. The proposed treated effluent will have to meet the limits and criteria set forth in the permit, which have been set at a level to ensure the maintenance of both environmental and public health. TCEQ used this information when the limits and criteria were developed. This determination can be reexamined and may be modified if study-based detailed information can be provided.

COMMENT 21:

Jeff Long asked if TCEQ conducted an environmental impact assessment.

RESPONSE 21:

The mandate and responsibility of the Municipal Wastewater Permitting Team of the TCEQ is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The permitting process does not require environmental impact assessments or review of any environmental impact statements.

COMMENT 22:

Regis Stevenson and Julie Salem asked that TCEQ postpone the public meeting for 30 days.

RESPONSE 22:

TCEQ received this comment on July 14, 2008. The original Applicant published the public meeting notice on June 7, 2008 and TCEQ held the public meeting on July 15, 2008. Due to the untimely comment, the TCEQ was unable to postpone the public meeting date.

COMMENT 23:

Darlene Pendell expressed her concern that the Applicant may build two wastewater treatment plants on one small parcel of land.

RESPONSE 23:

The draft permit authorizes a discharge of treated domestic wastewater at an interim volume not to exceed a daily average flow of 50,000 gpd and a final volume not to exceed a daily average flow of 250,000 gpd. The Interim phase will be effective upon the date of issuance and will last through the completion of expansion for the Final phase. The Final phase will last through the date of expiration. Because this is an expansion of the initial phase, only one treatment facility will exist on one parcel of land.

COMMENT 24:

Chad Martin expressed his concern that the 7-day average daily maximum, and single grab effluent limitations may not be enough to protect the ecosystem and human health if allowed during multiple events.

RESPONSE 24:

The ED evaluates the appropriateness of the effluent limitations on case-by-case conditions. The 7-day average daily maximum and single grab effluent limitations assumes occurrence of multiple events. The ED has determined that the proposed draft permit is protective of the environment, water quality, and human health. In addition, it will comply with TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations.

COMMENT 25:

Shirley Adams and Jeff Long expressed their concern as to the reliability and efficiency of a Houston-based company (South Central Water Company) to timely respond to emergencies at the plant site.

RESPONSE 25:

Due to public comments received before and during the public meeting, the permit application originally submitted by South Central Water Company was transferred to the current Applicant. Aqua Water Supply Corporation is located in Austin and its proximity to the site should address these concerns.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

The following changes were made in response to the public comments:

1. The permit application was transferred from South Central Water Company to Aqua Water Supply Corporation.
2. The current Applicant reduced the proposed daily average flow from three phases of 50,000, 150,000, and 750,000 gpd to two phases of 50,000 and 250,000 gpd.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

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Environmental Law Division

By _____ for Celia Castro
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 8, 2009, the "Executive Director's Response to Public Comment" for Permit No.WQ0014833001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

_____ for Celia Castro
Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350

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