TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
600 CONGRESS AVENUE
SUITE 2100
AUSTIN, TEXAS 78701

HOUSTON, TEXAS OFFICE
3200 ONE HOUSTON CENTER
1221 McKINNEY STREET
HOUSTON, TEXAS 77010
(713) 615-8500
FAX (713) 615-8585

AUSTIN, TEXAS OFFICE
(512) 495-6000
FAX (512) 495-6093

WRITER'S DIRECT DIAL NUMBER:
(512) 495-6078
srhodes@mcginnislaw.com
Fax: (512) 505-6378

2010 FEB -8 PM 3:31
CHIEF CLERKS OFFICE

MWD 68620

February 8, 2010

OPA
FEB 09 2010
BY

VIA COURIER

LaDonna Castañuela, Chief Clerk
TCEQ
12100 Park 35 Circle, Bldg F
Austin, TX 78753

Re: Request for Contested Case Hearing regarding Application by the City of Bullard ("Applicant") for a major amendment to TPDES Permit No. WQ0011787001 ("Application")

Dear Chief Clerk:

As previously asserted in a letter dated October 29, 2009, this letter is submitted on behalf of HRC Cherokee Tree Farm, L.P. ("HRC") to the Texas Commission on Environmental Quality ("TCEQ") to request a contested case hearing on the Application. As such, we request a contested case hearing on the Application and submit the following:

HRC owns approximately 7,000 acres of land in Cherokee County, Texas, which Flat Creek tracks across, and is located approximately 2.9 miles downstream of the effluent discharge point. Furthermore, HRC holds Water Use Permit No. 12047, issued by the TCEQ on August 25, 2008, which permits HRC to construct and maintain two reservoirs on Flat Creek to be used for recreational purposes. Both reservoirs will be downstream of the effluent discharge point, with the northernmost lake approximately 3.1 miles downstream. Additionally, HRC has four groundwater wells on the property that are used for irrigation and maintaining lake levels. Because HRC owns property directly downstream of the effluent discharge point, including two TCEQ permitted reservoirs and groundwater wells, HRC will be directly affected by the Application and is entitled to a contested case hearing.

Although HRC appreciates TCEQ's conditions proposed in the draft permit and the Executive Director's Response to Public Comment ("ED's Response"), HRC believes the permit as proposed may threaten the health and safety and use and enjoyment of HRC's property both now and when the permitted reservoirs are completed. Particularly, HRC requests a contested case hearing on the following issues:

1. Contested Case Hearing Issue No. 1. HRC believes the level of treatment proposed in the draft permit (10/15/3) may result in degradation of the water quality of Flat Creek and HRC's proposed reservoirs beyond a de minimis extent, particularly from

MWD

nutrients, which may not only violate Texas Surface Water Quality Standards (30 Tex. Admin. Code § 307.5) but also may negatively impact HRC's health and safety and use and enjoyment of its property.

Because Flat Creek flows intermittently and can experience very low flows, the discharge will comprise a large percentage of flow in Flat Creek and into HRC's permitted reservoirs. This could cause algal blooms and decrease water quality beyond the effects contemplated by the Application or draft permit. Any or all of this would be detrimental to the aquatic life habitat of the reservoirs, impair HRC's use of its property, Flat Creek and the reservoirs, and potentially violate the aesthetic requirements set forth in 30 Tex. Admin. Code § 307.4(b).

Importantly, TCEQ granted HRC a permit for the reservoirs in 2008. Environmental studies to protect stream flows and water quality have been performed, which HRC can use as a basis for evaluating the impacts of the discharge proposed by the Application. As the entity that permitted the reservoirs, TCEQ has sufficient information regarding HRC's reservoirs to analyze the impact of the Application, and ignoring relevant facts by failing to consider the potential impacts on HRC's reservoirs is prejudicial against HRC.

2. Contested Case Hearing Issue No. 2. Applicant has failed to demonstrate that the Application will not result in the violation of state water quality standards for the receiving stream. HRC believes the Application may very well cause such standards to be violated. For example, HRC believes the Applicant's proposed discharge could violate the standards of Flat Creek for high aquatic life use, public water supply and contact recreation. The proposed discharge could result in depressed dissolved oxygen levels below the water quality standards, and to HRC's knowledge, the model used for this analysis has not been verified on this stream.

3. Contested Case Hearing Issue No. 3. Applicant's compliance history is replete with continuing violations of permit operational requirements, permit limitations and recordkeeping. As Applicant is requesting a major amendment regarding the discharge of wastewater, Applicant's history of compliance, including efforts to promptly correct violations, is directly relevant to the evaluation of the Application. Therefore, Applicant should be required to demonstrate that it has the financial, managerial and operational ability to operate the wastewater treatment plant in compliance with state requirements.

4. Contested Case Hearing Issue No. 4. Applicant has not demonstrated that it has complied with TCEQ's regionalization policy.

5. Contested Case Hearing Request Issue No. 5. Applicant has not demonstrated that it will be able to adequately remove pharmaceutical and other potentially dangerous contaminants from its discharge. Although HRC appreciates the ED's Response

regarding this issue, HRC believes the potential impact on water quality warrants consideration of this issue in a contested case.

6. Contested Case Hearing Issue No. 6. Applicant has not demonstrated that the Application and draft permit will not adversely affect the groundwater used by HRC beyond a de minimis amount. Regardless of whether the Texas Groundwater Protection Strategy cited by the ED's Response is correct, the Executive Director's analysis of this issue presupposes that surface water quality is adequately protected, which HRC contests.

HRC's contact information is *HRC Cherokee Tree Farm, L.P., Attn: Bill McMahan, 3819 Maple Avenue, Dallas, Texas 75219, (214) 661-8118 (phone) and (214) 445-0814 (fax)*, and for purposes of the Application, correspondence should also be sent to *McGinnis, Lochridge & Kilgore, L.L.P., Attn: Phil Haag, 600 Congress Avenue, Suite 2100, Austin, Texas 78701, (512) 495-6008 (phone) and (512) 505-6308 (fax)*.

If you need additional information from HRC, please contact me directly. Again, we request a contested case hearing on this Application as presently proposed, but we remain willing to work with the Applicant toward an alternative that will meet the Applicant's needs and adequately protect the quality of the water features used and enjoyed by HRC within its property now and in the future.

Sincerely,

Scott Rhodes

cc: Mr. Tom Harrigan, P.E. – Permit Coordinator, TCEQ Municipal Permits Team
Mr. James L. Machin, P.E. – TRC

TEXAS
COMMISSION
ON ENVIRONMENTAL
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2010 FEB -8 PM 3:31
CHIEF CLERKS OFFICE

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WRITER'S DIRECT DIAL NUMBER:
(512) 495-6078
srhodes@mcginnislaw.com
Fax: (512) 505-6378

MWD 68620

October 29, 2009

OPA
OCT 30 2009
BY GB

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE
2009 OCT 29 PM 2:55

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

Re: Comment Letter and Request for Contested Case Hearing regarding Application by the City of Bullard ("Applicant") for a major amendment to TPDES Permit No. WQ0011787001 ("Application")

Dear Chief Clerk:

As counsel for HRC Cherokee Tree Farm, L.P. ("HRC"), this letter is submitted to the Texas Commission on Environmental Quality ("TCEQ") on behalf of HRC to provide public comments to the Application and request a contested case hearing on the Application. As such, we request a contested case hearing on the Application and submit the following:

HRC owns approximately 7,000 acres of land in Cherokee County, Texas, which Flat Creek tracks across, and is located approximately 2.9 miles downstream of the effluent discharge point. Furthermore, HRC holds Water Use Permit No. 12047, issued by the TCEQ on August 25, 2008, which permits HRC to construct and maintain two reservoirs on Flat Creek to be used for recreational purposes. Both reservoirs will be downstream of the effluent discharge point, with the northernmost lake approximately 3.1 miles downstream. Additionally, HRC has four groundwater wells on the property that are used for irrigation and maintaining lake levels. Because HRC's property, permitted reservoirs, and wells are near and directly downstream of the effluent discharge point, HRC will be directly affected by the Application.

Although HRC appreciates TCEQ's conditions proposed in the draft permit, including the proposed treatment levels, HRC believes the permit as proposed may threaten the health and safety and use and enjoyment of HRC's property both now and once the permitted reservoirs are constructed. Particularly, HRC comments on and requests a contested case hearing on the following issues:

1. Comment No. 1/Contested Case Hearing Issue No. 1. HRC believes the level of treatment proposed in the draft permit (10/15/3) may result in degradation of the water quality of Flat Creek and HRC's proposed reservoirs beyond a de minimus

extent, particularly from nutrients, which may not only violate Texas Surface Water Quality Standards (30 Tex. Admin. Code § 307.5) but also may negatively impact HRC's health and safety and use and enjoyment of its property. Because Flat Creek flows intermittently, the discharge will comprise a large percentage of flow into HRC's permitted reservoirs, which could generate algal blooms and decreased dissolved oxygen levels beyond the effects contemplated by the Application or draft permit. This would be detrimental to the aquatic life habitat of the reservoirs, impair HRC's contact recreational use of Flat Creek and the reservoirs, and potentially violate the aesthetic requirements set forth in 30 Tex. Admin. Code § 307.4(b).

2. Comment No. 2/Contested Case Hearing Issue No. 2. Applicant has failed to demonstrate that the Application will not result in the violation of State water quality standards for the receiving stream. HRC believes the Application may very well cause such standards to be violated. For example, HRC believes the Applicant's proposed discharge could violate the standards of Flat Creek for high aquatic life use, public water supply and contact recreation.

3. Comment No. 3/Contested Case Hearing Issue No. 3. Applicant's compliance history is replete with continuing violations of permit operational requirements, permit limitations and recordkeeping. Applicant will not be able to demonstrate that it can or will be able to comply with the permit for which it has now applied. Applicant should be required to demonstrate that it has the financial, managerial and operational ability to operate the wastewater treatment plant in compliance with state requirements.

4. Comment No. 4/Contested Case Hearing Issue No. 4. Applicant has not demonstrated that it has complied with TCEQ's regionalization policy.

5. Comment No. 5/Contested Case Hearing Request Issue No. 5. Applicant has not demonstrated that it will be able to adequately remove pharmaceutical and other potentially dangerous contaminants from its discharge.

6. Comment No. 6/Contested Case Hearing Issue No. 6. Applicant has not demonstrated that the Application and draft permit will not adversely affect the groundwater used by HRC beyond a de minimus amount.

HRC's contact information is *HRC Cherokee Tree Farm, L.P., Attn: Bill McMahan, 3819 Maple Avenue, Dallas, Texas 75219, (214) 661-8118 (phone) and (214) 445-0814 (fax)*, and for purposes of the Application, correspondence should also be sent to *McGinnis, Lochridge & Kilgore, L.L.P., Attn: Phil Haag, 600 Congress Avenue, Suite 2100, Austin, Texas 78701, (512) 495-6008 (phone) and (512) 505-6308 (fax)*.

If you need additional information from HRC, please contact me directly. Again, we request a contested case hearing on this Application as presently proposed, but we remain willing

to work with the Applicant toward an alternative that will meet the Applicant's needs and adequately protect the quality of the water features used and enjoyed by HRC now and in the future.

Sincerely,

Scott Rhodes

cc: Mr. Tom Harrigan, P.E. – Permit Coordinator, TCEQ Municipal Permits Team
Mr. James L. Machin, P.E. – TRC Solutions

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 2/12/2010 10:41 AM
Subject: Fwd: Public comment on Permit Number WQ0011787001
Place: PUBCOMMENT-OCC2
Attachments: 02.11.10 Hearing Request2.pdf

H

>>> PUBCOMMENT-OCC 2/11/2010 4:12 PM >>>

MWD 68620

>>> <axum@lf-lawfirm.com> 2/11/2010 4:06 PM >>>

REGULATED ENTY NAMECITY OF BULLARD WWTP
RN NUMBER:RN101720639
PERMIT NUMBER:WQ0011787001
DOCKET NUMBER:2010-0237-MWD
COUNTY:CHEROKEE
PRINCIPAL NAME:CITY OF BULLARD
CN NUMBER:CN600667026
FROM
NAME: Axum Teferra
E-MAIL:axum@lf-lawfirm.com
COMPANY: Lowerre, Frederick, Perales, Allmon & Rockwell
ADDRESS:707 RIO GRANDE ST Suite 200
AUSTIN TX 78701-2719
PHONE:5124696000
FAX:5124829346
COMMENTS: Attached

mw

LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
ATTORNEYS AT LAW
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

February 11, 2010

Ms. LaDonna Castañuela, Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 87811

Re: Request for a Contested Case Hearing on the Application for an Amendment to Permit # WQ0011787001 by the City of Bullard, Texas

Dear Ms. Castañuela:

On behalf of the Texas Conservation Alliance (TCA) and Dr. Adrian Van Dellen, I am filing this request for a contested case hearing on the above referenced application. TCA is a non-profit corporation with goals that include protection of the water resources of the state. TCA's goals also include representing its members in government decisions that affect the natural resources used by it members. TCA is a membership organization with individual members and member organizations. TCA has members who will be affected by the proposed amendment. TCA seeks the same result as its members, denial or significant revisions to the permit amendment.

Dr. Adrian Van Dellen is one member of TCA. He seeks a hearing on his own behalf as well as for TCA. Dr. Van Dellen has taken canoe trips on Flat Creek including to the area of the creek where the unnamed tributary that is the initial receiving waters for the discharge of the City of Bullard enters Flat Creek. There may be some confusion on these locations, due to the fact that different maps label the creeks differently. Dr. Van Dellen has, however, paddled a canoe for recreational purposes up Flat Creek to where CR 3707 (or School Bus Road) crosses it. This is approximately 0.2 mile upstream from where the receiving waters enter the actual Flat Creek as a tributary (incorrectly labeled at this confluence point as "Flat Creek" on Garmin's Topo Map Source CD and other modern maps).

In addition, Dr. Van Dellen has taken boats (canoes & kayaks) on Flat Creek just downstream of this location. He has worked as a professional guide and professional photographer. He has guided people on canoe trips on the Neches River and short segments of Flat Creek downstream of the discharge. He has taken and published photographs of wildlife and vegetation along Flat Creek downstream of the discharge. These guiding and photographic

activities have been done as part of his profession, and Dr. Van Dellen intends to continue with these activities. Thus, Dr. Van Dellen's economic and recreational interests will be affected, adversely if damage is done to Flat Creek or the Neches River from the operations of the wastewater treatment plant by the City of Bullard.

TCA and Dr. Van Dellen rely upon the comments they submitted and those comments of others in this matter. TCA and Dr. Van Dellen request that all issues raised in any such comments be referred to SOAH for any contested case hearing on this application.

Sincerely,

Richard Lowerre

xc: Ms. Michelle Bacon, Staff Attorney for the Executive Director, TCEQ
Mr. Blas Coy, Public Interests Counsel, TCEQ
Mr. Larry Morgan, City Manager, City of Bullard

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 10/28/2009 8:51 AM
Subject: Fwd: Public comment on Permit Number WQ0011787001
Place: PUBCOMMENT-OCC2
Attachments: 10.27.09 Hearing Request2.pdf

H

MWD 686620

>>> PUBCOMMENT-OCC 10/27/2009 4:07 PM >>>

>>> <axum@lf-lawfirm.com> 10/27/2009 4:04 PM >>>

REGULATED ENTY NAMECITY OF BULLARD WWTP
RN NUMBER:RN101720639
PERMIT NUMBER:WQ0011787001
DOCKET NUMBER: Not Found
COUNTY:CHEROKEE
PRINCIPAL NAME:CITY OF BULLARD
CN NUMBER:CN600667026
FROM
NAME: Axum Teferra
E-MAIL:axum@lf-lawfirm.com
COMPANY: Lowerre, Frederick, Perales, Allmon & Rockwell
ADDRESS:707 RIO GRANDE ST Suite 200
AUSTIN TX 78701-2719
PHONE:5124696000
FAX:5124829346
COMMENTS: Attached as a PDF.

MW

LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL
ATTORNEYS AT LAW
707 Rio Grande, Suite 200
Austin, Texas 78701
(512) 469-6000 / 482-9346 [facsimile]

October 27, 2009

Ms. LaDonna Castañuela, Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 87811

Re: Comments, and Request for Contested Case Hearing on the Application for an Amendment to Permit # WQ0011787001 by the City of Bullard, Texas

Dear Ms. Castañuela:

On behalf of the Texas Conservation Alliance (TCA) and Dr. Adrian Van Dellen, I am filing the attached comments and this request for a contested case hearing on the above referenced application. The attached comments provide the basis for the requests and the issues for the hearing.

TCA is a non-profit corporation with goals that include protection of the water resources of the state. TCA's goals also include representing its members in state proceedings that affect the natural resources used by it members. TCA is a membership organization with individual members and member organizations. TCA has members who will be affected by the proposed amendment. TCA seeks the same result as its members, denial or significant revisions to the permit amendment.

Dr. Adrian Van Dellen is one member of TCA. He seeks a hearing on his own behalf as well as for TCA. Dr. Van Dellen has taken canoe trips on Flat Creek including to the area of the creek where the unnamed tributary that is the initial receiving waters for the discharge of the City of Bullard enters Flat Creek. There may be some confusion on these locations, due to the fact that different maps label the creeks differently. Dr Van Dellen has, however, paddled a canoe for recreational purposes up Flat Creek to where CR 3707 (or School Bus Road) crosses it. This is approximately 0.2 mile upstream from where the receiving waters enter the actual Flat Creek as a tributary (incorrectly labeled at this confluence point as "Flat Creek" on Garmin's Topo Map Source CD and other modern maps).

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Sincerely,

Eric Allmon

Jon Richard Lowerre

xc: Mr. Mark Vickery, Executive Director, TCEQ
Mr. Blas Coy, Public Interests Counsel, TCEQ
Mr. Larry Morgan, City Manager, City of Bullard

SUMMARY OF COMMENTS AND ISSUES FOR CONTESTED CASE HEARING

Key Provisions of Statutes or Rules	COMMENTS AND ISSUES
Compliance History TWC § 26.0281	Applicant's compliance history requires either: 1) denial of the application, or 2) additional conditions and terms in the permit to minimize the likelihood of future violations, including increased monitoring and reporting requirements
Inadequate application TWC§§ 26.027, 26.028, 26.0285, 26.030, 26.034, 26.037, 26.041, & 26.121	The application is inadequate: It is incomplete and fails to include all necessary or required information. The application does not, for example: 1) include a complete list of all names and addresses of persons affected by the proposed application; 2) show how the operations will prevent **significant degradation** of the water quality in the receiving waters including Flat Creek and the Neches River. 3) contains adequate facility designs and specifications to allow the required review of the impacts of the operations on water quality, the ecology of the receiving waters and nearby landowners and residents. 4) address **groundwater contamination** from recharge of contaminated waters into the shallow and deeper aquifers. 5) provide adequate **odor controls** and controls for other **nuisance conditions,** including noise, light, and dusts. 6) Applicant has not demonstrated adequate extent and control of the necessary **buffer zones.** 7) provide for the **protection of wetlands.** 8) provide for meeting other **location requirements,** 9) address the options for **regionalization.** 10) show how **water quality standards** will be met, 11) demonstrate the **best available technologies** are being used. 12) provide for **adequate monitoring** of the receiving waters for impacts to water quality and the ecology of the waters from traditional and other pollutants, and 13) the information is not properly **verified or sealed** by a profession engineer or other person qualified to file such information.
Inadequate Notice TWC § 26.028	There has not been proper notice of application: The applicant has not complied with the requirements to identify all affected persons, including nearby residents and landowners.
Inadequate Permit Terms TWC §§ 26.0285, 26.029, 26.042	The proposed permit is inadequate: For example, it fails to provide in clear and enforceable terms: 1) the character of the discharge 2) flow limitations, and/or 3) adequate monitoring and reporting requirements, including sufficient frequency and type of monitoring, to detect violations or toxicity, associated with the discharge or the conditions in the receiving waters.

Key Provisions of Statutes or Rules	COMMENTS AND ISSUES
Violation of Water Quality Standards and Significant Degradation of Water Quality 30 TAC Ch 307	The discharge will result in violations of water quality standard and significant degradation of the water quality in the receiving waters, including Flat Creek and the Neches River.
Nuisances 30 TAC Ch 309 Subch B	The proposed facility will not provide for needed odor controls and controls for other nuisance conditions, including noise, light, and dusts.
Regionalization TWC § 26.0282, 30 TAC § 307.1	The opportunities for regionalization have not been adequately explored.
Protection of Wetlands 30 TAC Ch 309 Subch B	The location of the facilities, including the outfall, as wells as the discharges will adversely affect wetland areas