

TCEQ DOCKET NO. 2013-2114-WR

**IN THE MATTER OF THE
APPLICATION OF THE COVERED
BRIDGE CANYON HOMEOWNERS
ASSOCIATION FOR WATER USE
PERMIT NO. 12979**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**CITY OF HOUSTON’S REPLY TO THE RESPONSES TO HEARING REQUESTS
FILED BY THE EXECUTIVE DIRECTOR, OPIC & THE APPLICANT**

**I.
INTRODUCTION**

The City of Houston files this Reply to the Responses to its request for a contested case hearing in the matter of the application by Covered Bridge Canyon HOA for Permit No. 12979 filed by the Executive Director and the Office of Public Interest Council (“OPIC”), and the untimely response of the Applicant, and would show the Commission as follows:

**II.
APPLICABLE LAW & STANDARDS FOR PARTY STATUS**

No person may appropriate any state water for storage, taking, or diversion of water without first obtaining a permit where the Commission has made the following determinations:

1. unappropriated water is available in the source of supply;
2. the proposed appropriation:
 - (A) is intended for a beneficial use
 - (B) does not impair existing water rights or vested riparian rights;
 - (C) is not detrimental to the public welfare;
 - (D) considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152;
 - (E) addresses a water supply need in a trulliner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and
3. the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.

See Texas Water Code Section §11.134(2)-(4). Section 11.147 (d) and (e) of the Water Code also requires the Commission to consider the effect of a proposed permit on existing instream uses and water quality, as well as impacts on fish and wildlife. *Id.* §11.147. (d)-(e).

A contested case hearing may be requested by an affected person such as the City of Houston¹ within 30 days after the publication of the notice of application.² The hearing request must "substantially comply" with the requirements of Section 55.251(c) (30 TAC). A request should "identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public."³

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."⁴ Section 55.256(e) (30 TAC) provides the following factors for the Commission to consider in determining whether a person is affected:

1. whether the interest claimed is one protected by the law under which the application will be considered;
2. distance restrictions or other limitations imposed by law on the affected interest;
3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
4. likely impact of the regulated activity on the health, safety, and use of property of the person;
5. likely impact of the regulated activity on use of the impacted natural resource by the person; and
6. for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁵

¹ 30 TAC § 55.251(a).

² 30 TAC § 295.171.

³ 30 TAC § 55.251(b), (c).

⁴ 30 TAC § 55.256(a).

⁵ 30 TAC § 55.256(c).

III.
**HOUSTON IS AN “AFFECTED PERSON” ENTITLED TO PARTY
STATUS & A CONTESTED CASE HEARING ON THE APPLICATION**

Houston is an “affected person” and its contested case hearing request should be granted for the following reasons:

1. Houston’s hearing request was timely filed with the Commission.
2. Houston filed its hearing request for the purposes of protecting its senior and superior water rights in the Trinity River Basin. The City of Houston relies upon the Trinity River Basin, as well as other water resources, for its municipal water supplies to provide water to more than 3 million customers in Houston and its environs, including Harris and Fort Bend Counties, Texas. The City of Houston is the owner of, and/or has contracts for, multiple water rights in the Trinity River Basin, including Lake Livingston (Certificate of Adjudication No. 08-4261) and Certificate of Adjudication No. 08-4277. Additionally, the Trinity River provides the fresh water inflows to the Galveston Bay and its estuaries, all of which contribute to the economic well-being and quality of life of the City of Houston and its citizens.
3. Based upon the information in paragraph 2., above, the City of Houston has direct health and safety interests, as well as water rights and pecuniary interests associated with the condition and well-being of the Trinity River Basin and the potential impacts that the above-referenced Application might have on the river system, if granted. The City, along with its water rights, is located downstream of the HOA’s seven (7) existing on-channel reservoirs.
4. To protect the City’s specific and particularized rights and interests, and afford adequate opportunity to review the Application the proposed Permit the Commission a contested case hearing on the Application is necessary.

5. For the reasons and based upon the facts recited in paragraphs 1. Through 4., inclusive, Houston's concerns and rights are specific, particularized, and are not simply those interests and concerns of members of the public.
6. As a governmental entity with statutory authority and responsibilities directly related to the property interests, as well as the public health, safety and welfare interests over or interests it seeks to protect which are relevant to the issues raised by the application, Houston is entitled to have its hearing request granted.

IV.
CONCLUSION

The Commission should:

1. overrule the objections of the Executive Director and the Applicant and,
2. consistent with the recommendations of OPIC, determine (i) that the City of Houston is an affected person, and (ii) grant the City's request for a contested case hearing in the matter of Application No. 12979, and
3. refer Application No. 12979 to SOAH.

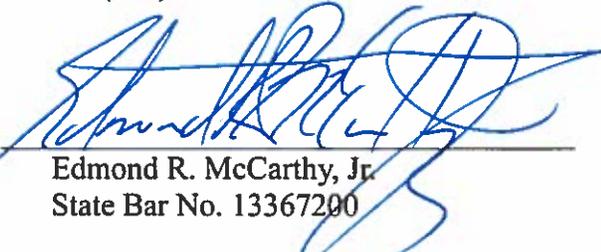
Respectfully submitted,

JACKSON, SJOBERG, MCCARTHY & TOWNSEND, LLP

Edmond R. McCarthy, Jr.
711 W. 7th Street
Austin, Texas 78701
(512) 472-7600
(512) 225-5565 FAX

City Attorney's Office, City of Houston

Sharon Citino
Senior Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002
(832) 393-6486

By: 

Edmond R. McCarthy, Jr.
State Bar No. 13367200

ATTORNEYS FOR CITY OF HOUSTON

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing Reply to the Responses to Hearing Requests Filed by the Executive Director, OPIC & the Applicant was sent as shown below on this the 27th day of May, 2016, as follows:

FOR THE APPLICANT:

Via U.S. mail:

Richard Riehm
108 Covered Bridge Drive
Fort Worth, Texas 76108-9602

Rena Peden
204 Covered Bridge Drive
Fort Worth, Texas 76108

FOR THE EXECUTIVE DIRECTOR:

Via electronic mail:

Sarah Henderson, Technical Staff
Texas Commission on Environmental Quality
Water Availability Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-2535
Fax: (512) 239-2214

Brian Christian, Director
Texas Commission on Environmental Quality
Environmental Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL:

Via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

**FOR ALTERNATIVE DISPUTE
RESOLUTION**

Via electronic mail:

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:

Via e-filing:

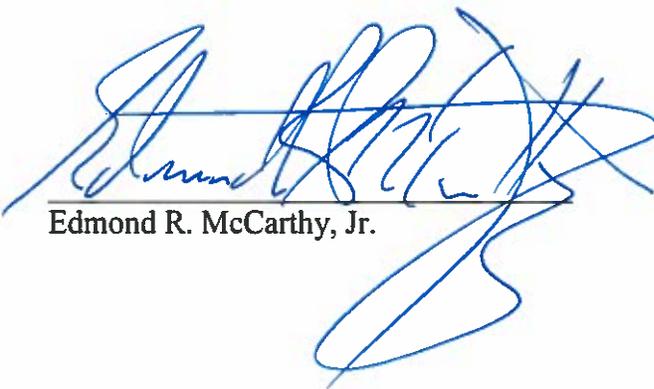
Bridget C. Bohac
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S):

Via U.S. mail:

Kathy Chruscielski
208 West Remuda Circle
Fort Worth, Texas 76108-9244

Joyce Hartman
217 West Remuda Circle
Fort Worth, Texas 76108-9249

A handwritten signature in blue ink, appearing to read "Edmond R. McCarthy, Jr.", is written over a horizontal line. The signature is highly stylized and cursive, with a large, sweeping flourish extending downwards and to the right.

Edmond R. McCarthy, Jr.