

Ms. Kalisek's Direct Line: (512) 322-5847  
lkalisek@lglawfirm.com

January 3, 2014

Ms. Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Bldg. F – 1<sup>st</sup> Floor  
Austin, Texas 78711-3087

**VIA ELECTRONIC FILING**

Re: New Braunfels Utilities' Response to Request for Contested Case Hearing  
regarding the Application for TPDES Permit No. WQ0010232004

Dear Ms. Bohac:

Please find enclosed New Braunfels Utilities' Response to Request for Contested Case Hearing filed in the above-referenced matter..

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

*Lauren Kalisek*

Lauren Kalisek

*with permission lmk*

LJK/lmr  
Enclosure

cc: Mr. Roger Biggers, NBU  
Mr. James Machin, TRC

**TCEQ DOCKET NO. 2013-2151-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE TEXAS COMMISSION</b>
<b>NEW BRAUNFELS UTILITIES FOR</b>	<b>§</b>	<b>ON</b>
<b>TPDES PERMIT NO. WQ0010232004</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**NEW BRAUNFELS UTILITIES' RESPONSE TO REQUEST FOR  
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the applicant, New Braunfels Utilities (“NBU”) and files its Response to Request for Contested Case Hearing in the above-referenced matter, and would respectfully show the following:

**I. INTRODUCTION**

NBU requests that the Texas Commission on Environmental Quality (the “Commission”) deny the hearing request submitted by Ms. Alberti and approve NBU’s application for proposed Texas Pollutant Discharge Elimination System Permit (“TPDES”) No. WQ0010232004 (the “Permit”). Ms. Alberti’s request fails to raise a disputed issue of fact that is relevant and material to the Commission’s decision on the application. As noted in the Executive Director’s Response to Comments, the Commission does not have jurisdiction to address the issues raised in Ms. Alberti’s request regarding property values and potential limitation of future development. In addition, she fails to raise any disputed issue of fact relevant and material to the Commission’s decision on the Permit.

## II. BACKGROUND AND PROCEDURAL HISTORY

NBU's permit application was filed on September 12, 2011, and the Executive Director declared the application administratively complete on October 24, 2011. The "Notice of Receipt of Application and Intent to Obtain Water Quality Permit," (the "NORI") was mailed by the Office of the Chief Clerk and published by NBU in the *New Braunfels Herald-Zeitung* on November 13, 2011. The NORI was also published in Spanish by NBU in *La Voz de Guadalupe County* on December 16, 2011. The permit application was available for inspection by the public at the NBU main office located at 263 Main Plaza, New Braunfels, Texas 78131-0289 and at the Guadalupe-Blanco River Authority ("GBRA") offices located at 933 East Court Street, Seguin, Texas 78155.

After completing his technical review of the permit application, the Executive Director issued an initial Draft Permit on February 21, 2013. The "Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater" (the "NAPD") was mailed by the Office of the Chief Clerk and published by NBU in the *New Braunfels Herald-Zeitung* on May 8, 2013, and in the *Seguin Gazette*, the newspaper of largest circulation in Guadalupe County, on May 8, 2013. Ms. Alberti mailed her hearing request citing her concerns for impacts to property values and the future use and development of her property on May 12, 2013. The NAPD was also published in Spanish by NBU in *La Voz de Guadalupe County* on June 1, 2013. The permit application was still available for inspection at the NBU main office located at 263 Main Plaza, New Braunfels, Texas 78131-0289 and at the GBRA offices located at 933 East Court Street, Seguin, Texas 78155. In addition, a combined NORI/NAPD was published by NBU in the *Seguin Gazette*, the newspaper of largest circulation in Guadalupe County, on September 8, 2013.

The public comment period for the permit application was extended and closed on October 8, 2013. The Executive Director filed his Response to Public Comment on November 5, 2013. The opportunity to request a contested case hearing or request reconsideration of the Executive Director's decision on the permit application expired on December 5, 2013. There were no additional hearing requests or requests for reconsideration submitted. Ms. Alberti's hearing request is the only one filed for the permit application.

### III. EVALUATION OF HEARING REQUEST

Section 5.556 of the Texas Water Code expressly provides that the Commission is precluded from granting a hearing request unless the Commission determines that the issue: (1) involves a disputed issue of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.<sup>1</sup> In this instance, Ms. Alberti's request fails the first and third prongs of this statutory test. She raises no disputed issue of fact and her general concerns are not relevant or material to the Commission's decision on the Permit.

In her May 12, 2013 letter attached hereto as Attachment A, Ms. Alberti simply states that NBU's installation of the new treatment facility and discharge "will greatly devalue my property and would severely limit any future use or development." Concerns regarding potential impacts to property values and future surrounding land uses are not issues that are relevant or material to the Commission's decision on NBU's application. It is well established that the Commission reviews TPDES permit applications consistent with its authority under Chapter 26 of the Texas Water Code to "establish the level of quality to be maintained in, and shall control the quality of, the water in this state."<sup>2</sup> As noted in the Executive Director's Response to

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<sup>1</sup> TEX. WATER CODE ANN. § 5.556(d) (West 2008).

<sup>2</sup> *Id.* at. § 26.011 (West 2008).

Comments, the water quality permitting process is “limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state’s rivers, lakes, and coastal waters,” and therefore, the Commission does not consider “property value and development” as a part of the wastewater permitting process.<sup>3</sup>

Ms. Alberti’s concerns are not directed at the Executive Director’s determination that NBU’s discharge as regulated by the Permit will be protective of water quality and allow for the continued maintenance of applicable Texas Surface Water Quality Standards.<sup>4</sup> Nor are they directed at the Executive Director’s determination that NBU meets the Commission’s siting conditions at Title 30, Texas Administrative Code, Chapter 309.<sup>5</sup> Rather, they are general concerns that fall outside of the scope of the Commission’s jurisdiction and are not proper for referral to the State Office of Administrative Hearings. In addition to being outside of the Commission’s jurisdiction, Ms. Alberti’s letter simply raises general concerns and fails to identify any specific disputed fact that could be the subject of a hearing. In this regard, her letter also fails to meet the statutory standard for the granting of a hearing request.

## V. CONCLUSION

Because Ms. Alberti’s hearing request states general concerns that are outside the scope of the Commission’s jurisdiction and are not relevant or material to the decision on the Permit and because the request fails to raise any disputed fact issue, NBU respectfully requests that the Commission deny the request and approve the Permit.

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<sup>3</sup> Executive Director’s Response to Public Comment, Application by New Braunfels Utilities for TPDES Permit No. WQ0010232004, November 5, 2013.

<sup>4</sup> 30 Tex. Admin. Code Chapter 307 (West 2013).

<sup>5</sup> 30 Tex. Admin. Code Chapter 309 (West 2013).

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

TELEPHONE: (512) 322-5847

FAX: (512) 472-0532

By: Lauren Kalisek with permission  
LMK  
LAUREN KALISEK  
State Bar No. 00794063

**ATTORNEYS FOR  
NEW BRAUNFELS UTILITIES**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of New Braunfels Utilities' Response to Request for Contested Case Hearing was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the address listed below on this 3rd day of January, 2014.

**FOR THE EXECUTIVE DIRECTOR:**

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

**FOR THE CHIEF CLERK:**

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

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

**REQUESTER:**

Ms. Irene Alberti  
111 Encino Blanco Street  
San Antonio, Texas 78232

Mr. Brian Christian, Director  
Texas Commission on Environmental Quality  
Small Business and Environmental  
Assistance Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

**FOR PUBLIC INTEREST COUNSEL:**

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

**FOR ALTERNATIVE DISPUTE RESOLUTION:**

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087

  
Lauren Kalisek *with permission  
LMK*

**ATTACHMENT A**  
May 12, 2013 Hearing Request

May 12, 2013

*MWD  
791687*

To Whom It May Concern,

I request a contested hearing on the New Braunfels Utilities application to discharge treated domestic wastewater into the Lake Dunlap Hydroelectric Plant Canal. I own approximately ten acres fronting the Guadalupe River, directly across the canal (20 yards) from the proposed treatment plant and outflow pipe. The installation of this treatment facility, along with the sewage outflow, would greatly devalue my property and would severely limit any future use or development.

Please contact my son, David Schneider, at the phone number indicated below if you have any questions.

Best Regards,

*Irene Alberti*

Irene Alberti

Name: Irene Alberti  
Address: 111 Encino Blanco  
San Antonio, TX 78232  
Phone: 210-275-0687

**REVIEWED**

MAY 17 2013

By *[Signature]*

*H*

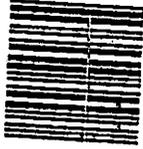
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2013 MAY 16 PM 3:01  
CHIEF CLERKS OFFICE

Applicant's Name: New Braunfels Utilities  
Applicant's Permit #: WQ0010232004

IRENE ALBERTI  
111 ENCINO BLANCO  
SAN ANTONIO, TX 78223



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