

TCEQ DOCKET NO. 2015-1152-IWD

IN THE APPLICATION OF THE	§	BEFORE THE
LOWER COLORADO RIVER AUTHORITY	§	
FOR RENEWAL OF TEXAS POLLUTANT	§	TEXAS COMMISSION ON
DISCHARGE ELIMINATION SYSTEM	§	
PERMIT NO. WQ0002105000	§	ENVIRONMENTAL QUALITY

**APPLICANT LOWER COLORADO RIVER AUTHORITY'S
RESPONSE TO HEARING REQUESTS**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The requests for a contested case hearing on this permit renewal application should be denied because the controlling law, Commission regulations, and Texas Supreme Court precedent all hold that the requestors have no right to a hearing.

ANALYSIS

Pending before the Commission in this matter is an application by the Lower Colorado River Authority ("LCRA") for renewal of a Texas Pollutant Discharge Elimination System ("TPDES") permit. The Water Code and the Commission's regulations provide that the requestors have no right to a contested case hearing on LCRA's application, and that the Commission may approve the application without holding a hearing, if:

- (1) the requested permit renewal (a) will not significantly increase the quantity of the authorized discharge or materially change the pattern or place of discharge, and (b) will maintain or improve the quality of the authorized discharge;
- (2) notice of the application and the opportunity to request a public meeting have been provided in compliance with applicable requirements;
- (3) the Executive Director has considered and responded to all timely and significant public comments; and

- (4) LCRA's compliance history raises no issues regarding its ability to comply with a material term of the permit.¹

As documented in the administrative record for LCRA's permit renewal application, each of the foregoing conditions is satisfied. The requested permit renewal does not seek an increase in the discharge quantity, or a change in the discharge route or outfall locations, authorized under LCRA's existing permit.² There will be no degradation in the quality of the currently authorized discharge. Indeed, the quality of the authorized discharge will be improved if the renewed permit is issued, because, at LCRA's request, the renewed permit will preclude the discharge of certain wastewater currently authorized to be discharged under LCRA's existing permit.³

Additionally, notice of LCRA's application and the opportunity to request a public meeting were provided in compliance with all applicable requirements. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal was issued on July 24, 2014, and published in *The Fayette County Record* on August 15, 2014. The Notice of Application and Preliminary Decision for Water Quality TPDES Renewal and the Notice of Public Meeting were issued on March 3, 2015, and published in *The Fayette County Record* on March 6, 2015. A public meeting was held on April 9, 2015. Thereafter, on June 26, 2015, the Executive Director issued his response to public comments on the application, considering and responding to all

¹ See Tex. Water Code § 26.028(d); 30 Tex. Admin. Code § 55.201(i)(5); see also 30 Tex. Admin. Code § 50.113(d)(4) (providing that the Commission may act on a TPDES permit renewal application, without holding a contested case hearing, unless the applicant's compliance history "raises issues regarding the applicant's ability to comply with a material term of its permit"); *TCEQ v. City of Waco*, 413 S.W.3d 409, 416, 419, 420, 424-25 (Tex. 2013) (recognizing the Commission's discretion to deny a contested case hearing request under Tex. Water Code § 26.028(d)); *TCEQ v. Bosque River Coal.*, 413 S.W.3d 403, 404, 406-07, 408-09 (Tex. 2013) (same).

² See Fact Sheet and Executive Director's Preliminary Decision, TPDES Permit No. WQ0002105000 (January 12, 2015) (summarizing the changes from the existing permit).

³ See Letter from Bill Steinhauser, P.E., Manager, Environmental Affairs, LCRA to Tim Janke, Wastewater Permitting Section, TCEQ Re: Lower Colorado River Authority Draft TPDES Permit No. WQ0002105000 (December 22, 2014).

timely and significant public comments.⁴ Finally, as determined by the Commission, LCRA is classified as a “satisfactory” performer with a compliance history rating of 0.17, and the permitted facility is classified as a “high” performer, which confirms LCRA’s ability to comply with the terms of its permit.⁵

CONCLUSION

For the foregoing reasons, LCRA respectfully requests that the Commission find that the requestors have no right to a contested case hearing; deny the requests for a contested case hearing; and approve LCRA’s application to renew TPDES Permit No. WQ0002105000.

Respectfully submitted,

BEVERIDGE & DIAMOND, P.C.
98 San Jacinto Blvd., Suite 1420
Austin, Texas 78701
t: 512.391.8030
f: 512.391.8099
e: bmoore@bdlaw.com

/s/ Bryan J. Moore

Bryan J. Moore/SBN 24044842

COUNSEL FOR APPLICANT
LOWER COLORADO RIVER AUTHORITY

⁴ See Executive Director’s Response to Public Comment, TPDES Permit No. WQ0002105000 (June 26, 2015).

⁵ LCRA and the Fayette Power Project’s performance classification and compliance history rating can be found on the TCEQ website at <http://www2.tceq.texas.gov/oce/ch/index.cfm>.

CERTIFICATE OF SERVICE

I certify that, on the 31st day of August, 2015, a true and correct copy of the foregoing response was served on the following via electronic mail:

FOR THE EXECUTIVE DIRECTOR:

Via Facsimile

Stefanie Skogen, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Melinda Luxemburg, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4541
Fax: (512) 239-4430

Via U.S. Mail

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 Facsimile

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
Office of 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 U.S. 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 U.S. Mail

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

REQUESTERS:

Via Fed Ex

Billie Clays
67 PR 651
Bay City, Texas 77414

Via Fed Ex

Jennifer Duggan
Environmental Integrity Project
1000 Vermont Ave NW Ste 1100
Washington, D.C. 20005-4939

Via Fed Ex

Robert Marion Malina
10735 FM 2668
Bay City, Texas 77414-2954

Via Priority Mail Express

Concerned Citizen
The Texas Pecan Growers' Alliance
5932 Baca Road
Fayetteville, Texas 78940-5400

Via Priority Mail Express

Charla A. Hengst
4370 Leslie Road
Fayetteville, Texas 78940-5475

Via Priority Mail Express

Roy and Muriel Tipps
P.O. Box 260
Cedar Lane, Texas 77415-0260

BEVERIDGE & DIAMOND, P.C.

98 San Jacinto Blvd., Suite 1420
Austin, Texas 78701
t: 512.391.8030
f: 512.391.8099
e: bmoore@bdlaw.com

/s/ Bryan J. Moore

Bryan J. Moore/SBN 24044842

COUNSEL FOR APPLICANT
LOWER COLORADO RIVER AUTHORITY