

TCEQ DOCKET NO. 2016-0162-WR

**APPLICATION BY NEW BRAUNFELS § BEFORE THE
UTILITIES TO AMEND § TEXAS COMMISSION ON
WATER USE PERMIT NO. 12469 § ENVIRONMENTAL QUALITY**

**CAROWEST’S REPLY TO RESPONSES TO
REQUEST FOR CONTESTED CASE HEARING**

Carowest has requested a contested case hearing regarding the referenced application. The Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”) have concluded Carowest is an “affected person” based on the relevant factors in 30 TAC §55.256 and that its request for a contested case hearing should be granted. Carowest agrees with the ED and OPIC. New Braunfels Utilities (“NBU”), the applicant in this proceeding, opposes all hearing requests. With regard to Carowest’s request, NBU asserts: (1) there is no opportunity for a contested case hearing on NBU’s application; (2) Carowest has failed to comply with TCEQ rules; and (3) Carowest is not an affected person. For the reasons discussed below, Carowest’s request should be granted because it is an affected person having a water right that could be adversely affected if the TCEQ were to grant the requested bed and banks authorization sought through NBU’s application.

I. AUTHORIZATION TO REQUEST CONTESTED CASE HEARING

NBU argues there is no legal authorization to grant any request for a contested case hearing, including Carowest’s, because NBU’s application “does not concern state water”, and therefore is not subject to statutes and rules applicable to state water.¹ NBU

¹ Applicant New Braunfels Utilities’ Response to Requests for Contested Case Hearing at pgs. 8-14, 21 (July 11, 2016).

cites as authority for its position the Commission's interim order in the Bryan and College Station bed and banks cases.² NBU's reliance on the Bryan/College Station interim order is wrong and its arguments are without merit. The interim order in the Bryan and College Station cases was based on the Commission's express determination that those cities' applications did not involve state water.³ In contrast, NBU's application clearly seeks authorization to reuse both state water and groundwater based return flows. This description of the authorization requested through NBU's application is confirmed through the application itself, the draft permit, the July 2, 2015 Notice of Water Rights Application, and the draft notice of the Commission's August 3, 2016 agenda to consider NBU's application.⁴ (See Exhibit 1.)

Furthermore, the relevant statutory and regulatory provisions make it clear that an affected person has the right to request a contested case hearing on NBU's application. Section 11.132 (a) of the Texas Water Code states the TCEQ shall hold a hearing if requested to do so by a person "who may be affected by an *application*." The applicable rule states the affected person must identify its justiciable interest that is affected by the "*application*." 30 TAC §55.251 (c) (2). As noted, the application in this case clearly states NBU seeks authority to reuse both surface water-based and groundwater-based return flows.

The draft permit recommended by the Executive Director which would authorize solely the conveyance and use of groundwater based return flows does not constitute an amendment of NBU's application. Although usually significant in the permitting process, the Executive Director's draft permit does not unilaterally amend an application. The draft permit can be and sometimes is challenged.⁵ Under the relevant legal authority, a person has a right to a contested case hearing if that person can demonstrate he has rights

² *Id.*, at pg. 17.

³ See Applicant New Braunfels Utilities' Response to Requests for Contested Case Hearing, Exhibit A.

⁴ Supplement to Application for Permit to Appropriate State Water at 1; Notice of a Water Right Application, Application no. 12469 at 1; Draft Water Use Permit no. 12469 at first recital; Draft Agenda, Texas Commission on Environmental Quality, item 1.

⁵ This Commission has recently faced just this circumstance in considering the application of the Brazos River Authority for a "system operation permit" in which the applicant and other parties have offered at the hearing fundamentally different alternatives to the draft permit recommended by the Executive Director.

that will be adversely affected by the authorization requested in the *application*. Neither the statute nor the rules require that a person demonstrate he will be adversely affected by the Executive Director's draft permit which remains subject to change until the commission makes its final decision on an *application* and issues a final order.

The procedure through which an applicant can request an amendment of its application is spelled out in the Commission's rules,⁶ but NBU did not invoke this procedure. Instead, it appears that NBU made a conscious decision not to amend its application, advising the Commission staff on August 25, 2014 that "NBU will be providing its comments/requested revisions [to the draft permit] in the form of a comment letter *as opposed to amending its permit application.*"⁷ (See Exhibit 2.)

II. CAROWEST'S HAS COMPLIED WITH REQUIREMENTS FOR HEARING REQUEST

NBU asserts Carowest failed to comply with the requirement of 30 TAC §55.251 (c)(2) for a hearing request because it: (1) did not describe its location and distance relative to NBU's proposed activities⁸ and (2) was unclear on who owned the land described in Carowest's request.⁹ NBU is wrong in its assertions, and Carowest has complied with the requirements of the rule.

Through its request Carowest explained that it owns land and residential property adjacent to the Guadalupe River in Comal County that is located "*downstream of one or more of NBU's discharge points and upstream of NBU's proposed diversion point*". This statement was understood by the Executive Director¹⁰ and Office of Public Interest

⁶ 30 TAC §281.23.

⁷ Email communications between Sara Thornton and Sarah Henderson, August 19, and August 25, 2014.

⁸ Applicant New Braunfels Utilities' Response to Requests for Contested Case Hearing at pg. 20.

⁹ Applicant New Braunfels Utilities' Response to Requests for Contested Case Hearing at pg. 19.

¹⁰ See Executive Director's Response to Hearing Requests and Response to GBRA's Plea to the Jurisdiction, at pg. 4.

Counsel (OPIC)¹¹, but appears to have been challenging to NBU who boldly asserts that it “independently discovered that NBU’s diversion point is *downstream* of Carowest’s alleged property interest.”¹² Carowest believes that its clear and straightforward location description was adequate to explain its location for purposes of its hearing request, but offers the map provided at Exhibit 3 for further clarification.

Similarly, ownership of the property described in Carowest’s request was clear to the Executive Director¹³ and OPIC¹⁴, but once again problematic for NBU. Carowest’s requests began with the statement “We represent Carowest Land, Ltd., (“Carowest”), a limited partnership associated with the Weston family, which owns land adjacent to the Guadalupe River in Comal County, Texas.” NBU mysteriously misread this sentence to state that the land is owned by the Weston Family and claims confusion because the second paragraph of the request stated that Carowest owns the land and residential property describe in the request. Although we believe that the punctuation of the first sentence made it clear that the land described is owned by Carowest Land, Ltd. (i.e. the antecedent of “which” is “ Carowest”, not “Weston Family”), we re-affirm that position for clarification.

III. CAROWEST IS AN AFFECTED PERSON

In its request for a contested case hearing, Carowest explained how it could be affected by the requested authorization. Carowest stated it has a right to divert water from the Guadalupe River, one of the watercourses from which NBU seeks authorization to convey and divert its return flows. Carowest’s request noted NBU’s assertion to TCEQ that there are no channel losses between its discharges and its proposed point of

¹¹ See The Office of Public Interest Counsel’s Response to Requests for Hearing and a Plea to the Jurisdiction at pg.7.

¹² NBU asserts it has “independently discovered that NBU’s requested diversion point is downstream of Carowest’s alleged property interest.” See Applicant New Braunfels Utilities’ Response to Requests for Contested Case Hearing at pg. 22.

¹³ See Executive Director’s Response to Hearing Requests and Response to GBRA’s Plea to the Jurisdiction, at pg. 4.

¹⁴ See The Office of Public Interest Counsel’s Response to Requests for Hearing and a Plea to the Jurisdiction at pg.7.

diversions and that NBU's accounting plan fails to recognize any diversions and use of water by Carowest pursuant to its domestic and livestock and wildlife exemption allowed under section 11.142 of the Texas Water Code. Carowest further stated NBU's accounting plan could be modified after the permit is granted without notice or due process protections for Carowest. Finally, Carowest stated it has a vested property interest recognized by law to divert water that could be adversely affected if the TCEQ were to grant the requested authorization. Accordingly, information contained in Carowest's request for a contested case hearing meets the applicable burden of proof because it is sufficient to establish Carowest will "potentially suffer harm or have a justiciable interest that will be affected." *United Copper Indus. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App. – Austin 2000, pet. dismiss'd).

NBU mistakenly believes Carowest should have tendered with its hearing request evidence to quantify the impact of NBU's application and proposed project on Carowest's interest in order to show how it may be affected.¹⁵ There is no requirement in TCEQ's rules that Carowest submit, at this stage of these proceedings, modeling or other analysis to quantify such impact. NBU's assertions go to the merits of its case, not to whether Carowest would potentially be affected by TCEQ's granting of the application. Under NBU's reasoning, Carowest would have to prove up its case on the merits in order to demonstrate it has standing to request a contested case hearing. However, there is no requirement that Carowest show it will prevail on the merits in order to demonstrate it would be affected by the pending application.¹⁶ Instead, Carowest need only demonstrate there is a potential for it to be harmed. *Id.* Carowest has met that burden by asserting facts necessary to establish it has a riparian water right that could potentially be harmed if the TCEQ were to grant the application authorizing NBU to reuse all of its return flows that would flow by Carowest's property because approving that application could make less state water available to Carowest.

¹⁵ Applicant New Braunfels Utilities' Response to Requests for Contested Case Hearing at pg. 14-15.

¹⁶ *United Copper Indus. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App. – Austin 2000, pet. dismiss'd).

Carowest also notes that the modeling analysis relied on by NBU as conclusive evidence that “no interest will be impacted if the Commission denies the hearing requests”¹⁷ is not based on NBU’s application, but rather on the Executive Director’s draft permit.¹⁸ As discussed in Section I above, the relevant inquiry in applying the “affected person” criteria is the impact of the application, not the draft permit.

Carowest has a riparian right to divert state water from the Guadalupe River that flows by Carowest’s property for domestic and wildlife use. If the application is granted, that amount of water in the river attributable to NBU’s discharges will, in effect, be removed from the amount of state water that currently is available to Carowest for diversion. Therefore, the application does in fact contemplate that NBU will divert and use water that Carowest currently is entitled to divert.

IV. CONCLUSION

For all the reasons set forth in Carowest’s August 11, 2015 Request for Contested Case Hearing and this reply, Carowest requests that the Commission grant Carowest’s request for hearing and refer this case to the State Office of Administrative Hearings.

Respectfully submitted,

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By: _____


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¹⁷ Applicant New Braunfels Utilities’ Response to Requests for Contested Case Hearing at pg. 14.

¹⁸ NBU’s modeling analysis concludes “that assuming that 100% of NBU’s historical discharges are groundwater based, the impact from indirect reuse of these discharges to other water rights in the basin is minimal (<5%)”. See Applicant New Braunfels Utilities’ Response to Requests for Contested Case Hearing at Exhibit E, pg. 3.

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ATTORNEYS FOR CAROWEST

Certificate of Service

I hereby certify that on this 25th day of July, 2016, a true and correct copy of Carowest's Reply to Responses to Request for Contested Case Hearing was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent to the persons identified below via electronic mail or US mail.


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EXHIBIT 1

**SUPPLEMENT TO
APPLICATION FOR PERMIT
TO APPROPRIATE STATE WATER**

**PURSUANT TO
TEXAS WATER CODE §§ 11.121, 11.042(b), 11.042(c), 11.046(c), 11.085(v)(4)**

NEW BRAUNFELS UTILITIES

I. Introduction

In addition to the TCEQ Application Form (Form 10214), a narrative description of the permit sought by this Application is found below. The following documents are also attached to this Application and referred to herein as Exhibit 1 through Exhibit 11:

1. Certificate of Adjudication Nos. 18-3823A, 18-3824B, and 18-3830A
2. Vicinity Map
3. Water Purchase Contract with Guadalupe River Basin Authority
4. Edwards Aquifer Authority Permits CO00112A, CO00124, CO00127, CO00136, CO00149, and CO00150
5. Texas Pollutant Discharge Elimination System Permit Nos. WQ0010232001, WQ0010232002, and WQ0010232003
6. 5-Year Summary of Historical Discharges
7. Board Resolution Authorizing Filing of Application
8. Maps and Photographs Depicting Discharge Points and Proposed Diversion Point
9. Discharge Point Information Sheets
10. Dam/Reservoir Information Sheet
11. Letter from City of Cibolo

II. Background Information

A. Sources of Surface Water-Based Return Flows

New Braunfels Utilities ("NBU") owns Certificate of Adjudication ("COA") Nos. 18-3823A, 18-3824B, and 18-3830A (collectively, the "Certificates"). Pursuant to COA No. 18-3823A, NBU is authorized to divert and use not to exceed 1,289 acre-feet of water per annum from the Guadalupe River in the Guadalupe River Basin in Comal County for municipal, industrial, agriculture, and recreational purposes. NBU is also authorized under COA No. 18-3824B to (1) divert and use not to exceed 5,658 acre-feet of water per annum from a point on the Guadalupe River at NBU's water treatment plant for municipal, industrial, agriculture, and recreational purposes; (2) to divert and use not to exceed 135,780 acre-feet of water per annum from the man-made channel tributary to the Comal River for non-consumptive industrial purposes; and (3) to release 124,870 acre-feet of water per annum through the dam on the man-made channel for hydroelectric power generating purposes. Under COA No. 18-3830A, NBU has the authority to divert and use not to exceed 5 acre-feet of water per annum from the Guadalupe River in the Guadalupe River Basin in Comal County for municipal, industrial, agriculture, and recreational purposes. Copies of the Certificates are provided as Exhibit 1. A

vicinity map is included as Exhibit 2. The Application is located in the following zip codes: 78130, 78131, and 78132.

In addition to the surface water rights granted under the Certificates, NBU also receives water pursuant to a Water Purchase Contract with the Guadalupe Basin River Authority ("GBRA") dated January 26, 1989 (the "Contract"). Under the Contract, GBRA furnishes NBU untreated water released from conservation storage in Canyon Reservoir under COA 18-2047B to be taken or paid for, whether taken or not, in the amount of 6,720 acre-feet of water per year. The Contract provides that the water is to be used for municipal purposes only with an option to request water for industrial purposes and an option to request additional water under certain circumstances. The Contract is attached hereto as Exhibit 3.

B. Sources of Groundwater-Based Return Flows

In addition to its surface water rights, NBU also holds Edwards Aquifer Authority ("EAA") Initial Regular Permit Nos. P100-697 (CO00112A), P100-730 (CO00124), P100-733 (CO00127), P100-759 (CO00136), P100-780 (CO00149), and P100781 (CO001510) (collectively referred to herein as "EAA Permits"). NBU's EAA Permits authorize a total annual groundwater withdrawal amount of 7,269.985 acre-feet for municipal purposes. The EAA Permits also provide that the place of use of the groundwater will be the wholesale or retail water service area identified in the Certificate of Convenience and Necessity Nos. 10677 and 10691, filed with TCEQ. Copies of the EAA Permits are attached as Exhibit 4.

C. Authorized Discharges

Texas Pollutant Discharge Elimination System ("TPDES") Permits No. WQ0010232001, WQ0010232002, and WQ0010232003 (the "TPDES Permits") collectively authorize NBU to discharge an amount not to exceed 8.4 million gallons per day ("MGD") (approximately 9,408 acre-feet per annum). TPDES Permit No. WQ0010232001 authorizes NBU to discharge an amount not to exceed 4.2 MGD (approximately 4,704 acre-feet per annum) of NBU return flows to an unnamed tributary of the Guadalupe River, then to the Guadalupe River. TPDES Permit No. WQ0010232002 authorizes NBU to discharge an amount not to exceed 1.1 MGD (approximately 1,232 acre-feet per annum) of NBU return flows to the Guadalupe River. TPDES Permit No. WQ0010232003 authorizes NBU to discharge an amount not to exceed 3.1 MGD (approximately 3,472 acre-feet per annum) of NBU return flows to an unnamed tributary, then to the Guadalupe River.

D. Historical and Future Return Flows

A copy of the TPDES Permits and a summary of historical discharges, consisting of both surface water-based return flows and groundwater-based return flows (collectively referred to herein as "NBU Historical Return Flows") over the last five years are provided as Exhibit 5 and Exhibit 6, respectively. Based upon the total surface water authorized by the Certificates and the Contract and the total groundwater authorized under the EAA Permits, NBU's water supplies are currently made up of approximately sixty-five percent (65%) surface water sources and thirty-five percent (35%) groundwater sources. Although these are the relative percentages of NBU's current water sources, these percentages may not reflect the actual percentages of water usage from year to year and are therefore in no way static. NBU's actual usage of groundwaters and

surface waters to meet its demands in the future will vary from year to year, based on a number of factors, such as the acquisition of additional groundwater or surface water rights, restrictions on groundwater withdrawal pursuant to EAA's critical period management plan, or restrictions on its surface water usage as a result of drought in the Guadalupe River watershed. Indeed, NBU's historical average percent use for groundwater and surface water from 2004 to 2008 was thirty percent (30%) and seventy percent (70%), respectively.

As illustrated by this Application, NBU seeks authorization to appropriate, divert and use NBU Historical Return Flows and its future surface water-based return flows and groundwater-based return flows (collectively referred to herein as "NBU Future Return Flows"), irrespective of their source, discharged pursuant to the TPDES Permits, and the authority to convey NBU Historical Return Flows and NBU Future Return Flows (collectively referred to herein as "NBU Return Flows") within the Guadalupe River Basin (the "Application"). The NBU Future Return Flows requested herein consist of any return flows associated with the permitted discharges for the TPDES Permits that NBU has yet to historically discharge, as well as any future return flows that NBU may be permitted to discharge pursuant to any amendments to the TPDES Permits or any TPDES permits that may be acquired in the future.

E. Authority to Act

On or about April 30, 2009, NBU's Board of Directors authorized the filing of this Application. A copy of the board resolution authorizing the filing and prosecution of the Application is attached hereto as Exhibit 7.

III. Applicant Information

Name of Applicant:	New Braunfels Utilities
Address:	P.O. Box 310289, New Braunfels, TX 78131-0289
Principal Contact:	Roger Biggers, Executive Director
Telephone:	(830) 629-8470
Fax:	(830) 629-8435

IV. Source of Supply

The source of water associated with this Application is the NBU Return Flows discharged pursuant to the TPDES Permits.

V. Amount and Purpose of Diversion and Use

By this Application, NBU seeks to appropriate, divert and use NBU Return Flows for municipal, industrial, and agricultural purposes. NBU seeks authority to divert NBU Return Flows anywhere along the perimeter of the reservoir known as Lake Dunlap, located on the Guadalupe River, downstream of the discharge points associated with the TPDES Permits. Exhibit 8 contains maps and photographs depicting the location of the three (3) discharge points and the proposed diversion point.

In seeking this authorization, NBU requests the Commission consider any and all appropriate legal theories available, including those related to unappropriated return flows associated with the TPDES Permits.

VI. Return and Surplus Water

Any unused water or return flow will be returned to streams in the Guadalupe River Basin and/or the San Antonio River Basin.

VII. Exempt Interbasin Transfer

Pursuant to Texas Water Code § 11.085(v)(4), NBU requests authorization for an exempt interbasin transfer of NBU Return Flows from that portion of Guadalupe County located in the Guadalupe River Basin to that portion of said County located in the adjoining San Antonio River Basin, for municipal, industrial, and agricultural purposes of use. NBU requests an exempt interbasin transfer because its use, or the use by its customers, of the water proposed to be diverted hereunder may occur in that portion of Guadalupe County that is located within the San Antonio River Basin.

VIII. Authorization to Use Bed and Banks

By this Application, NBU seeks authorization pursuant to Texas Water Code § 11.042 to use the bed and banks of the Guadalupe River and its tributaries, to convey NBU Return Flows from the wastewater treatment plant outfalls associated with the TPDES Permits to the proposed diversion(s) anywhere along the perimeter of Lake Dunlap. According to the Water Availability Modeling for the Guadalupe River Basin, there are no channel losses within the stream reach between the TPDES discharge points and Lake Dunlap. Included as Exhibit 9 please find the Discharge Point Information sheets for the three (3) discharge points associated with the TPDES Permits. Additionally, included in Exhibit 10 is information for Lake Dunlap, documenting the terminus of the bed and banks transfer, and thus the most downstream diversion point, that being at points on the perimeter of reservoir known as Lake Dunlap.

IX. Water Conservation, Drought Contingency and Avoidance of Waste

NBU has an adopted Water Conservation and Drought Contingency Plan that has been submitted to and approved by TCEQ. A copy of NBU's current Water Conservation and Drought Contingency Plan is on file with TCEQ. NBU has also recently submitted to TCEQ an updated Water Conservation and Drought Contingency Plans in accordance with 30 TAC Chapter 288.

As defined in both 30 TAC § 295.9 and Texas Water Code § 11.002(8), "conservation" means those practices that will "reduce the consumption of water, reduce the loss or waste of water, *improve the efficiency in the use of water*, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." [emphasis added]. By granting the Application, NBU will have the flexibility to more efficiently utilize its water supplies. Such efficiency, along with NBU's water conservation and drought contingency plan and groundwater conservation plan, will allow NBU to address current and future water supply

needs in this area of the state in a manner that will allow the avoidance of waste and the achievement of water conservation.

X. Administrative Requirements and Fees

This Application provides relevant information to address the administrative requirements of 30 TAC § 295, Subchapter A and the requirements of Texas Water Code Chapter 11. In accordance with 30 TAC § 295.131 and other TCEQ rules relating to fees, NBU is submitting payment of \$100.00 with this Application. With the filing of this Application, NBU requests a determination of any additional fees that may be required. Upon receipt of such determination, NBU will forward such fees to the TCEQ.

XI. Beneficial Use

Texas Water Code § 11.134(b)(3)(A) requires that proposed appropriations of water be intended for a beneficial use. The "beneficial use" of water is defined in Texas Water Code § 11.002(4) and 30 TAC § 297.1(8) as the use of water "which is economically necessary for a purpose authorized by [Chapter 11 of the Texas Water Code]." Through this Application, NBU seeks to appropriate its surface water-based return flows, to secure bed and banks authorization for its groundwater-based return flows, and to beneficially use NBU Return Flows for industrial, municipal, and agricultural purposes.

An "industrial" purpose of use is identified in Texas Water Code § 11.023 as a purpose for which water may be diverted and beneficially used and is defined in 30 TAC § 297.1(24) to include "the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value." A "municipal" purpose of use is identified in Texas Water Code § 11.023 as a purpose for which water may be diverted and beneficially use and is defined in 30 TAC § 297.1(32) to include "the use of potable water within a community or municipality and its environs for domestic, recreation, commercial, or industrial purposes or for the water of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes." An "agricultural" purpose of use is identified in Texas Water Code § 11.023 as a purpose for which water may be diverted and beneficially used and is defined in TAC § 297.1(2) as "any use or activity involving agriculture, including irrigation," with "agriculture" being further defined under 30 TAC § 297.1(1).

NBU is located within the Region L or South Central Texas Regional Water Planning Area ("Region L"). According to the State Water Plan, *Water for Texas 2007*, the population in Region L is expected to increase by seventy-five percent (75%) from 2010 to 2060.¹ With this increase in population will be an increasing demand for water, in particular water for municipal use, but an increase in demand is also expected for other uses, including industrial purposes of use.² Although the demand for water for irrigation purposes is expected to decrease slightly between 2010 to 2060, a current demand does exist for irrigation use.³ By securing the right to divert and use NBU Return Flows, NBU will be better able to meet these demands and in doing

¹ Texas Water Development Board, *Water for Texas 2007*, Volume II, pg. 79 (2006), available at http://www.twdb.state.tx.us/publications/reports/State_Water_Plan/2007/2007%20final%20draft%20SWP/CHAPTE R%202%20regional%20L%20FINAL%20110806.pdf.

² *Id.* at 80.

³ *Id.*

so will use said return flows for beneficial uses. NBU has also identified two entities interested in purchasing NBU Return Flows, for beneficial use prior to NBU's beneficial use of same. Both the City of Cibolo and Canyon Regional Water Authority ("CRWA") have approached NBU and expressed an interest in securing water from NBU in the form of its return flows to address their need for additional water supplies. Attached as Exhibit 11 is a letter from the City of Cibolo expressing the city's interest in purchasing or leasing NBU Return Flows. CRWA is comprised of thirteen members. Of these members, NBU would propose to supply the water proposed to be diverted hereunder to those members using water within the Guadalupe River Basin and/or that portion of Guadalupe County that is located within the San Antonio River Basin. Any water supply contract for such water would so limit the place of use of such water.

XII. Public Welfare

The proposed amendment will allow NBU to provide water for beneficial uses, as defined by the Texas Water Code. Such action is not detrimental to the public welfare. Indeed, the proposed amendment will benefit the public welfare as it will allow NBU to more efficiently utilize its existing water supplies to address future demands for water in this part of the state. As noted above, Region L is expected to have a significant increase in population and a corresponding increase in demand for water. In addition, a current demand for this water exists, based on the interest expressed both by the City of Cibolo and CRWA. Allowing NBU to secure the right to divert and use its return flows so as to meet this current and future demands for water will benefit the public welfare.

XIII. Consistency with State and Regional Water Plans

NBU is located within the Region L Planning Group as noted in the State Water Plan, *Water for Texas 2007*. The Application is consistent with the 2007 State Water Plan, which supports indirect reuse in a broad sense, identifying reuse as "a valuable and competitive water supply option in Texas."⁴ The Region L Plan was not timely submitted to the Texas Water Development Board ("TWDB") for inclusion in the 2007 State Water Plan. Following the untimely submission of the Region L Water Plan, House Bill 3776 was passed during the 80th Legislative Session and it mandated that the TWDB could only adopt the Region L Plan if certain revisions to the plan were made. It does not appear that those revisions have been made to the Region L Plan and, consequently, the Region L Water Plan has not been adopted or approved by the TWDB and is not included in the 2007 State Water Plan.

Under Texas Water Code § 11.134(b)(3)(E), an appropriation of water must address a water supply need in a manner that is "consistent" with an "approved regional plan." Texas Water Code § 11.134(c) also provides that TCEQ "may not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with Section 16.053(j) unless the commission [TCEQ] determines that conditions warrant waiver of this requirement." Because the Region L Plan has not been approved, there is no "approved" regional water plan, and NBU and all other applicants located in Region L seeking water appropriations are unable to comply with this requirement.

⁴ Texas Water Development Board, *Water for Texas 2007*, pg. 240 (2006), available at http://www.twdb.state.tx.us/publications/reports/State_Water_Plan/2007/2007StateWaterPlan/CHAPTER%208%20Final_112906.pdf.

Therefore, NBU requests that TCEQ make a special finding to determine consistency with the state and regional water plans or determine that conditions warrant waiver of the requirement. As stated, the Application is consistent with the State Water Plan and even though the Region L Plan is not approved, it is important to note that indirect reuse rights do comply with the "unapproved" Region L Water Plan. The Region L Plan recognizes that "water suppliers throughout the region may choose to reuse or reclaim the increased treated wastewater volumes associated with increased municipal water use, especially water volumes that are derived from privately owned groundwater and interbasin transfer of surface water...[and] that this reuse may be accomplished...indirectly through bed and banks delivery to downstream diversion and/or storage sites subject to applicable law."⁵ Based on the Application's consistency with the State Water Plan as well as the Region L Plan, even though not "approved," TCEQ should determine that the Application complies with the requirements of Texas Water Code § 11.134(b)(3)(E) and warrants a waiver of the requirement of an approved regional water plan in order to grant a water right for municipal purposes under Texas Water Code § 11.134(c).

XIV. Groundwater Assessment

As discussed, the source of NBU's groundwater is the Edwards Aquifer, primarily from the San Antonio pool. This source of groundwater was allocated to NBU by EAA pursuant to six (6) Initial Regular Permits ("EAA permits"), attached as Exhibit 4. Allocation of groundwater resources from the Edwards Aquifer is highly regulated by EAA to ensure that such allocation will not negatively impact the aquifer. EAA's policy is "to manage, conserve, preserve, and protect the aquifer and works to increase recharge and prevent waste or pollution of the aquifer."⁶ In accordance with this policy, EAA has established rules for securing a groundwater permits and using such permits.⁷ As a holder of EAA permits, NBU must comply with EAA's rules on the use, conservation, and reuse of groundwater. For example, as required by Subchapter C of EAA Rules, titled "Groundwater Conservation and Reuse," NBU is required to implement a groundwater conservation plan to ensure the successful management of groundwater consumption and to improve water use efficiency.⁸ Because of EAA's management and protection of the Edwards Aquifer, NBU's reuse of water resulting from its use of groundwater pursuant to the rights included in the EAA Permits will not negatively impact groundwater resources and will allow for more efficient use of its EAA groundwater rights.

⁵ South Central Texas Regional Water Plan, pages 4B.1-14, available online at http://www.twdb.state.tx.us/rwpg/2006_RWP/RegionL/Volume%20I/11%20-%20Section%204B.1.pdf.

⁶ Edwards Aquifer Authority, *EAA Act/Mission and Goal*, available at <http://www.edwardsaquifer.org/pages/aaaact.htm>.

⁷ See generally Edwards Aquifer Authority, *Edwards Aquifer Authority Rules*, available at http://www.edwardsaquifer.org/pdfs/rules/Final_Rules.pdf.

⁸ Edwards Aquifer Authority, *Edwards Aquifer Authority Rules*, Subchapter C: Groundwater Conservation and Reuse, pg. 215, available at http://www.edwardsaquifer.org/pdfs/rules/Final_Rules.pdf.

WATER USE PERMIT

PERMIT NO. 12469	TYPE §§11.121, 11.042, 11.085
Permittee: New Braunfels Utilities	Address: P.O. Box 310289 New Braunfels, TX 78131
Filed: November 20, 2009	Granted:
Purpose: Municipal, Industrial, Agricultural	Counties: Comal, DeWitt, Gonzales, Guadalupe, and Victoria
Watercourse: Unnamed tributaries of the Guadalupe River and the Guadalupe River	Watershed: Guadalupe and San Antonio River Basins

WHEREAS, New Braunfels Utilities (Applicant) seeks to authorize the diversion and use of its historic and future surface water based and groundwater based return flows originating from its three wastewater treatment plants located on two unnamed tributaries of the Guadalupe River and the Guadalupe River, Guadalupe River Basin for subsequent municipal, industrial, and agricultural purposes in Comal, DeWitt, Gonzales, Guadalupe, and Victoria Counties; and

WHEREAS, the Applicant also seeks to authorize the use of the bed and banks of the two unnamed tributaries of the Guadalupe River, Lake Dunlap, and the Guadalupe River to convey the return flows for subsequent diversion from Lake Dunlap on the Guadalupe River; and

WHEREAS, the Guadalupe-Blanco River Authority owns Certificate of Adjudication No. 18-5488 authorizing Lake Dunlap and has provided consent to this application; and

WHEREAS, the Applicant further seeks to authorize an exempt interbasin transfer for the authorized water to that portion of Guadalupe County within the San Antonio River Basin for municipal, industrial, and agricultural purposes; and

WHEREAS, the Applicant estimates the discharged return flows are 65% surface water and 35% groundwater, although such percentages may change in the future; and

WHEREAS, the Applicant indicates there are no channel losses between the discharge and diversion points; and

WHEREAS, the return flows, totaling up to 9,408 acre-feet of water per year, are discharged at a combined rate of 41.55 cfs (18,646 gpm) at the following three points in Comal County:

1. South Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 53° W, 2,558 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.097500° W at a maximum discharge rate of 19.5 cfs (8,750 gpm); and
2. Gruene Wastewater Treatment Plant discharge point located on the Guadalupe River, Guadalupe River Basin, approximately 2.3 miles north of the City of New Braunfels, bearing S 23° E, 3,077 feet from the northeast corner of the Veramendi J. Original Survey No. 091, Abstract No. 2, also being Latitude 29.737777° N, Longitude 98.105833° W at a maximum discharge rate of 14.25 cfs (6,910 gpm); and
3. North Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 58° W, 2,847 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.096611° W at a maximum discharge rate of 17.8 cfs (7,986 gpm); and

WHEREAS, the proposed diversion point will be located at any point along the perimeter of Lake Dunlap, approximately nine miles northwest of Seguin and 4.5 miles southeast of New Braunfels, bearing S 36° E, 13,171 feet from the northwest corner of the A.M. Esnauzizar Original Survey No. 18, Abstract No. 26, also being Latitude 29.653833° N and Longitude 98.066333° W in Guadalupe County; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) finds that jurisdiction over the application is established; and

WHEREAS, this permit, if granted, is subject to the requirements and orders of the South Texas Watermaster; and

WHEREAS, the Executive Director finds that it cannot support granting an authorization to divert and use that portion of the Applicant's historically discharged return flows that originate from surface water; and

WHEREAS, the Executive Director finds that it can support granting an authorization to divert and use that portion of the Applicant's discharged return flows that originate from groundwater, not to exceed 9,408 acre-feet of water per year; and

WHEREAS, the Executive Director recommends that special conditions be included in the permit; and

WHEREAS, ~~no notices of a contested case~~ hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this water use permit;

NOW, THEREFORE, Water Use Permit No. 12469 is issued to New Braunfels Utilities subject to the following terms and conditions:

1. USE

- A. Permittee is authorized to divert and use not to exceed 9,408 acre-feet of its groundwater based return flows per year and any future groundwater based return flows, for municipal, industrial, and agricultural purposes in Comal, DeWitt, Gonzales, Guadalupe, and Victoria Counties in the Guadalupe River Basin.
- B. Permittee is authorized to use the bed and banks of two unnamed tributaries of the Guadalupe River, Lake Dunlap, and the Guadalupe River to convey not to exceed 9,408 acre-feet of its groundwater based return flows per year, and any future groundwater based return flows originating from its wastewater treatment plants in the Guadalupe River Basin.
- C. Permittee is further authorized an exempt interbasin transfer of the authorized water to that portion of Guadalupe County within the San Antonio River Basin for municipal, industrial, and agricultural purposes.

2. DISCHARGE

The return flows will be discharged, at a combined rate of 41.55 cfs (18,646 gpm), at the following three locations in Comal County:

- A. South Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 53° W, 2,558 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.097500° W at a discharge rate of 19.5 cfs (8,750 gpm).
- B. Gruene Wastewater Treatment Plant discharge point located on the Guadalupe River, Guadalupe River Basin, approximately 2.3 miles north of the City of New Braunfels, bearing S 23° E, 3,077 feet from the northeast corner of the Veramendi J. Original Survey No. 091, Abstract No. 2, also being Latitude 29.737777° N, Longitude 98.105833° W at a discharge rate of 4.25 cfs (1,910 gpm).

C. North Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 58° W, 2,847 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.098611° W at a discharge rate of 17.8 cfs (7,986 gpm).

3. DIVERSION

A. Permittee is authorized to divert its groundwater based return flows from any point along the perimeter of Lake Dunlap on the Guadalupe River, Guadalupe River Basin, approximately nine miles northwest of Seguin and 4.5 miles southeast of New Braunfels, bearing S 36° E, 13,141 feet from the northwest corner of the A.M. Esnaurizar Original Survey No. 187, Abstract No. 20, also being Latitude 29.653833° N and Longitude 98.066333° W in Guadalupe County.

B. Permittee is authorized to divert its groundwater based return flows at a maximum diversion rate not to exceed the combined discharge rate of its groundwater based return flows and not to exceed 41.55 cfs (18,646 gpm).

4. TIME PRIORITY

The groundwater based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

A. Diversions of return flows shall be authorized when streamflow exceeds the following values at USGS Gage No. 208169792 (Guadalupe River at Seguin):

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Season	Winter			Spring			Summer			Fall		
Subsistence Flow (cfs)	118	118	118	118	118	118	118	118	118	101	101	101

B. Permittee shall implement measures to minimize impacts to aquatic resources due to entrainment or impingement including, but not limited to, the installation of screens at the diversion facilities.

C. Diversions authorized by this permit are dependent upon potentially interruptible return flows or discharges and are conditioned on the availability of those discharges. The right to divert the discharged return flows is subject to revocation if

discharges become permanently unavailable for diversion and may be subject to reduction if the return flows are not available in quantities and qualities sufficient to fully satisfy the permit. Should the discharges become permanently unavailable for diversion, Permittee shall immediately cease diversion under this permit and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee does not amend or forfeit the permit, the Commission may begin proceedings to cancel this permit.

- D. Permittee shall only divert groundwater based return flows that are actually discharged.
- E. Permittee shall only divert and use return flows pursuant to Paragraph 1, USE and Paragraph 3, DIVERSION in accordance with the most recently approved accounting plan (*New Braunfels Utilities Accounting Plan*). Permittee shall maintain the plan in electronic format and make the data available to the South Texas Watermaster upon request. Any modifications to the accounting plan shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease diversion of discharged return flows, and either apply to amend the permit or voluntarily forfeit the permit. If Permittee fails to amend the accounting plan or forfeit the permit, the Commission may begin proceedings to cancel the permit. Permittee shall immediately notify the Executive Director upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.
- F. The *New Braunfels Utilities Accounting Plan* may be modified at any time by the Watermaster or other Executive Director staff if any modifications are deemed necessary.
- G. Prior to diversion of any groundwater based return flows in excess of the combined discharge amount currently authorized by TPDES permits 10232-001, 10232-002 and 10232-003, Permittee shall apply for and be granted the right to reuse those return flows. Permittee must amend the *New Braunfels Utilities Accounting Plan* to include these future return flows prior to diverting said return flows.
- H. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point(s) authorized above in Paragraph 3, DIVERSION and maintain measurement records.
- I. Permittee shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device and records.
- J. Permittee shall contact the South Texas Watermaster prior to diversion of water authorized by this permit.

This water use permit is issued subject to all superior water rights in the Guadalupe River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this water use permit are denied.

This water use permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right continuing supervision of State Resources exercised by the Commission.

For the Commission

Date Issued:

DRAFT

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF A WATER RIGHTS APPLICATION

APPLICATION NO. 12469

New Braunfels Utilities (NBU) has applied for a water use permit to authorize the diversion and use of its historic and future surface water based and groundwater based return flows and to authorize the use of the bed and banks of two unnamed tributaries of the Guadalupe River, Lake Dunlap, and the Guadalupe River to convey the return flows for subsequent municipal, industrial, and agricultural purposes within the Guadalupe River Basin in Comal, DeWitt, Gonzales, Guadalupe, and Victoria Counties and in that portion of Guadalupe County within the San Antonio River Basin. More information on the application and how to participate in the permitting process is given below.

APPLICATION. New Braunfels Utilities, Applicant, P.O. Box 310289, New Braunfels, Texas 78131-0289, seeks a water use permit pursuant to Texas Water Code §§11.121, 11.042, 11.085 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, *et seq.* Notice is being published and mailed to the water right holders of record in the Guadalupe River Basin pursuant to 30 TAC §295.151.

The Applicant seeks to authorize the diversion and use of its historic and future surface water based and groundwater based return flows, originating from its three wastewater treatment plants located on two unnamed tributaries of the Guadalupe River and the Guadalupe River, Guadalupe River Basin for subsequent municipal, industrial, and agricultural purposes in Comal, DeWitt, Gonzales, Guadalupe and Victoria Counties.

The Applicant also seeks to authorize the use of the bed and banks of the two unnamed tributaries of the Guadalupe River, Lake Dunlap, and the Guadalupe River to convey the return flows for subsequent diversion from Lake Dunlap on the Guadalupe River.

The Guadalupe-Blanco River Authority owns Certificate of Adjudication No. 18-5488 authorizing Lake Dunlap and has provided consent to this application.

The Applicant further seeks to authorize an exempt interbasin transfer for the authorized water to that portion of Guadalupe County within the San Antonio River Basin for municipal, industrial, and agricultural purposes.

The Applicant estimates the discharged return flows are currently 65% surface water and 35% groundwater, although such percentages may change in the future.

The Applicant indicates there are no channel losses between the discharge and diversion points.

The return flows, totaling up to 9,408 acre-feet of water per year, are discharged at a combined rate of 41.55 cfs (18,646 mgd) at the following three points in Comal County:

1. South Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 53° W, 2,558 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.097500° W in Comal County at a maximum discharge rate of 19.5 cfs (8,750 gpm).
2. Gruene Wastewater Treatment Plant discharge point located on the Guadalupe River, Guadalupe River Basin, approximately 2.3 miles north of the City of New Braunfels, bearing S 23° E, 3,077 feet from the northeast corner of the Veramendi J. Original Survey No. 091, Abstract No. 2, also being Latitude 29.737777° N, Longitude 98.105833° W in Comal County at a maximum discharge rate of 4.25 cfs (1,910 gpm).
3. North Kuehler Wastewater Treatment Plant discharge point located on an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 1.5 miles southeast of the City of New Braunfels, bearing N 58° W, 2,847 feet from the southeast corner of the Thompson J. Original Survey No. 091, Abstract No. 608, also being Latitude 29.687222° N, Longitude 98.098611° W in Comal County at a maximum discharge rate of 17.8 cfs (7,986 gpm).

The proposed diversion point will be located at any point along the perimeter of Lake Dunlap, approximately nine miles northwest of Seguin and 4.5 miles southeast of New Braunfels, bearing S 36° E, 13,141 feet from the northwest corner of the A.M. Esnaurizar Original Survey No. 187, Abstract No. 20, also being Latitude 29.653833° N and Longitude 98.066333° W in Guadalupe County within ZIP code 78130.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would only authorize the use of the groundwater based return flows and would contain special conditions including, but not limited to, streamflow restrictions and maintenance of an accounting plan. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, TX 78753.

The application and partial fees were received on June 9, 2009. Additional information and fees were received on October 16, October 27, and October 29, and December 16, 2009. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 20, 2009.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html> by entering WRPERM 12469 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.texas.gov>.

Issued: July 2, 2015

THIS AGENDA IS A DRAFT OF THE AUGUST 3, 2016 AGENDA. THE FINAL VERSION OF THE AGENDA WILL BE POSTED NO LATER THAN THE 8TH DAY BEFORE THE SCHEDULED AGENDA DATE.

The Agenda document below includes hyperlinks (docket numbers highlighted in blue) that enable the user to view agenda backup documents [documents pertaining to a particular matter that have been filed with the Office of the Chief Clerk (OCC)]. To view all agenda backup in person including those documents not found in the hyperlinks below, please visit OCC at 12100 Park 35 Circle, Building F, Suite 1101 (30 TAC § 1.10).

Updates to backup documents will be noted by a purple indicator. Please note that some documents such as those of irregular size (i.e. oversized maps) cannot be viewed here and that color documents will be posted here in black and white. Finally, parties are still required to submit an original and 7 copies of documents filed for Commission consideration (30 TAC § 1.10(d)).

AGENDA

August 3, 2016

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Bldg. E

HEARING REQUESTS/REQUESTS FOR RECONSIDERATION

Item 1

Docket No. 2016-0162-WR.

Consideration of the application by New Braunfels Utilities for new Water Use Permit No. 12469, seeking authorization: 1) to divert and use its historic and future surface water based and groundwater based return flows originating from its three wastewater treatment plants located on two unnamed tributaries of the Guadalupe River and the Guadalupe River, Guadalupe River Basin for subsequent municipal, industrial, and agricultural purposes in Comal, DeWitt, Gonzales, Guadalupe, and Victoria Counties; 2) use the bed and banks of the two unnamed tributaries of the Guadalupe River, Lake Dunlap, and the Guadalupe River to convey the return flows for subsequent diversion from Lake Dunlap on the Guadalupe River; and 3) for an exempt interbasin transfer for the authorized water to that portion of

Guadalupe County within the San Antonio River Basin for municipal, industrial and agricultural purposes. The Commission will consider all timely filed hearing requests, related responses and replies, and public comments. (Sarah Henderson, Dinniah Tadema)

Item 2

Docket No. 2016-0787-MWD.

Consideration of the application by Nantucket Housing, LLC, for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015381001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. The facility will be located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429. The Commission will also consider requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's response to comments. (Larry Diamond, Hollis Henley)

AUTHORIZATION TO CONSTRUCT

Item 3

Docket No. 2016-1086-MWD.

Consideration of an application by Nantucket Housing LLC for Authorization to Construct a new wastewater treatment facility, pursuant to Texas Water Code Sections 26.019 and 26.027. Nantucket Housing LLC has applied for new Texas Pollutant Discharge Elimination System Permit (TPDES) No. WQ0015381001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 27,500 gallons per day in the Interim phase and a daily average flow not to exceed 55,000 gallons per day in the Final phase. The plant site is located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429. The treated effluent is proposed to be discharged to an enclosed stormwater pipe; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. Nantucket Housing LLC requests the Authorization to Construct in order for the developer to have certainty that it will remain in compliance with a loan agreement for the development project. An order granting this application for Authorization to Construct would not constitute permit issuance or a guarantee of future permit issuance, and would not authorize operation of, or disposal of, effluent from the facility until Nantucket Housing LLC obtains a TPDES permit from the Commission. (Hollis Henley)

DISTRICTS MATTERS

Item 4

Docket No. 2016-0249-DIS.

Consideration of an application by Kaufman County Fresh Water Supply District No. 6 ("District") for conversion of the District to a

EXHIBIT 2

Sarah Henderson

From: Sarah Henderson
Sent: Tuesday, August 19, 2014 5:45 PM
To: Sara Thornton
Subject: RE: Request for a meeting and additional extension to comment on draft notice/permit for NBU Water Use Application No. 12469 (1915-02)

Sara,

Per our conversation today, in addition to your extension request below, the applicant has been granted an extension to respond to the draft notice and draft permit until **September 30, 2014.**

Sincerely,
Sarah

From: Sara Thornton [mailto:sthornton@lglawfirm.com]
Sent: Tuesday, August 12, 2014 9:45 AM
To: Sarah Henderson
Cc: Paige Hamilton
Subject: Request for a meeting and additional extension to comment on draft notice/permit for NBU Water Use Application No. 12469 (1915-02)

Hi Sarah,

To review the draft permit and notice, NBU had to enter into a new consulting agreement with its engineering consultant and the consultant has only recently been able to review the draft permit and notice. Based on NBU's and the consultant's review, some substantive changes were identified as needed for the draft permit, including adjusting the accounting plan, and therefore, NBU requests an additional 30 days to provide comments on the draft permit, requesting a new deadline of September 15, 2014.

~~Prior to providing these comments, we would like to meet with you and other TCEQ staff to discuss the comments and changes that NBU will be requesting. We would be available the following days and times next week:~~

Monday, August 18 at 10 a.m.
Tuesday, August 19 at 1:30 p.m.
Thursday, August 21 at 10 a.m.

Please let me know if any of those times would work for a meeting next week and let me know whether the comment deadline is extended to September 15, 2014. Feel free to give me a call if you would like to discuss.

Thanks,

Sara

From: Sarah Henderson [mailto:sarah.henderson@tceq.texas.gov]
Sent: Thursday, July 10, 2014 3:16 PM
To: Sara Thornton

Sarah Henderson

From: Sara Thornton <sthornton@lglawfirm.com>
Sent: Monday, August 25, 2014 11:05 AM
To: Sarah Henderson
Cc: Dinniah Tadema; Paige Hamilton
Subject: Follow up regarding requested revisions to draft NBU Water Use Application No. 12469 (1915-02)

Hi Sarah,

As a follow-up to our meeting on the NBU Water Use Application No. 12469, because NBU will not be requesting an extension of the bed and banks authorization, and instead will only be requesting revisions to the permit language and/or accounting plan (regarding how groundwater-based return flows will be accounted for), **NBU will be providing its comments/requested revisions in the form of a comment letter as opposed to amending its pending application.**

Feel free to give me a call if you would like to discuss.

Thanks!

Sara

Sara R. Thornton, Associate
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Direct Line: (512) 322-5876
Fax: (512) 874-3976

If you would like more information about the Firm, please visit our website at www.lglawfirm.com/.

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EXHIBIT 3

Property Identification #: 80290

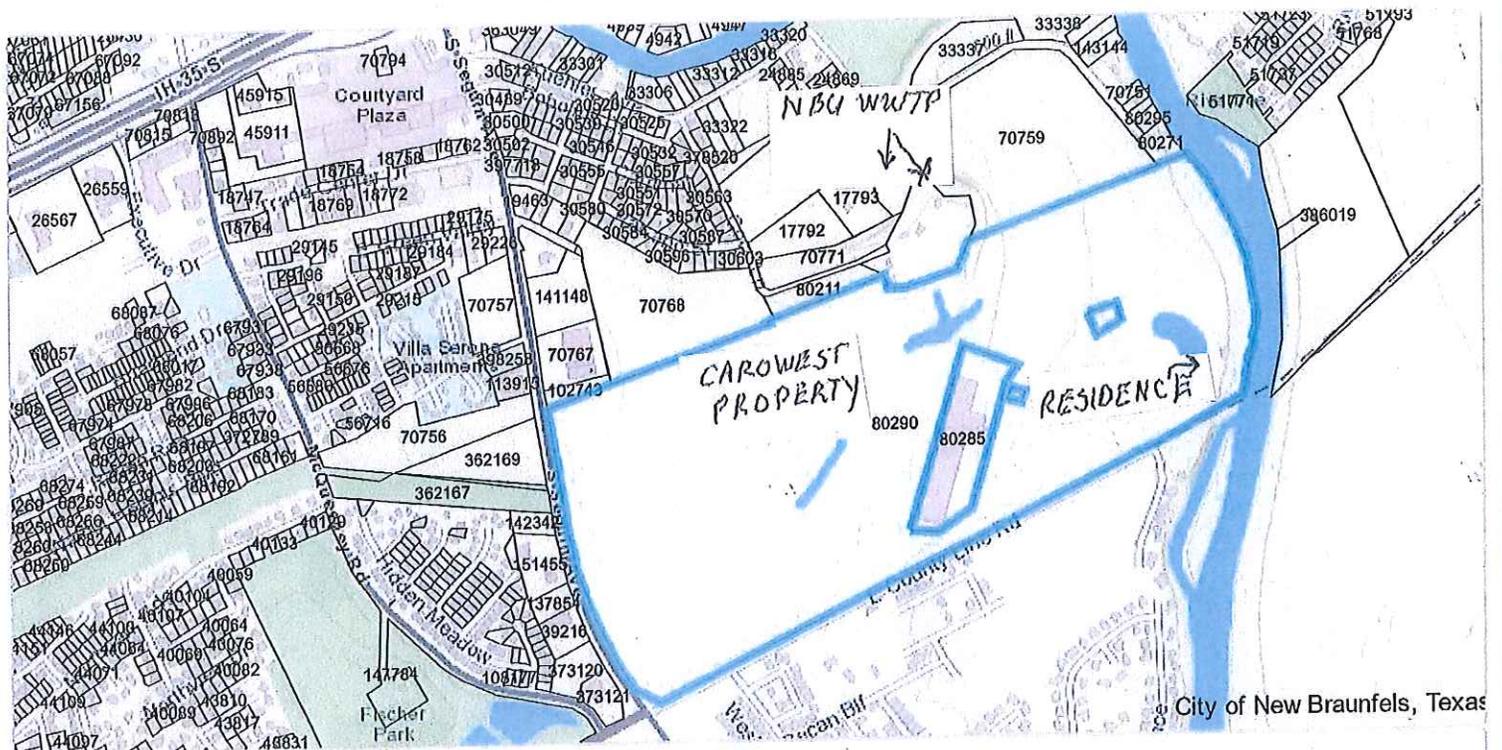
Geo ID: 750608004604
Situs 1849 S SEGUIN AVE NEW
Address: BRAUNFELS, TX 78130
Property Type: Real
State Code: D1

Property Information: 2016

Legal Description: A-608 SUR- 21 J THOMPSON,
ACRES 225.36
Abstract: A0608
Neighborhood: Guadalupe River NB- South of IH35
Appraised Value: N/A
Jurisdictions: 046, LTR, NBI, CNB, EDW, CAD, ZZZ

Owner Identification #: 133621

Name: CAROWEST LAND LTD
Exemptions:
DBA: NULL



Comal CAD Map Search

This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. The Comal County Appraisal District expressly disclaims any and all liability in connection herewith.