

DOCKET NO. 2016-0469-WR

APPLICATION OF	§	
MONTGOMERY COUNTY	§	BEFORE THE
MUNICIPAL UTILITY	§	TEXAS COMMISSION ON
DISTRICTS (MUDS) NOS. 8	§	ENVIRONMENTAL QUALITY
AND 9 FOR PERMIT NO. 12510	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) responds to the two hearing requests filed in this matter by San Jacinto River Authority (SJRA) and City of Houston (Houston).

I. APPLICATION

Montgomery County Municipal Utility Districts Nos. 8 and 9 (the MUDs) have filed an application seeking authorization to use, pursuant to Tex. Water Code 11.042(b), the West Fork San Jacinto River (Lake Conroe), tributary of the San Jacinto River, San Jacinto River Basin, to convey their present and future groundwater-based return flows. The MUDs have a water quality permit that authorizes a final phase combined discharge rate of 0.9 MGD from two outfall points into Lake Conroe. The groundwater will be diverted, less carriage losses, from diversion point(s) to be determined, at or inland of the perimeter of Lake Conroe, in Montgomery County at a maximum combined diversion rate of 3,422 cfs for municipal, industrial and agricultural purposes within the Districts' service area in Montgomery County in the San Jacinto River Basin.

Lake Conroe is authorized by Certificate of Adjudication No. 10-4963, issued jointly to SJRA and Houston.

II. BACKGROUND

The application was received on October 2, 2009, and declared administratively complete on April 12, 2010. Notice was mailed to the water right holders downstream of Lake Conroe on March 23, 2011. The deadline for hearing requests was April 28, 2011. The hearing requestors and the MUDs have been in settlement discussions for some time.

The draft permit authorizes the MUDs to use the bed and banks of Lake Conroe to convey their current and future groundwater-based return flows for subsequent diversion and reuse of up to 1,008.86 acre feet per year for municipal, industrial and agricultural purposes within their service areas in Montgomery County in the San Antonio River Basin. Special Conditions are that the diversions are dependent upon potentially interruptible return flows or discharges and are subject to reduction if the return flows are not available to fully satisfy the permit, that permittees must maintain an accounting plan that will enable them to divert and use groundwater-

based return flows in accordance with the permit, that discharging and diverting return flows in excess of the MUDs' current water quality permit will require an amendment to the permit, that implementing measures to minimize impacts to aquatic resources due to entrainment or impingement are required, and requiring a measuring device to account for the water diverted from Lake Conroe. Also, the Special Conditions provide that if the diversion point is on the perimeter of the reservoir, the MUDs must obtain an easement or agreement for the installation of diversion works on any land owned by SJRA and Houston. If the diversion point location is on someone else's land, the MUDs must also obtain the appropriate easements.

As stated above, the Special Conditions require the MUDs to have an accounting plan for this application. The approved accounting plan currently requires the MUDs to discharge and divert the water within 24 hours.

III. LEGAL AUTHORITY FOR AFFECTED PERSON STATUS

Pursuant to 30 Tex. Admin. Code § 55.251(a), the following may request a contested case hearing on water rights applications: the Commission, the Executive Director, the applicant, and affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights applications under Tex. Water Code § 11.132(a). The Commission, on the request of any affected person, shall hold a hearing on a water rights application. The procedures for determining whether a hearing requestor is an affected person and whether the hearing request is valid are set forth in 30 Tex. Admin. Code §§ 55.250-55.256, which apply to water rights applications such as this one that were declared administratively complete after September 1, 1999.

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." 30 Tex. Admin. Code § 55.256(a). An interest "common to members of the general public" does not qualify as a personal justiciable interest. *Id.*

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 Tex. Admin. Code § 55.256(b).

To determine whether a hearing requestor is an affected person, all relevant factors must be considered. 30 Tex. Admin. Code § 55.256(c). These factors include, but are not limited to:

- (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.

A hearing request by a group or association must meet the requirements set forth in 30 Tex. Admin. Code § 55.252(a). There are three requirements. First, at least one member of the group or association would have standing to request a hearing on his or her own. Second, the interests that the group or association seeks to protect must be germane to its purpose. Third, neither the claim asserted nor the relief requested by the group or association requires participation of the individual member(s) in the case.

A hearing request must substantially comply with the four requirements set forth in 30 Tex. Admin. Code § 55.251(c):

- (1) Give the name, address, and daytime telephone number of the person filing the request. If made by a group or association, the request must identify one person by who shall be responsible for receiving all official communications for the group, with the person's name, address, daytime telephone number and facsimile number if possible.
- (2) Identify the person's personal justiciable interest affected by the application, including a written statement explaining the requestor's location and distance relative to the application activity and how/ 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) Request a contested case hearing.
- (4) Provide any other information specified in the public notice of the application.

The request for a contested case hearing must be filed with the Commission's Chief Clerk during the public comment period. 30 Tex. Admin. Code § 55.251(d).

The Commission must grant a request for a contested case hearing made by an affected person if the request complies with the requirements of 30 Tex. Admin. Code § 55.251; is timely filed with the Chief Clerk; and is pursuant to a right to hearing authorized by law. 30 Tex. Admin Code § 55.255(b)(2).

IV. DISCUSSION

Hearing Requests:

Both hearing requests meet the administrative requirements of 30 Tex. Admin. Code § 55.251(c). The hearing requests are attached as Attachment A. A map showing the location of the MUDs' proposed bed and banks and the requestors' water rights is attached as Attachment B.

Houston

Houston is part owner of the Certificate of Adjudication for Lake Conroe. It contends that this proposed permit may directly injure or impact Houston's water rights, particularly its right in Lake Conroe, associated contracts, and the health, safety and well-being of the people and environment reliant on the San Jacinto River Basin. Houston relies upon the San Jacinto River Basin for municipal water supplies and holds multiple water rights in the basin, including Lake Houston. Houston states that it has not consented to the use of Lake Conroe by the MUDs, and that the MUDs have no easements or agreements for the use of Lake Conroe or the waterfront properties needed for the MUDs to construct diversion works.

Recommendation: Grant the hearing request. This application could impact the water rights for Lake Conroe, which is being used to transport the groundwater-based effluent, if there is not adequate accounting for the discharge and diversion of these return flows. Therefore, the hearing request shows that the interest claimed is one protected by the law under which the application will be considered under Section 55.256(c)(1), and that there may be an impact of the regulated activity on the health, safety, and use of property of the person under Section 55.256(c)(4).

SJRA

SJRA argues that if the draft permit as currently written is issued it may significantly impact its real property interests, including its water rights in the San Jacinto River Basin and the water supplies that result from such rights. SJRA states that the draft permit allows the MUDs to utilize Lake Conroe without acknowledging that this authorization will consume available storage in and use of the bed and banks of Lake Conroe. It argues that the MUDs should secure a water right in Lake Conroe for the use of storage space, should obtain a real property interest for the diversion of water from Lake Conroe, address the impact that the proposed diversions will have on Lake Conroe and its existing uses, address the impact that the proposed diversions will have on navigation within the lake, and require the SJRA or the City's consent for the use of and diversion of water from Lake Conroe.

Recommendation: Grant the hearing request. This application could impact the water rights for Lake Conroe, which is being used to transport the groundwater-based effluent, if there is not adequate accounting for the discharge and diversion of these return flows. Therefore, the hearing request shows that the interest claimed is one protected by the law under which the application will be considered under Section 55.256(c)(1), and that there may be an impact of the regulated activity on the health, safety, and use of property of the person under Section 55.256(c)(4).

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Executive Director's Response to Hearing Requests

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V. CONCLUSION

Grant SJRA's and Houston's hearing requests.

Respectfully submitted,

Richard A. Hyde, P.E.
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

by 
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2016, a true and correct copy of the Executive Director's Response to Hearing Requests was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent to the persons on the attached Mailing List.


Robin Smith, Staff Attorney
Environmental Law Division

MAILING LIST
MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT
NOS. 8 & 9
DOCKET NO. 2016-0469-WR; WRPERM 12510

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Attachment A
Hearing Requests

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TEXAS BOARD OF LEGAL SPECIALIZATION

*WJR
72455*

April 26, 2011

OPA

H APR 28 2011

BY *OL*

Via Telecopier & Certified Mail
Return Receipt Requested

CHIEF CLERKS OFFICE

2011 APR 27 PM 2:37

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

The Honorable La Donna Castañuela
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application No. 12510 – MUD Nos. 8 & 9, Montgomery County, Texas

Dear Ms. Castañuela:

I am writing on behalf of the City of Houston (“Houston”) in response to the notice of the above-referenced Application No. 12510 (the “Application”) filed by the MUD Nos. 8 & 9, Montgomery County, Texas (the “MUDs”) to obtain a permit “to convey their present and future groundwater-based return flows for use within the Districts’ service areas in Montgomery County in the San Jacinto River Basin (the “Proposed Permit”).” A copy of the notice of the MUDs proposed Permit reviewed by the City dated March 23, 2011 is attached for reference (Appendix “A”).

Please consider this letter as the City of Houston’s request for the Commission to conduct a contested case hearing on the Application.

The City of Houston relies upon the San Jacinto 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 holds multiple water rights in the San Jacinto River Basin, including Lake Conroe (Certificate of Adjudication No. 10-4963), which it jointly owns with the San Jacinto River Authority (“SJRA”) and Lake Houston (Certificate of Adjudication No. 10-4965, and Permit Nos. 5807 and 5808). The City of Houston also has multiple water contracts in the San Jacinto River Basin, including a water supply contract authorizing SJRA to purchase and beneficially use the City’s share of water stored in Lake Conroe. Additionally, the San Jacinto 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.

Accordingly, the Permit proposed in the Application may directly injure or impact the City of Houston’s water rights, particularly rights in Lake Conroe, associated contracts, and the health, safety and well-being of the people and environment reliant on the San Jacinto River Basin.

MW

The City of Houston has not consented to the uses of Lake Conroe the MUDs propose in the Application. As noted above, the City along with SJRA owns Lake Conroe the on-channel reservoir the MUDs propose to access and divert their reuse from. The MUDs have no agreements for easements, rights of way, or use of Lake Conroe or the water front properties owned by the City and SJRA needed for the MUDs to construct, maintain and/or operate the proposed diversion works and transmission or other facilities required to implement the proposed Permit.

In order to protect the City's rights (and those of its co-owner SJRA with respect to Lake Conroe) and afford adequate opportunity to review the Application, and any proposed Permit that may be published by the Executive Director for consideration by the Commission, the City of Houston requests that the Commission conduct a contested case hearing on the Application.

For all of the reasons set forth above, on behalf of the City of Houston, I also request that the Commission and the Executive Director's staff provide the City with copies of all proposed Permit drafts, technical memoranda, and any other evaluations, and/or any notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this Application. Please have these documents sent to my attention using the following contact information:

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711 West 7th Street
Austin, Texas 78701
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(512) 225-5565 Fax
emccarthy@jacksonsjoberg.com

And to the following address:

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City of Houston Legal Department
900 Bagby Street, 4th Floor
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(832) 393-6486
(832) 393-6259
augustus.campbell@houstontx.gov

Please note that this request is conditional. After further review and evaluation of the Application and its potential impacts, Houston hopes to reach an agreement with the Commission and the MUDs on the Application that will address Houston's interest in Lake Conroe, as well as providing for the health and well-being of the San Jacinto River Basin, and the protection of Houston's downstream water rights and other affected interests. Assuming those efforts are successful, the City would be able to withdraw its contested case hearing request.

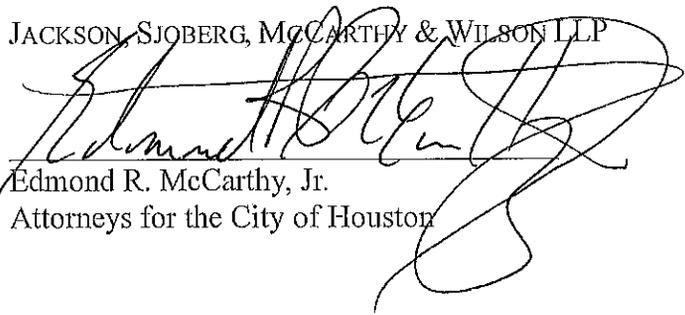
By copy of this letter, I am advising the MUDs through their Counsel Ms. Carolyn Ahrens, and Craig Mikes, Application Manager, of the Executive Director's staff of this request for a contested case hearing and copies of documents. I am also providing a copy to SJRA's counsel, Mr. Martin Rochelle.

Thank you for your assistance.

Best wishes.

Sincerely,

JACKSON SJOBERG, MCCARTHY & WILSON LLP



Edmond R. McCarthy, Jr.
Attorneys for the City of Houston

ERM/tn
Encl.

cc: City of Houston
Attn: Mr. Jun Chang, Deputy Director, Public Works & Engineering Dept.
Ms. Lisa Lattu, Managing Engineer, Public Works & Engineering Dept.
Mr. Augustus L. Campbell, Assistant City Attorney, Legal Dept.

TCEQ
Attn: Mr. Craig Mikes (MC 160)

MUD Nos. 8 & 9
Montgomery County, Texas
c/o Ms. Carolyn Ahrens
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Austin, Texas 78701-3503

San Jacinto River Authority
c/o Mr. Martin Rochelle
Lloyd, Gosselink
816 Congress Ave
Suite 1900
Austin, Texas 78701

Appendix "A"

Notice reviewed by the City dated March 23, 2011

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION FOR A WATER USE PERMIT

APPLICATION NO. 12510

Montgomery County Municipal Utility District Nos. 8 and 9 seek authorization to use the bed and banks of the West Fork San Jacinto River (Lake Conroe), San Jacinto River Basin, to convey their present and future groundwater-based return flows for use within the Districts' service areas in Montgomery County in the San Jacinto River Basin. More information on the application and how to participate in the permitting process is given below.

APPLICATION, Montgomery County Municipal Utility District No. 8, 1001 McKinney, Suite 1001, Houston, Texas, 77002-6424, and Montgomery County Municipal Utility District No. 9, 1001 Fannin, Suite 2500, Houston, Texas, 77002-6760, Applicants, have applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §11.042, and TCEQ Rules Title 30 Texas Administrative Code (TAC) §295.1, *et seq.* Notice of the application is being mailed to the nine downstream water right holders of record in the San Jacinto River Basin pursuant to Title 30 TAC 295.161(a).

Applicants seek authorization to use the bed and banks of the West Fork San Jacinto River (Lake Conroe), tributary of the San Jacinto River, San Jacinto River Basin, to convey their present and future groundwater-based return flows.

TPDES Permit No. WQ0011371001 authorizes the Permittees to discharge up to 1,008.86 acre-feet of water per year (0.9 MGD) into Lake Conroe on the West Fork San Jacinto, tributary of the San Jacinto River, San Jacinto River Basin, at two points as described below:

Outfall 1 - Latitude 30.390833°N, Longitude 95.604722°W, also bearing N81.350000°E, 5,270 feet from the westernmost corner of the W.C. Clark Survey, Abstract No. 3, Montgomery County.

Outfall 2 - Latitude 30.389722°N, Longitude 95.604167°W, also bearing S34.531667°W, 237 feet from the east corner of Lot 44 in Block 36 of Walden On Lake Conroe, Section 5 out of the William Clark Survey, Abstract No. 6, Montgomery County.

Applicants indicate the water will be diverted, less carriage losses, from diversion point(s) at or inland of the perimeter of Lake Conroe, Montgomery County at a maximum combined diversion rate of 3.422 cfs (1,500 gpm) for municipal, industrial, and agricultural purposes within the Districts' service areas in Montgomery County in the San Jacinto River Basin.

Lake Conroe is authorized by Certificate of Adjudication No. 10-4963, issued jointly to San Jacinto River Authority and the City of Houston.

Applicants submitted an accounting plan on October 30, 2009, which was accepted by the Executive Director.

The application and partial fees were received on October 2, 2009. Additional information was received on October 30, November 3 and December 14, 2009, and April 7 and June 3, 2010. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 12, 2010.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including but not limited to, restricting diversions to the return flows that are actually discharged. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas, 78753.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by April 28, 2011. 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 by April 28, 2011. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

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 to 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 TCEQ 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>. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance 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: March 23, 2011

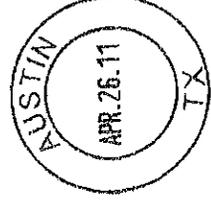
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JACKSON, SJOBERG, MCCARTH.
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CERTIFIED MAIL



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The Honorable La Donna Castañuela
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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April 26, 2011

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72455

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TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

The Honorable La Donna Castañuela
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Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Via Telecopier & Certified Mail,
Return Receipt Requested

OPA
H APR 27 2011
BY AL

Re Application No. 12510 - MUD Nos. 8 & 9, Montgomery County, Texas

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Accordingly, the Permit proposed in the Application may directly injure or impact the City of Houston's water rights, particularly rights in Lake Conroe, associated contracts, and the health, safety and well-being of the people and environment reliant on the San Jacinto River Basin.

MW

April 26, 2011

Page 2

The City of Houston has not consented to the uses of Lake Conroe the MUDs propose in the Application. As noted above, the City along with SJRA owns Lake Conroe the on-channel reservoir the MUDs propose to access and divert their reuse from. The MUDs have no agreements for easements, rights of way, or use of Lake Conroe or the water front properties owned by the City and SJRA needed for the MUDs to construct, maintain and/or operate the proposed diversion works and transmission or other facilities required to implement the proposed Permit.

In order to protect the City's rights (and those of its co-owner SJRA with respect to Lake Conroe) and afford adequate opportunity to review the Application, and any proposed Permit that may be published by the Executive Director for consideration by the Commission, the City of Houston requests that the Commission conduct a contested case hearing on the Application.

For all of the reasons set forth above, on behalf of the City of Houston, I also request that the Commission and the Executive Director's staff provide the City with copies of all proposed Permit drafts, technical memoranda, and any other evaluations, and/or any notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this Application. Please have these documents sent to my attention using the following contact information:

Edmond R. McCarthy, Jr.
Jackson, Sjoberg, McCarthy & Wilson, L.L.P.
711 West 7th Street
Austin, Texas 78701
(512) 225-5606
(512) 225-5565 Fax
emccarthy@jacksonsjoberg.com

And to the following address:

Augustus L. Campbell
City of Houston Legal Department
900 Bagby Street, 4th Floor
Houston, TX 77002
(832) 393-6486
(832) 393-6259
augustus.campbell@houstontx.gov ✓

Please note that this request is conditional. After further review and evaluation of the Application and its potential impacts, Houston hopes to reach an agreement with the Commission and the MUDs on the Application that will address Houston's interest in Lake Conroe, as well as providing for the health and well-being of the San Jacinto River Basin, and the protection of Houston's downstream water rights and other affected interests. Assuming those efforts are successful, the City would be able to withdraw its contested case hearing request.

April 26, 2011

Page 3

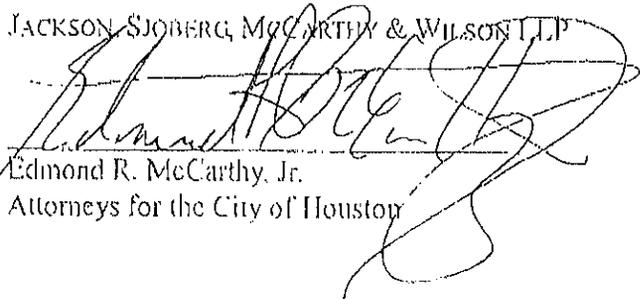
By copy of this letter, I am advising the MUDs through their Counsel Ms. Carolyn Ahrens, and Craig Mikes, Application Manager, of the Executive Director's staff of this request for a contested case hearing and copies of documents. I am also providing a copy to SJRA's counsel, Mr. Martin Rochelle.

Thank you for your assistance

Best wishes.

Sincerely,

JACKSON SJOBERG, MCCARTHY & WILSON LLP


Edmond R. McCarthy, Jr.
Attorneys for the City of Houston

ERM/tn

Encl.

cc: City of Houston

Attn: Mr. Jun Chang, Deputy Director, Public Works & Engineering Dept.
Ms. Lisa Lattu, Managing Engineer, Public Works & Engineering Dept.
Mr. Augustus L. Campbell, Assistant City Attorney, Legal Dept.

TCEQ

Attn: Mr. Craig Mikes (MC 160)

MUD Nos. 8 & 9
Montgomery County, Texas
c/o Ms. Carolyn Ahrens
Booth, Ahrens & Werkenthin, PC
515 Congress Ave., Suite 1515
NationsBank Tower
Austin, Texas 78701-3503

San Jacinto River Authority
c/o Mr. Martin Rochelle
Lloyd Gosselink
816 Congress Ave
Suite 1900
Austin, Texas 78701

April 26, 2011
Page 4

Appendix "A"

Notice reviewed by the City dated March 23, 2011

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION FOR A WATER USE PERMIT

APPLICATION NO. 12510

Montgomery County Municipal Utility District Nos. 8 and 9 seek authorization to use the bed and banks of the West Fork San Jacinto River (Lake Conroe), San Jacinto River Basin, to convey their present and future groundwater-based return flows for use within the Districts' service areas in Montgomery County in the San Jacinto River Basin. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Montgomery County Municipal Utility District No. 8, 1001 McKinney, Suite 1001, Houston, Texas, 77002-6424, and Montgomery County Municipal Utility District No. 9, 1001 Fannin, Suite 2500, Houston, Texas, 77002-6760, Applicants, have applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §11.042, and TCEQ Rules Title 30 Texas Administrative Code (TAC) §295.1, *et seq.* Notice of the application is being mailed to the nine downstream water right holders of record in the San Jacinto River Basin pursuant to Title 30 TAC 295.161(a).

Applicants seek authorization to use the bed and banks of the West Fork San Jacinto River (Lake Conroe), tributary of the San Jacinto River, San Jacinto River Basin, to convey their present and future groundwater-based return flows.

TPDES Permit No. WQ0011371001 authorizes the Permittees to discharge up to 1,008.86 acre-feet of water per year (0.9 MGD) into Lake Conroe on the West Fork San Jacinto, tributary of the San Jacinto River, San Jacinto River Basin, at two points as described below:

Outfall 1 - Latitude 30.390833°N, Longitude 95.604722°W, also bearing N81.350000°E, 5,270 feet from the westernmost corner of the W.C. Clark Survey, Abstract No. 3, Montgomery County.

Outfall 2 - Latitude 30.389722°N, Longitude 95.604167°W, also bearing S34.531667°W, 237 feet from the east corner of Lot 44 in Block 36 of Walden On Lake Conroe, Section 5 out of the William Clark Survey, Abstract No. 6, Montgomery County.

Applicants indicate the water will be diverted, less carriage losses, from diversion point(s) at or inland of the perimeter of Lake Conroe, Montgomery County at a maximum combined diversion rate of 3.422 cfs (1,500 gpm) for municipal, industrial, and agricultural purposes within the Districts' service areas in Montgomery County in the San Jacinto River Basin.

Lake Conroe is authorized by Certificate of Adjudication No. 10-4963, issued jointly to San Jacinto River Authority and the City of Houston.

Applicants submitted an accounting plan on October 30, 2009, which was accepted by the Executive Director.

The application and partial fees were received on October 2, 2009. Additional information was received on October 30, November 3 and December 14, 2009, and April 7 and June 3, 2010. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 12, 2010.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including but not limited to, restricting diversions to the return flows that are actually discharged. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas, 78753.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by April 28, 2011. 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 by April 28, 2011. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

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 to 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 TCEQ 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>. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance 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: March 23, 2011

Law Offices Of
JACKSON, SJOBERG, McCARTHY & WILSON, L.L.P.

711 WEST 7TH STREET
AUSTIN, TEXAS 78701-2785

(512) 472-7600
FAX (512) 225-5565
SENDER'S DID (512) 225-5606

CHIEF CLERKS OFFICE

2011 APR 26 PM 4:17

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FACSIMILE TRANSMISSION

CONFIDENTIALITY NOTICE: The documents accompanying this facsimile transmission contain confidential information which is legally privileged and intended only for the use of the recipient named below. We request immediate notification by telephone of misrouted facsimile transmissions so that we may arrange for return of those documents to us. If you receive this facsimile transmission in error, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of the information contained in this facsimile transmission, is strictly prohibited.

DATE: April 26, 2011 **NO. PAGES (including cover):** 8

TO: LaDonna Castañuela	FAX NO.: (512) 239-3311	CONTACT NO.: (512) 239-3300
TO: Craig Mikes	FAX NO.: (512) 239-4770	CONTACT NO.: (512) 239-2535
TO: Carolyn Ahrens, MUDs Counsel	FAX NO.: (512) 473-2609	CONTACT NO.: (512) 472-3263
TO: Martin Rochelle, SJRA Counsel	FAX NO.: (512) 472-0532	CONTACT NO.: (512) 322-5810

FROM: Edmond R. McCarthy, Jr. **C/M NO.:** 40-847
RE: Application No. 12510, Montgomery County MUD Nos. 8 & 9 for Reuse Authorization

ATTACHMENT: Yes

MESSAGE: The Original Letter has been mailed to the Chief Clerk's Office this date.

ORIGINALS TO FOLLOW: YES ___ NO X

Mr. Rochelle's Direct Line: (512) 322-5810
mrochelle@lglawfirm.com

April 28, 2011

OPA

H APR 29 2011

BY *OL*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 APR 28 2:03
CHIEF CLERK'S OFFICE

VIA HAND DELIVERY

*WR
72455*

Ms. LaDonna Castañuela (MC 105)
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78767-3087

RE: Application No. 12510 of Montgomery County Municipal Utility District No. 8
and Montgomery County Municipal Utility District No. 9 (1197-19)

Dear Ms. Castañuela:

I am writing on behalf of my client, the San Jacinto River Authority ("SJRA"), in response to the notice of an application (the "Application") filed by Montgomery County Municipal Utility District No. 8 and Montgomery County Municipal Utility District No. 9 ("Applicants"). Please consider this letter as SJRA's formal comment, protest, and request for a contested case hearing on the Application.

SJRA relies upon water supplies in the San Jacinto River Basin to meet the municipal and industrial water needs of its customers. SJRA is the owner and operator, jointly with the City of Houston (the "City"), of Lake Conroe, authorized by Certificate of Adjudication (COA) No. 10-4963. SJRA also holds and/or has contracts for other water rights in the San Jacinto River Basin. The San Jacinto River and its tributaries provide water that supports the economic health and well being of SJRA and its customers. Accordingly, SJRA has significant property interests in the waters of the San Jacinto River Basin, and specifically Lake Conroe. The draft permit associated with the Application and prepared by Texas Commission on Environmental Quality ("TCEQ") staff (the "Draft Permit"), if issued as currently written, may significantly impact SJRA's real property interests, including its water rights in the San Jacinto River Basin and the water supplies that result from such rights.

The Draft Permit allows the Applicants to utilize Lake Conroe and the real property interests of SJRA and the City without 1) acknowledging that this authorization will consume available storage in and use of the bed and banks of Lake Conroe, 2) requiring the Applicants to secure a water right interest in Lake Conroe for the use of the storage space in the Lake and/or the bed and banks of the Lake, 3) affirmatively requiring any real property interest for the diversion of water from Lake Conroe, 4) addressing the impact the proposed diversions will have on Lake Conroe and its existing uses, including recreational uses, 5) addressing the impact the

ML

Ms. LaDonna Castañuela

April 28, 2011

Page 2

proposed diversions will have on navigation within Lake Conroe, and 6) requiring the consent of SJRA or the City for the use of and diversion of water from Lake Conroe.

For these reasons and on behalf of SJRA, I request a contested case hearing on the Application and the associated Draft Permit. My mailing address, phone number and fax number are included herein. SJRA reserves the right to raise and pursue any and all issues that may be relevant to its interests in the event of a contested case hearing. Furthermore, SJRA has interests, as discussed above, that are not common to the general public in issues that are, or may be, raised in any proceeding on the Application and the Draft Permit.

Thank you for your assistance in this important matter. If you or your staff have questions concerning this letter, or I may be of service to you, please feel free to call me at your earliest convenience.

Sincerely,



Martin C. Rochelle

MCR/jdg
1283035v5

cc: Mr. Mark Vickery
Ms. Linda Brookins
Ms. Kellye Rila
Mr. Craig Mikes
Mr. James Aldredge
Mr. Ed McCarthy
Ms. Carolyn Ahrens
Mr. Reed Eichelberger
Mr. Jace Houston
Mr. Ron Kelling
Ms. Michelle Maddox Smith

April 28, 2011

WR
72455

OPA

APR 29 2011

By *DL*

CHIEF CLERKS OFFICE

2011 APR 29 AM 8:14

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

VIA ELECTRONIC FILING

Ms. LaDonna Castañuela (MC 105)
Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78767-3087

RE: Application No. 12510 Submitted by Montgomery County Municipal Utility
District No. 8 and Montgomery County Municipal Utility District No. 9 (1197-19)

Dear Ms. Castañuela:

I am writing as a member of the GRP Review Committee, which represents Groundwater Reduction Plan ("GRP") customers of the San Jacinto River Authority ("SJRA"), in response to the notice of an application (the "Application") filed by Montgomery County Municipal Utility District No. 8 and Montgomery County Municipal Utility District No. 9 ("Applicants"). Please consider this letter as an expression of the Review Committee's formal protest of the Application.

The GRP Review Committee consists of six individuals who are selected to represent approximately 134 separate water supply systems in Montgomery County that are customers ("GRP Participants") of the SJRA via participation in the SJRA's countywide GRP, and they represent a population of approximately 325,000 comprising 80 percent of the total groundwater demand by all large volume groundwater users in Montgomery County. Based on the terms of the water supply contract between each GRP Participant and the SJRA, the GRP Participants pay reservation fees on approximately 92,000 acre-feet of permitted water rights in Lake Conroe, which represents virtually the entire firm yield of the Lake. Therefore, the GRP Participants have a financial stake in, and in fact are heavily dependent upon, the reliability and sustainability of the water rights in Lake Conroe for their surface water supply needs. The GRP Participants have significant interests in the waters and water supplies of Lake Conroe. The draft permit associated with the Application and prepared by Texas Commission on Environmental Quality ("TCEQ") staff (the "Draft Permit"), if issued as currently written, will significantly and negatively impact those interests.

The Draft Permit allows the Applicants to consume available storage in Lake Conroe, utilize the bed and banks of Lake Conroe for placement of unspecified diversion structure(s), and use the impounded waters of Lake Conroe to transport and dilute their effluent, with no

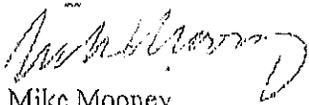
MC

Ms. LaDonna Castañuela
April 28, 2011
Page 2

consideration for the negative impacts that the proposed project would have on those who have paid for the development of the reservoir in the past and those who will continue to pay the ongoing costs of operating and maintaining the reservoir in the future and who depend on the yield of the reservoir for their water supply.

The GRP Review Committee considered and rejected an indirect re-use proposal by the Applicant that used Lake Conroe as a means for facilitating the plan on January 13, 2011. The GRP Review Committee continues to oppose the proposal, the Application and the associated Draft Permit.

Sincerely,



Mike Mooney
Member, GRP Review Committee
PO Box 329
Conroe, Texas 77305

cc: Mr. Mark Vickery
Ms. Linda Brookins
Ms. Kellye Rila
Mr. Craig Milkes
Mr. James Aldredge
Mr. Ed McCarthy
Ms. Carolyn Ahrens
Mr. Reed Eichelberger
Mr. Jace Houston
Mr. Ron Kelling
Ms. Michelle Smith
Mr. Martin Rochelle



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

TELECOPIER COVER SHEET

Type in Date; or Insert, Date-make sure update auto is NOT checked

PLEASE DELIVER THE FOLLOWING PAGES:

To: Chief Clerk

Firm: TCEQ

Telecopy No.: 239-3311

Verification No.:

Client No.: 1197-19

From: Mike Mooney, through Michelle M. Smith

No. of Pages: 2 + cover sheet

Documents transmitted: Comment on Water Right Permit No. 12510

Comments:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 2011 APR 29 AM 8:14
 CHIEF CLERKS OFFICE

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5844.



OPA

MAY 25 2011

By DS

Legal Department

CITY OF CONROE

May 23, 2011

Ms. LaDonna Castanuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78767-3087

WR
72455

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 MAY 25 AM 10:04
CHIEF CLERKS OFFICE

Re: Application No. 12510 submitted by Montgomery County MUD No. 9 and MUD No. 9 (1197-19)

Dear Ms. Castanuela:

At the request of the Mayor of the City of Conroe I am forwarding a copy of correspondence to the San Jacinto River Authority relating to a protest filed by Mike Mooney that is alleged to be an expression of the SJRA GRP Review Committee.

As a participant in the San Jacinto River Authority GRP Review Committee the City of Conroe does not support the protest and wishes to make it clear that the protest filed by Mr. Mooney does not represent Conroe.

The City of Conroe is unaware of any authorization given by the Review Committee to support the protest filed by Mr. Mooney in the Committee's name. The City of Conroe representative on the committee has reported that the Committee has taken no action to his knowledge to authorize the protest.

Sincerely,

Marcus L. Winberry
City Attorney

MLW/pjp
Enclosure

cc: Senator Robert Nichols
Representative Brandon Creighton
Mayor Webb K. Melder

April 28, 2011

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2011 MAY 25 AM 10:04
CHIEF CLERKS OFFICE

VIA ELECTRONIC FILING

Ms. LaDonna Castañuela (MC 105)
Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78767-3087

RE: Application No. 12510 Submitted by Montgomery County Municipal Utility
District No. 8 and Montgomery County Municipal Utility District No. 9 (1197-19)

Dear Ms. Castañuela:

I am writing as a member of the GRP Review Committee, which represents Groundwater Reduction Plan ("GRP") customers of the San Jacinto River Authority ("SJRA"), in response to the notice of an application (the "Application") filed by Montgomery County Municipal Utility District No. 8 and Montgomery County Municipal Utility District No. 9 ("Applicants"). Please consider this letter as an expression of the Review Committee's formal protest of the Application.

The GRP Review Committee consists of six individuals who are selected to represent approximately 134 separate water supply systems in Montgomery County that are customers ("GRP Participants") of the SJRA via participation in the SJRA's countywide GRP, and they represent a population of approximately 325,000 comprising 80 percent of the total groundwater demand by all large volume groundwater users in Montgomery County. Based on the terms of the water supply contract between each GRP Participant and the SJRA, the GRP Participants pay reservation fees on approximately 92,000 acre-feet of permitted water rights in Lake Conroe, which represents virtually the entire firm yield of the Lake. Therefore, the GRP Participants have a financial stake in, and in fact are heavily dependent upon, the reliability and sustainability of the water rights in Lake Conroe for their surface water supply needs. The GRP Participants have significant interests in the waters and water supplies of Lake Conroe. The draft permit associated with the Application and prepared by Texas Commission on Environmental Quality ("TCEQ") staff (the "Draft Permit"), if issued as currently written, will significantly and negatively impact those interests.

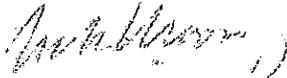
The Draft Permit allows the Applicants to consume available storage in Lake Conroe, utilize the bed and banks of Lake Conroe for placement of unspecified diversion structure(s), and use the impounded waters of Lake Conroe to transport and dilute their effluent, with no

Ms LaDonna Castañuela
April 28, 2011
Page 2

consideration for the negative impacts that the proposed project would have on those who have paid for the development of the reservoir in the past and those who will continue to pay the ongoing costs of operating and maintaining the reservoir in the future and who depend on the yield of the reservoir for their water supply.

The GRP Review Committee considered and rejected an indirect re-use proposal by the Applicant that used Lake Conroe as a means for facilitating the plan on January 13, 2011. The GRP Review Committee continues to oppose the proposal, the Application and the associated Draft Permit.

Sincerely,



Mike Mooney
Member, GRP Review Committee
PO Box 329
Conroe, Texas 77305

cc: Mr. Mark Vickery
Ms. Linda Brookins
Ms. Kellye Rila
Mr. Craig Mikes
Mr. James Aldredge
Mr. Ed McCarthy
Ms. Carolyn Ahrens
Mr. Reed Eichelberger
Mr. Jace Houston
Mr. Ron Kelling
Ms. Michelle Smith
Mr. Martin Rochelle



Office of the Mayor

CITY OF CONROE

May 13, 2011

H. Reed Eichelberger
General Manager
San Jacinto River Authority
P. O. Box 329
Conroe, Texas 77305

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2011 MAY 25 AM 10:04
CHIEF CLERKS OFFICE

Certified Mail Receipt No. 7010 1870 0003 4705 2971
& First Class US Postal

Re: GRP Advisory Committee member Mike Mooney's "letter of protest" to TCEQ regarding the permit application of Montgomery County MUDs 8 & 9

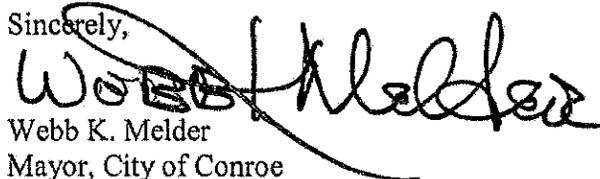
Dear Mr. Eichelberger:

I have been provided a copy of the attached letter signed by Mike Mooney, a member of the GRP Review Committee, addressed to the Texas Commission on Environmental Quality. The April 28, 2011 letter requests that the TCEQ consider the letter to be an expression of the Review Committee's formal protest of the above referenced application filed by MUDs 8 & 9.

Please confirm whether or not the GRP Review Committee authorized the protest filed by Mooney in the name of the Committee and provide me with a copy of the minutes of the Review Committee meeting at which the protest was authorized. Dean Towery, the City of Conroe's representative on the Review Committee has informed me that the protest letter was not authorized by the Committee and that he would not have favored supporting a protest of the permit application. Mr. Towery also believes that the Committee has no role in this matter as it is unrelated to the functions of the GRP. Since it appears that the letter was not authorized by the Committee please tell me who authorized that it be sent in the name of the Review Committee.

As Mayor of the City of Conroe I object to the use of GRP funds to pay any portion of the costs associated with the protest of the MUDs 8 & 9 application. Please confirm in writing that no portion of the GRP funds have or will be used for the purposes of opposing the disputed permit application.

Sincerely,


Webb K. Melder
Mayor, City of Conroe



CITY OF CONROE

P.O. Box 3066 ■ CONROE, TX 77305

Ms. LaDonna Castanuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78767-3087



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FIRST CLASS
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0011351005 MAY 23 2011
MAILED FROM ZIP CODE 77301
ENVIRONMENTAL COMMISSION TEXAS

RECEIVED
MAY 25 2011

TCEQ MAIL CENTER
JR

78711+3087



Attachment B
Map of MUDs' Proposed Bed and Banks and Hearing Requestors'
Diversion Points

