

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

www.jacksonsjoberg.com

DAVID E. JACKSON*
JOHN MATTHEW SJOBERG*
EDMOND R. MCCARTHY, JR.
ROBERT C. WILSON

OF COUNSEL
ELIZABETH A. TOWNSEND†
MARC O. KNISELY**

*BOARD CERTIFIED IN OIL,
GAS AND MINERAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

†LICENSED IN TEXAS AND
TENNESSEE
**BOARD CERTIFIED IN CIVIL APPELLATE LAW
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:

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@houston.tx.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.

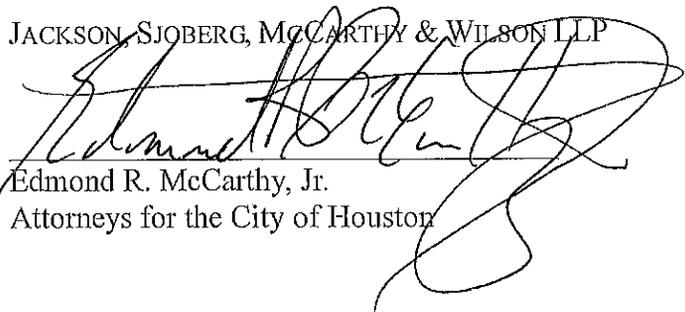
By copy of this letter, I am advising the MUDs through their Counsel Ms. Carolyn Ahrens, and Craig Mikes, Application Manager, of the Executive Director's staff of this request for a contested case hearing and copies of documents. I am also providing a copy to SJRA's counsel, Mr. Martin Rochelle.

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
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

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

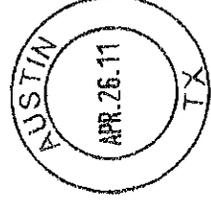
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JACKSON, SJOBERG, MCCARTH.
711 WEST 7TH STR
AUSTIN, TEXAS 78701.

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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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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April 26, 2011

WR
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2011 APR 26 PM 4:19
CHIEF CLERK
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ELIZABETH A. TOWNSEND
MARC O. KOSBELY
LICENSED IN TEXAS AND
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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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MW

April 26, 2011

Page 2

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emccarthy@jacksonsjoberg.com

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April 26, 2011

Page 3

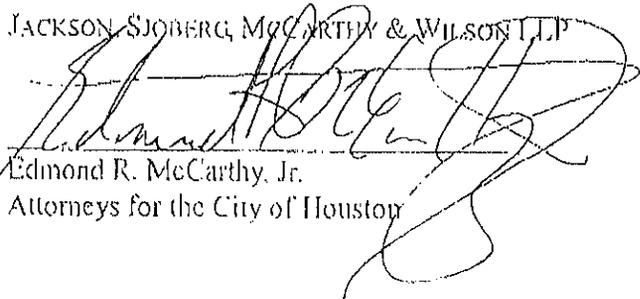
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Thank you for your assistance

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



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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
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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

MC

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