

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 19, 2009

2009 FEB 19 PM 2:42
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VIA FACSIMILE NO. 512/239-5533

Les Trobman
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-08-0202; TCEQ Docket No. 2007-1426-MWD; In Re: Application by Hays County Water Control & Improvement District No. 1 for an Amendment to Texas Pollutant Discharge Elimination System Permit (TPDES) Permit No. WQ0014293001

Dear Mr. Trobman:

Please find enclosed the revised Proposed Order in this case. We believe all the changes previously agreed to as well as those directed by the Commission have been incorporated into the revision. I should point out that the provision in the Partial Settlement Agreement regarding regionalization was never a part of our Proposed Order.

The revisions include the following as shown by the amendments in boldface type:

- Finding of Fact No. 18: Segment 1427 **was** listed on the State's inventory of impaired and threatened waters, *i.e.*, the Clean Water Act Section 303(d) list, specifically for the depressed Dissolved Oxygen (DO) concentrations from the end of the segment to U.S. Hwy. 183, **but was removed from the list in 2006.**
- Finding of Fact No. 21: In accordance with 30 TEX. ADMIN. CODE (TAC) § 307.5 and the TCEQ implementation procedures for the *Texas Surface Water Quality Standards*, the TCEQ performed an antidegradation review of the receiving waters **under the terms of the Draft Permit.**

SOAH DOCKET NO. 582-08-0202
TCEQ DOCKET NO. 2007-1426-MWD
Transmittal Letter
Page 2

- Finding of Fact No. 23:

Final Effluent Limitations and Monitoring Requirements

- **0.500 MGD daily average flow.**

- **Finding of Fact No. 25: In addition to the terms of the Partial Settlement Agreement that the ED incorporated into the revisions to the Draft Permit, the Agreement also contained the following terms, which included changes or additions to the wastewater treatment process and plant (Proposed Facility):**

- **All wastewater in the Interim II and Final Phase will be treated using membrane bioreactor technology with denitrification.**
- **WCID shall continue to dispose of 0.150 MGD of treated effluent via subsurface drip irrigation either under the existing land application authorization or pursuant to a Chapter 210 Beneficial Reuse Authorization and continue to use the moisture monitoring plan associated with existing drip irrigation field.**
- **WCID shall apply for Chapter 210 Beneficial Reuse Authorization to irrigate at least 201 acres of irrigable land at a rate required for applying no more than 0.350 MGD of effluent, with soil moisture monitors in order to determine when irrigation areas are unsuitable for effluent irrigation...**
- **WCID shall build and maintain a lined effluent storage pond with a capacity of at least 5,250,000 gallons, exclusive of required freeboard.**
- **WCID agrees to discharge no more than 0.350 MGD, and then only when the land to be surface irrigated is frozen or saturated and the effluent pond is full, or when Bear Creek is flowing at a rate of 14 cubic feet per second (cfs) measured at the U. S. Geological Survey (USGS) gauge on Bear Creek, 5.1 miles down stream of the discharge point.**
- **During the Interim II and Final Phase, the wastewater treatment plant shall be operated by an operator holding a "Class A" wastewater operator license.**

SOAH DOCKET NO. 582-09-0202
TCEQ DOCKET NO. 2007-1426-MWD
Transmittal Letter
Page 3

- **A study of instream conditions shall be conducted in accordance with the Workplan, attached as Exhibit B to the Partial Settlement Agreement.**
 - **WCID will conduct in-stream monitoring on a monthly basis for at least one year prior to the commencement of the first discharge for determining background conditions.**
 - **WCID will conduct post-discharge in-stream monitoring during the first 18 months after the first discharge.**
 - **If, as a result of the in-stream monitoring it is determined that significant differences in the water quality of Bear Creek are caused by WCID's discharge, WCID shall commence construction of at least 1,750,000 gallons of additional effluent storage capacity and employ other measures to decrease the volume of effluent to be discharged.**
 - **WCID shall equip all lift stations receiving untreated effluent with automatic-on standby generator power.**
 - **WCID shall utilize an overflow pond or equivalent holding device to handle any untreated or partially-treated effluent.**
 - **WCID shall conduct weekly sampling for Total Nitrogen and turbidity in the effluent to determine the effectiveness and performance of the membrane bioreactor wastewater treatment plant.**
- **Finding of Fact No. 41: An increased concentration of a limiting nutrient in a stream may, along with other factors, increase the growth of algae; the growth of algae will lower the DO levels of the stream.**
 - **Finding of Fact No. 46: The most credible estimate of background total phosphorus concentrations in Bear Creek is 0.03 mg/L (baseline concentration).**
 - **Conclusion of Law No. 11: Under the facts in this record, WCID has no legal obligation under existing Texas law to monitor or treat its effluent for pharmaceutical and personal care products (PPCPs) that may enter its treatment facility.**

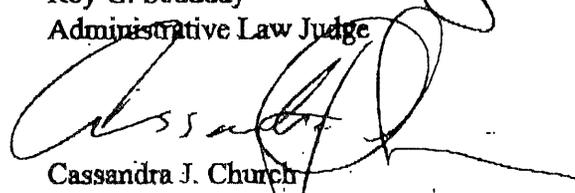
SOAH DOCKET NO. 582-08-0202
TCEQ DOCKET NO. 2007-1426-MWD
Transmittal Letter
Page 4

- **First sentence of Ordering Provision No. 2: The Commission adopts the Executive Director's Response to Public Comment not in conflict with the Findings of Fact and Conclusions of Law in this Order in accordance with 30 TEX. ADMIN. CODE § 50.117.**

Sincerely,



Roy G. Scudday
Administrative Law Judge



Cassandra J. Church
Administrative Law Judge

cc: Mailing List

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ORDER
CONCERNING THE APPLICATION BY
HAYS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 1
FOR AMENDMENT TO TPDES PERMIT NO. WQ0014293001
TCEQ DOCKET NO. 2007-1426-MWD
SOAH DOCKET NO. 582-08-0202**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Hays County Water Control & Improvement District No. 1 (WCID) for a permit to discharge treated wastewater effluent into Bear Creek, a tributary of Onion Creek, in Hays County, Texas. A Proposal for Decision (PFD) was presented by Roy G. Scudday and Cassandra J. Church, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH).

The following are parties to the proceeding: WCID; the Executive Director (ED); City of Austin (Austin), Hays County (County), Joel and Kim Stearns, Alston and Barbara Boyd, Robert O'Boyle and Barbara Stroud, Charles O'Dell, Robert D. Hejl, Radiance Water Supply Corp., Sam Cobb, Tara Weaver, Gregg Brown, Bear Creek Property Owners Association (BCPOA), Hays Community Action Network (HCAN), and Save Our Springs Alliance (SOS) (collectively, Protestants); and the Office of Public Interest Counsel (OPIC).

After considering the Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

GENERAL FINDINGS

1. On December 13, 2005, WCID applied to the TCEQ for a major amendment to Permit No. WQ0014293001 to authorize a discharge of 500,000 gallons per day (gpd) of treated effluent into Bear Creek, a tributary of Onion Creek in the contributing zone of the Edwards Aquifer (the Application).
2. The wastewater treatment facility serves the Belterra Subdivision and is located approximately 1,100 feet west of County Road 163 (Nutty Brown Road) and approximately 1.16 miles south of the intersection of County Road 163 and U.S. Highway 290 in Hays County, Texas.
3. The Application was deemed administratively complete by the TCEQ on January 19, 2006.
4. The Notice of Receipt and Intent was published on January 31, 2006, in the *Austin American-Statesman*, a newspaper published and generally circulated in Travis and Hays Counties, Texas.
5. The ED issued a Draft Permit for public comment on June 8, 2007.
6. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment was published on July 21, 2007, in the *Austin American-Statesman*.
7. The Notice of Public Meeting was published on August 24, 2007, in the *Austin American-Statesman*.
8. On August 30, 2007, WCID requested that its application be directly referred to SOAH for a contested case hearing.

9. On September 18, 2007, the Commission referred the case to SOAH for a contested case hearing.
10. On October 15, 2007, Notice of Hearing on the Application was published in the *Austin American Statesman*.
11. On November 27, 2007, a preliminary hearing was held in Austin, Texas, at which the following were designated as parties to the proceeding: the ED; Austin; Lower Colorado River Authority (LCRA); Barton Springs/Edwards Aquifer Conservation District (BSEACD); County; City of Dripping Springs (CDS); Hays Trinity Groundwater Conservation District (HTGCD); Joel and Kim Stearns; Alston and Barbara Boyd; Owen Kinney and Darryl Howard; Robert O'Boyle and Barbara Stroud; Davis Family Properties, Ltd.; Charles O'Dell; Robert D. Hejl; Radiance Water Supply Corp.; Sam Cobb; Tara Weaver; Charles Jones; Gregg Brown; BCPOA; HCAN; SOS; and OPIC. The Protestants were subsequently aligned into five groups.
12. Prior to the hearing on the merits the following entered into a Partial Settlement Agreement with WCID and withdrew as parties to the contested case: LCRA; BSEACD; CDS; HTGCD; and Davis Family Properties, Ltd. In addition, during the course of the hearing on the merits, the following Protestants also withdrew as parties to the contested case: Charles Jones, Owen Kinney, and Darryl Howard.
13. The evidentiary hearing was conducted on July 14 - 18, 2008, in Austin, Texas, by ALJs Roy G. Scudday and Cassandra J. Church. The record closed September 22, 2008.

DRAFT PERMIT

14. WCID's current facility is an activated sludge process plant currently disposing of wastewater through subsurface drip irrigation on 35 acres of non-public lands under a Texas Land Application Permit (TLAP Facility).
15. Bear Creek is an unclassified receiving water that is in the contributing zone of the Edwards Aquifer.
16. The treated effluent from the Interim II and Final Phases of Applicant's plant development will discharge into Bear Creek; thence to Onion Creek in Segment No. 1427 of the Colorado River Basin.
17. Segment 1427 is designated for high aquatic life use, public water supply, aquifer protection, and contract recreation.
18. Segment 1427 was listed on the State's inventory of impaired and threatened waters, *i.e.*, the Clean Water Act Section 303(d) list, specifically for the depressed Dissolved Oxygen (DO) concentrations from the end of the segment to U.S. Hwy. 183, but was removed from the list in 2006.
19. The upper portion of Bear Creek that extends from the proposed discharge point to Aspen Drive, approximately 0.94 kilometers (km), is intermittent with perennial pools and has the presumption of a limited aquatic life as the ED typically assigns to such unclassified bodies of water. The minimum DO criteria for such streams is 3.0 milligrams per liter (mg/L).
20. The lower portion of Bear Creek that extends from Aspen Drive to the boundary of the Edwards Aquifer Recharge Zone, approximately 8 miles downstream from the proposed discharge point, is spring-fed and with small flows, contains several man-made ponds, and

has the presumption of high aquatic life. The minimum DO criteria for that portion of the stream is 5.0 milligrams per liter (mg/L).

21. In accordance with 30 TEX. ADMIN. CODE (TAC) §307.5 and the TCEQ implementation procedures for the *Texas Surface Water Quality Standards*, the TCEQ performed an antidegradation review of the receiving waters under the terms of the Draft Permit.
22. WCID will maintain current disposal operations under the TLAP until the treatment plant is built; the treatment plant will come on line in two phases, the Interim II and Final Phases, but there is no timetable set for implementation of either phase.
23. The revised Draft Permit included the following provisions for the two implementation phases of the wastewater treatment plant:

Interim II Effluent Limitations and Monitoring Requirements:

- 0.250 MGD daily average flow
- 5 mg/L BOD
- 5 mg/L TSS
- 2 mg/L Ammonia Nitrogen
- 0.15 mg/L Total Phosphorus
- Chlorine residual of at least 1.0 mg/L after a detention time of at least 20 minutes (based on peak flow).
- Minimum DO of 5.0 mg/L

Final Effluent Limitations and Monitoring Requirements

- 0.500 MGD daily average flow
- 5 mg/L BOD

- 5 mg/L TSS
 - 2 mg/L Ammonia Nitrogen
 - 0.15 mg/L Total Phosphorus daily average calculated as a median value and based on a long-term average of 0.10 mg/L
 - Chlorine residual of at least 1.0 mg/L after a detention time of at least 20 minutes (based on peak flow)
 - Minimum DO of 5.0 mg/L.
24. Subsequent to the entering of the Partial Settlement Agreement, the ED further revised the revised Draft Permit to add additional limits on effluent characteristics as follows:
- 6 mg/L Total Nitrogen
 - 126 mg/L E. coli Bacteria colonies per 100 ml
 - Use of an Ultraviolet Light (UV) system for disinfection purposes.

PARTIAL SETTLEMENT AGREEMENT

25. In addition to the terms of the Partial Settlement Agreement that the ED incorporated into the revisions to the Draft Permit, the Agreement also contained the following terms,, which included changes or additions to the wastewater treatment process and plant (Proposed Facility):

- All wastewater in the Interim II and Final Phase will be treated using membrane bioreactor technology with denitrification.
- WCID shall continue to dispose of 0.150 MGD of treated effluent via subsurface drip irrigation either under the existing land application authorization or pursuant to a Chapter 210 Beneficial Reuse Authorization and continue to use the moisture monitoring plan associated with existing drip irrigation field.
- WCID shall apply for Chapter 210 Beneficial Reuse Authorization to irrigate at least 201 acres of irrigable land at a rate required for applying

no more than 0.350 MGD of effluent, with soil moisture monitors in order to determine when irrigation areas are unsuitable for effluent irrigation.

- WCID shall build and maintain a lined effluent storage pond with a capacity of at least 5,250,000 gallons, exclusive of required freeboard.
- WCID agrees to discharge no more than 0.350 MGD, and then only when the land to be surface irrigated is frozen or saturated and the effluent pond is full, or when Bear Creek is flowing at a rate of 14 cubic feet per second (cfs) measured at the U. S. Geological Survey (USGS) gauge on Bear Creek, 5.1 miles down stream of the discharge point.
- During the Interim II and Final Phase, the wastewater treatment plant shall be operated by an operator holding a "Class A" wastewater operator license.
- A study of instream conditions shall be conducted in accordance with the Workplan, as attached as Exhibit B to the Partial Settlement Agreement
- WCID will conduct in-stream monitoring on a monthly basis for at least one year prior to the commencement of the first discharge for determining background conditions.
- WCID will conduct post-discharge in-stream monitoring during the first 18 months after the first discharge.
- If, as a result of the in-stream monitoring it is determined that significant differences in the water quality of Bear Creek are caused by WCID's discharge, WCID shall commence construction of at least 1,750,000 gallons of additional effluent storage capacity and employ other measures to decrease the volume of effluent to be discharged.
- WCID shall equip all lift stations receiving untreated effluent with automatic-on standby generator power.
- WCID shall utilize an overflow pond or equivalent holding device to handle any untreated or partially-treated effluent.
- WCID shall conduct weekly sampling for Total Nitrogen and turbidity in the effluent to determine the effectiveness and performance of the membrane bioreactor wastewater treatment plant.

26. If operated correctly in accordance with the revised Draft Permit and the Partial Settlement

Agreement, the Proposed Facility can consistently meet a total phosphorus effluent long-term average limit of 0.1 mg/L, and a total nitrogen limit of 6 mg/L.

27. WCID has included an Emergency Response Plan and Spill Prevention Plan in the Application that will adequately prevent and protect against accidental discharge under the revised Draft Permit.
28. The compliance history at the TLAP Facility is average.

BEAR CREEK

29. There are currently no wastewater discharges directly into Bear Creek.
30. The discharge route begins at the headwaters of Bear Creek, which are dry, except in storm conditions.
31. The discharge route continues from the headwaters to Dry Pond, which is dry.
32. From Dry Pond, the discharge route flows into Pond 6B, which is a stormwater retention pond built as part of the Belterra development.
33. After Pond 6B, the discharge route continues to Aspen Drive, where spring flow begins.
34. The first perennial pool below the Belterra Subdivision property is Davis Pond.
35. Both WCID and the ED conducted DO modeling for a continuous daily flow of 0.500 MGD, at 5 mg/L BOD, 5 mg/L TSS, 2 mg/L ammonia nitrogen, and 0.1 mg/L phosphorus (5/5/2/0.1) effluent limits.
36. Both WCID and TCEQ's modeling showed that the DO standards in Bear Creek would be met with the discharge permitted under the revised Draft Permit.
37. Limiting nutrients such as phosphorus and nitrogen are needed by algae to build biomass structure cells.

38. Bear Creek is limited by both phosphorus and nitrogen.
39. Limiting nutrients can move through a body of water or stream by several means, as set forth below:
- When a nutrient concentration in a body of water reaches the level at which the nutrient is no longer being biologically taken up by algae in the growth process or bonding to inorganic matter and sinking to the bottom of a stream, the nutrient will flow downstream.
 - When the sediments of an impoundment that is initially efficient at reducing nutrient movement downstream become organically rich, nitrogen and phosphorus will move back out of the sediments in dissolved states.
 - At high flows, scouring will pick up and transport nutrient-rich sediments and algae and wash them downstream.
 - Re-suspension, *i.e.*, the mechanism whereby particles are picked up from bottom sediments, also will move nutrients downstream.
40. If the flow of an effluent stream is increased with the same nutrient concentration, then the nutrient loading will increase.
41. An increased concentration of a limiting nutrient in a stream may, along with other factors, increase the growth of algae; the growth of algae will lower the DO levels of the stream.
42. Once a pond is exposed to enough nutrients, the sediment will become more organic and will tend to be totally devoid of oxygen much of the time due to bacterial metabolism. Nutrients will then move back into the water column and move downstream and algal growth will move downstream as well.
43. If there are several ponds along the course of a stream, the oxygen depletion and nutrient movement cycle will repeat from pond to pond, resulting in excessive algal growth affecting DO, stream clarity, and aquatic plant life in successive downstream areas of the stream.

44. Streams are classified by the levels of aquatic plants, from least-dense to most-dense concentrations, as set forth below:
- Oligotrophic waters are nutrient limited with corresponding low populations of aquatic plants.
 - Mesotrophic waters are the transition zones between oligotrophic and eutrophic waters, and have occurrences of nuisance plant growth, but usually at a lower frequency and in more limited locations than for waters in the eutrophic range.
 - Eutrophic waters are nutrient enriched, resulting in dense populations of aquatic plants that are considered nuisance by most persons and that will have an adverse affect on aquatic life and recreational uses.
45. The boundary between oligotrophic and mesotrophic states (trophic boundary) is 0.025 mg/L of total phosphorus concentration and 0.70 mg/L of total nitrogen concentration.
46. The most credible estimate of background total phosphorus concentrations in Bear Creek is 0.030 mg/L (baseline concentration).
47. In Bear Creek, the threshold concentration for stimulation of algal growth is a total phosphorus level of 0.05 to 0.1 mg/L.
48. The assimilative capacity of a stream regarding nutrient loadings is based on the difference between the baseline concentration and the trophic boundary.
49. The assimilative capacity regarding total phosphorus of Bear Creek at Davis Pond is 0.045 mg/L, and the proposed discharge pursuant to the revised Draft Permit will increase the phosphorus concentration at Davis Pond to 0.06 mg/L, or 150 percent of the assimilative capacity.

50. The assimilative capacity regarding total nitrogen of Bear Creek at Davis Pond is 0.06 mg/L, and the proposed discharge pursuant to the revised Draft Permit will increase the nitrogen concentration at Davis Pond to 11.8 mg/L, or 1,863 percent of the assimilative capacity.
51. The proposed effluent discharge will cause an increase of the total phosphorus concentration at Davis Pond from 0.03 mg/L to 0.06 mg/L, or 200 percent, and would have the result of pushing Davis Pond toward the upper end of the mesotrophic classification.
52. A 200 percent increase in the total phosphorus concentration at Davis Pond, together with the effect of the proposed discharge on the assimilative capacity of the creek and the long term effects of the increased phosphorus loading, would cause more than a *de minimis* degradation of Bear Creek.
53. There is no evidence that the lowering of the water quality of Bear Creek by more than a *de minimis* amount is necessary for important economic or social development.
54. Based on the terms of the Partial Settlement Agreement, a discharge would only occur 24 days a year on average, resulting in an annual average discharge of 12,000 gpd.
55. As the operation of the Proposed Facility will result in effluent with a total phosphorus long-term average of 0.1 mg/L, the proposed discharge pursuant to the terms of the Partial Settlement Agreement will not increase the phosphorus concentration at Davis Pond above Bear Creek's assimilative capacity of 0.045 mg/L.
56. As the operation of the Proposed Facility will result in effluent with a 6 mg/L Total Nitrogen, the proposed discharge pursuant to the revised Draft Permit as modified by the Partial Settlement Agreement will not increase the nitrogen concentration at Davis Pond above Bear Creek's assimilative capacity of 0.06 mg/L.

- 57. The median flow of Bear Creek at the USGS monitoring station is 1.1 cfs. If the stream flow increased to 9 cfs, there would be a 10-to-1 dilution factor of the effluent and the total phosphorus loading would not impact Bear Creek.
- 58. If the effluent discharge were 0.350 MGD, with a Total Nitrogen limit of 6 mg/L, and the stream flow were 14 cfs, the total nitrogen loading would not impact Bear Creek.
- 59. The in-stream monitoring provisions in the Partial Settlement Agreement and optional alternate disposal methods are sufficient to assure that the proposed discharge will not have more than a *de minimis* effect on the receiving streams.

TRINITY AQUIFERS

- 60. The Upper Trinity Aquifer and the Middle Trinity Aquifer are the main sources of water for wells in the area of WCID, and the Upper Aquifer is the source for the springflows in Bear Creek.
- 61. The Trinity Aquifers underlie Bear Creek to the boundary of the Edwards Aquifer Recharge Zone and, as such, also lie within the contributing zone of the Edwards Aquifer.
- 62. There is no meaningful amount of recharge from Bear Creek to either level of the Trinity Aquifer.
- 63. The proposed discharge under the revised Draft Permit and the Partial Settlement Agreement would not degrade the waters of the Trinity Aquifers.

EDWARDS AQUIFER

- 64. The contributing and recharge zones of the Edwards Aquifer are hydraulically connected by conduits in the limestone subsurface and by conduits between the subsurface and surface waters.

65. Surface water can be rapidly conveyed to the subsurface through surface conduits developed in the limestone that composes the Edwards Aquifer.
66. Bear Creek recharges the Edwards Aquifer approximately 8 miles downstream from the proposed discharge point.
67. The degradation of the surface water in Bear Creek by the proposed discharge pursuant to the revised Draft Permit will also degrade the groundwater going into the Edwards Aquifer.
68. The discharge of effluent authorized by the revised Draft Permit would cause greater than a *de minimis* degradation of the Edwards Aquifer due to the recharge from Bear Creek.
69. An intermittent discharge pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement would not cause greater than a *de minimis* degradation of the Edwards Aquifer.

BARTON SPRINGS POOL

70. Bear Creek contributes about 10 percent of the total recharge to the Barton Springs segment of the Edwards Aquifer.
71. The Barton Springs segment of the Edwards Aquifer feeds into Barton Springs Pool, which is used for sunbathing, picnicking, and swimming.
72. At low-flow conditions, the phosphorus concentration in Bear Creek would impact the phosphorus concentration in Barton Springs Pool.
73. The effluent discharge authorized by the revised Draft Permit that would cause greater nutrient loadings in Bear Creek would likewise cause an increase in the level of nutrients in Barton Springs Pool at low-flow conditions, resulting in an increase of the growth of algae in the Pool.

74. An intermittent discharge pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement would not cause an increase in the level of nutrients in Barton Springs Pool at low-flow conditions that would result in an increase of algal growth in the Pool.

BARTON SPRINGS SALAMANDER

75. Barton Springs is the habitat for the Barton Springs Salamander, which is listed by the U.S. Fish and Wildlife Service as an endangered species.
76. The suitability of Barton Springs as a habitat for the Barton Springs Salamander can be reduced by decreasing DO concentrations.
77. A fall of the DO level in Barton Springs below the lethal concentration of 3.9 mg/L for longer than 28 consecutive days would kill five percent of the population of the Barton Creek Salamanders, which would be the kill level considered significant for the salamander population.
78. The DO in Barton Creek with one treatment plant discharging 0.500 MGD would be 8.36 mg/L.
79. The proposed discharge of 0.500 MGD under the revised Draft Permit would not cause any significant impact on the Barton Springs Salamander.
80. An intermittent discharge pursuant to the terms of the Draft Permit as modified by the Partial Settlement Agreement would not cause any significant impact on the Barton Springs Salamander.

EMERGING CONTAMINANTS

81. Components of pharmaceutical and personal care products (PPCPs) can persist in the environment, particularly in water bodies; PPCPs include medicines, industrial chemicals, detergents, disinfectants, and agricultural chemicals.
82. PPCPs, referred to generally as emerging contaminants, are the subject of research and policy discussion in the environmental regulatory community, particularly in regard to those constituents that affect the reproduction of aquatic animals.
83. Texas has not adopted any numerical or narrative criteria for the regulation of PPCPs.
84. There is no evidence concerning which PPCPs, if any, will exist in the effluent proposed for discharge either under the revised Draft Permit or under the Partial Settlement Agreement.

TRANSCRIPTION COSTS

85. Reporting and transcription of the hearing on the merits was warranted as the hearing lasted four days.
86. All parties fully participated in the hearing by presentation of witnesses and cross examination.
87. All parties benefitted from preparation of a transcript.
88. There was no evidence that any party subject to allocation of costs was financially unable to pay a share of the costs.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over permits for the discharge of wastes into or adjacent to waters in the State pursuant to TEX. WATER CODE ANN. ch. 26.

2. SOAH has the authority to conduct evidentiary hearings and prepare proposals for decision on contested matters referred by the Commission pursuant to TEX. GOV'T CODE ANN. § 2003.047.
3. WCID has not shown by a preponderance of the evidence that a continuous discharge pursuant to the terms of the revised Draft Permit would not cause degradation of Bear Creek below Aspen Drive by less than a *de minimis* extent nor that such lowering of the water quality of Bear Creek is necessary for important economic or social development, within the meaning of 30 TAC § 307.5.
4. WCID met its burden of proof to show that a proposed discharge under the terms of the revised Draft Permit will not result in degradation of the waters of the Trinity Aquifers, within the meaning of 30 TAC § 307.5.
5. WCID has not shown by a preponderance of the evidence that a continuous discharge pursuant to the terms of the revised Draft Permit would not cause degradation of the Edwards Aquifer, within the meaning of 30 TAC § 307.5.
6. WCID has not shown by a preponderance of the evidence that a continuous discharge pursuant to the terms of the revised Draft Permit would not cause an increase in the level of nutrients in Barton Springs Pool at low-flow conditions, resulting in an increase of algal growth in the Pool, in violation of 30 TAC § 307.4.
7. WCID met its burden of proof to show that a proposed discharge under the terms of the revised Draft Permit would not cause any significant impact on the Barton Springs Salamander, pursuant to 30 TAC § 307.4.

8. WCID has shown by a preponderance of the evidence that an intermittent discharge pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement would not cause degradation of Bear Creek by greater than a *de minimis* extent, within the meaning of 30 TAC § 307.5.
9. WCID has shown by a preponderance of the evidence that an intermittent discharge pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement would not cause degradation of the Edwards Aquifer, within the meaning of 30 TAC § 307.5.
10. WCID has shown by a preponderance of the evidence that an intermittent discharge pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement would not cause an increase in the level of nutrients in Barton Springs Pool at low-flow conditions sufficient to cause an increase of algal growth in the Pool, pursuant to 30 TAC § 307.4.
11. Under the facts in this record, WCID has no legal obligation under existing Texas law to monitor or treat its effluent for pharmaceutical and personal care products (PPCPs) that may enter its treatment facility.
12. Allocating 75 percent of reporting and transcription costs for the hearing on the merits to WCID and 25 percent of the costs to the City of Austin, Hays County, and each of the two protesting landowner groups, collectively, is a reasonable allocation of costs under the factors set forth in 30 TAC § 80.23(d).
13. Based on the above Findings of Fact and Conclusions of Law, a major amendment to Permit No. WQ0014293001, pursuant to the terms of the revised Draft Permit as modified by the Partial Settlement Agreement, will comply with the requirements of 30 TAC ch. 332 in

regard to environmental impact, specifically the nondegradation of the receiving waters greater than a *de minimis* extent.

14. In accordance with 30 TAC § 50.117, the Commission issues this Order and the attached permit as modified by this Order as its single decision on the permit (amendment/renewal) application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, document the ED's review of the permit amendment application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit (Exhibit A) as modified by this Order are appropriate and satisfy all applicable federal and state requirements.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of Hays County Water Control & Improvement District No. 1 for an amendment to Permit No. WQ0014293001 is granted in part; and the attached Draft Permit, as modified to include the terms of the Partial Settlement Agreement, set out in Finding of Fact No. 25, is issued to Hays County Water Control & Improvement District No. 1.
2. The Commission adopts the Executive Director's Response to Public Comment not in conflict with the Findings of Fact and Conclusions of Law in this Order in accordance with 30 TEX. ADMIN. CODE § 50.117. Also, in accordance with Section 50.117, the Commission issues this Order and the attached permit (Exhibit A) as modified by this Order as its single decision on the permit amendment application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record,

document the Executive Director's review of the permit amendment application, including that part not subject to a contested case hearing, and establishes that the terms of the attached permit as modified by this Order are appropriate and satisfy all applicable federal and state requirements.

- 3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
- 4. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273 .
- 5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
- 6. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Buddy Garcia, Chairman
For the Commission**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: HAYS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO 1

SOAH DOCKET NUMBER: 582-08-0202

REFERRING AGENCY CASE: 2007-0426-MWD

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ ROY SCUDDAY**

REPRESENTATIVE / ADDRESS

PARTIES

DOCKET CLERK
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 OFFICE OF THE CHIEF CLERK
 PO BOX 13087
 AUSTIN, TX 78711
 (512) 239-3300 (PH)
 (512) 239-3311 (FAX)

(COURTESY COPY)

CHRISTINA MANN
 ATTORNEY
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 OFFICE OF PUBLIC INTEREST COUNSEL
 P.O. BOX 13087, MC-103
 AUSTIN, TX 78711-3087
 (512) 239-4014 (PH)
 (512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

FRED B WERKENTHIN, JR.
 BOOTH, AHRENS & WERKENTHIN, P.C.
 515 CONGRESS AVENUE, SUITE 1515
 AUSTIN, TX 78701-3503
 (512) 472-3263 (PH)
 (512) 473-2609 (FAX)
 fbw@baw.com

DAVIS FAMILY PROPERTIES (DAVIS FAMILY)

DAVID O FREDERICK
LOWERRE, FREDERICK, PERALES, ALLMON &
ROCKWELL
707 RIO GRANDE, SUITE 200
AUSTIN, TX 78701
(512) 469-6000 (PH)
(512) 482-9346 (FAX)

CITY OF DRIPPING SPRINGS

HAYS COUNTY

HAYS TRINITY GROUNDWATER CONSERVATION
DISTRICT

KATHY HUMPHREYS
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-3417 (PH)
(512) 239-0606 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

LES TROBMAN
GENERAL COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-175 P.O. BOX 13087
AUSTIN, TX 78711-3087

(512) 239-5533 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

STUART HENRY
HENRY & POPLIN
1350 INDIAN SPRINGS
DRIPPING SPRINGS, TX 78620
(512) 858-0385 (PH)
(512) 708-1297 (FAX)
stuarthentry@wildblue.net

GREGG R. BROWN
JOEL AND KIM STEARNS
ALSTON AND BARBARA BOYD
OWEN KINNEY
DARYL HOWARD
CHARLES O DELL
RADIANCE WATER SUPPLY CORP.
CHARLES JONES
TARA WEAVER
SAM COBB
ROBERT D. HEJL

RAY CHESTER
ATTORNEY
MCGINNIS LOCHRIDGE & KILGORE, LLP
600 CONGRESS AVENUE, SUITE 2100
AUSTIN, TX 78701
(512) 495-6051 (PH)
(512) 505-6351 (FAX)

HAYS COUNTY WATER CONTROL & IMPROVEMENT
DISTRICT NO. 1

PATRICIA LINK
ASSISTANT CITY ATTORNEY
CITY OF AUSTIN
LAW DEPARTMENT
P. O. BOX 1546
AUSTIN, TX 78767-1546
(512) 974-2173 (PH)
(512) 974-6490 (FAX)

BARTON SPRINGS EDWARDS AQUIFER
CONSERVATION DISTRICT

LOWER COLORADO RIVER AUTHORITY
CITY OF AUSTIN

ROBERT O BOYLE
ATTORNEY
600 CONGRESS, # 1600
AUSTIN, TX 78701
(512) 499-3691 (PH)
(512) 499-3660 (FAX)
bob.oboyle@strasburger.com

SAVE OUR SPRING ALLIANCE

HAYS COMMUNITY ACTION NETWORK

BEAR CREEK PROPERTY OWNERS ASSOCIATION

ANDREW S. MILLER
ATTORNEY
KEMP SMITH, L.L.P.
816 CONGRESS AVENUE, SUITE 1150
AUSTIN, TX 78701
(512) 320-5466 (PH)
(512) 320-5431 (FAX)
dmil@kempsmith.com

ROBERT O BOYLE

BARBARA STROUD

cc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

DATE: 02/19/2009
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 28
REGARDING: TRANSMITTAL LETTER AND REVISED PROPOSED ORDER
DOCKET NUMBER: 582-08-0202

JUDGE ROY SCUDDAY

Table with 2 columns: FAX TO: and FAX TO: listing various recipients and their phone numbers.

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT ANGELA PARDO(apa) (512) 475-4993

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 FEB 19 PM 2:42
CHIEF CLERKS OFFICE