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August 16, 2012

Mr. Les Trobman  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

VIA EMAIL AND FACSIMILE

RE: *Application of the City of Lubbock for an Amendment to Water Use Permit No. 3985, in Lubbock County, Texas; SOAH Docket No. 582-11-3522; TCEQ Docket No. 2010-0837-WR.*

Mr. Trobman:

As indicated in the correspondence submitted yesterday afternoon by counsel for R. E. Janes Gravel Co., the City of Lubbock does not agree to the requested continuance of the August 22, 2012 agenda setting for consideration of the above-referenced application. The City has multiple reasons for not supporting the request.

First, while counsel for R. E. Janes Gravel Co. may be the lead counsel for his client's protest of this application, he is not the only counsel within his firm that has been substantively involved with the case. In fact, contrary to his representation yesterday, it was not Mr. Terrill who contacted me about his schedule conflict, it was his colleague, Mr. Shoemaker. Mr. Shoemaker has been an attorney of record for R. E. Janes Gravel Co. since even before his client submitted its hearing request on the City's application; he was actively involved in the discovery process during this case, and he was part of the R. E. Janes Gravel Co. legal team throughout the entirety of the hearing on the merits. Furthermore, there are likely other attorneys who are associated with the Terrill Firm that presumably would be able to represent R. E. Janes Gravel Co. during its portion of the five minutes allotted to the protestants during the August 22, 2012 agenda setting.

Second, all parties were notified of the agenda setting on August 9, 2012, by virtue of email correspondence by counsel for Office of Public Information Counsel. In response to that notice, the City's representatives began working immediately to rearrange their calendars, and coordinate their travel arrangements so as to accommodate the Commissioners' agenda. Presumably, the conflict described by counsel in its correspondence yesterday was as apparent on August 9, 2012, as it was on August 15, 2012. Counsel for R. E. Janes Gravel Co. provides us with no basis for the delay in apprising the City or the Office of General Counsel of his schedule constraint. Accordingly, it is far from clear why all parties should be required to rearrange their calendars at this late date—less than a week in advance of the August 22, 2012 agenda.

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Finally, the undersigned can appreciate the constraints of managing multiple contested case hearings and post-hearing schedules. However, based on past experience, the Administrative Law Judges of the State Office of Administrative Hearings have shown tremendous flexibility regarding the types of conflicts raised by counsel for R. E. Janes Gravel Co. by allowing brief hearing recesses to accommodate competing hearing obligations. There is no indication in counsel's August 15, 2012 correspondence that any such request was made, or even contemplated. In this context, it seems more reasonable to first seek accommodation from SOAH for a brief morning recess so that Mr. Terrill could be available to represent his client at the agenda setting for this matter.

Title 30, Section 80.261(a) of the Texas Administrative Code provides that the TCEQ General Counsel may reschedule the presentation of the proposal for decision in this case either on his own motion or by agreement of the parties and the Administrative Law Judge. Earlier this morning, Judge Wilfong indicated to the parties by email that, of the dates provided by counsel for R. E. Janes Gravel Co., he preferred the earlier date over the later date, but he made clear that he neither opposed nor supported the attempt to reschedule the hearing.

Without an "agreement of the parties and the judge," and without a motion by the General Counsel himself, it does not appear that the August 15, 2012 request by R. E. Janes Gravel Co. satisfies TCEQ requirements for rescheduling the August 22, 2012 agenda setting. Nevertheless, the equities of the circumstances described in the August 15, 2012 request appear to weigh heavily in favor of maintaining the agenda date as provided in the General Counsel's August 9, 2012 notice regarding the same.

Please do not hesitate to contact me with any questions that you may have regarding the City's concerns with the request made yesterday by R. E. Janes Gravel Co.

Yours truly,



Jason T. Hill

JTH/plh  
2222541

cc: The Honorable Richard R. Wilfong  
Chief Clerk, Texas Commission on Environmental Quality  
Service List (attached)  
Marsha Reed, City of Lubbock  
Aubrey Spear, City of Lubbock  
Martin C. Rochelle, *of the firm*

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**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** CITY OF LUBBOCK  
**SOAH DOCKET NUMBER:** 582-11-3522  
**REFERRING AGENCY CASE:** 2010-0837-WR

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**STATE OFFICE OF ADMINISTRATIVE HEARINGS** **ADMINISTRATIVE LAW JUDGE**  
**ALJ RICHARD R. WILFONG**

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