

# THE TERRILL FIRM

A PROFESSIONAL CORPORATION

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August 16, 2012

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

via fax to: (512) 239-5533

2012 AUG 16 PM 14  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Commission agenda for consideration of TCEQ Docket No. 2010-08374-WR; SOAH Docket No. 582-11-3522; *Application by City of Lubbock for Amendment to Water Use Permit No. 3985*

Dear Mr. Trobman:

This letter is in response to Jason Hill's correspondence today responding to Janes Gravel's request that the Office of General Counsel reset consideration of the captioned proceeding. I am sorry to burden your office with what should have been a non-controversial matter, but because Lubbock objects to resetting the Agenda due to a previously-scheduled contested case hearing, Janes Gravel must respond to Mr. Hill's correspondence on behalf of the City of Lubbock.

Lubbock makes essentially three points in its response. First, Lubbock says that Paul Terrill "may be" lead counsel in the case, but that Scott Shoemaker or someone else at the Terrill Firm can argue the case. Lubbock is not my firm's client. They are the *opponent* in the captioned proceeding and, as such, they do not get to pick the lawyer that argues the case against them. The client — R.E. Janes Gravel Company — does. I am — and have always been — the lead counsel on this case. I examined and cross-examined every witness during the contested case hearing and am the only attorney qualified to argue the case at Agenda. I have contacted Janes Gravel about this matter and Janes Gravel does not consent to anyone other than me arguing the case at Agenda. Lubbock's suggestion that it can pick Janes Gravel's counsel is meritless and serves no purpose other than to try to get a leg up on Janes Gravel.

Second, Lubbock insinuates — without citing any rule — that the request for resetting is untimely. Lubbock does not cite a rule to support its insinuation because no such rule exists. Janes Gravel's request was not untimely and, in fact, was officially made a week in advance of the setting and even earlier over the phone. As you likely recall, I did call you to alert you of the conflict the day that it became apparent to me. My concern at the time was that the Office of General Counsel know of the conflict so that it could adjust the Agenda. I did not anticipate that the other parties would object to resetting because of the conflict with a previously-scheduled contested case hearing. That proved true for all parties — except one. As stated in my correspondence to you yesterday, all of the other parties to this proceeding, except Lubbock, do not object to resetting the Agenda to the dates set forth in my correspondence yesterday.

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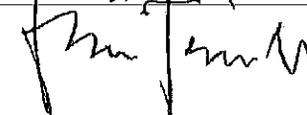
Lubbock's suggestion that unnamed "City representatives" had to "rearrange their calendars" hardly qualifies as a significant burden, if that even mattered — which it does not. Agenda is not evidentiary. The only "City representative" that testified at the contested case hearing — Aubrey Spear — could not testify at Agenda, even assuming that he wanted to. In fact, if Lubbock wanted to save money for the taxpayers of Lubbock, City representatives could easily watch Agenda from the comfort of their desk in Lubbock over the internet, saving both the time and travel costs.

Lubbock's empty insinuation that the slight delay caused by resetting the Agenda would somehow harm the City directly conflicts with the reality of this permit application — the application languished for *years* before Lubbock provided the TCEQ staff enough information to find it technically complete — and even with statements made in today's Lubbock newspaper by Marsha Reed, the City's Chief Operating Officer. Reed confirmed that there is no urgency for the Commission to act on the application by saying that, "the city has no immediate plans to drain water from the tributary for drinking water. She said it could be *20 years or more* before the city develops plans to collect and process the water."<sup>1</sup> Simply put, there is no harm in resetting this matter.

Finally, Lubbock argues that the contested case hearing that was scheduled long before the Agenda setting should be reset or recessed. I am not aware of any rule that requires, or even suggests, that an Agenda setting trumps a pre-existing SOAH contested case hearing, nor does Lubbock cite to one. The contested case hearing in question involves multiple parties and was scheduled months ago. I am aware of at least one person that is scheduled to travel to Austin from California for the contested case hearing and there may be others as well. The burden caused by re-scheduling that case is significant, whereas the burden caused by resetting the Agenda is virtually non-existent.

Janes Gravel respectfully requests that the Office of General Counsel exercise its discretion to reset the consideration of the captioned matter at Agenda. If you have any questions, please feel free to contact me. Thank you for your courtesies.

Sincerely,



Paul M. Terrill III  
THE TERRILL FIRM, P.C.

cc: Service List

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<sup>1</sup> Adam D. Young, *State Agency to Act on Lubbock Permit Request to Collect Processed Wastewater*, LUBBOCK AVALANCHE-JOURNAL, August 15, 2012  
<http://m.lubbockonline.com/local-news/2012-08-15/state-agency-act-lubbock-permit-roquest-collect-processed-waste-water> (emphasis added). A true and correct copy of the foregoing article is attached as Exhibit A.

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**SERVICE LIST**

SOAH Docket Clerk	Docket Clerk State Office of Admin. Hearings 300 West 15th Street, Suite 502 Austin, TX 78701	<i>via fax to: 322-2061</i>
TCEQ Chief Clerk	Office of the Chief Clerk, TCEQ 12100 Park 35 Circle Bldg. F/1, Room 1104 Austin, Texas 78753	<i>via fax to: 239-3311</i>
City of Lubbock	Brad Castleberry Lloyd Gosselink 816 Congress Ave, Ste 1900 Austin, Texas 78701	<i>via fax to: (512) 472-0532</i>
TCEQ Executive Director	James Aldredge TCEQ, MC-173 P.O. Box 13087 Austin, Texas 78711-3087	<i>via fax to: (512) 239-0606</i>
Public Interest Counsel	James Murphy TCEQ - OPIC, MC-103 P.O. Box 13087 Austin, TX 78711-3087	<i>via fax to: (512) 239-6377</i>
Martha Jean Forrest McNeely Marianne and John Loveless Lynn Forrest	Trey Jackson 1905 W. 30 <sup>th</sup> Street Austin, Texas 78703	<i>via fax to: (512) 551-0679</i>

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Wednesday, Aug 15, 2012

## State agency to act on Lubbock permit request to collect processed wastewater

By Adam D. Young

AVALANCHE-JOURNAL

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A nine-year legal process to amend a city of Lubbock permit to extract for later use the processed wastewater it dumps in a Brazos River tributary could come to an end with a Texas Commission on Environmental Quality decision next week.

The TCEQ is set to act in the permit amendment case involving Lubbock's request to pour 32,991 acre-feet of processed wastewater — nearly 11 billion gallons — into the North Fork of the Double Mountain Fork of the Brazos River in southeast Lubbock County and eventually remove that water for treatment and reuse as Lubbock tap water, according to the TCEQ and Marsha Reed, Lubbock's chief operating officer.

An acre-foot is 325,000 gallons, the amount U.S. water management officials estimate as the typical annual use of a suburban family of four.

A hearing is set for Wednesday in Austin, but a Lubbock County property owner objecting to the permit says his company's attorney plans to request the hearing be pushed back due to scheduling conflicts with his legal counsel. A change in the hearing time could be posted by week's end.

Janes Gravel Co. of Slaton is one of two property owners named by the TCEQ as objecting to the proposal, claiming concerns about their water rights.

Jason Janes, vice president of the company, said Wednesday evening he would not comment on the permit, directing questions to his Austin-based attorney. The attorney did not respond to an Avalanche-Journal request for comment Wednesday evening.

Lynn Forrest, another objecting property owner, said the North Fork runs through his southeast Lubbock County property, but he would not comment on his concerns.

"I don't think it would be wise for me to make any comments at this time," he said.

A spokesman for TCEQ did not respond to an A-J phone message for comment.

A state administrative law judge earlier this year ruled in favor of Lubbock's permit request following years of hearings and filing periods, according to documents provided on a TCEQ agenda.

Reed said Lubbock already deposits about nine million gallons of treated wastewater each day into the North Fork. The TCEQ agenda states Lubbock received the initial permit in 1983.

Under the initial permit, treated wastewater and stormwater enter the tributary as stream-quality water, Reed said.

But the city needs a permit amendment from the TCEQ to retrieve the water several miles downstream and reprocess it as drinking water.

Reed said she expects the commission will approve the permit, but the city has no immediate plans to drain water from the tributary for drinking water. She said it could be 20 years or more before the city develops plans to collect and process the water.

"We just want that ability for when the time comes," she said.

To comment on this story:

adam.young@lubbockonline.com • 766-8725

leesha.faulkner@lubbockonline.com • 766-8706

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QUALITY  
2012 AUG 16 PM 4:15  
CHIEF CLERKS OFFICE

## FAX COVER SHEET

DATE : August 16, 2012

PLEASE DELIVER TO:

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	Jason Hill		(512) 472-0532
	James Aldredge		(512) 239-0606
	James Murphy		(512) 239-6377
	Trey Jackson		(512) 551-0679
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Attached please find correspondence from Paul Terrill dated August 16, 2012.			
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