SOAH DOCKET NO. 582-14-3427
TCEQ DOCKET NO. 2013-2228-MWD

APPLICATION OF DHJB DEVELOPMENT, LLC FOR A MAJOR AMENDMENT TO TPDES PERMIT NO. WQ0014975001	§ § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

APPLICANT, DHJB DEVELOPMENT LLC, & THE JOHNSON RANCH MUNICIPAL UTILITY DISTRICT'S COMBINED MOTION TO STRIKE PROTESTANTS' NEW INFORMATION FILING

TO: The Honorable Sarah G. Ramos, Administrative Law Judge:

COMES NOW, DHJB Development LLC, Applicant in the above referenced proceeding, and Aligned Party, Johnson Ranch Municipal Utility District (collectively the "Applicant") and file this their Combined Motion to Strike the Protestants' New Information Filing made in conjunction with the Protestants' Reply to Applicant's and Executive Director's Exceptions in the matter of the Application to Amend TPDES Permit No. WQ0014975001 to increase its flow and authorize a discharge, and would show the ALJ as follows:

I.
OBJECTION TO PROTESTANTS' NEW INFORMATION FILING

In conjunction with their Reply to Applicant's and Executive Director's Exceptions, the Protestants attempted, for a third time during this proceeding, to inappropriately introduce untimely and irrelevant evidence long after the close of the record in this matter. Applicant must once again object to this blatant disregard for the rules and procedures governing this hearing by the Protestants, who continue to ignore the scheduling order, close of discovery, and narrow issues which frame this proceeding as referred by the TCEQ, as well as Protestants' mischaracterization of the newly introduced information.

As part of their Reply, Protestants included information related to a September 2014 report titled: "Intensive Cultural Resources Survey of the Johnson Ranch Drainage Easement Project, Comal County, Texas." As shown by the title and on the rest of the cover page, this report was prepared by SWCA for the Johnson Ranch MUD in relation to Texas Antiquities Permit 6855. A copy of this permit, authorized by the Texas Historical Commission, has been attached for your reference.

This report has absolutely nothing to do with Applicant's TPDES Permit Amendment at issue in this hearing. The description of the report by Protestants as "unproduced by the Applicant" is a blatantly false attempt to impart a burden on the Applicant which does not exist. This SWCA report was commissioned by Johnson Ranch MUD, not the Applicant DHJB Development LLC ("DHJB"), and for a totally different purpose. Specifically, the MUD commissioned the report as part of its ongoing stormwater and drainage project. It has nothing to do with DHJB's pending TPDES permit amendment at issue in this proceeding. Protestants' false allegations against the Applicant for failure to produce are as offensive as they are inappropriate.

The MUD's interests in its stormwater and drainage project continues to this day, wholly separate from this proceeding. In fact, a condemnation hearing on the property described in the report was held on April 20, 2015 to determine the value the MUD will have to pay to acquire a fee title interest to portions of the Graham's and Hasting's property, including the watercourse identified as an unnamed tributary of Cibolo Creek, for the MUD's stormwater and associated drainage needs.

Protestants' attempt to include a report related to an application for a Texas Antiquities Permit by the MUD, not DHJB, is irrelevant to this proceeding, untimely at this stage, and

obviously offered to unduly prejudice DHJB as the Applicant in this proceeding. Applicant strenuously objects to the Protestants' repeated attempts to include irrelevant extra-record evidence long after the close of the record. This pattern of ignoring the rules and procedures for this Hearing by the Protestants should not be rewarded in any way.

II.
CONCLUSION & PRAYER

For all the foregoing reasons, DHJB Development LLC and Johnson Ranch Municipal Utility District respectfully request that the ALJ ignore and strike any reference to the irrelevant and untimely extra-record evidence offered by Protestants, and that the ALJ prepare a Proposal for Decision recommending the Commission grant the Application and include therewith appropriate Proposed Findings of Fact and Conclusions of Law supporting the same.

Respectfully submitted,

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By: /s/ Phillip Haag
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ATTORNEYS FOR JOHNSON RANCH
MUNICIPAL UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing Motion to Strike Protestants' New Information Filing (was electronically filed with SOAH and the Clerk of the Texas Commission on Environmental Quality,) as well as sent via e-mail and/or facsimile transmission as available and/or by Regular U.S. Mail to the following attorneys and/or party representatives on this the 22nd day of April, 2015.

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TCEQ Public Interest Counsel

By: /s/ Edmond R. McCarthy, Jr.
Edmond R. McCarthy, Jr.

ATTACHMENT "A"

TEXAS ANTIQUITIES PERMIT 6885 AND TRANSMITTAL LETTER

RECEIVED BY:

NOV 10 2014

SWCA, Incorporated

TEXAS HISTORICAL COMMISSION

real places telling real stories

November 5, 2014

Ken Lawrence
SWCA Environmental Consultants
4407 Monterey Oaks Blvd., Building 1, Suite 110
Austin, TX 78749

Re: Project review under the Antiquities Code of Texas
Johnson Ranch Drainage Easement, Comal County, Texas
Texas Antiquities Permit Application **#6855**

Dear Colleague:

Thank you for your Antiquities Permit Application for the above referenced project. This letter presents the final copy of the permit application from the Executive Director of the Texas Historical Commission (THC), the state agency responsible for administering the Antiquities Code of Texas.

Please note that the permit sent earlier has been revised and is being replaced by the attached copy. Please keep this copy for your records. The Antiquities Permit investigations requires the production and submittal of one printed copy of the final report, a completed abstract form submitted via our online system, two copies of the final report on a tagged PDF CD (one with site location information & one without), and verification that any artifacts recovered and records produced during the investigations are curated at the repository listed in the permit. The abstract form may be submitted via the THC website (www.thc.state.tx.us) or use url: http://106.thc.state.tx.us:4444/Abstract/Secure/index.aspx. Additionally, you must send the THC shapefiles showing the boundaries of the project area *and* the areas actually surveyed via email to archeological_projects@thc.state.tx.us.

If you have any questions concerning this permit or if we can be of further assistance, please contact Lillie Thompson at 512/463-1858. The reviewer for this project is Jeff Durst, 512/463-6096.

Sincerely,

William A. Durst

for
Mark Wolfe
Executive Director

MW/lft

Enclosures

Cc: Tracy Bratton, Johnson Ranch MUD

State of Texas

TEXAS ANTIQUITIES COMMITTEE

ARCHEOLOGY PERMIT # 6855

This permit is issued by the Texas Historical Commission, hereafter referred to as the Commission, represented herein by and through its duly authorized and empowered representatives. The Commission, under authority of the Texas Natural Resources Code, Title 9, Chapter 191, and subject to the conditions hereinafter set forth, grants this permit for:

Intensive Survey

To be performed on a potential or designated landmark or other public land known as:

Title: ***Johnson Ranch Drainage Easement***

County: ***Comal***

Location: ***The project is situated in southern Comal County NE of Bulverde, Tx. The project is located 1.14 mi E of the intersection of FM 1863 & US 281 & 0.37 mi W of the intersection of Stahl Rd & FM 1863 extending Northward for approx. 0.42 mile.***

Owned or Controlled by: (hereafter known as the Permittee):

Private

Sponsored by (hereafter known as the Sponsor

Johnson Ranch Municipal Utilities District
3101 Bee Cave Road, Suite 100
Austin, TX 78746

The Principal Investigator/Investigation Firm representing the Owner or Sponsor is:

Ken Lawrence
SWCA, Inc., Environmental Consultants
4407 Monterey Oaks Blvd., Building 1, Suite 110
Austin, TX 78749

This permit is to be in effect for a period of:

5 Years and 0 Months

and Will Expire on:

04/28/2019

During the preservation, analysis, and preparation of a final report or until further notice by the Commission, artifacts, field notes, and other data gathered during the investigation will be kept temporarily at:

SWCA Environmental Consultants

Upon completion of the final permit report, the same artifacts, field notes, and other data will be placed in a permanent curatorial repository at:

Texas Archeological Research Lab.

Scope of Work under this permit shall consist of:

SWCA will conduct an intensive pedestrian survey of the proposed Johnson Ranch drainage easement project. For the exact parameters of the project, see scope of services submitted with permit application.

ARCHEOLOGY PERMIT # 6855

This permit is granted on the following terms and conditions:

1) This project must be carried out in such a manner that the maximum amount of historic, scientific, archeological, and educational information will be recovered and preserved and must include the scientific, techniques for recovery, recording, preservation and analysis commonly used in archeological investigations. All survey level investigations must follow the state survey standards and the THC survey requirements established with the projects sponsor(s).

2) The Principal Investigator/Investigation Firm, serving for the Owner/Permittee and/or the Project Sponsor, is responsible for insuring that specimens, samples, artifacts, materials and records that are collected as a result of this permit are appropriately cleaned, and cataloged for curation. These tasks will be accomplished at no charge to the Commission, and all specimens, artifacts, materials, samples, and original field notes, maps, drawings, and photographs resulting from the investigations remain the property of the State of Texas, or its political subdivision, and must be curated at a certified repository. Verification of curation by the repository is also required, and duplicate copies of any requested records shall be furnished to the Commission before any permit will be considered complete.

3) The Principal Investigator/Investigation Firm serving for the Owner/Permittee, and/or the Project Sponsor is responsible for the publication of results of the investigations in a thorough technical report containing relevant descriptions, maps, documents, drawings, and photographs. A draft copy of the report must be submitted to the Commission for review and approval. Any changes to the draft report requested by the Commission must be made or addressed in the report, or under separate written response to the Commission. Once a draft has been approved by the Commission, one (1) printed, unbound copy of the final report containing at least one map with the plotted location of any and all sites recorded and two copies of the report in tagged PDF format on an archival quality CD or DVD shall be furnished to the commission. One copy must include the plotted location of any and all sites recorded and the other should not include the site location data. A paper copy and an electronic copy of the completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final report to the Commission. (Printed copies of forms are available from the Commission or also online at www.thc.state.tx.us.)

4) If the Owner/Permittee, Project Sponsor or Principal Investigator/Investigation Firm fails to comply with any of the Commission's Rules of Practice and Procedure or with any of the specific terms of this permit, or fails to properly conduct or complete this project within the allotted time, the permit will fall into default status. A notification of Default status shall be sent to the Principal Investigator/Investigation Firm, and the Principal Investigator will not be eligible to be issued any new permits until such time that the conditions of this permit are complete or, if applicable, extended.

5) The Owner/Permittee, Project Sponsor, and Principal Investigator/Investigation Firm, in the conduct of the activities hereby authorizes, must comply with all laws, ordinances and regulations of the State of Texas and of its political subdivisions including, but not limited to, the Antiquities Code of Texas; they must conduct the investigation in such a manner as to afford protection to the rights of any and all lessees or easement holders or other persons having an interest in the property and they must return the property to its original condition insofar as possible, to leave it in a state which will not create hazard to life nor contribute to the deterioration of the site or adjacent lands by natural forces.

6) Any duly authorized and empowered representative of the Commission may, at any time, visit the site to inspect the fieldwork as well as the field records, materials, and specimens being recovered.

7) For reasons of site security associated with historical resources, the Project Sponsor (if not the Owner/Permittee), Principal Investigator, Owner, and Investigation Firm shall not issue any press releases, or divulge to the news media, either directly or indirectly, information regarding the specific location of, or other information that might endanger those resources, or their associated artifacts without first consulting with the Commission, and the State agency or political subdivision of the State that owns or controls the land where the resource has been discovered.

8) This permit may not be assigned by the Principal Investigator/Investigation Firm, Owner/Permittee, or Project Sponsor in whole, or in part to any other individual, organization, or corporation not specifically mentioned in this permit without the written consent of the Commission.

9) Hold Harmless: The Owner/Permittee hereby expressly releases the State and agrees that Owner/Permittee will hold harmless, indemnify, and defend (including reasonable attorney's fees and cost of litigation) the State, its officers, agents, and employees in their official and/or individual capacities from every liability, loss, or claim for damages to persons or property, direct or indirect of whatsoever nature arising out of, or in any way connected with, any of the activities covered under this permit. The provisions of this paragraph are solely for the benefit of the State and the Texas Historical Commission and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10) Addendum: The Owner/Permittee, Project Sponsor and Principal Investigator/Investigation Firm must abide by any addenda hereto attached.

Upon a finding that it is in the best interest of the State, this permit is issued on 04/28/2014.

Pat Mercado-Allinger

Pat Mercado-Allinger, for the
Texas Historical Commission