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October 24, 2014

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F – 1st Floor
Austin, Texas 78711-3087

VIA ELECTRONIC FILING

Re: Nueces River Authority's Response to Request for Contested Case Hearing
regarding the Application for TLAP Permit No. WQ0015083001;
TCEQ Docket No. 2014-1317-MWD

Dear Ms. Bohac:

Please find enclosed for filing Nueces River Authority's Response to Request for Contested Case Hearing in the above-referenced matter.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,


Lauren Kalisek

LJK/lmr
Enclosure

cc: Mr. Con Mims, Nueces River Authority

TCEQ DOCKET NO. 2014-1317-MWD

APPLICATION BY § BEFORE THE TEXAS COMMISSION
NUECES RIVER AUTHORITY FOR § ON
TLAP PERMIT WQ0015083001 § ENVIRONMENTAL QUALITY

**NUECES RIVER AUTHORITY'S RESPONSE TO REQUEST FOR
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the applicant, Nueces River Authority ("NRA") and files its Response to Request for Contested Case Hearing in the above-referenced matter, and would respectfully show the following:

I. INTRODUCTION

NRA requests that the Texas Commission on Environmental Quality (the "Commission" or "Agency") deny the hearing request submitted by Mr. Harris on behalf of Jean C. and Dan Huffman and approve NRA's application for proposed Texas Land Application Permit ("TLAP") No. WQ0015083001 (the "Permit") for the Leaky Regional Wastewater Project that will replace inadequate septic systems with municipal, centralized sewer service to retail customers along and near the Frio River. Mr. Harris's request fails to raise a disputed issue of fact that is relevant and material to the Commission's decision on the application. As noted in the Executive Director's ("ED") Response to Comments ("RTC"), the concerns raised by Mr. Harris relate to the design and location of the wastewater collection system associated with the facility and are not relevant or material to Agency's review of an application to dispose of effluent by land application.

II. BACKGROUND AND PROCEDURAL HISTORY

On March 18, 2013, NRA applied to the TCEQ for a new permit, Permit No. WQ0015083001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via surface irrigation of up to 93.5 acres of public access pastureland during the Interim phase, and at a daily average flow not to exceed 360,000 gallons per day via surface irrigation of up to 93.5 acres of public access pastureland during the Final phase (the "Application"). The Application supports the Leakey Regional Wastewater Project that will allow for the extension of centralized municipal sewer service to over 600 retail customers in the vicinity of Leaky, Texas to address water quality impacts to the Frio River from inadequate septic systems.

The Executive Director declared the application administratively complete on March 27, 2013. The "Notice of Receipt of Application and Intent to Obtain Water Quality Permit," (the "NORI") was mailed by the Office of the Chief Clerk and published by NRA in the *Uvalde Leader-News* on April 7, 2013, and in the *Hill Country Herald* on April 10, 2013. The Application was available for inspection by the public at Leakey City Hall located at 148 West 4th Street, Leakey, Texas.

After completing his technical review of the Application, the ED issued an initial Draft Permit on November 6, 2013. The "Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater" (the "NAPD") was mailed by the Office of the Chief Clerk and published by NRA in the *Uvalde Leader-News* on February 16, 2014 and in the *Hill Country Herald* on February 19, 2014. Mr. Harris mailed his hearing request on July 18, 2013. Mr. Harris submitted additional requests on March 10, 2014 and March 14, 2014, respectively.

The public comment period for the Application ended on March 21, 2014. The ED filed his Response to Public Comment on August 11, 2014. The opportunity to request a contested case hearing or request reconsideration of the ED's decision on the Application expired on September 10, 2014. There were no additional hearing requests or requests for reconsideration submitted. Mr. Harris' hearing requests were the only ones filed for the Application.

III. EVALUATION OF HEARING REQUEST

Section 5.556 of the Texas Water Code expressly provides that in order to grant a hearing request the Commission must determine that the issue: (1) involves a disputed issue of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the Application.¹ In this instance, the third prong of this statutory requirement is not met. None of the concerns raised by Mr. Harris during the public comment period are relevant or material to the Commission's decision on the Application because they focus on the design and location of the wastewater collection system associated with the project. As explained in the ED's Response to Comments, the design and location of the wastewater collection system are issues that are unrelated to the authority the NRA seeks through its Application, which is authorization to dispose of treated effluent through land application.

IV. OTHER ELEMENTS OF RULE 55.209(e)

Section 55.209(e) of the Commission's procedural rules also requires this response to address several other factors, and NRA's evaluation of such factors are set forth below.

¹ TEX. WATER CODE ANN. § 5.556(d) (West 2008).

(1) Whether the requestor is an affected person: The documentation provided by Mr. Harris is not sufficient to determine whether the clients he represents are persons with a personal justiciable interest impacted by the Application. Although a property owner with the same surname as Huffman is included on the Application mailing list, Mr. Harris' correspondence does not explain whether this is the same property owner or how the clients he represents are impacted by the proposed permitted activity.

(2) Which issues raised in the hearing request are disputed: All issues raised in Mr. Harris' correspondence are disputed by NRA.

(3) Whether the dispute involves questions of fact or law: The concerns raised by Mr. Harris are questions of law and fact but are not relevant or material to the Agency's decision on the Application.

(4) Whether the issues were raised during the public comment period: The issues raised by Mr. Harris were raised during the public comment period.

(5) Whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC: To NRA's knowledge, no issues have been withdrawn.

(6) Whether the issues are relevant and material to the decision on the Application: See Part III. above

(7) A maximum expected duration for the contested case hearing: If the Application is referred to hearing, NRA proposes a period of no greater than 90 days for the hearing. A shorter than usual timeline is appropriate in this instance given that the project will address ongoing water quality impacts to water in the State.

V. CONCLUSION

Because Mr. Harris's hearing request raises concerns that are not relevant or material to the Commission's decision on the Permit, NRA respectfully requests that the Commission deny the request and approve the Permit.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

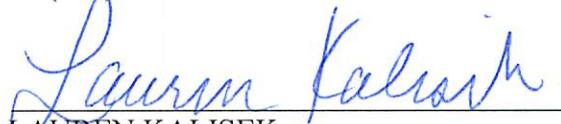
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By:


LAUREN KALISEK

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**ATTORNEYS FOR
NUECES RIVER AUTHORITY**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Nueces River Authority's Response to Request for Contested Case Hearing was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the address listed below on this 24th day of October, 2014.

FOR THE EXECUTIVE DIRECTOR:

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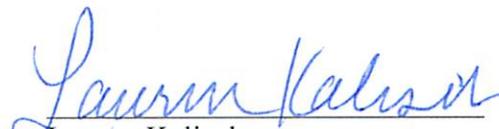
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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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Lauren Kalisek