

January 17, 2019

Ms. Bridget C. Bohac
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**VIA FIRST CLASS MAIL
AND ELECTRONIC FILING**

Re: North Texas Municipal Water District's Reply to Responses to Request for
Reconsideration and Request for Contested Case Hearing (446-13)
Application by East Fork Partners, LLC for TPDES Permit No. WQ0015565001
TCEQ Docket No. 2018-1306-MWD

Dear Ms. Bohac:

On behalf of my client the North Texas Municipal Water District ("NTMWD"), I hereby submit this letter to the Texas Commission on Environmental Quality ("TCEQ") as a formal Reply to the January 4, 2019, Response to Hearing Requests filed by the TCEQ Executive Director ("ED") and Response to Request for Hearing and Request for Reconsideration filed by the TCEQ Office of Public Interest Counsel ("OPIC") in the matter of the above-referenced Texas Pollutant Discharge Elimination System ("TPDES") permit application ("Application") filed by East Fork Partners, LLC ("Applicant") and the associated Draft Permit No. WQ0015565001 ("Draft Permit"). Both the ED and OPIC support NTMWD's request for a contested case hearing and recommend referring the Application to the State Office of Administrative Hearings ("SOAH") on the issues raised by NTMWD. East Fork Partners, LLC did not file a response to NTMWD's request for reconsideration and a contested case hearing. NTMWD files this Reply to: (1) comment on the ED's presentation of the issues to be referred; and (2) to request the TCEQ consider, in addition to the referral to SOAH, a referral of this contested matter to the Office of Alternative Dispute Resolution ("ADR") due to the likelihood of that the ADR process could prove helpful in resolving the issues raised by NTMWD and obviate the need for a contested case hearing.

I. NTMWD'S INTEREST AND ISSUES TO BE REFERRED

As recognized by the ED and OPIC, NTMWD is an "affected person" in that: (1) NTMWD is a governmental entity with statutory authority over or interest in the issues relevant to the Application and Draft Permit; (2) NTMWD is the statutorily-designated regional entity for the area proposed to be served by the Draft Permit—the East Fork Trinity River Regional Area; (3) NTMWD has filed an application for a new Sister Grove Regional Water Resource Recovery Facility ("Sister Grove"), which has been designed by NTMWD, consistent with its role as the regional entity, to provide wastewater service to an area inclusive of the

service area of Applicant's planned facility; and (4) NTMWD has an interest in ensuring the water quality of its Lavon Lake public drinking water supply is maintained.

Nearly all disputed issues of facts and law raised by NTMWD in its hearing request have been recommended by the ED and OPIC for referral to SOAH, with the exception of two issues that the ED alone considered to be issues of law rather than of fact. NTMWD echoes the ED's and OPIC's recommendations for those issues on which there is common ground and requests that TCEQ refer all issues of fact on which there is such consensus to SOAH, as each is relevant and material to TCEQ's permitting decision. NTMWD supports the issues cited by both the ED and OPIC in their Responses as issues that should be referred to SOAH for a contested case hearing, as follows:

- Whether issuance of the proposed permit is contrary to the State's regionalization policy and whether the Commission should deny or alter the terms and conditions of the proposed permit based on consideration of the State's policy to encourage and promote regionalization under Texas Water Code § 26.081.
- Whether the application is complete. Specifically, whether the application contains a complete regionalization analysis required by Domestic Technical Report 1.1, a complete treatment process description, proof that the minimum buffer zones are met, and a demonstration or justification for each phase of the proposed permit required by Domestic Technical Report 1.0.
- Whether the proposed permit complies with TCEQ's antidegradation requirements, specifically, whether the proposed discharge would be protective of water quality and the uses of the receiving waters under the applicable surface water quality standards in Title 30 of the Texas Administrative Code, Chapter 307.
- Whether proper evaluation or modeling was performed by the Applicant for the treatment levels in the proposed permit given the location of the Proposed Facility and outfall and the ultimate discharge to Lavon Lake.
- Whether the Applicant evaluated the impacts of nutrient loading from the proposed discharge in the East Fork Trinity River and Lavon Lake, and whether the proposed permit's lack of Total Phosphorous limit in the Interim I phase will maintain water quality in the East Fork Trinity River and Lavon Lake and prevent nutrient loading.
- Whether the proposed permit would adversely affect aquatic life.
- Whether the Proposed Facility's design and operations can meet the proposed treatment levels and whether the Proposed Facility will prevent nuisance odors because of the proposed permit's conditions related to plant siting, operations, and maintenance.

NTMWD agrees with and highlights OPIC's affirmative recommendation regarding the remaining two issues raised by NTMWD that the ED considered issues of law, namely:

- Whether the proposed permit authorizes the Applicant to design, construct, and operate a sewerage system in the East Fork Trinity River Regional Area as defined by TCEQ rules, found at 30 TAC Chapter 351, Subchapter C.
- Whether the application contained a justification for each phase of the proposed permit related to NTMWD's designation as the regional entity required by TCEQ rules to provide service within NTMWD's Regional Area.

Each of these issues are, at a minimum, mixed issues of law and fact that warrant referral to SOAH. The first of these two remaining issues requires a factual determination of the boundaries of the East Fork Trinity River Regional Area in conjunction with the planned location of the proposed facility associated with the Draft Permit. This information is not clear from the Application itself nor from the Draft Permit, and NTMWD disputes the Applicant's assessment of the overlap in areas. The second of the two issues requires a factual determination of whether the Applicant in fact proffered a justification for each phase of the proposed permit (i.e., for planned future expansions of the facility) in its Application. Again, both of these two remaining issues are issues of fact that warrant referral to SOAH along with all other issues raised by NTMWD in its letter requesting a contested case hearing.

II. REQUEST FOR ADR

NTMWD and the Applicant had been previously engaged in settlement discussions which appeared promising but were never finalized, and it is NTMWD's view that such discussions could be successfully concluded with the help of the TCEQ's ADR process. An approach involving future incorporation of the planned wastewater treatment facility into NTMWD's regional service plan following Phase I construction of that facility could prove successful in avoiding the need for a contested case hearing, and NTMWD has employed a similar approach in the past in relation to other planned, small facilities within its regional area.¹

In addition, it is NTMWD's understanding that the city council of the City of Weston—which holds the retail wastewater certificate of convenience and necessity for the service area identified in the Application²—recently has approved a development agreement with the Applicant that would transfer ownership of the wastewater treatment facility authorized by the Draft Permit to the City. The City of Weston has also indicated to NTMWD its desire to bring

¹ See, e.g., Farmersville Investors, LP, TPDES Permit No. WQ0014778001 (issued Sept. 6, 2011) (subsequently transferred to City of Farmersville on October 24, 2013, in conjunction with transfer in ownership of the wastewater treatment plant). Prior to the 2011 issuance of a new TPDES permit, NTMWD, the City of Farmersville, and applicant Farmersville Investors, LP, jointly entered into a Wastewater Regionalization Agreement in which: (1) NTMWD agreed to withdraw its protest of the TPDES permit application; and (2) the developer agreed to connect to, and to obtain retail wastewater service from, NTMWD's proposed regional wastewater plant following construction of Phase I of the applicant's plant, at the latest.

² Wastewater CCN No. 20999.

that plant and its service area into the NTMWD regional system. However, NTMWD is not aware of any final executed agreements between the City of Weston and the Applicant, and there is no final written agreement between NTMWD and the City of Weston that would confirm these matters. Therefore, NTMWD has found it necessary to maintain its request for a contested case hearing but remains hopeful that an agreement with the various parties can be reached.

III. CONCLUSION

For the foregoing reasons, NTMWD respectfully requests that the TCEQ determine that NTMWD is an affected person and refer all issues raised by NTMWD in its request for a contested case hearing to SOAH for determination and, in addition, refer the matter to ADR to help facilitate a successful resolution of this matter. NTMWD remains committed to resolution of this matter through a contested case hearing in the event that the Applicant chooses to forego ADR or if ADR does not yield an agreement that adequately protects NTMWD's regionalization and other interests.

Sincerely,



Lauren J. Kalisek

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cc: TCEQ Executive Director
TCEQ Office of Public Interest Counsel
Mr. Joe Stankiewicz
Mr. R.J. Muraski
Mr. Jerry Allen
Ms. Sarah Collins