

TCEQ DOCKET NO. 2021-1211-MWD

**APPLICATION BY
CITY OF FORT WORTH FOR
TPDES PERMIT NO. WQ0015668001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**TARRANT REGIONAL WATER DISTRICT’S REPLY TO RESPONSE TO REQUESTS
FOR CONTESTED CASE HEARING AND RECONSIDERATION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Tarrant Regional Water District (“TRWD” or the “District”) is a water control and improvement district authorized by the Texas Legislature to provide flood control, to provide raw water supply, and to participate in the development and maintenance of recreational water uses within TRWD’s statutory district. In addition to holding various water rights and a TCEQ-issued municipal separate storm sewer system (“MS4”) permit that includes the Clear Fork of the Trinity River, TRWD also owns hundreds of acres of property downstream of Mary’s Creek and the proposed discharge. As such, TRWD closely monitors and protects activities that may impact water quality in the portion of the Trinity River and its tributaries located within the District.

If the Commission issues the draft permit as written, TRWD will be impacted by the City’s discharge to Mary’s Creek. As a governmental entity with jurisdiction over water quality within the Clear Fork—immediately downstream of the proposed discharge—and impacted property interests, TRWD is an affected person. In addition to the other concerns previously identified, and incorporated here by reference,¹ TRWD remains concerned that nutrients in the City’s proposed discharge will impact downstream water quality in the Clear Fork downstream of Mary’s Creek,

¹ TRWD incorporates by reference its previously submitted public comments on this application and draft permit.

including the designated use as primary contact recreation, and that total dissolved solids (“TDS”) may exceed surface water quality standards. TRWD supports the Executive Director’s list of issues for referral to SOAH, which was appropriately reflective of the comments submitted, and notes a possible clarification, below.

TRWD requests that the Commission determine, as did the Executive Director and Office of Public Interest Counsel, that TRWD is an affected person entitled to a contested case hearing on the above-referenced application and adopt the ED’s issues list, as clarified further below.

Argument

I. TRWD is an Affected Person Entitled to a Contested Case Hearing

As explained in TRWD’s original filings and request for contested case hearing, and as acknowledged by both the Executive Director and OPIC, TRWD is an affected person as defined by Title 30, Section 55.203 of the Texas Administrative Code given its personal justiciable interests related to a legal right, duty, privilege, power, or economic interest affected by the City’s application. 30 TAC § 55.203(a).

A. TRWD’s Interests Affected in a Manner Not Common to the General Public

1. TRWD is a Governmental Entity with Statutory Authority over or Interest in the Issues Relevant to this Application

As a “governmental entity...with authority under state law over issues raised by the application,” TRWD “may be considered [an] affected person[.]” in accordance with TCEQ rules. 30 TAC §§ 55.203(b), (c)(7). TRWD has “statutory authority over or interest in the issues relevant to the application,” particularly water quality that supports drinking water supply and recreational interests in the Clear Fork of the Trinity River, downstream of the confluence with Mary’s Creek. *See* 30 TAC §§ 55.203(b), (c)(7). In creating TRWD, the Texas Legislature authorized the District to:

- “...preserve the sanitary condition of all...water controlled by the district,” Act of May 9, 1957, 55th Leg., R.S., ch. 268, *amended by* Act of May 15, 2001, 77th Leg., R.S., ch. 433, *and* Act of May 28, 2005, 79th Leg., R.S., ch. 1363 (“Enabling Act”), §17(a)(2);
- “...regulate...all recreational and business privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district,” *Id.* at §17(a)(4);
- “...regulate privileges on any land, easement, or property interest adjoining a reservoir or other property of the district to prevent activities on such adjoining land, easement, or property interest that could adversely affect the purity of water in this state,” *Id.* at §17(a)(5); and
- “...promote state or local economic development and stipulate business and commercial activity in the district.” *Id.* at §17(a)(6).

These statutory provisions give TRWD authority, under state law, over many of the issues raised by the City’s application.

The City’s proposed discharge is located upstream of a portion of the Clear Fork, including where it meets the West Fork, that is used by the District to support recreation on its adjacent trailheads and in the water. TRWD submitted information, including the results of water quality modeling, to the Commission, demonstrating the potential of the proposed nutrient discharges to cause the proliferation of blue-green algae under certain conditions. The discharge is also upstream of and will contribute flows through waters that are managed under TRWD’s MS4 permit jointly held with the City. Accordingly, as a governmental entity with interest in, and authority under state law over, issues implicated by the City’s application, TRWD is an affected person.

2. Property Ownership Impacted by the Proposed Discharge

In addition to TRWD’s statutory authority, TRWD is also a landowner with property that will be impacted by the City’s proposed discharge in a manner different from the general public. 30 TAC § 55.203(c)(4), (c)(5). TRWD owns hundreds of acres of land along the Clear Fork of the Trinity River, downstream of the confluence with Mary’s Creek (the location of the proposed

discharge).² In prior submissions, TRWD explained its substantial concerns over the potential impact of the City's application on water quality adjacent to TRWD's property.³

B. Scope of the Hearing

TRWD supports the Executive Director's list of issues for referral to SOAH, which was appropriately reflective of the comments submitted. *See* Executive Director's Response to Hearing Requests at 24. The Executive Director recommended referring the following issues to SOAH:

1. Whether the draft permit is protective of aquatic and terrestrial wildlife as well as the environment.
2. Whether the draft permit will be protective of surface water quality.
3. Whether the nutrient limits in the draft permit will comply with the Texas Surface Water Quality Standards.
4. Whether the draft permit is protective of the health of nearby residents.
5. Whether existing uses will be protected and maintained under the draft permit.
6. Whether the draft permit will violate TCEQ's antidegradation policy and procedures.

Although likely encompassed by the Executive Director's list of issues, in order to avoid uncertainty over the scope of the hearing, TRWD requests that the Commission also explicitly refer the following issue:

7. Whether the draft permit will protect against the creation of harmful algal blooms ("HABs").

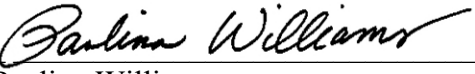
² *See e.g.*, 6800 Southwest Blvd. Rogers (JAMES SURVEY Abstract 1265 Tract 3B01) and other downstream properties, *available at* <https://www.tad.org/resources/interactive-maps/>.

³ While opposing the Draft Permit, as proposed, TRWD nevertheless *supports* the City's needs for additional wastewater treatment and discharge capacity in a manner that avoids detrimentally impacting downstream water quality and TRWD's interests. Assuming TRWD's hearing request is granted, TRWD looks forward to engaging with both the applicant and TCEQ on strategies to address TRWD's concerns with the Draft Permit and would appreciate the opportunity for referral to TCEQ's alternative dispute resolution.

Conclusion

For the reasons set forth in TRWD’s prior comments, including that there was no evaluation of the proposed discharge’s impact on the Clear Fork, TRWD respectfully asks that this matter to be referred to SOAH for hearing, that TRWD be named an affected person and party to the proceeding, and that the referral include the issues list recommended by the Executive Director with the clarification noted above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing *Response to Reply to Request for Contested Case Hearing and Reconsideration* on the following via email, e-filing and/or U.S. Mail on this 25th day of October 2021.

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