

TCEQ Docket No. 2017-1150-WR

APPLICATION BY THE CITY OF WEATHERFORD FOR CERTIFICATE OF ADJUDICATION NO. 08-3356B §
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BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AND

APPLICATION BY THE CITY OF WEATHERFORD FOR WATER QUALITY PERMIT NO. WQ0010380002 §
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BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CITY OF WEATHERFORD'S RESPONSE TO PETITION TO REVOKE ISSUANCE OF CERTIFICATE OF ADJUDICATION NO. 08-3356B

AND

CITY OF WEATHERFORD'S RESPONSE TO MOTION TO CONSOLIDATE THE APPLICATION FOR CERTIFICATE OF ADJUDICATION NO. 08-3356B WITH THE APPLICATION FOR THE AMENDMENT PERMIT NO. WQ0010380002

TO THE HONORABLE COMMISSIONERS:

The City of Weatherford (the "City") hereby submits this, its Response to the Petition to Revoke Issuance of Certificate of Adjudication No. 08-3356B and Motion to Consolidate the Application for Certificate of Adjudication No. 08-3356B with the Application for the Amendment Permit No. WQ0010380002 (collectively, the "Petition") by Ms. M. Christine Jurzykowski ("Petitioner").

I. INTRODUCTION

The Texas Commission on Environmental Quality ("TCEQ") issued Certificate of Adjudication No. 08-3356B (the "Permit") to the City on April 18, 2017. No motions to overturn were filed, and no such motion is currently before the TCEQ Executive Director. Instead, more than three months after TCEQ issued the Permit, the Petitioner now asks TCEQ to set aside its rules, revoke the issued Permit, and then consolidate the issued Permit as an "application" alongside a separate water quality permit application. TCEQ should reject the

Petition as it fails to meet TCEQ's requirements for a motion to overturn. Neither TCEQ law nor policy supports the granting of relief for such a collateral attack on the issued Permit. Furthermore, the Permit is essential for the City's beneficial reuse of water, consistent with Section 11.002 of the Texas Water Code and the Region C Water Plan.

II. ARGUMENT AND AUTHORITIES

A. **Petitioner failed to satisfy TCEQ Requirements in both procedure and schedule.**

The controlling vehicle to challenge TCEQ action on an application is 30 Texas Administrative Code § 50.139, which prescribes a motion to overturn to be filed by an express deadline: "The applicant, public interest counsel or *other person* may file with the chief clerk a motion to overturn the executive director's action on an application. . . A motion to overturn must be filed *no later than 23 days after the date the agency mails notice of the signed permit . . .*" 30 Tex. Admin. Code § 50.139 (a)-(b) (emphasis added). The Petitioner has failed to meet such TCEQ requirements, and its Petition should be denied as a result.

The Petitioner does not – and cannot – identify a procedural basis to circumvent the motion to overturn process, instead relying solely on the consolidation reference regarding two *applications* under Texas Water Code § 11.042(c) and 30 Tex. Admin. Code § 295.113(c).¹ Petitioner's Br. at 14. These provisions are neither a basis to consolidate a TCEQ-issued permit with a pending application, nor are they a means to invalidate such a permit. As such, Petitioner's collateral attack is a strained and impermissible attempt to litigate issues that the Petitioner failed to raise at the appropriate time and venue.

B. **Petitioner's complaints are an effort to bootstrap complaints from a separate water quality permit application onto the issued water rights Permit.**

Petitioner is no stranger to the City and its reuse project, as she filed comments and a request for a contested case hearing on June 30, 2017 (the "WQ Comments"). The WQ

¹ 30 Tex. Admin. Code § 295.113(c) provides: "An *application* under this section may be combined with an *application* for a wastewater discharge for purposes of a consolidated permit proceeding." (emphasis added).

Comments are on file with TCEQ's Chief Clerk. *See also* Petitioner's Br. at Ex. B. The City is prepared to address the WQ Comments and in the appropriate forum for same. However, a revocation and consolidation process on a water rights Permit is not the appropriate setting to address the WQ Comments (particularly when TCEQ issued the City's water rights Permit more than three months before the Petition was filed). Further, from a policy perspective, TCEQ should not subject issued water rights permits to reopening/revocation because a person has issued comments and/or requested a hearing on that permittee's separate project or permit application.

The foundation for the Petitioner's interest in this project is the WQ Comments. Petitioner's Br. at 6-7. Petitioner has failed to demonstrate an interest in the Permit beyond that of the WQ Comments alone. No claims of standing (including as to water rights ownership or notice entitlement), descriptions of issues unique to Petitioner for the water rights Permit, or reasons for missing the motion to overturn deadline are identified. As such, TCEQ should not conflate Petitioner's purported interest and standing alleged in the context of her WQ Comments with the alleged interests and issues with respect to the water rights Permit.² The impacts of such a practice would extend beyond this Permit, as issued Permits could become subject to review and revocation for the sole reason that a protestant in a separate application process pursues a collateral attack strategy – even after the window for proper appeal has closed.

C. The Permit is necessary for the City's beneficial reuse strategies, as included in the Region C Water Plan.

The City further requests that TCEQ deny the Petition because of the importance of the Permit to the City's beneficial reuse water supply strategies. The Permit is consistent with the most recent Region C Water Plan, which recommends the Permit and its beneficial reuse as a part of the region's recommended water management strategies for the City, adopted by the

² As stated, the City disputes the allegations as raised in the WQ Comments and preserves its right to contest same in the water quality permit process. Further, Petitioner was not precluded from filing a Motion to Overturn in accordance with 30 Tex. Admin. Code § 50.139.

State. *See* 2016 Region C Water Plan at 5C.108-5C.109 (excerpts attached hereto as **Exhibit A**). The Permit provides authorization for the beneficial reuse of the City's treated wastewater from both its Water and Wastewater Treatment Plants in a manner that expands the City's ability to serve customers without a need for additional water supplies or contracted water. As such, contrary to Petitioner's claims, revoking such Permit would harm the City and its beneficial reuse strategy that the Region and State have recommended.

III. CONCLUSION

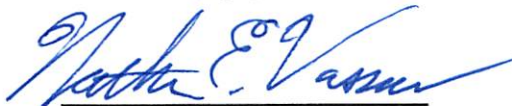
For the foregoing reasons, the City respectfully requests that TCEQ deny the Petition in its entirety, and affirm the City's Permit, which became non-appealable in May of this year.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August 2017, I served a copy of the foregoing document to the individuals below, via electronic mail.

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Exhibit A

Strategy	Date to be Developed	Quantity for Waxahachie (Ac-Ft/Yr)	Waxahachie Share of Capital Costs	Unit Cost (\$/1000 gal)		Table for Details
				With Debt Service	After Debt Service	
48" TRWD Parallel Supply Line to Sokoll WTP	2030	16,815	\$3,510,500	\$1.01	\$0.97	Q-122
Increase delivery infrastructure to Rockett SUD (30" Raw water Line)	2030	16,815	\$11,894,900	\$0.50	\$0.05	Q-124
Raw Water Intake Improvements at Lake Bardwell	2030	16,815	\$5,168,200	\$0.16	\$0.08	Q-127
Total Waxahachie Capital Costs			\$194,455,000			

5C.2.26 City of Weatherford

The City of Weatherford provides municipal, manufacturing, and irrigation water to users in Parker County. Weatherford currently provides water to the city of Hudson Oaks, and plans to potentially serve the cities of Annetta, Annetta North, Annetta South, Willow Park, and much of Parker County Other in the future. Weatherford also provides a small amount of water from Lake Weatherford for steam electric power (Brazos Electric Co-Op).

Weatherford's water supply consists of water the city has rights to use out of Lake Weatherford and Benbrook Lake (through its Sunshine Lake water right and a contract agreement with TRWD) and raw water the city purchases from Tarrant Regional Water District out of Lake Benbrook. (In the tables presented in this plan, Weatherford's Lake Benbrook supply has been included with the TRWD supply because both of those supplies come from the same reservoir.) The currently available supplies for Weatherford are limited to 7,860 acre-feet per year, which is 7,847 acre-feet per year of treatment plant capacity (14 MGD peak) plus the 13 acre-feet per year of raw water use for irrigation demand. To fully utilize its existing water rights and contracts, Weatherford will need to expand its water treatment plant capacity and expand the pumping capacity of the pipeline from Benbrook Lake. Weatherford is also currently developing a reuse project for their water from Lake Weatherford and Sunshine Lake. The recommended water management strategies for Weatherford include implementing water conservation measures, developing an indirect reuse project, purchasing additional water from the TRWD, increasing treatment capacity (new plant and expansions), and increasing transmission pump capacity from Benbrook Lake. Table 5C.79 shows the recommended water management strategies for Weatherford. Table 5C.80 shows the costs of the strategies.

**Table 5C.79
Summary of Recommended Water Management Strategies for Weatherford**

Planned Supplies (Ac-Ft/Yr)	2020	2030	2040	2050	2060	2070
Projected Demands (Table H.35)	6,340	7,589	9,009	15,444	23,829	34,478
Currently Available Supplies						
<i>Lake Weatherford</i>	<i>2,923</i>	<i>2,880</i>	<i>2,837</i>	<i>2,793</i>	<i>2,750</i>	<i>2,707</i>
<i>TRWD</i>	<i>1,162</i>	<i>2,077</i>	<i>2,862</i>	<i>5,826</i>	<i>8,824</i>	<i>8,770</i>
Current Supply	4,085	4,957	5,699	8,619	11,574	11,477
Current Supply Limited by Plant Capacity (14 mgd)	4,085	4,957	5,699	7,860	7,860	7,860
Need (Demand - Supply)	2,255	2,632	3,310	7,584	15,969	26,618
Water Management Strategies						
Conservation (retail)	141	299	385	676	1,134	1,756
Conservation (wholesale customers)	21	38	57	79	105	136
Indirect Reuse - Lake Weatherford/Sunshine	2,240	2,240	2,240	2,240	2,240	2,240
Add'l Water from TRWD	0	55	628	4,589	12,490	22,486
Treatment Plant & Infrastructure needed to treat and deliver TRWD and reuse water as below:						
<i>14 MGD Existing WTP</i>	<i>1,093</i>	<i>1,295</i>	<i>1,148</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>8 MGD WTP Expansion</i>	<i>1,000</i>	<i>1,000</i>	<i>1,000</i>	<i>4,484</i>	<i>4,484</i>	<i>4,484</i>
<i>14 MGD New WTP</i>				<i>2,345</i>	<i>7,847</i>	<i>7,847</i>
<i>24 MGD WTP Expansion</i>						<i>12,395</i>
<i>Expand Lake Benbrook PS</i>						
Total Supplies from Strategies	2,402	2,632	3,310	7,584	15,969	26,618
Total Supplies	6,487	7,589	9,009	15,444	23,829	34,478
Reserve or (Shortage)	147	0	0	0	0	0
Management Supply Factor	1.02	1.00	1.00	1.00	1.00	1.00