

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Monday, July 26, 2021 9:30 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13428
Attachments: City of Frisco Hrg. Request FINAL1.pdf

WRPERM
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From: hgilbert@bartonbensonjones.com <hgilbert@bartonbensonjones.com>
Sent: Friday, July 23, 2021 3:32 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13428

REGULATED ENTY NAME WRPERM 13428

RN NUMBER: RN109997106

PERMIT NUMBER: WRPERM 13428

DOCKET NUMBER:

COUNTY: DENTON

PRINCIPAL NAME: CITY OF FRISCO

CN NUMBER: CN600245526

FROM

NAME: MS Helen Gilbert

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COMPANY: Barton Benson Jones PLLC

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COMMENTS: City of Dallas Hearing Request



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July 23, 2021

Via Electronic Filing Only

Ms. Laurie Gharis
Office of the Chief Clerk, MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: City of Frisco; Application No. 13428 for Water Use Permit

Dear Ms. Gharis:

On behalf of the City of Dallas, Dallas Water Utilities (“Dallas”), please consider this a request for a contested case hearing on City of Frisco’s (“Frisco”) application for Water Use Permit No. 13428 in the Trinity River Basin filed initially with the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) on October 16, 2017 and amended or supplemented thereafter in 2018. As set out more fully below, Dallas is an affected person with a justiciable interest in Frisco’s application in accordance with Texas Water Code § 5.115 and Title 30 Texas Administrative Code (“TAC”) §§ 55.251, 295.153, and 295.171.

1. Contact Information

For purposes of this hearing request and all other correspondence, these persons represent Dallas and may be contacted as follows:

Mr. Terry Lowery, Director
City of Dallas – Dallas Water Utilities
1500 Marilla Street
Dallas, Texas 75201
214/670-3144

Mr. Randall Wilburn
Barton Benson Jones, PLLC
7000 N. MoPac Expressway, Suite 200
Austin, Texas 78731
512/431-8442
rwilburn@bartonbensonjones.com

2. Application Information

Dallas requests a contested case hearing on Frisco's Application No. 13428 which seeks authorization to maintain an existing dam and reservoir on an unnamed tributary of the Elm Fork Trinity River, Trinity River Basin for recreational purposes in Denton County upstream from Lewisville Lake. The application also seeks authorization to use the bed and banks of the unnamed tributary to convey groundwater from the Paluxy Aquifer to maintain the reservoir and divert for subsequent agricultural purposes.

3. Request for Contested Case Hearing

Dallas hereby requests a contested case hearing on Frisco's Application because the water use permit would affect Dallas in a manner not common to members of the general public.

4. Description of Affected Person Status

Pursuant to Texas Water Code § 5.115 and 30 TAC § 55.256, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.¹ Additionally, governmental entities may be considered affected persons.² Among other things, in assessing affected person status, the Commission may consider relevant factors including, 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) likely impact of the regulated activity on the health, safety, and use of property of the person; 5) likely impact of the regulated activity on use of the impacted natural resource by the person; and, 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.³

Dallas is a senior water right holder in the Trinity River Basin and a regional water supplier to millions of Texans through numerous senior water rights to an area approximately 700 square miles, including rights to use water from Lewisville Lake and the Elm Fork of the Trinity River ("Elm Fork") below Lewisville Lake for municipal water supply downstream of Frisco's reservoir.⁴ Dallas maintains two (2) water treatment plants on the Elm Fork, the Elm Fork Water Treatment Plant ("WTP") and the Bachman WTP to effectuate this purpose. As a senior water right holder and public utility downstream from Frisco's reservoir and proposed bed and banks conveyance, Dallas not only has an interest protected by law under its water right permits and certificates of adjudication, but it has an interest in protecting its water resources from impairment by other water users to the detriment of its customers and the public welfare.⁵

¹ Tex. Water Code Ann. § 5.115; 30 Tex. Admin. Code ("TAC") § 55.256(a).

² *Id.* 30 TAC § 55.256(b).

³ *Id.* 30 TAC § 55.256(c).

⁴ Certificate of Adjudication No. 08-2457 and amendments.

⁵ *See* Tex. Water Code Ann. § 11.134.

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In this case, although Frisco does not appear to be seeking a new appropriation to impound State water, Dallas believes Frisco's application does not conform to applicable State requirements. Among other things, Dallas is specifically concerned that the draft permit's special provisions and accounting plan do not provide sufficient assurance that inflows of state water will be passed, the proposed measuring requirements are appropriate, water quality of the alternate source meets the applicable surface water quality standards, or that evaporative losses will not impact Dallas' downstream water rights. To protect its senior water rights, Dallas must be named and remain a party to this proceeding.

Dallas is an affected person with a justiciable interest, because Frisco's water use permit will impair the health and safety of Dallas' customers, its senior water rights, downstream environmental flows, its WTP operations, and the Elm Fork of the Trinity River.

An evidentiary hearing with sworn testimony is essential to ensure that Frisco's application conforms to State law and does not impact Dallas. Dallas reserves the right to supplement this hearing request after public newspaper notice is provided.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Wilburn', written in a cursive style.

Randall B. Wilburn

Attorneys for City of Dallas, Dallas Water Utilities

cc: Mr. Denis W. Qualls, P.E.