

April 17, 2023

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

RE: Aqua Utilities, Inc. (Applicant)  
TCEQ Docket No. 2023-0384-IWD

Dear Ms. Gharis:

Aqua Utilities Inc. (“Aqua” or the “Company”) appreciates the responses to Aqua’s request for a contested case hearing filed by the Executive Director and the Office of Public Interest Counsel (“OPIC”).

Aqua concurs with the Executive Director and OPIC’s recommendations that the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) grant the contested case hearing request. The Company requests, however, that TCEQ refer to the State Office of Administrative Hearings (“SOAH”) all relevant and material disputed issues of fact raised in Aqua’s January 11, 2023 request for contested case hearing.

Specifically, Aqua requests that TCEQ refer the following issues to SOAH:

- 1) **Issue No. 1** – Whether the effluent limitations for Total Dissolved Solids (“TDS”) and sulfate in the proposed permit were properly calculated:
  - a. Based on the applicable criteria in the *Texas Surface Water Quality Standards* for the receiving water;
  - b. In accordance with the methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards*; and
  - c. Consistent with all other applicable TCEQ rules for TPDES permit applications.
- 2) **Issue No. 2** – Whether the draft permit correctly identifies the presence of perennial pools.

- 3) **Issue No. 3** – Whether the geographic locations of water quality data utilized in the permit limits calculations were derived consistent with all applicable TCEQ rules and guidance.

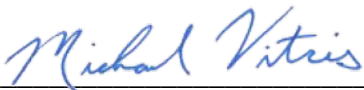
All parties agree that TCEQ should refer to SOAH Issues Nos. 1 and 3.

TCEQ should also follow the recommendation of OPIC and Aqua to refer to SOAH Issue No. 2 regarding the presence of perennial pools. Issue No. 2 meets all regulatory criteria necessary for referral to SOAH under 30 TAC § 50.115(c). *First*, Issue No. 2 raises a disputed question of fact because Aqua contests the factual accuracy of the Executive Director’s identification of perennial pools along the discharge route. *Second*, Aqua filed timely public comments that the draft permit limits are unachievable and lower than the sourced groundwater. These broad objections to the draft permit are sufficient to preserve Aqua’s disagreement with the Executive Director’s reliance on perennial pool location data. *Third*, the factual dispute regarding perennial pools is relevant and material to a decision on the application because the Executive Director relied on these facts to prepare the draft permit.

TCEQ should therefore include Issue No. 2 in its referral of this matter to SOAH. Alternatively, if TCEQ finds that Aqua has not satisfied one or more of the criteria under 30 TAC § 50.115(c) necessary to refer Issue No. 2 to SOAH, TCEQ should clarify that Issue No. 1 (whether the effluent limits for TDS and sulfate were properly calculated) necessarily includes a determination of whether the Executive Director relied on factually correct information regarding the perennial pools.

Finally, to avoid ambiguity or confusion about the scope of the issues referred to SOAH, Aqua requests that TCEQ’s order describe the referred issues as proposed by Aqua in the third paragraph of this letter, above.

Sincerely,



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Michael F. Vitris

Cc: Executive Director (via Kathy Humphreys, [Kathy.humphreys@tceq.texas.gov](mailto:Kathy.humphreys@tceq.texas.gov))  
Public Interest Counsel (via Garrett T. Arthur, [Garrett.arthur@tceq.texas.gov](mailto:Garrett.arthur@tceq.texas.gov))