



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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Austin, Texas 78701
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CHIEF CLERKS OFFICE

January 13, 2023

JAN 17 2023

By ECW

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Ms. Laurie Gharis
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: Venetian 141 Swisher LLC – Application for New TPDES Permit
Proposed Permit Weston 125A WWTP TPDES Permit No. WQ0016165001
Request for Contested Case Hearing (446-13/-69)

Dear Ms. Gharis:

On behalf of North Texas Municipal Water District (“NTMWD”), please consider this letter as providing comments on and a formal request for a contested case hearing on the above-referenced Texas Pollutant Discharge Elimination System (“TPDES”) permit application (“Application”) filed with the Texas Commission on Environmental Quality (“TCEQ”) by Venetian 141 Swisher LLC (“Applicant”) and the associated draft permit for the proposed TPDES Permit No. WQ0016165001 (“Draft Permit”).

I. REQUEST FOR CONTESTED CASE HEARING

NTMWD is a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution that was created by the Texas Legislature in 1951 to serve regional water and wastewater needs in the area north and east of Dallas. Today, NTMWD provides wastewater service to this area from fourteen (14) NTMWD-owned or operated wastewater treatment plants (“WWTP”). Many of these WWTPs operate in and discharge to tributaries of the Trinity River, including the East Fork Trinity River.¹ Flows from the Sister Grove Regional Waste Resource Recovery Facility (“RWRRF”) discharge into the Trinity River Basin.

¹ Sister Grove Regional Waste Resource Recovery Facility Phase I Facilities, TPDES Permit No. 15693001; Wilson Creek WWTP, TPDES Permit No. WQ0012446001; Rowlett Creek WWTP, TPDES Permit No. WQ0010363001; Floyd Branch WWTP, TPDES Permit No. WQ0010257001; South Mesquite Creek WWTP, TPDES Permit No. WQ0010221001; Seis Lagos WWTP, TPDES Permit No. WQ0011451001; Squabble Creek WWTP, TPDES Permit No. WQ0010262001; Buffalo Creek WWTP, TPDES Permit No. WQ00102047001; Frisco Cottonwood Creek WWTP, TPDES Permit No. WQ0010172002; Stewart Creek West WWTP, TPDES Permit No. WQ0014008001; Farmersville No. 1 WWTP, TPDES Permit No. WQ0010442001; Bear Creek WWTP, TPDES Permit No. WQ0014577001; Panther Creek WWTP, TPDES Permit No. WQ0014245001; Sabine Creek WWTP TPDES Permit No. WQ0014469001.

NTMWD's provision of regional service on this scale is due to its historic recognition and legal designation by the TCEQ's predecessor agency as the regional service provider for the service area at issue in the Application. In 1972, the Texas Water Quality Board issued an order ("1972 Order"), pursuant to a 1969 amendment to the 1967 Texas Water Quality Control Act, designating NTMWD as the regional wastewater service provider for the watershed area of the East Fork Trinity River.² **Attachment A** is a copy of the 1972 Order. This designation is memorialized in current TCEQ regulations.³

TCEQ received this application on May 9, 2022. The Application is for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The TPDES permit authorizes discharge into an unnamed tributary of Honey Creek, thence to Soil Conservation Service Site 8f Reservoir, thence to an unnamed tributary of Honey Creek, thence to Honey Creek, thence to East Fork Trinity River above Lake Lavon in Segment No. 0821 of the Trinity River Basin. The Applicant asserts that the proposed WWTP will service the Applicant's residential development located approximately 0.52 miles southwest of the intersection of Farm-to-Market Road 455 and North Main Street in Collin County, Texas.

NTMWD requests a contested case hearing, as NTMWD is an "affected person" within the meaning of 30 Tex. Admin. Code §§ 55.103 and 55.203. An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by issuance of the Draft Permit.⁴ All relevant factors must be considered by the TCEQ in determining affected persons status, 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) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor submitted comments on the Application that were not withdrawn; and, (7) *for governmental entities, their statutory authority over or interest in the issues relevant to the Application.*⁵ Additionally, the TCEQ may consider: (1) the merits of the Application, including whether the Application meets the requirements for permit issuance; (2) the Executive Director's ("ED's") analysis and opinions; and (3) other expert reports, affidavits, opinions, and data.⁶

² Texas Water Quality Board, Order No. 72-0426-17 (Apr. 26, 1972); *see* Texas Water Quality Act of 1967, 60th Leg., R.S., ch. 313 (amended 1969, 1971, and 1985) (current version at Tex. Water Code §§ 26.081-.087); Act of May 13, 1969, 61st Leg., ch. 760, §§ 1.02, 3.29 (amended 1971 and 1985) (current version at Tex. Water Code §§ 26.081-.087).

³ 30 Tex. Admin. Code §§ 351.31—.35.

⁴ 30 Tex. Admin. Code § 55.103.

⁵ *Id.* § 55.203(c) (emphasis added).

⁶ *Id.* § 55.203(d).

II. NTMWD HAS A PERSONAL JUSTICIABLE INTEREST AFFECTED BY THE APPLICATION AND DRAFT PERMIT

A. The Applicants' proposed WWTP seeks to collect, transport, treat, and discharge wastewater within the area designated by TCEQ as the Regional Area over which NTMWD is the designated regional entity.

NTMWD is an affected person, because the proposed action would interfere with its statutory right, privilege, and economic interest as the TCEQ-designated regional entity to collect, transport, treat, and discharge wastewater within the Regional Area.⁷ Specifically, the Application indicates that the proposed WWTP will allow the Applicant to collect, transport, and treat wastewater for the Applicant's residential development located approximately 0.52 miles southwest of the intersection of Farm-to-Market Road 455 and North Main Street in Collin County, Texas, which is located in the watershed area of the East Fork Trinity River, and therefore falls within the Regional Area designated to NTMWD.⁸ In short, granting the TPDES permit to the Applicants violates applicable statutory requirements pertaining to the state's regionalization policy in Texas Water Code ("TWC") Chapter 26 as well as the TCEQ's own regionalization regulations at 30 Tex. Admin. Code Chapter 351, Subchapter C.⁹

TWC Chapter 26 provides the TCEQ the authority to—whenever it deems necessary in the interest of serving the waste disposal needs of the state, and to prevent pollution and maintain and enhance the quality of state water—designate a regional entity to provide wastewater service.¹⁰ Moreover, the specified duties of the regional entity indicate that NTMWD "shall provide regional wastewater collection and treatment service to all legal entities requiring such services within the defined area, upon such terms as may be agreed upon by the parties or as may be ordered by the [TCEQ] if agreement cannot be reached."¹¹ NTMWD has expended significant time, effort, and resources over the intervening four decades in planning, financing, and constructing the infrastructure needed to serve the Regional Area, and such efforts would be undermined by approval of the Application.

For the reasons set forth herein, NTMWD is an affected person, as defined by 30 Tex. Admin. Code §§ 55.103 and 55.203. NTMWD has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public and

⁷ *Id.* §§ 351.31—.35; Texas Water Quality Board, Order No. 72-0426-17 (Apr. 26, 1972).

⁸ *Id.*

⁹ Tex. Water Code §§ 26.003, .081. See specifically TWC Section 26.084, authorizing the TCEQ to refuse to grant a permit for a system in a designated regional area unless the permit complies and is consistent with the TCEQ's regionalization order.

¹⁰ *Id.* §§ 26.081-.087.

¹¹ *Id.* § 351.35 (emphasis added); *see also* Texas Water Quality Board, Order No. 72-0426-17 (Apr. 26, 1972).

that would be adversely affected should the Draft Permit be issued. The Applicant's proposed WWTP seeks to collect, transport, treat, and discharge wastewater within three miles of the collection system connecting to NTMWD's regional system. The proximity of the proposed WWTP to NTMWD's existing regional system calls into question the need for the permit and/or whether the permit conditions should be changed or altered given the availability of NTMWD's nearby regional system pursuant to TEXAS WATER CODE § 26.0282.

B. NTMWD's existing Sister Grove RWWRF is available to serve the Applicant's proposed service area.

NTMWD is an affected person because the proposed action would interfere with its existing system—including the Sister Grove RWWRF¹²—that collects, transports, and treats wastewater within three miles of Applicant's proposed WWTP. Specifically, the Application indicates the proposed WWTP will provide wastewater collection and treatment services to the Applicant's residential development located approximately 0.52 miles southwest of the intersection of Farm-to-Market Road 455 and North Main Street in Collin County, Texas, with the entirety of this service area being within three miles of the Sister Grove RWWRF's primary service area. NTMWD has expended significant time, effort, and resources over many years planning, financing, and constructing infrastructure, including constructing the Sister Grove RWWRF that discharges into the Trinity River Basin. NTMWD's efforts would be undermined if the TCEQ issues the Draft Permit without regard to the availability of service from the NTMWD system.

C. Proposed collection lines from the City of Anna will be available to serve the Applicant's proposed service area.

As shown in Attachment B, the proposed collection lines from the City of Anna are within three miles of the Applicant's proposed service area. NTMWD is currently working with the City of Anna on a regional approach to this area, and Anna has approved a regionalization agreement with NTMWD. NTMWD has expended significant time, effort, and resources in developing this agreement, and such efforts would be undermined by approval of the Application. Further, the proximity of the proposed WWTP to NTMWD's future regional system calls into question the need for the permit and/or whether the permit conditions should be changed or altered given the availability of NTMWD's nearby regional system.

III. DISPUTED FACTS AND LAW TO BE REFERRED FOR A CONTESTED CASE HEARING.

In addition to the foregoing bases to grant NTMWD's hearing request, NTMWD reasserts that it is an affected person and thus entitled to a hearing, because the of the proximity of the

¹² The Sister Grove RWWRF is estimated to come online in early 2024.

January 13, 2023

Page 5

proposed WWTP and proposed development to NTMWD's nearby regional system. In accordance with 30 Tex. Admin. Code § 55.201(d)(4)(B), NTMWD requests that the following issues be referred to a contested case hearing:

1. Whether there is a need for the Draft Permit given the proximity of NTMWD's regional system.
2. Whether the application should be denied or the Draft Permit terms and conditions altered given the availability of NTMWD's regional system.
3. Whether the Application meets the requirements in 30 Texas Administrative Code Chapters 21, 39, 281, and 305?

In short, an additional treatment and disposal facility within this area is not necessary. It is not in the public interest for TCEQ to issue a new discharge authorization when wastewater services are available within three miles of the proposed WWTP.

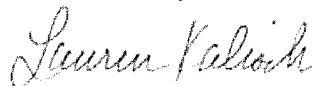
IV. CONCLUSION

For the foregoing reasons and because this request substantially complies with the requirements of a contested case hearing request per 30 Tex. Admin. Code § 55.201, NTMWD files these comments on and requests a contested case hearing in this matter regarding the above-listed issues. NTMWD reserves the right to raise and pursue any and all issues that may be relevant to its interest in the event of a contested case hearing. All official communication may be directed to my attention at:

Ms. Lauren J. Kalisek
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5847
Email: lkalisek@lglawfirm.com

I appreciate your attention to this request. Please do not hesitate to contact me if you have questions.

Sincerely,



Lauren J. Kalisek

LJK/yw

Attachments

Attachment A

TEXAS WATER QUALITY BOARD
P. O. Box 13246, Capitol Station
Austin, Texas 78711

ORDER NO. 72-0426-17

AN ORDER of the Texas Water Quality Board defining that area of the East Fork of the Trinity River in which the implementation of a regional or area-wide sewerage system is necessary to protect the quality of the waters in the State; designating the North Texas Municipal Water District as the governmental entity to design, construct and provide operation for the system; and directing the Executive Director to send copies of the Order to parties who might reasonably be affected by this Order.

PREAMBLE

It is the policy of the State of Texas to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the State and to prevent pollution and maintain and enhance the quality of waters in the State (Sec. 21.201, Texas Water Code). In accordance with this policy, a public hearing was held in Garland, Texas on December 10, 1971 to receive evidence concerning the creation of an area-wide sewerage system for the watershed area of the East Fork of the Trinity River that lies in Dallas, Kaufman, Rockwall, and Collin Counties, Texas. Notice of the public hearing was given to all local governments which, in the opinion of the Board, would be reasonably affected by its actions.

The Board finds: (a) that the described territory is within a standard metropolitan statistical area as defined by Section 21.201 (d), Texas Water Code; (b) that an area-wide system is necessary and desirable to prevent pollution and maintain and enhance the quality of water in the State; (c) that there is a system which the North Texas Municipal Water District proposes to construct, which in the reasonably foreseeable future, will be capable of serving the waste collection, treatment and disposal needs of all or part of the area defined below; (d) that the North Texas Municipal Water District is agreeable to sponsoring the area-wide system and providing the services; and (e) the Board intends to

consider, after appropriate notice and hearings, taking the actions made available under Section 21.204, Texas Water Code.

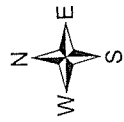
BE IT ORDERED BY THE TEXAS WATER QUALITY BOARD:

- I. The watershed area of the East Fork of the Trinity River that lies in Dallas, Kaufman, Rockwall, and Collin Counties is hereby designated as an area in which the implementation of a regional or area-wide system is necessary or desirable to effectuate the policy stated in Sec. 21.201, Texas Water Code.
2. The North Texas Municipal Water District is designated as the governmental entity to design, construct and be the operating agency for a regional sewerage system in the defined area and to provide the services therefor.
3. The Duck Creek site described in the North Central Texas Council of Government's Upper Trinity River Basin Comprehensive Sewerage Plan will not be designated as a regional sewage treatment center.
4. After development of the area-wide system, the North Texas Municipal Water District shall provide regional wastewater collection and treatment service to all legal entities requiring such services within the defined area, upon such terms as may be agreed upon by the parties or as may be ordered by the Board if agreement cannot be reached.
5. The Executive Director is directed to send a copy of this Order to the North Texas Municipal Water District, the City of Garland, and other parties who might reasonably be affected by this Order.

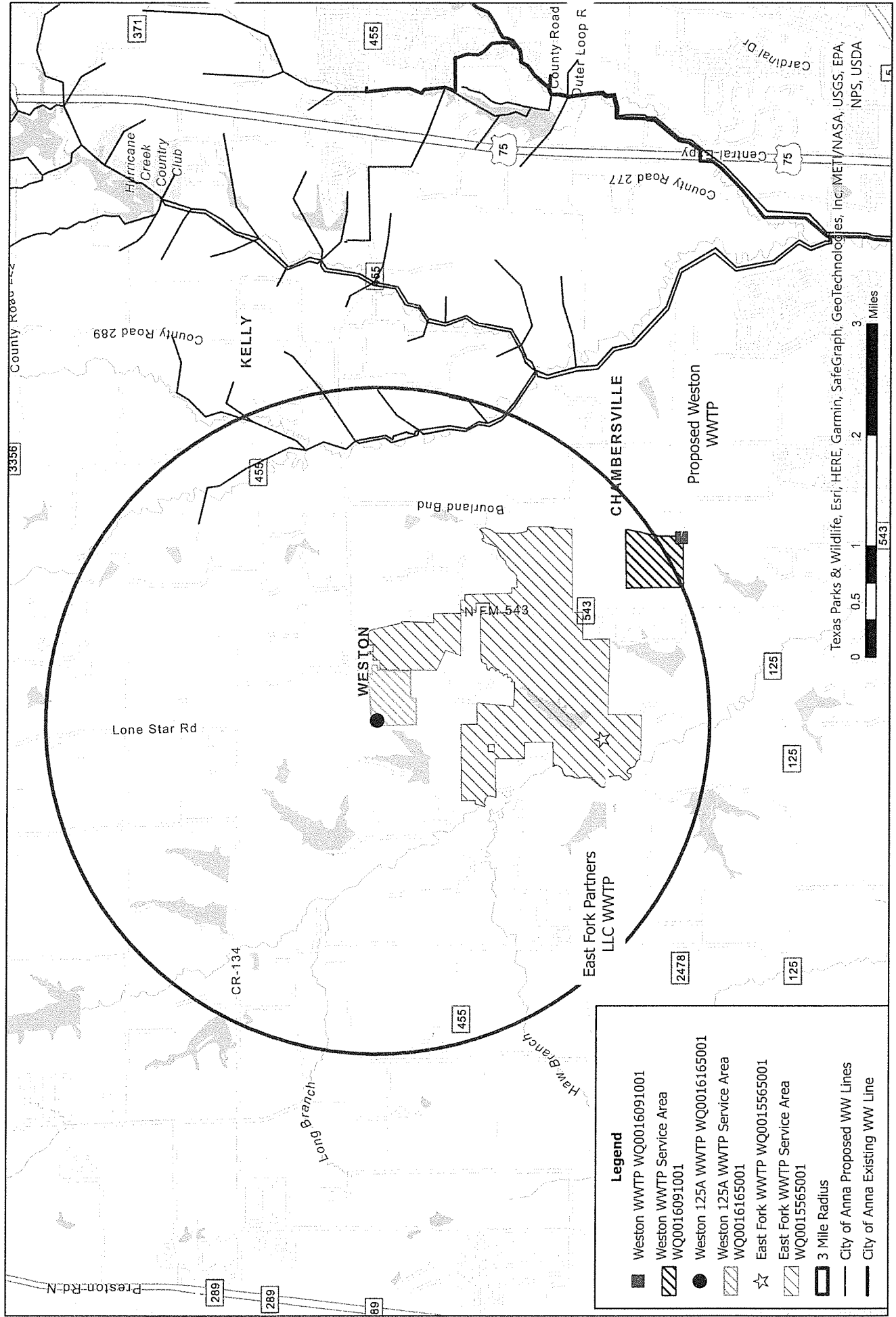
Passed and approved this 26th day of April, 1972. CHAIRMAN
(SEAL) s/ Gordan Fulcher

ATTEST:
s/Hugh C. Yantis, Jr.,
EXECUTIVE DIRECTOR

Attachment B



Venetian 141 Swisher, LLC - Weston 125A WWTP
Nearby Wastewater Treatment Plants and Collection Systems



A black and white photograph showing a close-up of a textured surface. The surface appears to be covered in a dense, irregular pattern of small, dark, rectangular or square-like elements, possibly tiles or a woven fabric. The lighting creates a strong contrast between the dark elements and the lighter background, giving it a three-dimensional appearance. The overall effect is one of a complex, organic yet structured texture.

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Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group.

JOE WALL CENTER
DA

Lloyd
Gosselink

ATTORNEYS AT LAW

Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue Suite 1900 Austin, Texas 78701

To:

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

FIRST CLASS

FIRST-CLASS

FIRST CLASS

FIRST CLASS

FIRST-CLASS

Christina Bourque

From: PUBCOMMENT-OCC
Sent: Friday, January 13, 2023 3:23 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016165001
Attachments: CCH for Venetian 141 Swisher WQ001616500.pdf

H

From: ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>
Sent: Friday, January 13, 2023 1:56 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016165001

REGULATED ENTY NAME WESTON 125A WWTP

RN NUMBER: RN111498846

PERMIT NUMBER: WQ0016165001

DOCKET NUMBER:

COUNTY: COLLIN

PRINCIPAL NAME: VENETIAN 141 SWISHER LLC

CN NUMBER: CN605975184

FROM

NAME: Yvette Wilkerson

EMAIL: ywilkerson@lglawfirm.com

COMPANY: Lloyd Gosselink

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 5123225828

FAX:

COMMENTS: Formal request for contested case hearing, on behalf of North Texas Municipal Water District regarding proposed permit Weston 125A WWTP TPDES Permit No. WQ0016165001.

January 13, 2023

Ms. Laurie Gharis
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: Venetian 141 Swisher LLC – Application for New TPDES Permit
Proposed Permit Weston 125A WWTP TPDES Permit No. WQ0016165001
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I. REQUEST FOR CONTESTED CASE HEARING

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TCEQ received this application on May 9, 2022. The Application is for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The TPDES permit authorizes discharge into an unnamed tributary of Honey Creek, thence to Soil Conservation Service Site 8f Reservoir, thence to an unnamed tributary of Honey Creek, thence to Honey Creek, thence to East Fork Trinity River above Lake Lavon in Segment No. 0821 of the Trinity River Basin. The Applicant asserts that the proposed WWTP will service the Applicant's residential development located approximately 0.52 miles southwest of the intersection of Farm-to-Market Road 455 and North Main Street in Collin County, Texas.

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² Texas Water Quality Board, Order No. 72-0426-17 (Apr. 26, 1972); *see* Texas Water Quality Act of 1967, 60th Leg., R.S., ch. 313 (amended 1969, 1971, and 1985) (current version at Tex. Water Code §§ 26.081-.087); Act of May 13, 1969, 61st Leg., ch. 760, §§ 1.02, 3.29 (amended 1971 and 1985) (current version at Tex. Water Code §§ 26.081-.087).

³ 30 Tex. Admin. Code §§ 351.31—35.

⁴ 30 Tex. Admin. Code § 55.103.

⁵ *Id.* § 55.203(c) (emphasis added).

⁶ *Id.* § 55.203(d).

II. NTMWD HAS A PERSONAL JUSTICIABLE INTEREST AFFECTED BY THE APPLICATION AND DRAFT PERMIT

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TWC Chapter 26 provides the TCEQ the authority to—whenever it deems necessary in the interest of serving the waste disposal needs of the state, and to prevent pollution and maintain and enhance the quality of state water—designate a regional entity to provide wastewater service.¹⁰ Moreover, the specified duties of the regional entity indicate that NTMWD "shall provide regional wastewater collection and treatment service to all legal entities requiring such services within the defined area, upon such terms as may be agreed upon by the parties or as may be ordered by the [TCEQ] if agreement cannot be reached."¹¹ NTMWD has expended significant time, effort, and resources over the intervening four decades in planning, financing, and constructing the infrastructure needed to serve the Regional Area, and such efforts would be undermined by approval of the Application.

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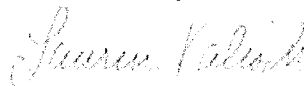
IV. CONCLUSION

For the foregoing reasons and because this request substantially complies with the requirements of a contested case hearing request per 30 Tex. Admin. Code § 55.201, NTMWD files these comments on and requests a contested case hearing in this matter regarding the above-listed issues. NTMWD reserves the right to raise and pursue any and all issues that may be relevant to its interest in the event of a contested case hearing. All official communication may be directed to my attention at:

Ms. Lauren J. Kalisek
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5847
Email: lkalisek@lglawfirm.com

I appreciate your attention to this request. Please do not hesitate to contact me if you have questions.

Sincerely,



Lauren J. Kalisek

LJK/yw

Attachments

Attachment A

TEXAS WATER QUALITY BOARD
P. O. Box 13246, Capitol Station
Austin, Texas 78711

ORDER NO. 72-0426-17

AN ORDER of the Texas Water Quality Board defining that area of the East Fork of the Trinity River in which the implementation of a regional or area-wide sewerage system is necessary to protect the quality of the waters in the State; designating the North Texas Municipal Water District as the governmental entity to design, construct and provide operation for the system; and directing the Executive Director to send copies of the Order to parties who might reasonably be affected by this Order.

PREAMBLE

It is the policy of the State of Texas to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the State and to prevent pollution and maintain and enhance the quality of waters in the State (Sec. 21.201, Texas Water Code). In accordance with this policy, a public hearing was held in Garland, Texas on December 10, 1971 to receive evidence concerning the creation of an area-wide sewerage system for the watershed area of the East Fork of the Trinity River that lies in Dallas, Kaufman, Rockwall, and Collin Counties, Texas. Notice of the public hearing was given to all local governments which, in the opinion of the Board, would be reasonably affected by its actions.

The Board finds: (a) that the described territory is within a standard metropolitan statistical area as defined by Section 21.201 (d), Texas Water Code; (b) that an area-wide system is necessary and desirable to prevent pollution and maintain and enhance the quality of water in the State; (c) that there is a system which the North Texas Municipal Water District proposes to construct, which in the reasonably foreseeable future, will be capable of serving the waste collection, treatment and disposal needs of all or part of the area defined below; (d) that the North Texas Municipal Water District is agreeable to sponsoring the area-wide system and providing the services; and (e) the Board intends to

consider, after appropriate notice and hearings, taking the actions made available under Section 21.204, Texas Water Code.

BE IT ORDERED BY THE TEXAS WATER QUALITY BOARD:

- I. The watershed area of the East Fork of the Trinity River that lies in Dallas, Kaufman, Rockwall, and Collin Counties is hereby designated as an area in which the implementation of a regional or area-wide system is necessary or desirable to effectuate the policy stated in Sec. 21.201, Texas Water Code.
2. The North Texas Municipal Water District is designated as the governmental entity to design, construct and be the operating agency for a regional sewerage system in the defined area and to provide the services therefor.
3. The Duck Creek site described in the North Central Texas Council of Government's Upper Trinity River Basin Comprehensive Sewerage Plan will not be designated as a regional sewage treatment center.
4. After development of the area-wide system, the North Texas Municipal Water District shall provide regional wastewater collection and treatment service to all legal entities requiring such services within the defined area, upon such terms as may be agreed upon by the parties or as may be ordered by the Board if agreement cannot be reached.
5. The Executive Director is directed to send a copy of this Order to the North Texas Municipal Water District, the City of Garland, and other parties who might reasonably be affected by this Order.

Passed and approved this 26th day of April, 1972. CHAIRMAN
(SEAL) s/ Gordan Fulcher
ATTEST:
s/Hugh C. Yantis, Jr.,
EXECUTIVE DIRECTOR

Attachment B

