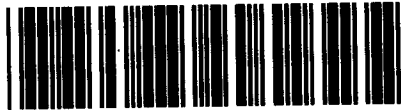




Control Number: 44069



Item Number: 47

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

44069

RECEIVED

SOAH DOCKET NO. 582-06-1697
TCEQ DOCKET NO. 2005-2092-UCR

2015 JAN -7 AM 9:36

PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE
CHIEF CLERK
OF

CITY OF COLLEGE STATION'S §
APPLICATION TO AMEND §
SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
IN BRAZOS COUNTY §

ADMINISTRATIVE HEARINGS

**STATUS REPORT AND UNOPPOSED
MOTION TO EXTEND ABATEMENT PERIOD**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of College Station ("College Station") files this Status Report and Unopposed Motion to Extend Abatement Period.

BACKGROUND

A preliminary hearing in the above-captioned matter was held on June 6, 2006. In Order Number 1, the ALJ set out the prehearing and hearing schedule. On August 3, 2006, College Station filed a motion to abate the schedule while the parties conducted settlement negotiations. In Order Number 2 dated August 4, 2006, the ALJ granted the abatement and required College Station to submit a status report on October 3, 2006. On October 3, 2006, College Station filed an unopposed motion to extend the abatement period. College Station settled with all protesting parties except for Main Street Homes ("MSH") and Wellborn Special Utility District ("WSUD"). In Orders Number 3 and 4, the ALJ dismissed the parties who settled with College Station. In Order Number 5, the ALJ granted College Station's October 3, 2006 request for an extension of the abatement period and ordered College Station to file a status report on or before January 5, 2007. College Station submitted a status report and request for abatement extension, which the ALJ granted in Order Number 6. The ALJ also ordered College Station to file a status report on or before March 5, 2007. College Station submitted a status report and request for abatement

extension, which the ALJ granted in Order Number 7. The ALJ also ordered College Station to file a status report on or before June 6, 2007.

On March 13, 2007 SOAH ALJ Carol Wood conducted a preliminary hearing in SOAH Docket 582-07-1251 in connection with MSH's competing sewer CCN application. College Station was admitted as a party. It is anticipated that MSH will file to consolidate these two dockets.

STATUS REPORT

As reported in the last status report, MSH was sued in Brazos County on January 9, 2007. The Brazos County litigation relates to, among other things, the operation of MSH's wastewater treatment plant, which College Station proposes to acquire in settlement. A temporary injunction hearing was held and, on May 14, 2007, the District judge issued a letter ruling against MSH. A copy of the letter ruling is attached as Exhibit "A." MSH and the plaintiff's have agreed to mediate and College Station has been asked and agreed to participate in the mediation in an effort to resolve the CCN dispute with the Brazos County litigation. The parties have contacted a retired district judge to mediate in Brazos County and are attempting to determine a mutually agreeable date. It appears that the schedule will not permit mediation until sometime in July 2007.

MOTION FOR EXTENSION OF ABATEMENT

The parties wish to mediate as described above. The parties do not wish to incur the time and expenses associated with a contested hearing while conducting settlement negotiations and request an extension of the abatement.


CONCLUSION

College Station requests a 60 day extension of the abatement to participate in mediation. In the event settlement is not completed, College Station will submit a status report to the ALJ on or before August 6, 2007. In the status report, College Station will coordinate with the parties and submit a revised schedule or request additional time for settlement, whichever is necessary. Counsel for College Station has conferred with Leonard Dougal, counsel for WSUD, Mark Zeppa, counsel for MSH, and, Paul Tough, counsel for the Executive Director, all who concur with this request.

Respectfully submitted,

BICKERSTAFF, HEATH, POLLAN
& CAROOM, L.L.P.
816 Congress Avenue, Suite 1700
Austin, TX 78701
Tel: (512) 472-8021
Fax: (512) 320-5638

By:

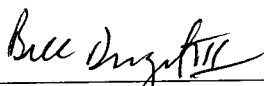

William D. Dugat III
State Bar No. 06173600

ATTORNEYS FOR COLLEGE STATION

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this 6th day of June, 2007, a true and complete copy of the foregoing was sent to the following by facsimile, overnight delivery, or by first class mail:

Parties	Representative / Address	Phone
TCEQ Executive Director	Paul Tough, Staff Attorney TCEQ, MC-175 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-1297 Fax: (512) 239-0606
Office of Public Interest Counsel	Blas J. Coy, OPIC TCEQ, MC-103 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-6363 Fax: (512) 239-6377
Wellborn Special Utility District	Leonard Dougal Jackson Walker, L.L.P. 100 Congress Avenue, Suite 1100 Austin, TX 78701	Tel: (512) 236-2000 Fax: (512) 236-2002
Main Street Homes-CS	Mark Zeppa Law Offices of Mark H. Zeppa, P.C. 4833 Spicewood Springs Road Suite 202 Austin, TX 78759-8436	Tel: (512) 346-4011 Fax: (512) 346-6847
The Honorable Lilo D. Pomerleau Administrative Law Judge	SOAH 300 W. 15 th Street, Ste. 504 Austin, TX 78711-3025	Tel: (512) 475-4993 Fax: (512) 475-4994
Office of the Chief Clerk	TCEQ P.O. Box 13087 (MC-105) Austin, TX 78711-3087	Tel: (512) 239-3000 Fax: (512) 239-3311



William D. Dugat III



Jim Locke

JUDGE
COUNTY COURT AT LAW #2
BRAZOS COUNTY, TEXAS

DC	FILED	M
At	clock	
MAY 14 2007		
MARCO ANTONIO DIST CLERK		
Brazos County, Texas		
By		Deputy

Brazos County Courthouse
300 East 26th Street, Suite 214
Bryan, Texas 77803

TELEPHONE: (979) 361-4260
FAX: (979) 361-4514

11 May 2007

W. STEPHEN RODGERS
P O BOX 4884
BRYAN TX 77805

TERRANCE DILL
1515 EMERALD PLAZA
COLLEGE STATION TX 77845-1515

ALLEN HALBROOK
901 CONGRESS AVE.
AUSTIN TX 78701

Re: Cause No. 07-000019-CV-CCL2; Rick and Marla Young, Larry and Jonne Young, Jack and Donna Winslow, Richard and Karen Miller, Lee and Joanie McCleskey and Greg and Cathy Taylor vs. Main Street Homes-CS; Ltd.

Gentlemen:

I intended to give you a ruling earlier than this to avoid a Reply to the Response to the Retort to the Rejoinder to Opponent's Last Final Argument. An unusual, very short-fused temporary injunction hit our court first and delayed me. Thanks for your patience.

Despite the evidence of some prior "flooding", there is substantial evidence of increased damaging flooding since the development of the Main Street property. This is despite the authoritative calculations and designs intended to prevent such a result. My lay opinion at this point is that the detention pond used to slow the flow of water in many foreseeable rain events becomes useless for that purpose after it is completely filled and the rain is still falling. If the detention pond is the counter measure to having smoothed and paved the upstream property, once the pond is filled to the brim neither the previous vegetation and soil, nor the pond, are available to slow the flow of water at all.

EXHIBIT

A

Whether my belief as to the mechanics of the problem is correct or not, the evidence of the harm because of diverted water is there, and I believe results in a violation of Water Code §11.086. There appears to be a probable right of relief at trial and a probable injury by continued additional water flow across plaintiffs' property.

A specific pretrial remedy which does not leave Main Street to guess about what they must do and causes the least extra expense from redesign and construction would be the immediate construction of the already planned second detention pond. The somewhat seasonal nature of the problem, and the ability to set the case for trial in late summer or early fall, ought to make that a sufficient temporary injunction, within the realm of physical and fiscal practicality. "Immediate" will not mean next week, but probably ought to be rendered "as quickly as is practicable". I'll be open to additional explanatory language or a specific date for pond construction if that is possible.

I will be glad to hear argument on a bond, either in person or in writing. The order must include a trial date. Please let me know your wishes there.

Sincerely,

Jim Locke

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

CHEF CLERK

June 6, 2007

VIA FACSIMILE AND U.S. MAIL

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: SOAH Docket No. 582-06-1697; TCEQ Docket No. 2005-2092-UCR; *City of College Station's Application to Amend Sewer Certificate of Convenience and Necessity in Brazos County*

Dear Ms. Castañuela:

Enclosed for filing is an original and one copy of the Status Report and Unopposed Motion to Extend Abatement Period in connection with the above-referenced matter. Please file the original and have the copy filed-stamped and returned to me in the enclosed self-addressed, stamped envelope.

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



William D. Dugat III

WDD/db
Enclosures

cc: The Honorable Lilo D. Pomerleau (*via facsimile only*)
Administrative Law Judge

All Parties of Record (*via facsimile and/or mail*)

Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue

Suite 1700

Austin, Texas 78701

(512) 472-8021

Fax (512) 320-5638

www.bickerstaff.com

August 6, 2007

VIA FACSIMILE AND U.S. MAIL

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 AUG - 7 AM 10: 23
CHIEF CLERKS OFFICE

Re: SOAH Docket No. 582-06-1697; TCEQ Docket No. 2005-2092-UCR; *City of College Station's Application to Amend Sewer Certificate of Convenience and Necessity in Brazos County*

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Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



William D. Dugat III

WDD/bc
Enclosures

cc: The Honorable Lilo D. Pomerleau (*via facsimile only*)
Administrative Law Judge

All Parties of Record (*via facsimile and/or mail*)

AUSTIN

DALLAS

EL PASO

HOUSTON

SOAH DOCKET NO. 582-06-1697
TCEQ DOCKET NO. 2005-2092-UCR

2006-08-07 10:45

CITY OF COLLEGE STATION'S §
APPLICATION TO AMEND §
SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
IN BRAZOS COUNTY §

BEFORE THE STATE OFFICE OF
OF
ADMINISTRATIVE HEARINGS

**STATUS REPORT AND UNOPPOSED
MOTION TO EXTEND ABATEMENT PERIOD**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of College Station ("College Station") files this Status Report and Unopposed Motion to Extend Abatement Period.

BACKGROUND

A preliminary hearing in the above-captioned matter was held on June 6, 2006. In Order Number 1, the ALJ set out the prehearing and hearing schedule. On August 3, 2006, College Station filed a motion to abate the schedule while the parties conducted settlement negotiations. In Order Number 2 dated August 4, 2006, the ALJ granted the abatement and required College Station to submit a status report on October 3, 2006. On October 3, 2006, College Station filed an unopposed motion to extend the abatement period. College Station settled with all protesting parties except for Main Street Homes ("MSH") and Wellborn Special Utility District ("WSUD"). In Orders Number 3 and 4, the ALJ dismissed the parties who settled with College Station. In Order Number 5, the ALJ granted College Station's October 3, 2006 request for an extension of the abatement period and ordered College Station to file a status report on or before January 5, 2007. College Station submitted a status report and request for abatement extension, which the ALJ granted in Order Number 6. The ALJ also ordered College Station to file a status report on or before March 5, 2007.

STATUS REPORT

College Station City Council was to consider at a January 11, 2007 council meeting a possible resolution of two issues that were impeding settlement between the parties. However, on January 9, 2007, MSH was sued in Brazos County. A copy of the petition is attached as Exhibit "A." The Brazos County litigation relates to, among other things, the operation of MSH's wastewater treatment plant, which College Station proposed to acquire in settlement. A temporary injunction hearing was begun, but not yet completed, in the litigation. College Station understands that the temporary injunction hearing will be completed in April 2007.

In addition to the litigation in Brazos County, MSH's competing sewer CCN application is scheduled for a preliminary hearing before SOAH on March 13, 2007. A copy of the Notice of Hearing is attached as Exhibit "B." There is the potential that the MSH application docket could affect the scheduling in this docket.

MOTION FOR EXTENSION OF ABATEMENT

The parties have continued limited settlement discussions and believe that a district court resolution of issues raised in the Brazos County litigation will be beneficial to settlement. The parties do not wish to incur the time and expenses associated with a contested hearing while conducting settlement negotiations and request an extension of the abatement.

CONCLUSION

College Station requests a 90 day extension of the abatement so that the temporary injunction hearing in the Brazos County litigation and the follow-up settlement negotiations can be completed. In the event settlement is not completed, College Station will submit a status report to the ALJ on or before June 3, 2007. In the status report, College Station will coordinate with the parties and submit a revised schedule or request additional time for settlement,


whichever is necessary. Counsel for College Station has conferred with Leonard Dougal, counsel for WSUD, Mark Zeppa, counsel for MSH, and, Paul Tough, counsel for the Executive Director, all who concur with this request.

Respectfully submitted,

BICKERSTAFF, HEATH, POLLAN
& CAROOM, L.L.P.

816 Congress Avenue, Suite 1700
Austin, TX 78701
Tel: (512) 472-8021
Fax: (512) 320-5638

By:



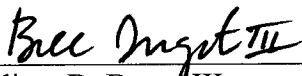
William D. Dugat III
State Bar No. 06173600

ATTORNEYS FOR COLLEGE STATION

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this 5th day of March, 2007, a true and complete copy of the foregoing was sent to the following by facsimile, overnight delivery, or by first class mail:

Parties	Representative / Address	Phone
TCEQ Executive Director	Paul Tough, Staff Attorney TCEQ, MC-175 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-1297 Fax: (512) 239-0606
Office of Public Interest Counsel	Blas J. Coy, OPIC TCEQ, MC-103 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-6363 Fax: (512) 239-6377
Wellborn Special Utility District	Leonard Dougal Jackson Walker, L.L.P. 100 Congress Avenue, Suite 1100 Austin, TX 78701	Tel: (512) 236-2000 Fax: (512) 236-2002
Main Street Homes-CS	Mark Zeppa Law Offices of Mark H. Zeppa, P.C. 4833 Spicewood Springs Road Suite 202 Austin, TX 78759-8436	Tel: (512) 346-4011 Fax: (512) 346-6847
The Honorable Lilo D. Pomerleau Administrative Law Judge	SOAH 300 W. 15 th Street, Ste. 504 Austin, TX 78711-3025	Tel: (512) 475-4993 Fax: (512) 475-4994
Office of the Chief Clerk	TCEQ P.O. Box 13087 (MC-105) Austin, TX 78711-3087	Tel: (512) 239-3000 Fax: (512) 239-3311



William D. Dugat III

CHIEF CLERK'S OFFICE

MAR 6 2007 9:45

COPIES
ON
FILE

~~JAN~~ 09 2007

MAH... JST CLER
...COUNTY TEXAS
RT OF ...

www.ck12.org

COURT OF W.D. D.

BRAZOS COUNTY,

TEXAS

1

A

2. Defendant Developer is believed to be a Domestic Limited Partnership who can be served through its managing partner or registered agent, Richard R. Jenkins at 900 Congress Avenue, Suite L-100, Austin TX 78701.

3. Plaintiff Property Owners assert that discovery in this case should be conducted under Level 2 of the Discovery Control Plan pursuant to Tex.R.Civ.P.190.3.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the case because it contains a request for damages in excess of the minimal jurisdictional limits of the Court.

5. Venue is proper in Brazos County, Texas, because all or a substantial part of the events that form the basis of this suit arise in Brazos County, Texas.

6. The Plaintiff Property Owners have homes or land in the vicinity of Hidden Acres Drive near or I&GN Road near Koppe Bridge Road outside of College Station, Texas. They have lived on and maintained their property in a peaceful manner with their neighbors for many years.

7. Defendant Developer recently acquired approximately 70 acres of land in the Wellborn area that was partially wooded and brush covered. The Defendant Developer's land also included some naturally occurring marshland, all of which facilitated the proper natural drainage of the surface water in the area. These natural drainways were immediately adjacent or in the proximate vicinity of the Plaintiff Property Owners. Without notice to the Plaintiff Property Owners the Defendant Developer clear cut its recently purchased acreage, uprooting and removing nearly all of the trees, bulldozing out the brush and natural grass land, and filling in naturally occurring drainways. The Defendant Developer then cut new drain ways or water courses to divert the natural flow of the surface water on its land. All of the foregoing resulted in a diversion of the natural flow of surface water in a manner that has damaged Plaintiff Property Owners.

8. Further, the Defendant Developer has installed a facility of some kind to gather sewage, waste water and/or effluent produced on the Defendant Developer's land. The sewage

facility is operated in such a way that it discharges untreated effluent into the waters that drain onto the land of the Plaintiff Property Owners. The sewage facility uses multiple motors that run at a high pitched whine 24 hours a day, seven days a week. The operation of the sewage facility is noisy, obnoxious and offensive to the natural senses of those in the proximate vicinity of it.

9. Further, the Defendant Developer has placed huge propane storage tanks on its property immediately adjacent to and in the proximate vicinity of the homes of your Plaintiff Property Owners. The Defendant Developer has caused a notification to go out to the Plaintiff Property Owners that they are in what the Defendant Developer has caused to be the "BLAST ZONE" of the propane tanks when they explode.

10. The Defendant Developer has further changed the natural flow of surface water across its property so that now it collects and drains directly into and onto the property of the Plaintiff Property Owners commingling with the effluent from its sewage treatment plant when the Defendant Developer sprays the sewage discharge into the flood waters. The resulting discharge of an effluent laden water goes directly across the fresh water lines of some of the Plaintiff Property Owners which causes a deterioration and inevitable contamination of the fresh water lines in which the sewage effluent comes into contact.

11. The Defendant Developer has bulldozed, cleared, removed trees and brush and channeled its land in such a way that the flow of surface water now comes in such a depth and volume as to be a danger to people, animals and the personal property of the Plaintiff Property Owners. The flooding caused by the diversion of the natural flow of surface water has been of sufficient volume and intensity to cut channels and destroy roads. Such destruction had never occurred prior to the Defendant Developer's activities in clear cutting its land and diverting its surface water.

12. The Defendant Developer has taken actions which divert the natural flow of surface water from the marsh areas upon its property which formerly retained and drained the property.

The Defendant Developer has filled in the marshes or diverted the natural flow in such a way that no natural detention of the water occurs any longer. The modifications to their surface and the diversion of the natural flow of surface water into artificial detention ponds has resulted in silting and flooding which never occurred prior to the Defendant Developer's activities on its land. The way in which the Defendant Developer has modified the surface of its land to divert the natural flow of surface water now also collects garbage and trash from the surface and channels it into the drainage that is deposited onto the land of the Plaintiff Property Owners.

13. The Defendant Developer has allowed its officers, directors, employees, agents, or representatives to trespass into and onto the land of some of the Plaintiff Property Owners where they defecate, soil the ground, deposit garbage and conduct themselves in ways that are potentially unhealthy for the activities of some of the Plaintiff Property Owners.

14. All in all, the Defendant Developer has been a bad neighbor who disturbed the peace and invaded the privacy of the Plaintiff Property Owners. The Defendant Developer's usage of its property has unreasonably or abnormally been conducted in a way that is out of place with respect for its surroundings. The conduct of the Defendant Developer has been in "bad faith" as a "bad neighbor" and has resulted in conditions that substantially interfere with the Plaintiff Property Owners' private use and enjoyment of their own property. The Defendant Developer's conduct, acts or omissions is outrageous and has caused injury to the Plaintiff Property Owners.

CAUSES OF ACTION

15. **Negligence Per Se.** The Defendant Developer is restricted in its activities on its land by Texas Water Code §11.086. In violation of that statute the Defendant Developer has diverted the natural flow of surface water in a manner that has damaged the property of the Plaintiff Property Owners in this case. The violation of this statute is *negligence per se* and has been a proximate cause of damages to the Plaintiff Property Owners.

16. **Negligence.** Relying upon the foregoing allegations, the Plaintiff Property Owners

allege that the Defendant Developer has acted in such a way that it breached its duties to the adjacent and downstream Plaintiff Property Owners in the manner it conducts operations on its own land. The negligence of the Defendant Developer has been the proximate cause of damage to the Plaintiff Property Owners, including loss of use, loss of market value, costs to mitigate damage and costs to repair injuries.

17. **Private Nuisance.** The Defendant Developer has conducted its operations and business on its land adjacent to the Plaintiff Property Owners in such a way as to interfere with the Plaintiff Property Owners' interest in their own property. The Defendant Developer has conducted its operations and business on its land adjacent to the Plaintiff Property Owners in such a way as to negligently, intentionally or abnormally (in the light of its surroundings) interfere with the Plaintiff Property Owners' use and enjoyment of their own land. The operations of the Defendant Developer on its land are a nuisance to the adjacent Plaintiff Property Owners and those in the proximate vicinity of the Defendant Developer's operations. The Defendant Developer's conduct causes injury and damage to the surrounding Plaintiff Property Owners.

REQUEST FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

18. The Plaintiff Property Owners incorporate all of the foregoing allegations as set forth above. The resulting damage caused by the Defendant Developer's operations and conduct of its business on its land could be mitigated by the Defendant Developer if the Defendant Developer acted in a reasonable and equitable way. The Defendant Developer has chosen to continue its unreasonable and inequitable activities in spite of the complaints by the adjacent Plaintiff Property Owners. Plaintiff Property Owners have the legal right to protect their interests from the past and likely future actions of the Defendant Developer. Because of the nature of the wrong being perpetrated and absent the equitable intervention of this Court, Plaintiff Property Owners have no adequate remedy at law to enforce their legal rights.

19. Plaintiff Property Owners assert that the Defendant Developer is intentionally

avoiding its legal obligations in that the Defendant Developer has used its land in a way that drains effluent and garbage laden water into the Plaintiff's land. Further the Defendant Developer operates a sewage facility that is obnoxious in the noise it emits and the manner in which it discharges its waste so that Plaintiff Property Owners are not able to enjoy their own property. Unless the damaging activities being taken by the Defendant Developer are ordered terminated pending the resolution of the issues presented in this lawsuit, then in all likelihood it will continue. The Plaintiff Property Owners have no adequate remedy at law for the substantial damage and interference with their interests which is occurring. It is necessary that the Court immediately order that any business being conducted by Defendant Developer's officers, directors, attorneys, employees, representatives or agents of the Defendant Developer on its land be done so that it does not effect the premises owned, enjoyed or occupied by the Plaintiff Property Owners in any way including but not limited to the following: diversion of the natural flow of surface water as it existed prior to the activities of the Defendant Developer; the emission of high pitched noise from the sewage treatment plant; the discharge of water onto the Plaintiff Property Owners from its sewage plant or its drainage paths; or the entry by any of its officers, directors, attorneys, employees, representatives or agents onto premises owned or occupied by the Plaintiff Property Owners pending a resolution to the issues presented in this case.

20. The adjacent Plaintiff Property Owners will suffer probable injury prior to a trial on the merits of this case. Each time it rains more than an inch in the vicinity of the Defendant Developer's land, there is a substantial risk of serious and irreparable injury to the adjacent Plaintiff Property Owners who are impacted by the Defendant Developer's diversion of the natural flow of surface water. Illness, injury, property damage and even death can result by the Defendant Developer's unnatural diversion of surface water because of the placement, intensity and amounts so diverted. The acts performed by the Defendant Developer are of a continuing nature and are in violation of the rights of the adjacent Plaintiff Property Owners such that if the Court does not

grant a temporary injunction, it would tend to render any judgment in this case ineffectual. The inequitable conduct of the Defendant Developer in violating statutes relating to the diversion of the natural flow of surface water gives rise to a probable right of recovery by the adjacent Plaintiff Property Owners. Incorporating all of the foregoing allegations, the Plaintiff Property Owners request that Court to enter an immediate temporary restraining order and then upon notice and hearing, a temporary injunction restraining the Defendant Developer, its officers, directors, attorneys, employees, representatives or agents from operations on its property which substantially interfere with or damage the rights of the Plaintiff Property Owners, including but not limited to:

- a. causing or allowing a diversion of the natural flow of surface water in such a way that the water from the Defendant Developer's property comes into or onto the adjacent Plaintiff Property Owners' land in a location, amount or intensity different from that location, amount or intensity which was previously accepted by the Plaintiff Property Owners as downstream recipients of water;
- b. operating or allowing the operation of any sewage treatment plant on its property which allows effluent water to be discharged from the plant into an open drain way that enters or crosses the land of any Property Owner;
- c. allowing any of its operation or business activities to be conducted on its land in a way that is seen, smelled, heard or felt by the adjacent Plaintiff Property Owners;

and further entering an order

- d. requiring the Defendant Developer or any of its successors, assigns or those acting in concert with them or at their direction to (1) prevent the excess flow of surface water onto the Plaintiff Property Owners' land; (2) prevent the natural flow of water in a manner that will damage the Plaintiff Property Owners' (3) prevent the increase of flood hazard onto the Plaintiff Property Owners;
- e. mandating that any personal activities or business conducted by the Defendant Developer, its officers, directors, attorneys, employees, representatives or agents, successors or assigns of the Defendant Developer be conducted solely on its own land and that no entry be allowed onto the Plaintiff Property Owners' land from the land of the Defendant Developer by any person, object or offensive sounds or smells from the sewage treatment plant.

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

21. The Plaintiff Property Owners have no plain adequate or complete remedy at law to redress the wrongs alleged above and this suit for permanent injunction is the only means of

securing complete relief to the Plaintiff Property Owners. The Plaintiff Property Owners request the Court order the Defendant Developer to take actions that will rectify the Defendant Developer's diversion of the natural flow of surface water from its property onto the Plaintiff Property Owners, decrease the flood hazard to the Plaintiff Property Owners and repair, alter or otherwise fix all areas of the property so that they no longer pose a substantial and increased likelihood of future diversions of the natural flow of surface water in a manner that would damage the Plaintiff Property Owners. The Plaintiff Property Owners request the Court order the Defendant Developer to take actions that will rectify the drainage and the noise emitted from its sewage treatment plant so that it does not reach the land of any Plaintiff Property Owner in such a way that abnormally interferes with their use and enjoyment of their own property, and further entering an order:

- a. causing or allowing a diversion of the natural flow of surface water in such a way that the water from the Defendant Developer's property comes into or onto the adjacent Plaintiff Property Owners' land in a location, amount or intensity different from that location, amount or intensity which was previously accepted by the Plaintiff Property Owners as downstream recipients of water;
- b. operating or allowing the operation of any sewage treatment plant on its property which allows effluent water to be discharged from the plant into an open drain way that enters or crosses the land of any Property Owner;
- c. allowing any of its operation or business activities to be conducted on its land in a way that is seen, smelled, heard or felt by the adjacent Plaintiff Property Owners;
- d. requiring the Defendant Developer or any of its successors, assigns or those acting in concert with them or at their direction to (1) prevent the excess flow of surface water onto the Plaintiff Property Owners' land; (2) prevent the natural flow of water in a manner that will damage the Plaintiff Property Owners' (3) prevent the increase of flood hazard onto the Plaintiff Property Owners;
- e. mandating that any personal activities or business conducted by the Defendant Developer, its officers, directors, attorneys, employees, representatives or agents, successors or assigns of the Defendant Developer be conducted solely on its own land and that no entry be allowed onto the Plaintiff Property Owners' land from the land of the Defendant Developer by any person, object or offensive sounds or smells from the sewage treatment plant.

22. All conditions precedent to the establishment of the causes of action outlined above have been performed, completely satisfied or have been waived by the Defendant Developer prior

to filing this suit.

EXEMPLARY DAMAGES

23. The acts or omissions of the Defendant Developer in this case have been of such kind and character that it amounts to malice or gross negligence such that a jury would in all likelihood unanimously make a finding in regard to the Defendant Developer's liability for exemplary damages and award an amount of exemplary damages to the Plaintiff Property Owners to deter such conduct by the Defendant Developer in the future.

ATTORNEY'S FEES

24. Due to the necessity of instituting this suit the Plaintiff Property Owners have been forced to obtain the undersigned law firm and will in all likelihood incur the expenses of litigation including attorney's fees and court costs in this case. Therefore, the Plaintiff Property Owners are entitled to recovery of their attorney's fees in a sum of not less than \$50,000.00 pursuant to Texas Water Code § 11.0841(b).

PRAYER

THEREFORE, the Plaintiff Property Owners pray that Defendant Developer be cited and answer herein, and that the following relief be granted:

1. A temporary restraining order and subsequently temporary injunctive relief in the form of mandatory temporary injunction that restrains the Defendant Developer, its officers, directors, members, agents, successors, assigns, employees, attorneys and any others acting in concert with it or at its direction from:
 - a. causing or allowing a diversion of the natural flow of surface water in such a way that the water from the Defendant Developer's property comes into or onto the adjacent Plaintiff Property Owners' land in a location, amount or intensity different from that location, amount or intensity which was previously accepted by the Plaintiff Property Owners as downstream recipients of water;
 - b. operating or allowing the operation of any sewage treatment plant on its property which allows effluent water to be discharged from the plant into an open drain way that enters or crosses the land of any Property Owner;

- c. allowing any of its operation or business activities to be conducted on its land in a way that is seen, smelled, heard or felt by the adjacent Plaintiff Property Owners; and further entering an order
 - d. requiring the Defendant Developer or any of its successors, assigns or those acting in concert with them or at their direction to (1) prevent the excess flow of surface water onto the Plaintiff Property Owners' land; (2) prevent the natural flow of water in a manner that will damage the Plaintiff Property Owners' (3) prevent the increase of flood hazard onto the Plaintiff Property Owners;
 - e. mandating that any personal activities or business conducted by the Defendant Developer, its officers, directors, attorneys, employees, representatives or agents, successors or assigns of the Defendant Developer be conducted solely on its own land and that no entry be allowed onto the Plaintiff Property Owners' land from the land of the Defendant Developer by any person, object or offensive sounds or smells from the sewage treatment plant.
2. Permanent injunctive relief that the Court order the Defendant Developer, its officers, directors, members, agents, successors, assigns, employees, attorneys and any others acting in concert with it or at its direction to take actions that will rectify the Defendant Developer's diversion of the natural flow of surface water from its property onto the Plaintiff Property Owners, decrease the flood hazard to the Plaintiff Property Owners and repair, alter or otherwise fix all areas adjacent to the property so that they no longer pose a substantial and increased likelihood of future diversions of the natural flow of surface water in a manner that would damage the Plaintiff Property Owners and further entering an order:
- a. causing or allowing a diversion of the natural flow of surface water in such a way that the water from the Defendant Developer's property comes into or onto the adjacent Plaintiff Property Owners' land in a location, amount or intensity different from that location, amount or intensity which was previously accepted by the Plaintiff Property Owners as downstream recipients of water;
 - b. operating or allowing the operation of any sewage treatment plant on its property which allows effluent water to be discharged from the plant into an open drain way that enters or crosses the land of any Property Owner;
 - c. allowing any of its operation or business activities to be conducted on its land in a way that is seen, smelled, heard or felt by the adjacent Plaintiff Property Owners;
 - d. requiring the Defendant Developer or any of its successors, assigns or those acting in concert with them or at their direction to (1) prevent the excess flow of surface water onto the Plaintiff Property Owners' land; (2) prevent the natural flow of water in a manner that will damage the Plaintiff Property Owners' (3) prevent the increase of flood hazard onto the Plaintiff

Property Owners;

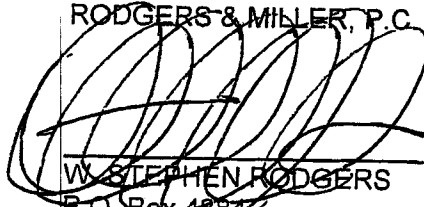
- e. mandating that any personal activities or business conducted by the Defendant Developer, its officers, directors; attorneys, employees, representatives or agents, successors or assigns of the Defendant Developer be conducted solely on its own land and that no entry be allowed onto the Plaintiff Property Owners' land from the land of the Defendant Developer by any person, object or offensive sounds or smells from the sewage treatment plant.
3. Actual damages in an amount in excess of the minimal jurisdictional limits of this Court for the nuisance, negligence and negligence per se of the Defendant Developer;
4. Special and consequential damages;
5. Exemplary damages;
6. Pre-judgment and post judgment interest as provided by law;
7. Attorney's fees;
8. Costs of court;

Such other and further relief, special and general, whether in law or in equity which the Plaintiff

Property Owners may show themselves to be justly entitled.

Respectfully submitted,

RODGERS & MILLER, P.C.



W. STEPHEN RODGERS

P.O. Box 4884

Bryan, TX 77805

(979) 260-9911

(979) 846-7083 (facsimile)

State Bar No. 17139200

ATTORNEYS FOR PLAINTIFF PROPERTY
OWNERS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF HEARING

WELLBORN SPECIAL UTILITY DISTRICT AND MAIN STREET HOMES-CS, LTD.

SOAH Docket No. 582-07-1251

TCEQ Docket No. 2006-1664-UCR

APPLICATION. Wellborn Special Utility District, 4118 Green Prairie Road West, College Station, Texas 77845 and Main Street Homes-CS, Ltd., 900 Congress Avenue, Suite L-100, Austin, Texas 78701, have applied with the Texas Commission on Environmental Quality (TCEQ) to obtain a sewer Certificate of Convenience and Necessity in Brazos County, Texas (Application No. 35206-C).

CONTESTED CASE HEARING. The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

**10:00 a.m. – March 13, 2007
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 13, Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 291; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. To participate in the evidentiary hearing as a party, you must attend the preliminary hearing and show you would be affected by the petition in a way not common to members of the general public.

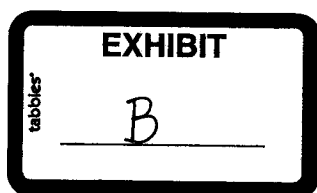
INFORMATION. For information concerning the hearing process, please contact the TCEQ Office of the Public Interest Counsel (MC 103), P.O. Box 13087, Austin, TX 78711-3087, telephone 512-239-6363. For additional information, contact the TCEQ Water Supply Division, Utilities & Districts Section (MC 153), P.O. Box 13087, Austin, TX 78711-3087, telephone 512-239-4691. General information regarding the TCEQ can be found at our web site at www.TCEQ.state.tx.us.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the SOAH Docketing Department at 512-475-3445, at least one week prior to the hearing.

Issued: January 30, 2007

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality



Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue

Suite 1700

Austin, Texas 78701

(512) 472-8021

Fax (512) 320-5638

www.bickerstaff.com

March 5, 2007

VIA FACSIMILE ONLY

The Honorable Lilo D. Pomerleau
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, TX 78711-3025

Re: SOAH Docket No. 582-06-1697; TCEQ Docket No. 2005-2092-UCR; City of
College Station's Application to Amend Sewer Certificate of Convenience and
Necessity in Brazos County

Dear Judge Pomerleau:

Enclosed is a copy of the Status Report and Unopposed Motion to Extend Abatement
Period in connection with the above-referenced matter. The original is being filed with the
TCEQ and a copy is being served on each of the parties.

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,

Bill Dugat III
William D. Dugat III

WDD/db
Enclosure

cc: All Parties of Record (via facsimile and/or mail)

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue

Suite 1700

Austin, Texas 78701

(512) 472-8021

Fax (512) 320-5688

www.bickerstaff.com

March 5, 2007

VIA FACSIMILE AND U.S. MAIL

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: SOAH Docket No. 582-06-1697; TCEQ Docket No. 2005-2092-UCR; City of
College Station's Application to Amend Sewer Certificate of Convenience and
Necessity in Brazos County

Dear Ms. Castañuela:

Enclosed for filing is an original and one copy of the Status Report and Unopposed Motion to Extend Abatement Period in connection with the above-referenced matter. Please file the original and have the copy filed-stamped and returned to me in the enclosed self-addressed, stamped envelope.

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



William D. Dugat III

WDD/db
Enclosures

cc: The Honorable Lilo D. Pomerleau (via facsimile only)
Administrative Law Judge

All Parties of Record (via facsimile and/or mail)

SOAH DOCKET NO. 582-06-1697
TCEQ DOCKET NO. 2005-2092-UCR

CITY OF COLLEGE STATION'S
APPLICATION TO AMEND
SEWER CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN BRAZOS COUNTY

§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**STATUS REPORT AND UNOPPOSED
MOTION TO EXTEND ABATEMENT PERIOD**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of College Station ("College Station") files this Status Report and Unopposed Motion to Extend Abatement Period.

BACKGROUND

A preliminary hearing in the above-captioned matter was held on June 6, 2006. In Order Number 1, the ALJ set out the prehearing and hearing schedule. On August 3, 2006, College Station filed a motion to abate the schedule while the parties conducted settlement negotiations. In Order Number 2 dated August 4, 2006, the ALJ granted the abatement and required College Station to submit a status report on October 3, 2006. On October 3, 2006, College Station filed an unopposed motion to extend the abatement period. College Station settled with all protesting parties except for Main Street Homes ("MSH") and Wellborn Special Utility District ("WSUD"). In Orders Number 3 and 4, the ALJ dismissed the parties who settled with College Station. In Order Number 5, the ALJ granted College Station's October 3, 2006 request for an extension of the abatement period and ordered College Station to file a status report on or before January 5, 2007. College Station submitted a status report and request for abatement extension, which the ALJ granted in Order Number 6. The ALJ also ordered College Station to file a status report on or before March 5, 2007.

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this 5th day of March, 2007, a true and complete copy of the foregoing was sent to the following by facsimile, overnight delivery, or by first class mail:

Parties	Representative / Address	Phone
TCEQ Executive Director	Paul Tough, Staff Attorney TCEQ, MC-175 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-1297 Fax: (512) 239-0606
Office of Public Interest Counsel	Blas J. Coy, OPIC TCEQ, MC-103 P.O. Box 13087 Austin, TX 78711-3087	Tel: (512) 239-6363 Fax: (512) 239-6371
Wellborn Special Utility District	Leonard Dougal Jackson Walker, L.L.P. 100 Congress Avenue, Suite 1100 Austin, TX 78701	Tel: (512) 236-2000 Fax: (512) 236-2002
Main Street Homes-CS	Mark Zeppa Law Offices of Mark H. Zeppa, P.C. 4833 Spicewood Springs Road Suite 202 Austin, TX 78759-8436	Tel: (512) 346-4011 Fax: (512) 346-6847
The Honorable Lilo D. Pomerleau Administrative Law Judge	SOAH 300 W. 15 th Street, Ste. 504 Austin, TX 78711-3025	Tel: (512) 475-4993 Fax: (512) 475-4994
Office of the Chief Clerk	TCEQ P.O. Box 13087 (MC-105) Austin, TX 78711-3087	Tel: (512) 239-3000 Fax: (512) 239-3311


William D. Dugal III

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

A Registered Limited Liability Partnership

816 Congress Avenue

Suite 1700

Austin, Texas 78701-2443

Telephone: (512) 472-8021

<http://www.bickerstaff.com>

The information contained in this facsimile is privileged & confidential. It is intended only for the use of the individual or entity named below. If you have received this transmission in error, please notify us by telephone collect and return it to us at the above address. Thank you.

DATE: March 5, 2007

CLIENT #: 1094.24

TELECOPIER COVER SHEET

Fax Number: (512) 320-5638

Send To:

Confirmation No.

Facsimile No.

Hon. Lilo D. Pomerleau

475-4993

475-4994

Chief Clerk

239-3000

239-3311

Mark Zeppa

346-4011

346-6847

Leonard Dougal

236-2000

236-2002

Blas Coy

239-6363

239-6377

Paul Tough

239-1297

239-8606

FROM: Bill Dagat

Return to Denise B.

TOTAL PAGES INCLUDING COVER SHEET: 19

☐ ORIGINAL WILL FOLLOW VIA U.S. MAIL

☒ ORIGINAL WILL NOT FOLLOW Except to
Chief Clerk

TELECOPIER OPERATOR: _____

TIME: _____ a.m./p.m.

Please contact the fax center at 512-472-8021 if complete FAX is not received.

MESSAGE:

Please see attached.