

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE STATE OF TEXAS
COUNTY OF TRAVIS
THEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT WHICH IS FILED IN THE PERMANENT RECORDS



JUL 08 2020

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON

Bridget C. Bohac
BRIDGET C. BOHAC, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TOWN OF ADDISON;
RN105975361**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2015-0549-WR-E

On JUL 01 2020, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the Town of Addison ("Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by David G. Cabrales of the law firm Foley & Lardner LLP, presented this Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, to receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights which might otherwise be authorized or required in this action.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable; and if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates two permitted impoundments, associated with TCEQ Water Use Permit No. 5383A (the "Permit"), within a municipal development located on Ponte Avenue along Vitruvian Trail in the Town of Addison, Dallas County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(51).
2. During an investigation conducted on October 8, 2014, an investigator documented that Respondent:

JUL 08 2020
5:00 PM
JUL 08 2020
JUL 08 2020
JUL 08 2020
JUL 08 2020

- a. Failed to obtain authorization prior to beginning construction of any work designed for the storage, taking or diversion of state water. Specifically, Respondent began construction in September 2010 and impounded additional state water prior to the May 20, 2011, approval of the Permit;
 - b. Failed to maintain a Trinity Aquifer groundwater well as an alternative source of water. Specifically, Respondent drilled a well into the Woodbine Aquifer instead of the Trinity Aquifer as required under the Permit;
 - c. Failed to supplement the reservoirs with water from the groundwater well in the amount of a minimum of 5.82 acre-feet of water per year. Specifically, the well to provide an alternative water source was not put into operation until August 1, 2012; and
 - d. Failed to maintain a riparian buffer zone of permanent native vegetation around the perimeter of the reservoir complex at a density to ensure complete coverage at maturity and to ensure that the slope of the of the perimeter is not greater than 15%. Specifically, the area around Reservoir No. 2 had non-native vegetation growing around the perimeter, and some areas were graded with a slope greater than 15%.
3. The Executive Director recognizes that Respondent performed the following corrective actions:
- a. On May 20, 2011, Respondent obtained authorization, the Permit, from the TCEQ to commence construction on a project to create an additional reservoir ("Reservoir No. 2");
 - b. On August 1, 2012, Respondent began supplementing impoundments with a minimum of 5.82 acre-feet of groundwater per year; and
 - c. On March 3, 2015, Respondent submitted an application to the TCEQ to amend the Permit to substitute the Woodbine Aquifer as the alternate water source and to revise the riparian buffer zone requirements.
4. The Executive Director recognizes that on or about September 11, 2018, Respondent and the City of Farmers Branch, the municipality immediately downstream of the Site, reached agreement on several matters that pertain to the Permit (the "Settlement Agreement"). The Settlement Agreement was later approved by the city council of each city. With regard to the matters covered by this Order, the Settlement Agreement addresses:
- a. The drilling of a well by the City of Farmers Branch to be completed in the Trinity Aquifer and used as the primary alternate source of water to replace state water lost through evaporation, and to utilize the existing well in the Woodbine Aquifer as a supplemental backup source of water while the well to Trinity Aquifer is under construction, or for those instances in which groundwater from the well in the Trinity

- Aquifer is either unavailable or not available in sufficient quantity; and
- b. Modification of the riparian buffer zone around Reservoir No. 2 to consist of a mixture of native and introduced vegetation and to maintain the riparian buffer zone.
5. The Executive Director recognizes that on April 12, 2019, Respondent submitted to the TCEQ, a request to amend the Permit. The Respondent's requested changes included the completion of a well in the Trinity Aquifer, the modification of the riparian buffer zone requirements and the limited use of the well in the Woodbine Aquifer.
 6. The Executive Director recognizes that on July 9, 2019, Respondent received approval from the TCEQ of an amended Water Use Permit No. 5383B (the "Revised Permit") that reflects matters contained in the Settlement Agreement. The Revised Permit includes the completion of a well in the Trinity Aquifer, the modification of the riparian buffer zone requirements and the use of the well in the Woodbine Aquifer in accordance with the Revised Permit.
 7. The Executive Director further recognizes that the above-mentioned Settlement Agreement, the Revised Permit and this Order address specific matters of contest associated with this enforcement action. Accordingly, Respondent may be allowed reasonable extensions, in accordance with the terms of the Revised Permit and this Order, to ensure that the well is completed in accordance with this Order and the Revised Permit.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain authorization prior to beginning construction of any work designed for the storage, taking or diversion of state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain a Trinity Aquifer groundwater well as an alternate source of water, in violation of 30 TEX. ADMIN. CODE § 297.45(e) and the Permit, Special Condition 6.B.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to supplement the reservoirs with water from the groundwater well in the amount of a minimum of 5.82 acre-feet of water per year, in violation of TEX. WATER CODE § 11.121, 30 TEX. ADMIN. CODE § 297.45(e), and the Permit, Special Condition 6.B.
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to maintain a riparian buffer zone of permanent native vegetation around the perimeter of the reservoir complex at a density to ensure complete coverage at maturity and to ensure that the slope of the perimeter is not greater than

15%, in violation 30 TEX. ADMIN. CODE § 297.45(e) and the Permit, Special Condition 6.D.

6. Pursuant to TEX. WATER CODE § 11.0842(a), TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of thirty-four thousand dollars (\$34,000.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 11.0842. Respondent paid thirty-four thousand dollars (\$34,000.00) of the penalty.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 7 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall undertake the following technical requirements:
 - a. Have a well constructed in the Trinity Aquifer and plant a community of native and introduced vegetation around Reservoir No. 2, in compliance with the Revised Permit. Further, the following information and notices shall be submitted to the addresses in Ordering Provision No. 2.d.:
 - i. At least 3 days prior to the commencement of construction, Respondent shall send written notice to the Executive Director of the date of commencement of construction of the well in the Trinity Aquifer;
 - ii. Respondent shall provide the Executive Director with the status of the construction of the well in the Trinity Aquifer every 60 days until the completion of the well in the Trinity Aquifer. In addition, Respondent shall respond completely and adequately, as determined by the Executive Director, to all requests for information concerning the construction and completion of a well to the Trinity Aquifer and the installation/maintenance of the riparian buffer zone around Reservoir No. 2, within 30 days after the date of such requests or by any deadline specified by the Executive Director in writing;

- iii. Within 15 days after the date the Well in the Trinity Aquifer is completed, Respondent shall provide the Executive Director written notice of completion; and
- iv. Within 15 days after the installation of a community of native and introduced vegetation around Reservoir No. 2, Respondent shall provide the Executive Director written notice of installation.
- b. After construction of the well in the Trinity Aquifer, the well shall be maintained and operated in accordance with the Revised Permit. After installation of the riparian buffer zone around Reservoir No. 2, Respondent shall maintain the riparian buffer zone around Reservoir No. 2 in accordance with the Revised Permit.
- c. Within 30 days after the date of notice of completion of the well in the Trinity Aquifer Ordering Provision 2.a.iii., Respondent shall submit written certification in accordance with Ordering Provision 2.d. to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.b.
- d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The written certifications, notices, status updates and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Road
Fort Worth, Texas 76118-3087

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The

term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



For the Commission

7-6-2020
Date



For the Executive Director

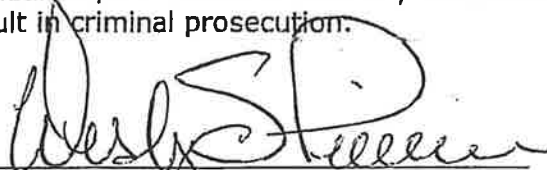
May 28, 2020
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Wesley S. Pierson, City Manager
Town of Addison
P.O. Box 9010
Addison, Texas 75001

February 18, 2020
Date

If mailing address has changed, please check this box and provide the new address below:
