

**600 Congress Avenue, Suite 1300  
Austin, TX 78701**

May 12, 2015

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Ron Ellis, Manager, Water Rights Permitting Section  
Dr. Kathy Alexander, Technical Specialist  
Chris Peters, Water Rights  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Tony Walker, Director, Region 4  
Jeff Tate, Section Manager - Water  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth TX 76118-6951

Re: Addison Water Use Permit No. 5383A – Farmers Branch Creek – Addison Accounting Plan

Dear Mr. Sallans, Mr. Ellis, Ms. Alexander, Ms. Peters, Mr. Walker, and Mr. Tate:

In response to periodic information requests we have filed on behalf of the City of Farmers Branch, we have been receiving copies of a number of submissions the Town of Addison has filed in support of its request to amend its Water Use Permit No. 5383A, including a number of documents relating to its Vitruvian Park Accounting Plan, which Chris Kozlowski provided us by April 28<sup>th</sup> email. By this letter, we formally object to the agency's processing of Addison's permit amendment application, based on Addison's record of continued non-compliance and on the adverse water quality impacts that would result were the amendment to be issued. In the event the agency decides to deny our request and to process Addison's amendment application, we provide for the staff's consideration the attached comments of our consultant, TRC, specifically critiquing Addison's accounting plan, and we request that staff require that Addison amend its plan to address our concerns.

By way of background, on March 30, representatives of the City of Farmers Branch met with each of the addressees to discuss our concerns with Addison's ongoing non-compliance and proposed amendment request. We followed that meeting with an April 6 letter summarizing our concerns. We raised a number of concerns, but the key one was "Addison's continued recalcitrance" and strategy for achieving compliance, that is "rather than changing its conduct to comply with its permit, . . . seeking to change its permit to conform to its conduct." We do not

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believe the agency should be entertaining a permit amendment while Addison remains out of compliance.

The rules of the TCEQ expressly address compliance history and provide that the commission should deny an application for a permit amendment when the person has demonstrated “a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct the violations.” 30 TAC 60.3(a)(3)(E). Although the compliance history rules do not expressly apply to water rights permits, the policy behind them supports a determination that granting a permit amendment is not appropriate when a person has demonstrated a lack of respect for the regulatory process.

As we have shown in our prior presentations, Addison has demonstrated such disrespect in numerous ways - beginning construction and impounding water before it obtained a permit, drilling the make-up water well to the Woodbine rather than the Trinity as required in the permit, failing to maintain a riparian buffer of native vegetation as required in the permit, and failing to provide makeup water as required in its permit causing the creek downstream to stop flowing at times. Now, when told by the agency that they are in violation of their permit, instead of making any attempt to correct the violations, Addison has simply requested a permit amendment to allow its non-compliant behavior to continue.

Addison is not only out of compliance with its water use permit, it is out of compliance as well with the MS4 stormwater permitting requirements. Addison failed to file a notice of intent to be covered under the MS4 General Permit by the required deadline. This history of non-compliance and disregard for regulatory requirements is precisely what the regulations require the permitting staff take into account in other permitting programs and should be relevant in the decision regarding amendment of Addison’s water rights permit.

As to Addison’s proposed “Vitruvian Park Accounting Plan” TRC’s comments include the following:

- The plan does not provide a reconciliation schedule and we recommend reconciliation at least weekly.
- The plan only accounts for evaporation from one reservoir, which is inconsistent with language in the permit that requires consideration of evaporation from both reservoirs. If the agency moves forward with the permit amendment, we request that the amendment clarify that evaporation from both reservoirs, including the water features, must be accounted for as that is the only way to ensure that all impounded water is passed through to the stream downstream of the reservoirs.
- The location of the stream flow gages as proposed will not provide accurate stream flow readings. Regardless of the location, numerous direct flow measurements will be

required to establish rating curves, and the method would still have insufficient precision for the required purpose.

- A single daily stream flow reading is inappropriate because stream flow varies throughout the day and the time of a single reading would influence calculations.
- Evaporation should not be ignored during storm events.
- The TWDB Average Monthly Rates for lake evaporation provided in Addison's table are lower in every month than the average annual rate provided by the TWDB.
- Addison proposes to use net evaporation; gross evaporation is more appropriate.
- The proposed process is complicated, time consuming, and inaccurate. We believe calculating evaporative losses using pan evaporation data would be simpler and more accurate.

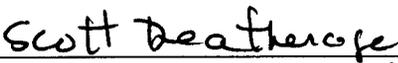
We again urge the agency to deny Addison's permit amendment application and require that it comply with all of the terms of its existing permit. We reiterate the concern expressed in our April 6<sup>th</sup> letter that issuance of Addison's proposed amendment will result in further degradation of the quality of the water in Farmers Branch Creek and request that the agency deny the requested amendment on that substantive ground. In the event the agency decides to continue the processing of Addison's permit amendment, we ask that the permitting staff consider the attached comments to Addison's proposed "Accounting Plan."

Sincerely,

**Representing**  
**City of Farmers Branch**

  
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**Representing**  
**Concerned Citizens of Farmers Branch**

  
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c: Mayor Bob Phelps  
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