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February 18, 2010

VIA ELECTRONIC FILING

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: San Jacinto River Authority, Appeal No. NPDES 09-09

Dear Clerk of the Board:

Enclosed for submission is the electronic filing of the San Jacinto River Authority's Motion to Abate Proceedings.

Sincerely,



Lauren Kalisek
Attorney for the San Jacinto River Authority

LJK:mab

Enclosure

cc: Mr. Thomas David Gillespie
Ms. Tojuana Cooper
Dr. Peggy Glass
Mr. Reed Eichelberger
Mr. Martin C. Rochelle (*of the firm*)

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
San Jacinto River Authority)	NPDES Appeal No. 09-09
)	
NPDES Permit No. TX0054186)	
)	

SAN JACINTO RIVER AUTHORITY'S MOTION TO ABATE PROCEEDINGS

I. INTRODUCTION

San Jacinto River Authority ("SJRA") files this Motion to Abate Proceedings and requests that the Environmental Appeals Board (the "Board" or "EAB") postpone consideration of the merits of SJRA's Petition for Review ("the Petition") for the reasons detailed below.

The Petition was filed with the Board on August 21, 2009 requesting review of SJRA's Modified National Pollutant Discharge Elimination System ("NPDES") Permit issued on July 24, 2009 (the "Permit") for The Woodlands Wastewater Treatment Plant No. 1 ("WWTP #1"). Among the conditions in the Permit which SJRA appeals is the imposition of lethal and sublethal Whole Effluent Toxicity ("WET") limits. For the reasons discussed below, SJRA respectfully requests that the Board postpone its consideration of and ruling on the Petition until such time as SJRA's additional Texas Pollutant Discharge Elimination System ("TPDES") permit for The Woodlands

Wastewater Treatment Plant No. 2 (“WWTP #2”) may be efficiently appealed and reviewed in conjunction with the Petition.

II. MOTION TO ABATE

The Petition currently being considered by the Board relates to the imposition of WET limits by Region VI of the Environmental Protection Agency (the “Region”) on WWTP #1. At the time the Petition was filed, WWTP #1 was the only SJRA facility upon which the Region sought to impose WET limits. However, the Region has recently notified the Texas Commission on Environmental Quality (the “TCEQ”) that it believes there are more than thirty facilities with draft TPDES permits that have a “history of WET test failures” that indicate “significant lethal and/or sublethal effects” and for which the Region is now requiring lethal and sublethal WET limits.¹ Included in these thirty-one facilities is SJRA’s WWTP #2.² These thirty-one facilities are indicative of the unresolved issues between the Region and TCEQ related to the methodology used for Reasonable Potential determination (“RP”) and the need for WET limits in delegated Texas NPDES permits. As noted in the attached correspondence between the TCEQ and EPA, the TCEQ has worked with the Region over the past three years regarding revisions to its WET program that could receive the Region’s support, but concludes that the “EPA continues to find TCEQ’s suggested approaches unsatisfactory without

¹ Letter from U.S. EPA Region VI to Mark R. Vickery, TCEQ Executive Director, *Revisions to the Procedures to Implement the Texas Water Quality Standards with Regard to Whole Effluent Toxicity Requirements in Wastewater Discharge Permits* (December 22, 2009). Enclosed as **Exhibit A**; Letter from EPA Region VI to L’Oreal Stepney, TCEQ Office of Water, *Texas Pollutant Discharge Elimination System (TPDES) Permits on Hold for Issues Related to Whole Effluent Toxicity (WET) Requirements* (Dec. 18, 2009) at 1. Enclosed as **Exhibit B**.

² Exhibit A at pg. 3; Exhibit B at pg. 1.

offering any scientific justification.”³ The continued tension between the agencies regarding the implementation of WET limits may lead to the “EPA objecting to a significant percentage of TCEQ draft permit decisions” in addition to these thirty-one facilities and SJRA’s WWTP #1.⁴ Thus, the issues between the EPA and TCEQ regarding WET limits in TPDES permits may not be resolved in the near future, and there is a clear possibility that SJRA’s permit for WWTP #2 will be federalized by the Region. If this federalization of the TPDES permit occurs, SJRA intends to protest the WET limits proposed for WWTP #2, as it has for WWTP #1, and anticipates that this second protest will similarly result in an appeal to the Board.

SJRA files this Motion to request an abatement because SJRA will be unduly burdened by conducting two full appeals before the Board, where each appeal related to WWTP #1 and WWTP #2 will involve similar arguments and factual circumstances. In fact, SJRA’s 2008 Sublethal Toxicity Evaluation (“2008 STE”), which is discussed in depth in the Petition and is at the heart of many issues disputed between SJRA and the Region, applies to both WWTP #1 and WWTP #2, and will be similarly argued in the future appeal regarding WWTP #2 as it has been for WWTP #1. SJRA requests that, to avoid the duplication of the time and effort of SJRA, the Region, and the Board, the Board delay its consideration of the Petition until the point in the appeals process where appeals for both WWTP #1 and WWTP #2 may be heard together. Such an abatement will allow the Board to consider the record for both permits before making a decision that will affect both.

³ Letter from Mark R. Vickery, TCEQ Executive Director to Lawrence E. Starfield, Deputy Regional Administrator, EPA Region VI (January 26, 2010)1. Enclosed as **Exhibit C.**

⁴ Exhibit A at pg.2.

For these reasons, SJRA respectfully requests that the Board abate its consideration of the Petition regarding SJRA's WWTP #1 until such time in the process as the appeal of WWTP #1 may be heard simultaneously with the appeal of WWTP #2.

Counsel for SJRA contacted counsel for the Region on February 17, 2010 regarding the filing of this Motion, and the Region opposes the Motion.

Respectfully submitted,

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LAUREN KALISEK

Attorney for the San Jacinto River Authority

Date: February 18, 2010.

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of February 2010, a true and correct copy of the San Jacinto River Authority's Motion to Abate Proceedings was provided by hand delivery, regular mail, electronic filing or facsimile to the following persons:

The Environmental Appeals Board

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

For The Region

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