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Documents transmitted:	SAN JACINTO RIVER AUTHORITY'S RESPONSE TO MOTION FOR EXTENSION OF TIME TO SUBMIT A RESPONSE BY EPA REGION VI
From: Lauren J. Kalisek	

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

VIA FACSIMILE AND FEDERAL EXPRESS

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

Dear Clerk of the Board:

Enclosed for filing is the original and five copies of San Jacinto River Authority's Response to Motion for Extension of Time to Submit a Response by EPA Region VI.

Sincerely,

Lauren Kalisek
with permission
Stefanie Albright
Lauren Kalisek
Attorney for San Jacinto River Authority

LJK:mb
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Enclosure

cc: Mr. Miguel I. Flores
Mr. Don R. Sarich
Dr. Peggy Glass
Mr. Reed Eichelberger
Mr. Martin C. Rochelle

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

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

NPDES Appeal No. 09-09

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**SAN JACINTO RIVER AUTHORITY'S RESPONSE TO MOTION FOR EXTENSION
OF TIME TO SUBMIT A RESPONSE BY EPA REGION VI**

San Jacinto River Authority ("SJRA" or the "District") files this response to the motion filed by Region VI of the Environmental Protection Agency (the "Region") dated October 9, 2009, requesting that the Environmental Appeals Board (the "Board" or "EAB") issue an order granting a 60-day extension of time, up to and including December 14, 2009, to file a response to SJRA's Petition for Review filed on August 24, 2009 in the above-referenced matter. The Region's motion was received by SJRA on October 12, 2009. The Region argues that good cause exists for an extension and that the District will not be prejudiced by such an extension.

SJRA opposes the Region's motion for an extension of time to file its response to the District's Petition. The District disagrees that the Region has demonstrated a good cause to justify an extension from the October 15, 2009 response deadline, the date specified in the Board's regulations.

The EAB may grant an extension of time for filing a document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.¹ However, the EAB will typically relax a filing deadline only where special circumstances exist.² Examples of such special circumstances are found where mistakes by the permitting authority or delivery service have caused a delay, delays from terrorist threats, or from delays caused by natural disasters, such as hurricanes.³

In the present matter, the Region has cited no such special circumstances to justify any extension of response time, much less the excessive 60 days requested. The Region asks for its extension to "fully evaluate SJRA's petition...discuss the complex issues presented internally to identify issues for which a response should be coordinated, and if necessary...organize and index the administrative record."⁴ However, the EAB has already determined that conducting legal and technical research in preparation does not in and of itself fall into the category of a special circumstance to merit a delay in the proceedings.⁵

Further, the details specific to this proceeding do not put the Region's request for delay into the category of "special circumstances" as this proceeding is a result of protracted negotiations and prior proceedings between SJRA and the Region, all based on essentially the same documents and information that the Region is unnecessarily requesting more time to prepare. The Region issued the first draft permit on December

¹ 40 C.F.R. § 22.07(b).

² *In re AES Puerto Rico LP*, 8 E.A.D. 324, 329 (EAB 1999).

³ See, e.g., *In re Hillman Power Co., LLC*, 10 E.A.D. 673, 680 n.4 (EAB 2002) (delay due to improper service); *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 703 n.6 (EAB 2002) (delay attributed to rerouting of Washington D.C. mail due to anthrax concerns); *AES Puerto Rico*, 8 E.A.D. at 328-29 (filing delay caused by hurricane).

⁴ Respondent's Motion of Extension of Time to Submit a Response to Petitioner's Contentions at 1.

⁵ *In re Town of Mansfield, Mass.*, NPDES Appeal No. 07-03 (Order Denying Review, March 27, 2007).

7, 2006, and SJRA filed its comments to such draft permit on February 19, 2007. The Region issued its response to comments and the first final permit on September 28, 2007 ("2007 EPA Permit"). SJRA properly filed its first request for review with the EAB on September 28, 2007. On March 14, 2008, the Region chose to withdraw the contested portions of the 2007 EPA Permit to correct errors, and requested that the Board dismiss SJRA's petition as moot. The Board dismissed SJRA's petition on March 28, 2008. The Region later issued a Draft Permit Modification of the 2007 EPA Permit on January 29, 2009, and SJRA filed its comments to such draft permit modification on February 27, 2009. The Region issued its response to comments and the final modified permit on July 24, 2009, upon which this proceeding is based.

As detailed above, the Region has been working on this permit since it was federalized in 2006. The Region rescinded the original permit after a series of continuances due to their own admitted errors, and now have issued a new permit. Although the current proceeding is based on the new permit, many of the issues briefed are the same issues included in SJRA's original appeal, issues which the Region has already researched, analyzed, and prepared to address as a result of the District's comments on both the original and modified permits, as well as a result of the first proceeding before the Board. The only new issue is the San Jacinto River Authority Sublethal Toxicity Evaluation, The Woodlands Wastewater Treatment Plant No.1 ("2008 STE Study"); a study that the Region has had available to them for almost a year.⁶

SJRA had only 30 days to file its petition following the issuance of the new permit, and was able to meet this deadline. The Region should also be held to

⁶ SJRA submitted the 2008 STE Study to the Region in November 2008.

applicable deadlines as set out in the federal regulations, absent any special circumstances. Otherwise, this process could continue forever.

Further, SJRA would be prejudiced by such an extended delay of time if granted by the Board. The inordinate amount of time this process has endured has resulted in higher costs and expenses associated with such a protracted administrative process. Further, it is prejudicial to allow the Region to have a much longer period of time to craft its response by extending deadlines when such an advantageous amount of time was not similarly given to SJRA to file its original appeal. SJRA has been accommodating to the Region in agreeing to continuances in the past,⁷ but at some point the Region should be required to respond in a timely and meaningful manner to SJRA's petition. This proceeding should not be left to languish in another round of deadline extensions when the issues and materials the Region is asking for more time to consider have largely already been considered in earlier proceedings.

⁷ See Environmental Protection Agency, Respondent's Unopposed Motion for Extension of Time to Submit a Response to Petitioner's Contentions, NPDES Appeal 07-19 (Nov. 28, 2007); Environmental Protection Agency, Respondent's Unopposed Motion for Extension of Time to Submit a Response to Petitioner's Contentions, NPDES Appeal 07-19 (Jan. 23, 2008); Environmental Protection Agency, Respondent's Unopposed Motion for Extension of Time to Submit a Response to Petitioner's Contentions, NPDES Appeal 07-19 (Feb. 13, 2008); Environmental Protection Agency, Respondent's Unopposed Motion for Extension of Time to Submit a Response to Petitioner's Contentions, NPDES Appeal 07-19 (Feb. 29, 2008).

For these reasons, SJRA opposes the Region's request for an extension to file its response to the District's petition.

Respectfully submitted,

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Date: October 13, 2009.