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Austin, TX 78701**

April 6, 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

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

Thank you for taking the time to meet with representatives of the City of Farmers Branch, including its Mayor and City Manager, and several of its residents on Monday, March 30, to discuss our concerns with Addison's ongoing non-compliance with the terms of the referenced permit, which authorized it to modify one reservoir and to construct another, in conjunction with its Vitruvian Park development, and the impact of that failure on the ecology of Farmers Branch Creek and on its adjacent landowners as well as on the Farmers Branch community generally. We thought it useful to summarize some of the key points we discussed.

We are appreciative that the agency, in response to the formal complaints we filed in late summer of 2014, has initiated a formal enforcement action against Addison, but remain concerned with Addison's continued recalcitrance and that Addison, rather than changing its conduct to comply with its permit, is seeking to change its permit to conform to its conduct. We request that the agency vigorously pursue its enforcement action, to encourage Addison to come

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into compliance expeditiously and to discourage it from future non-compliance. As we discussed, the terms of Addison's permit that it seeks to change were intended to protect Farmers Branch Creek, and we are opposed to, and request the opportunity to formally challenge, any such changes. Below is our commentary on Addison's violations and its permit amendment request.

### **Addison's Violations**

#### **Commencement of construction without authorization**

Addison commenced construction of its Vitruvian Park reservoir project before receiving authorization to do so, impounding water during that time, cutting off flow to Farmers Branch Creek, significantly impairing the vitality of its ecosystem. There is no remedy to cure those impacts and those violations; the only remedy is to punish Addison for its conduct and to seek to deter such conduct in the future. There are measures, however, that can be taken prospectively to preserve and protect the Creek.

#### **Failure to maintain adequate flow**

As the agency found, Addison, on a number of occasions, has failed to maintain adequate flow in Farmers Branch Creek. As we discussed, we believe that the vitality of the Creek depends on their being, and that the permit requires that there be, continuous flow in it. We had suggested that any agency-issued order, therefore, not only contain sanctions for past non-compliance and stipulated penalties to discourage future non-compliance, but that it also contain explicit conditions to assure that Addison attains and maintains compliance, for example, by including a requirement that Addison maintain daily flows and adjust its flows weekly to assure compliance with the permit's conditions that it maintain its reservoirs full and pass all inflows of state water downstream as well as that it "ensure that no State water is used." (emphases added). We had suggested as well that the order include provisions ensuring Addison's compliance, for example, by requiring reporting or posting on its website pertinent evaporation and pumping data, so that the agency and the public could readily verify that Addison has been doing what's required of it.

We disagree with the agency as to whether Addison must make up evaporative losses from Reservoir 1 as well as from Reservoir 2. As we noted, the permit expressly references both reservoirs not one. If the evaporation is not accounted for from Reservoir 1, then the water flowing into and through Reservoir 2 will not flow over the dam in Reservoir 1 to the Creek downstream as the permit requires. In any event, the evaporative losses that Addison is required to make up should include those related to enhanced evaporation resulting from its pumping 2000 gallons per minute to maintain its aesthetic water features such as waterfalls, which TRC calculated to be on the order of 0.4 acre feet per year. As we also discussed, the incremental cost

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to Addison of pumping at capacity at 32 gallons per minute to maintain flow 24-7 is relatively miniscule and certainly pales by comparison to its waterfall-related pumping costs.

Use of an unauthorized aquifer for make-up water

As we noted, Addison seeks to amend its permit to authorize it to take make-up water from the Woodbine, into which they drilled their well, as opposed to the Trinity Aquifer, into which their permit required them to drill. Under the permit, however, specifically Special Condition 6. C., Addison may not continue to impound water pending consideration of a permit amendment request; it must immediately cease impoundment in the meantime. This provision expressly states:

This amendment is issued contingent upon the Permittee's maintenance of the alternate source of water identified in Special Condition B. [the Trinity Aquifer]. In the event the groundwater well will not be used as the alternate source, Permittee shall immediately cease impoundment of water under this amendment and either apply to amend the permit with documentation of the new alternate source of water, or voluntarily forfeit the amendment. (Emphasis added)

As we discussed, as to the merits of Addison's amendment request, the quality of the Woodbine is significantly inferior to that of the Trinity and the use of Woodbine water degrades the quality of the water in Farmers Branch Creek as well as raises legal issues as to whether separate authorization to discharge is required. Separate and independent of those issues is the issue of whether use of the Woodbine could lead to violations of the water quality standards for Farmers Branch Creek, which would result in yet another violation by Addison of its permit; the permit requires that the commingled discharge of make-up and Creek water meet water quality standards.

At our meeting, James Machin of TRC described his calculations that indicated that a discharge of Woodbine water commingled with Creek water would result in a violation of pertinent water quality standards under critical conditions. Attached is the spreadsheet he prepared that led to this conclusion. In follow-up correspondence to us, Mr. Machin notes:

The TCEQ Water Quality Standards Implementation Team has determined the creek is classified as "intermittent with perennial pools." Therefore, Menu 7 is used to determine the impact of a discharge on the standards relating to total dissolved solids (TDS), chlorides (Cl), and sulfates (SO4).

The attached spreadsheet (TCEQ Menu 7) presents the calculations for TDS, Cl, and SO4 using the averages of the three groundwater samples TRC collected from the Vitruvian

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well in February 2014, which were 2170 mg/L TDS, 573 Cl, and 436 SO<sub>4</sub>. There are two criteria, and the more stringent one must be met. They are shown as "5.a." and "5.b." tabs in the spreadsheet. The 5.b. tabs are more stringent, so the 5.a. tab is not considered.

The "5.b. maxflow" tab shows the analysis under critical conditions of the highest evaporation month in the TWDB period of record, which results in a groundwater makeup flow of 22.03 gpm. The standards for all three constituents would be significantly exceeded.

The "5.b. avg flow" tab shows the analysis using the long-term average flow for the entire period of record of 9.26 gpm. That also results in exceedances of all three standards.

#### Failure to maintain a native vegetation riparian buffer

Addison also seeks to amend its permit to remove the requirement that it maintain a native vegetation buffer. As we discussed, this requirement too, which Addison continues to ignore, was intended to protect the quality of Farmers Branch Creek, by serving as a filter as well as a buffer, preventing pet waste and trash, as well as other contaminants, such as pesticides and herbicides, from entering the reservoirs. Addison's plans to increase development to over 6500 residents in the vicinity as well as its touting of the park as dog friendly poses an increased threat to the Creek.

#### Addison's Amendment Request

In reviewing information we received from the agency in response to our Public Information Act request, we note that Addison has asserted that its requested amendments to the permit do not require notice and an opportunity for a public hearing because the application merely changes the groundwater source from the Trinity Aquifer to the Woodbine Aquifer and does not change the quantity of groundwater to be used or change the requirement that the commingled water leaving the reservoir not adversely impact water quality and therefore the changes do not meet any of the regulatory or statutory requirements that trigger notice and opportunity for a hearing. We disagree and take this opportunity to respond.

The permit application requests not only a change in the aquifer to be used for make-up water, but also a change in the requirement to maintain a riparian buffer of native vegetation. As discussed above, we believe both of these changes have an impact on water quality of the Creek and the environment generally. The Texas Water Code requires notice and comment if a proposed change will cause adverse impacts on the environment, TEX. WATER CODE § 11.122(b), and TCEQ's rules clarify that notice and hearing are not required only if the proposed

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amendment “has no potential for harming any other existing water right.” 30 T.A.C. § 295.158(c). The Supreme Court has explained that notice and comment is required if the amendment will cause adverse impacts on (i) other water right holders, (ii) the stream environment, or (iii) other applicable requirements. *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 110–111 (Tex. 2006).

TCEQ recognized that the quality of the make-up water as well as the lack of riparian buffer could have an adverse impact on the Creek. In addition to proscribing a violation of water quality standards, the permit expressly requires, in Special Condition 6. D, that the Permittee maintain a riparian buffer zone “[i]n order to protect the water quality of the reservoirs and the ecosystem of the water body downstream of the reservoirs.”(Emphasis added). The agency specifically evaluated these issues in its analysis of the first permit amendment in 2010. See TCEQ November 18, 2010 Environmental Analysis Memorandum. This evaluation resulted in the inclusion of specific permit terms requiring not only that the commingled water leaving the lower reservoir not impact water quality, but also that there be installed a riparian buffer of dense vegetation composed of natural species. A permit amendment to change the quality of the make-up water or remove the requirement for a native riparian buffer undeniably has the potential to cause adverse impacts to water quality and therefore triggers notice and opportunity for a hearing.

If the TCEQ does proceed with consideration of Addison’s amendment application, we request that the permit be clarified to require continuous flow and that evaporation calculations take into account evaporative losses from both reservoirs and the water features. We further request that Addison be required to periodically sample the Creek to ensure compliance of the commingled water with water quality standards.

In sum, we appreciate the agency’s responsiveness to our concerns and request that it vigorously pursue enforcement to compel Addison to come into compliance sooner rather than later. We request too that any order issued to Addison contain significant sanctions for past non-compliance and to encourage expeditious attainment and continuous maintenance of compliance with all the terms of its permit, which were developed to protect the vitality of Farmers Branch Creek, an amenity that benefits all the residents of Farmers Branch and surrounding communities. We also reiterate our request that we be afforded notice of any communications between the agency and Addison regarding its request for a permit amendment and that TCEQ provide formal notice and an opportunity for a hearing if it decides to amend the permit.

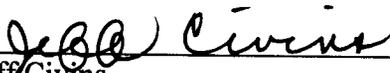
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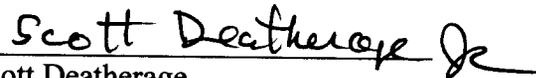
Thank you again for your consideration. Please do not hesitate to contact us should you have any questions.

Sincerely,

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

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

  
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