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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 29, 2020

Mr. Erich Birch
Birch, Becker & Moorman, LLP
4705 Spicewood Springs RD. Ste. 200
Austin, Texas 78759

RE: Complaint 339157

Dear Mr. Birch:

TCEQ received the complaint you submitted June 30, 2020 on behalf of the Lake Conroe Association asserting that the San Jacinto River Authority (SJRA) and the City of Houston (City) are diverting water from Lake Conroe in violation of Certificate of Adjudication 10-4963, the Texas Water Code and TCEQ's rules. SJRA and the City own Certificate of Adjudication 10-4963 for Lake Conroe. SJRA operates Lake Conroe and the 100,000 acre-feet of diversion rights are split between SJRA and the City. In response to flooding events from Hurricane Harvey, in 2018 SJRA initiated a seasonal strategy to temporarily lower Lake Conroe to provide flood mitigation benefits downstream of the lake. The SJRA Board adopted the strategy, which was reviewed and reconsidered in 2019 and most recently on February 20, 2020.

The Lake Conroe Association alleges several violations that it argues are within TCEQ's jurisdiction to remedy. However, some of the issues it identified are not within TCEQ's jurisdiction. TCEQ does not have jurisdiction over future water supply strategies or State and Regional Water Planning. TCEQ's authority over operation of Lake Conroe is limited to oversight of compliance with the terms and conditions of the Lake Conroe water right. If SJRA and the City have not violated the terms of the Certificate or state law, decisions about the operation of Lake Conroe are at the discretion of SJRA's Board of Directors and the City of Houston. Therefore, this response will only address whether the lake lowering strategy is a violation of the terms of Certificate of Adjudication 10-4963, as amended, and whether TCEQ should exercise enforcement discretion.

Certificate of Adjudication 10-4963 for Lake Conroe authorizes SJRA and the City of Houston to impound water in Lake Conroe and to divert from the lake or release downstream to Lake Houston 100,000 acre-feet of water per year for multiple purposes of use, including municipal use. The certificate does not require maintenance of specific lake levels or include any operational requirements. The amended certificate also requires the owners to implement Water Conservation Plans. Both SJRA and the City have adopted Water Conservation Plans that comply with TCEQ's Chapter 288 rules. Therefore, these diversions, which are in compliance with the terms of the Certificate and the Conservation Plan, are not a waste of water under the law.

Releases from Lake Conroe in 2018 and 2019 were reported by the City, charged to municipal use and conveyed downstream to Lake Houston as authorized by the certificate. Lake Houston is used for municipal purposes by both SJRA and the City. The amount of water released downstream did not exceed the amount of water authorized for use by the Certificate.

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Therefore, there has not been a need for TCEQ to exercise enforcement discretion related to any exceedance of the annual amount authorized in the Certificate. It is my understanding that the City requested continuation of the lake lowering strategy, in part, because additional dredging activities are still planned. Thus, there is no need for TCEQ to reconsider its letter of June 15, 2018 related to enforcement discretion.

Based on TCEQ's review of the Lake Conroe water right, SJRA and the City are in compliance with the terms and conditions of Certificate of Adjudication 10-4963. If you have any questions concerning this matter, please contact Earl Lott, Deputy Director of Office of Water, at 512-239-2047.

Sincerely,

A handwritten signature in black ink, appearing to read "Toby Baker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Toby Baker
Executive Director
Texas Commission on Environmental Quality