

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 5, 2007

TO: Persons on the attached mailing list.

RE: City of Walnut Springs  
TPDES Permit No. WQ0013436001

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the City of Walnut Springs, City Hall, 4126 Third Street, Walnut Springs, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

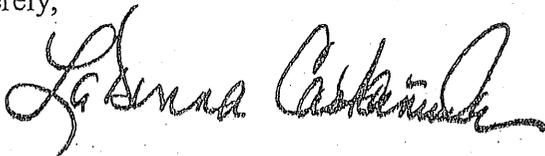
### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/er

Enclosures

MAILING LIST  
for  
City of Walnut Springs  
TPDES Permit No. WQ0013436001

FOR THE APPLICANT:

The Honorable Benny Damron  
City of Walnut Springs  
P.O. Box 272  
Walnut Springs, Texas 76690

Charles P. Gillespie, Jr., P.E.  
Consulting Environmental Engineers, Inc.  
150 North Harbin Drive, Suite 408  
Stephenville, Texas 76401

PROTESTANTS/INTERESTED PERSONS:

Clay Humphries  
420 Throckmorton Street, Suite 710  
Fort Worth, Texas 76102

Bruce M. Flowers  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

FOR THE EXECUTIVE DIRECTOR:

Dede Sigman, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Mary Ann Dimakos Airey, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

TCEQ PROPOSED PERMIT NO. WQ0013436001

APPLICATION BY

CITY OF

WALNUT SPRINGS

FOR PERMIT NO. WQ0013436001

§  
§  
§  
§  
§  
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

2007 OCT 29 AM 9:45  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the City of Walnut Springs (Applicant) application and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following persons: Mr. Bruce M. Flowers and Mr. Clay Humphries. Mr. Flowers submitted comments on behalf of his clients who consist of the The Russell Family Trust, Steele Creek Ranch, L.P., Lindsay K. Russell, Sam Irizarry and Ann Irizarry, Phillip B. Butler, Trustee of the Lucille C. Butler Revocable Family Trust, and The Sztamenitis Family Limited Partnership. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a major permit amendment to Texas Land Application Permit (TLAP) No. WQ0013436001 to change the method of disposal from irrigation to discharge. The current permit authorizes the disposal of treated effluent via irrigation of 60 acres of non-public access land at a daily average flow of 65,000 gallons per day.

The treated effluent will be discharged to Steele Creek; then to Whitney Lake in Segment No. 1203 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life uses for Steele Creek. The designated uses for Segment No. 1203 are high aquatic life uses, public water supply, and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards (TSWQS), an antidegradation review of the receiving

waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The Walnut Springs Wastewater Treatment Facility is a pond system; treatment units include two aeration ponds and two stabilization ponds. The facility also includes a holding pond for storage of treated effluent prior to irrigation.

The facility is located approximately 1,500 feet east of the crossing of State Highway 144 over Steele Creek in the City of Walnut Springs in Bosque County, Texas. The irrigation site is located approximately one mile west-southwest of the intersection of Farm-to-Market Road 927 (Texas Street) and State Highway 144.

#### Procedural Background

The permit application for a major permit amendment was received on June 21, 2006 and declared administratively complete on September 5, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on September 13, 2006 in the *Bosque County News*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on March 21, 2007 in the *Bosque County News*. The public comment period ended on April 20, 2007. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

### COMMENTS AND RESPONSES

#### COMMENT 1:

Mr. Humphries and Mr. Flowers state that during periods of drought, when the creek is not running, the concentration of pollutants may adversely affect the wildlife and livestock that depend on the creek for drinking water. Mr. Humphries and Mr. Flowers state that since Steele Creek is spring fed, pollution which enters the stream may also pollute the underground aquifer that supplies drinking water. Mr. Flowers states that the increase in pollutant concentration levels may result in substantial and imminent harm to health and the environment.

#### RESPONSE 1:

The Executive Director bases his recommended effluent limits on low flow conditions. In the assessment of the wastewater treatment plant's effects on the receiving stream, the intermittent flow nature of the stream was taken into consideration. The effluent limits in the draft permit are founded on the understanding that there are pooled areas in an intermittent flow situation, and have been drafted to be protective of human health, aquatic life and associated domestic livestock and wildlife. The Executive Director has determined that the proposed draft permit will be protective of the environment,

water quality and human health and that it meets TCEQ rules. Given the small amount of effluent proposed to be discharged, during these periods of no flow, most of the effluent will evaporate, be taken up by plants through transpiration, or infiltrate into the stream bed prior to traveling any appreciable distance.

Since the permit amendment changes effluent disposal from irrigation to discharge, more stringent effluent limitations are required in the final phase of the draft permit for discharge of the treated effluent. Also, pretreatment requirements have been added to the draft permit. Effluent limitations and monitoring requirements in the interim phase of the draft permit for disposal via irrigation remain the same as the existing permit requirements.

According to the Texas Water Development Board (TWDB), the facility and its discharge point overlies the Trinity Aquifer. The formations which make up the Trinity Aquifer are the Travis Peak, Glen Rose, and Paluxy formations (from oldest to youngest). Recharge to the Trinity Aquifer generally occurs through the infiltration of precipitation where the formations that make up the aquifer are exposed at the surface and through the interaction between surface-water bodies (streams, rivers, lakes) and the underlying aquifers. According to the Geological Atlas of Texas, Dallas Sheet, Steele Creek overlies the Walnut Clay (Kwa). The Walnut Clay formation consists of clay and resistant, bench-forming, fossiliferous limestone. The Walnut Formation is generally considered to be a confining unit above the Trinity Aquifer, and is not considered to be an area of active recharge to the Trinity Aquifer. No faults are mapped along Steele Creek near discharge point, nor are any other potential recharge features evident from the review of geological maps and soils survey for the area.

A search of the Texas Water Development Board Water Information Integration & Dissemination (WIID) web site found three wells nearby, all belonging to the City of Walnut Springs. The wells were drilled to depths of 540-830 feet below ground level, and appear to be withdrawing ground water from the Travis Peak Formation of the Trinity Aquifer. The potential for contamination of these wells is negligible.

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of the water in the state. The draft permit includes effluent limits based on this criterion for the protection of human health and aquatic life, i.e. fish and associated wildlife. The Executive Director has determined that the proposed draft permit will be protective of the environment, water quality and human health and that it meets TCEQ rules. The permit limits given to the Applicant, if followed, are protective of the existing conditions, and should not degrade water quality. Noncompliance with the permit may result in enforcement action against the permittee.

**COMMENT 2:**

Mr. Humphries indicates that with the drought conditions in Texas, the Applicant would have no shortage of land in need of irrigation. He does not think there is any legitimate reason for the creek to be affected by the proposed discharge.

**RESPONSE 2:**

Texas Water Code Section 26.027 authorizes the commission to issue permits for wastewater discharges. The ED reviews the application to determine if the proposed discharge will violate the TSWQS in 30 TAC Chapter 307. The ED does not have the authority to require a different discharge location, different type of wastewater treatment plant or to require the Applicant to dispose of treated effluent via land

application or irrigation if the proposed discharge complies with the TSWQS. The ED evaluates applications for wastewater treatment plants, based on the information provided in the application. The ED can recommend denial if discharge does not comply with the TCEQ rules.

**COMMENT 3:**

Mr. Flowers indicates Steele Creek has been classified to have only limited aquatic life uses, the NAPD does not address the impact the requested amendment would have on Steele Creek. He also questions why the aquatic life uses for Steele Creek are classified as "limited," and there is no valid reason for this vibrant, historical creek to be classified so low. He also appears to disagree with the antidegradation review. See Comment 4.

**RESPONSE 3:**

The ED's preliminary decision contains the draft permit and the technical summary. The technical summary describes all the technical elements of the application reviewed, such as the antidegradation review.

A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. The water bodies that receive the effluent from a wastewater treatment plant are called receiving waters. Receiving waters can be assigned several different aquatic life uses based on the best available information obtained by the ED staff assessing the receiving water body. These aquatic life uses in order of increasing quality are; no significant, limited, intermediate, high and exceptional. The immediate receiving stream, Steele Creek, is listed in appendix D of the Texas Surface Water Quality Standards as a perennial water body with a high aquatic life use beginning approximately 3.3 miles downstream of the wastewater treatment plant outfall location and extending downstream to Lake Whitney. The portion of Steele Creek receiving the effluent and upstream of the perennial portion is presumed to be intermittent with perennial pools and having a limited aquatic life use. The TCEQ document, Procedures to Implement the Texas Surface Water Quality Standards, states that if available information indicates that the presumed uses and criteria in the standards for the receiving waters may be inappropriate, additional data may be obtained by the TCEQ or the Applicant in the form of a "receiving water assessment" before the permit issuance. TCEQ staff reviewed the classification in September 2006 and determined that the classification was sufficient for this portion of Steele Creek.

In TCEQ's document Procedures to Implement the Texas Surface Water Quality Standards, a Tier 2 antidegradation review is only needed on streams that have been assessed an intermediate aquatic life use or higher. The portion of Steele Creek receiving effluent receiving stream is classified as having a limited aquatic life use.

The proposed discharge is predicted to maintain the 3.0 mg/L dissolved oxygen criterion associated with the limited aquatic life use presumed for Steele Creek upstream of the Texas Surface Water Quality Standards' Appendix D listed portion of Steele Creek which has been assigned a high aquatic life use. The draft permit includes effluent limits based on this criterion for the protection of human health and aquatic life, i.e. fish and associated wildlife. The Executive Director has determined that the proposed draft permit will be protective of the environment, water quality and human health and that it meets TCEQ rules.

**COMMENT 4:**

Mr. Flowers states that the NAPD does not state that the antidegradation policy that will be pertinent to the permit action, degradation of the waters found in Steele Creek is not anticipated, or the impact the permit amendment would have on Steele Creek. Mr. Flowers states that the NAPD does not state that lowering of the water quality in Steele Creek is justified by important economic or social development and therefore is not a basis for the permit amendment to be granted.

**RESPONSE 4:**

TCEQ has adopted rules concerning the NAPD. These rules require the NAPD to contain certain information. In 30 TAC Section 39.411(c), the NAPD must contain a summary of the ED's preliminary decision, public location where a copy of the complete application and the ED's preliminary decision are available, and brief description of the location and nature of the proposed activity. The NAPD contained the required information for this permit.

**COMMENT 5:**

Mr. Humphries indicates the proposed discharge will adversely affect himself, his family and friends since they will no longer be able to wade, swim, fish, tube or enjoy the aesthetic value of the creek. Mr. Flowers indicates that degradation of the water quality in Steele Creek will damage his clients' and their families' ability to use and enjoy the creek; they will no longer be able to swim, fish or enjoy the aesthetic value of Steele Creek.

**RESPONSE 5:**

The permit limits given to the Applicant, if followed, are protective of the existing conditions, will not degrade water quality, and will not hinder the ability of Mr. Humphries, his family and friends to safely enjoy recreation within water bodies along the discharge route.

The proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), and pH to ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality and human health according to TCEQ rules. The proposed draft permit includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health. The Executive Director has determined that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements.

**COMMENT 6:**

Mr. Humphries questions the legality of authorizing a discharge into Steele Creek because he indicates that Steele Creek is privately owned unlike the Brazos River whose bed is owned by the State of Texas. He indicates that he and his wife hold a deed to the bed itself as private property that is not open to the public. He also indicates that he will not give permission to the Applicant to discharge sewage to the state by crossing his property.

**RESPONSE 6:**

The issuance of this permit does not grant to the permittee the right to use private or public property for

conveyance of wastewater along the discharge route described in this permit. This includes property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire any property rights as may be necessary to use the discharge route.

**COMMENT 7:**

Mr. Humphries indicates that the total value of his land and home will be substantially damaged and decreased due to the proposed discharge into Steele Creek. Mr. Flowers indicates that degradation of the water quality in Steele Creek will greatly damage the value of his clients' properties. He states that the market and intrinsic value of his clients' properties will be substantially damaged and materially decreased.

**RESPONSE 7:**

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of the water in the state. TCEQ has not been granted the authority to assess property values in determining whether an Applicant has met all of the statutory and regulatory criteria applicable to a wastewater permit. The TCEQ does not have zoning authority, and it is beyond the agency's power to address an Applicant's site selection and its effect on property values.

**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

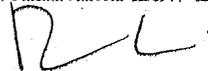
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Robert Martinez, Director  
Environmental Law Division



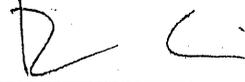
---

Dede Sigman, Staff Attorney  
Environmental Law Division  
State Bar No. 24044640  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-0619

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 29, 2007, the "Executive Director's Response to Public Comment" for Proposed Permit No. WQ 0013436001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



---

Dede Sigman, Staff Attorney  
Environmental Law Division  
State Bar. No. 24044640  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
Telephone: (512) 239-0619  
Fax: (512) 239-0606

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY