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March 18, 2008

Ms. LaDonna Castanuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: TCEQ DOCKET NUMBER 2007-1941-MWD

Dear Ms. Castanuela:

Enclosed you will find the original and the eleven copies of Mr. Humphries Response and Request for Reconsideration to the Executive Director's Response to Hearing with regard to the above referenced matter.

If you have any questions or comments, please feel free to contact me.

Very truly yours,



Clay Humphries

CH/ar

Enclosures

cc w/encl: All persons on attached mailing list.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 MAR 20 AM 10:24
CHIEF CLERKS OFFICE

MAILING LIST
CITY OF WALNUT SPRINGS
DOCKET NO. 2007-1941-MWD; PERMIT NO. WQ0013436001

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FOR THE EXECUTIVE DIRECTOR:

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TCEQ Docket Number 2007-1941-MWD

Application by § Before the
City of Walnut Springs § TEXAS COMMISSION ON
For TCEQ Permit No. WQ0013436001 § ENVIRONMENTAL QUALITY

**RESPONSE AND REQUEST FOR RECONSIDERATION
TO THE
EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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I. Introduction

Clay Humphries, who requested a contested case hearing in connection with the application of the City of Walnut Springs (Applicant) for the amendment of Permit Number WQ0013436001 respectfully files this Response and Request for Reconsideration to the Executive Director's Response to Hearing Requests.

Copies of this document have been provided to all parties and all persons on the attached mailing list.

II. Basis for Executive Director's Recommendation

The Executive Director recommends that Mr. Humphries is not an affected person because he does not meet all of the requirements in 30 TAC § 55.203 primarily on the basis that the portion of Steele Creek which passes through the Humphries' property is approximately six miles downstream from the City of Walnut Springs. The Executive Director concludes that because of this distance Mr. Humphries is not an affected landowner, does not have an interest that is protected by law or a distance restriction or other limitation imposed by law, does not show a reasonable relationship that existed between his interest claimed and the activity regulated, a likely impact of the regulated activity on his health and safety, a likely impact of the regulated activity on the use of his property, or a likely impact of the regulated activity on his use of an impacted natural resource that is beyond a claim or interest that is made by the general public. Based on this distance from the facility, the Executive Director opined that the issues raised by Mr. Humphries are common to the members of the general public.

III. Response and Request for Reconsideration

The decision of the Executive Director that Mr. Humphries is not an "affected" party because of his supposed lack of proximity from the proposed point of discharge (approximately 6 miles downstream) is predicated on certain factual findings or assumptions that are, respectfully, in error:

1. Steele Creek is not an "intermittent, pooled stream" as determined by the Executive Director. While these conditions may exist briefly during periods of extreme drought (as they do on the Perdenales River, Paluxy River and other Hill Country streams), they hardly represent the true character and nature of this unusually vibrant, active stream. At the risk of sentimentality, Steele Creek is fairly and properly characterized as one of the most beautiful, pristine flowing streams in the State of Texas. Its' clear spring-fed waters run almost continuously across a smooth limestone bottom, providing an ideal habitat for aquatic creatures (and those who cherish them). The stream is teeming with large-mouth bass, small-mouth bass, catfish, red-ear, blue-gill, blotched and diamondback water snakes, crayfish, turtles, mussels, ducks, beaver, and a host of other creatures (including happy, inquisitive children) that comprise an as yet unspoiled ecosystem.* Steele Creek is not to be confused with a mere drainage ditch or muddy bottomed stream. It is exceptional for both its aquatic life and its aesthetic value.

The photographs attached to Mr. Humphries original filing not only support this conclusion but are, upon close inspection, informative in several ways:

- (a) The photographs indicate a large volume of clear water flowing down the stream. If this was an "intermittent, pooled" stream flowing only after substantial rainfall one would reasonably expect any significant volume of running water to be discolored and cloudy. Instead, the photographs demonstrate the exact opposite: a large quantity of clear, sparkling water indicative of sustained spring-fed flow. (The presence of people riding on inner-tubes is generally contrary to the notion of an "intermittent, pooled stream.") Also contrary to the Executive Director's suggestion, the near continuous flow of this stream makes it apparent that the proposed discharge of effluent will not "evaporate" or "aspirate" prior to reaching the subject property. At an estimated water flow rate of 2 feet per second, the effluent will travel from the point of discharge to the subject property in less than 4 ½ hours.

* Mr. Humphries and his family acquired the subject property in 1987. His familiarity with the stream is based on more than 20 years of personal observation and experience.

- (b) The photographs depict a smooth limestone creek bed – a layer of near impervious limestone many feet deep. While the tree-lined banks of this magnificent stream undoubtedly absorb their fair share of life-giving water, any suggestion that its waters will aspirate thru the creek bottom is largely unfounded. One is also left to wonder how an “intermittent, pooled stream” could have ever worn a layer of solid limestone smooth. Equally puzzling are the smoothed edges of the rocks that form the rapids and riffles of the stream – all consistent with a near eternity of moving water and all inconsistent with the Executive Director’s conclusion.
- (c) The photographs demonstrate a high degree of human use and contact with the stream – much greater than normally expected for an “intermittent, pooled stream.” Unlike virtually any ordinary drainage way, this stream is suitable for and actively used for swimming, snorkeling, fishing (including human consumption thereof), wading, inner tubing and canoeing.

2. The Executive Director’s finding that the processed effluent will have no adverse impact on wildlife and downstream habitat failed to address (a) whether the chlorine used in the treatment process will be removed prior to discharge and if not, its impact on wildlife and habitat, and (b) whether the nutrients in the effluent will alter the stream or habitat by promoting the growth of algae or other aquatic growth (c) what effect the discharge will have on the safety of human consumption of fish caught in the stream.

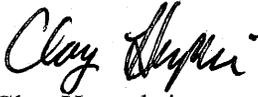
IV. Other Affected Persons

It appears from the record that a number of other concerned landowners who claim to be “affected”, including the Russell Family Trust, Steele Creek Ranch, L.P., Lindsay K. Russell, Sam and Ann Irizarry, Phillip P. Butler and the Sztamenitis Family limited Partnership, attempted to object to the subject permit but failed to identify the exact location of their property. Under the circumstances, and to avoid the dismissal of their objections on a technicality, Mr. Humphries respectfully urges that in the interest of equity said landowners be permitted to amend their filing to include the omitted information and proceed with their case on the merits. Said amendment would appear to cause little, if any, prejudice to the remaining parties and be greatly outweighed by the interest of justice.

V. Conclusion

The decision of the Executive Director that Mr. Humphries is not an "affected person" and will suffer no "adverse effect" from the proposed discharge was based upon factual findings and assumptions that are in error. Mr. Humphries respectfully requests that the Commission find otherwise.

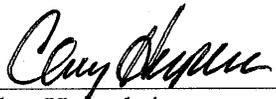
Respectfully submitted,



Clay Humphries

CERTIFICATE OF SERVICE

I certify that on March 18, 2008 the original and eleven copies of the aforementioned document were filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk and a true and correct copy was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.



Clay Humphries
State Bar No. 10277380