

BRUCE M. FLOWERS
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March 22, 2008

Via Federal Express

Ms. LaDonna Castaneda, Chief Clerk
Attn: Agenda Docket Clerk, Mail Code 105
12100 Park 35 Circle
Texas Commission on Environmental Quality
Austin, TX 78753

Re: Docket No. 2007-1941-MWD
City of Walnut Springs, Permit No. WQ0013436001

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 MAR 24 AM 10:42
CHIEF CLERKS OFFICE

Dear Ms. Castaneda:

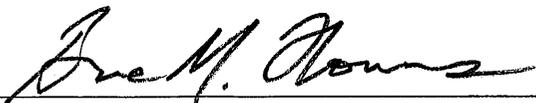
Enclosed please find the original and eleven copies of a Request to Amend Request for Contested Case Hearing and Reply to the Executive Director's Response. Attached to it are, among other things, the affidavits of four of the owners.

Also enclosed please find the original and eleven copies of a Motion for Leave to Request and Request for Contested Case Hearing, filed on behalf of seven additional affected property owners in Bosque County, Texas. Four of those owners are within two miles of the point of discharge, two are within one mile, and one owner is immediately contiguous to the treatment facility.

If you have any comments or questions, please contact the undersigned at your earliest convenience.

Very truly yours,

KANE RUSSELL COLEMAN & LOGAN PC

By: 
Bruce M. Flowers

BMF/jts
Enclosures

Ms. LaDonna Castaneda
March 22, 2008
Page 2

CC w/enclosures:

For The Applicant:

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Consulting Environmental Engineers, Inc.
150 North Harbin Drive, Suite 408
Stephenville, TX 76401-2800

The Honorable Benny Damron
City of Walnut Springs
PO Box 272
Walnut Springs, TX 76690-0272

For The Executive Director:

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Austin, TX 78711-3087

Mary Ann Airey, Technical Staff
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Water Quality Division, MC-148
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Senator John Cornyn
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Washington, DC 20510

Senator Kip Averitt
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Austin, TX 78711

Christopher D. DeCluitt
Carolyn H. Johnson
Brazos River Authority
PO Box 7555
Waco, TX 76714

For The Office Of Public Assistance:

Ms. Bridget Bohac, Director
TCEQ
Office of Public Assistance, MC 108
PO Box 13087
Austin, TX 78711-3087

For Alternative Dispute Resolution:

Mr. Kyle Lucas
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Requesters:

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For Public Interest Counsel:

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Congressman Chet Edwards
17th Congressional District of Texas
2369 Rayburn Building
Washington, DC 20515-4311

Congressman Rob Orr
PO Box 2910
Austin, TX 78768

Ms. LaDonna Castaneda

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Page 3

Ms. Martha Uloth

Mr. Tommy Yodram

Mr. and Mrs. Charles Rankin

Mr. and Mrs. John Davenport

Mr. and Mrs. Gordon Russell

Mr. and Mrs. John Szamentis

Mr. and Mrs. Sam Irizarry

Mr. and Mrs. Philip Butler

Mr. and Mrs. Albert Timms

TCEQ Docket Number 2007-1941-MWD

2008 MAR 24 AM 10:45

CHIEF CLERKS OFFICE

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

**REQUEST TO AMEND REQUEST FOR CONTESTED CASE
HEARING AND REPLY TO THE EXECUTIVE DIRECTOR'S RESPONSE**

This Request and Reply is respectfully submitted on behalf of The Russell Family Trust, Steele Creek Ranch, L.P., Sam Irizarry and Ann Irizarry, Phillip B. Butler, Trustee of the Lucille C. Butler Revocable Family Trust, and The Sztamenitis Family Limited Partnership, (collectively, "Owners"). The Owners own real property that abuts one or both sides of Steele Creek downstream from the wastewater discharge point identified by the City of Walnut Springs, Texas ("City") in its application for a major amendment of Permit Number WQ0013436001. The respective locations and approximate distances from the requested discharge point are depicted on Exhibits "A" and "B", attached hereto and incorporated for all purposes. In his response the Executive Director acknowledges that the effluent discharged to Steele Creek will pass through the Owners' properties, then to Lake Whitney.

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

I. Request and Reply Summary

The Executive Director posits that the Owners have not been shown to be "affected persons" pursuant to 30 TAC § 55.203(a) or (c) because their property locations were not specifically set forth in their request for a contested hearing. The Executive Director, however, graciously provides that if the Owners "provide facts demonstrating a reasonable proximity to the facility, the Executive Director may amend his recommendation" that their hearing request be denied. Accordingly, the Owners request that they be allowed to amend their request through this Reply to demonstrate that they are affected persons pursuant to 30 TAC § 55.29 and 55.203(a) or (c). The facts set forth in this Reply regarding the Owners' properties and the true nature of Steele Creek are contrary to certain findings of the Executive Director and establishes material interests protected by law that are specific to the Owners. Further, a reasonable relationship exists between these interests and the activity regulated such that the likely impact of the regulated activity on the Owners' health and safety, property, and use and enjoyment of Steele Creek will be adverse. If the City is allowed to discharge its partially treated wastewater directly into Steele Creek, then the potential adverse impact to the Owners and their respective property rights and economic interests is immense and personal to each Owner. Each Owner's threatened interest is beyond any claim or interest common to the general public.

Furthermore, there is agreement within the TCEQ for the Owners' position. Ms. Christina Mann, of the Office Public Interest Counsel ("OPIC") for the TCEQ, states in her Response to Requests for Hearing that "Mr. Flowers or any of his clients may file a reply and provide additional information." She then states that, if warranted, OPIC may recommend that the Owners are affected persons. Ms. Mann provided an analysis of the issues raised in the hearing requests and recommended the following disputed issues be heard at the State Office of Administrative Hearings ("SOAH") for a contested hearing:

1. Use and Enjoyment;
2. Groundwater Concerns;
3. Surface Water Quality and Environmental concerns; and
4. Antidegradation Review.

II. The Owners' Properties

Attached as Exhibit "A" is a map showing the location of the Owners' respective properties relative to Steele Creek. This map evidences the properties' physical location, but tells little about the properties themselves. The photographs attached to the affidavits are intended to help illustrate the vibrant nature of these properties and the impact of Steele Creek on each property. The Owners should be allowed, at least, the opportunity to present evidence showing how the proposed average daily discharge of up to 65,000 gallons of partially treated wastewater, including but not limited to sewage sludge, will adversely impact their properties. Understanding the nature of their properties and how each is impacted by the waters in Steele Creek is material to referral of the matter for the contested hearing and determination of the Owners' opposition to the requested permit amendment.

III. Steele Creek

Originally known as Steels or Steeles Creek, the watercourse is probably named for James S. Steele, whose land grant at the junction of Steele Creek and the Brazos River is dated August 7, 1835. By mid-century the creek was a focus of settlement, with clusters of families located both near the stream's mouth and near the site of future Walnut Springs on the stream's western side. The Texas Central Railroad closely followed the path of Steele Creek as it built westward across Bosque County in 1880.¹ Other writers state that the creek was probably named for local settler and San Jacinto veteran Alfonso Steele.²

The *Handbook of Texas Online* provides that Steele Creek rises 3½ miles northwest of Walnut Springs in northern Bosque County (at 32°07' N, 97°46'W) and is intermittent in only its upper reaches, with the stream flowing southeast for 40½ miles to its mouth on Lake Whitney, on the Brazos River south of Lakeside Village (at 32°00' N, 97°26' W). Appendix "D" of the Texas Surface Water Quality Standards, 30 TAC, Chapter 307, that Steele Creek at 2.4 km above

¹ *Handbook of Texas Online*, s.v. "," <http://www.tshaonline.org/handbook/online/articles/SS/rbsgl.html> (accessed March 12, 2008).

² John J. Germann and Myron Janzen, *Texas Post Offices by County* (1986). Ray A. Walter, *A History of Limestone County* (Austin: Von Boeckmann-Jones, 1959).

the confluence of Cox Branch as a perennial water body with high aquatic life use and dissolved oxygen of 5.0. For these reasons set forth below, the Owners assert that the perennial nature of the creek and high aquatic life use extend far beyond the location indicated in Appendix "D".

The attached affidavits and photographs evidence that Steele Creek's clear spring-fed waters run almost continuously across a smooth limestone bottom, providing an ideal habitat for many forms of aquatic life. The stream is home to large-mouth bass, small-mouth bass, catfish, red-ear, blue-gill, blotched and diamondback water snakes, crayfish, turtles, a variety of mussels, ducks, beaver, and a host of other creatures that comprise an as yet unspoiled ecosystem. Steele Creek is exceptional for its aquatic life, aesthetic value and human enjoyment.

Further, the "Executive Director bases his recommended effluent limits on low flow conditions" in Steele Creek. However, the creek is identified at www.riverfacts.com as Class II+ whitewater for 10 miles from Morgan to FM 56. This classification is according to American Whitewater.³ Both www.dallasrafting.com and www.houstonrafting.com identify Steele Creek for rafting on their websites.⁴

There is a high degree of human use and contact with the stream – much greater than normally expected for an “intermittent, pooled stream as the creek is referred to by the Executive Director in his response.” Unlike virtually any ordinary drainage way, Steele Creek is suitable for and actively used for kayaking, swimming, fishing, wading, inner-tubing and canoeing. The presence of people riding on inner-tubes or kayaks is generally contrary to the notion of an “intermittent, pooled stream.”

Contrary to the Executive Director's suggestion, the near continuous flow of this creek makes it apparent that the proposed discharge of effluent is not likely to “evaporate” or “aspirate” prior to reaching the Owners' properties. The Executive Director partially bases this suggestion on false premises – that these are periods of “no flow.” Based on the Owners' personal observations, any period of no flow would be extremely rare. While the tree-lined banks of this beautiful creek undoubtedly absorb their fair share of life-giving water, any suggestion that its waters will aspirate thru the limestone 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.

The Owners testify in their affidavits that they have for many years used their properties and the Steele Creek for a variety of uses including, without limitation, wading, fishing, boating,

³ Founded in 1954, American Whitewater is a national organization with a mission “to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely.” American Whitewater represents a broad diversity of individual whitewater enthusiasts, river conservationists, and more than 100 local paddling club affiliates across America. The organization is the primary advocate for the preservation and protection of whitewater resources throughout the United States, and connects the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission.

⁴ A more than four minute video of several people whitewater rafting on Steele Creek during a high water period can be found at <http://www.youtube.com/watch?v=0hC5MR6FThk&mode=user&search>.

hiking, and nature watching. The Owners further state that Steele Creek is "pristine" and "perennial in that it has flowing water year-round during a typical year."⁵ They also recite that Steele Creek flows over a well defined bed and is fed by natural springs and supplemented by rainfall and runoff. It appears that some of the TCEQ's confusion may be as a result of Steele Creek apparently being fed mostly by rainfall and runoff upstream of the City, but then having significant amounts of water added by springs located in or near the City. This would explain the creek being more intermittent upstream from the discharge point, but perennial downstream and at the location of Owners' properties.

The Owners testify in their affidavits about the abundant aquatic life in Steele Creek, and the abundant wildlife on their properties. One of the Owners, Philip Butler, states that there is catfish and blue bass in the Creek. Mr. Butler also relates that he and his wife had planned to build a Bed and Breakfast on their property, but that feared degradation of the water quality in Steele Creek as a result of the requested discharge would result in "immense damage" and force them to abandon their goal of helping to revitalize the area. One or more of the Owners also use Steele Creek for watering their livestock. Each of the Owners expresses that "[i]f the major amendment of the wastewater discharge permit requested by the City is granted, the value of their respective properties would decrease, and wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of their properties will be impaired and there will be a threat to human health and the environment."

In her affidavit, Owner representative Lindsay Russell, tells of the abundant wildlife, including wild turkeys, coyotes, deer, armadillos, foxes, road runners, at her property, as well as aquatic life such as bass and catfish in Steele Creek. She also points to the historic value of Steele Creek as it runs through her property, stating that historically the family of Milton Cole had owned and used the property as a dairy farm and because of Steele Creek as a minnow farm. The Coles were baptized in the "Cole Hole" on Steele Creek on her property. A photograph of this historic location is attached to her affidavit.

Steele Creek runs through the center of property owned by Owner John Davenport. In his affidavit he states that the creek is the "focal point of most of the outdoor activities at his ranch." He further states that "[m]y family very much hopes this hazard (wastewater from the City being drained into Steele Creek) can be eliminated." The pictures of his family's use of Steele Creek that are attached to his affidavit greatly evidence the impact the waters in Steele Creek have on his property and his family's enjoyment of the property and the creek.

East Owner, Charles Rankin, who owns property approximately .6 miles downstream from the discharge point, states in his affidavit that his kids love to swim and fish in Steele Creek, even having a two foot long pet catfish in the creek. His cattle and deer drink from the creek. He "strongly opposes" the requested amendment.

The Owners regularly use, enjoy and rely upon the flowing waters of Steele Creek. Does the State really believe it is protective of the Owners' interests and the environment to allow up to 65,000 gallons of partially treated sewage and wastewater to be dumped into Steele Creek each day without even the safeguards of a hearing? As Mr. Rankin questions: "Doesn't this go

⁵ One Owner, Ms. Ann B. Irizarry, states that in her opinion the creek is intermittent.

against everything we have been taught to preserve our national resources? Are we moving backwards?" A contested hearing is necessary to maintain the rights of the Owners and to protect the environment.

IV. The Facts Require at Least a Tier 2 Degradation Determination

The Executive Director's "preliminary" determination that no water bodies with exceptional, high, or even intermediate aquatic life are present within the stream is misplaced. Regrettably, this "preliminary" determination means that no Tier 2 or Tier 3 degradation determination is required. Starting from a false premise means also that the rights of the Owners, as well as the quality of our Texas environment, is at risk.

The TCEQ provides the "preliminary determination can be reexamined and may be modified if new information is received." This Reply, as well as that of Clay Humphries,⁶ and of the Motion for Leave to Request, and Request for, Contested Case Hearing, filed by the East Owners,⁷ provides such new information, which contradict the determination of the Executive Director and instead evidence an active creek environment, teeming with aquatic and other wildlife. This, combined with the creek's high recreational use make at least a Tier 2 degradation determination vital to protection of existing uses, human health and the environment. The Owners further contend that because of Steele Creeks' exceptional recreational and ecological significance, the creek may be shown deserving of a Tier 3 degradation determination.

The State admits that "high aquatic life" begins at least "3.3 miles downstream of the wastewater treatment plant outfall location." Steele Creek is similarly listed in Appendix "D" of the Texas Surface Water Quality Standards, as a perennial water body with high aquatic life use downstream of the outfall location and 2.4 km above the confluence of Cox Branch. The Owners assert that the Executive Director's "preliminary" determination that any affected area of Steele Creek has low aquatic life use is in error. Moreover, there has been no determination of whether the distance intermediate aquatic life use extends toward, and perhaps past, the requested discharge point.

V. The Issues the Executive Director Determined Proper for Hearing

In his Response, the Executive Director set forth that following issues are relevant and material to the TCEQ's decision on the permit application, involve a disputed question of fact that has not been withdrawn, and are referable to SOAH because they meet the relevant criteria.

- ISSUE 1: Whether the discharge will adversely affect the wildlife and livestock?
- ISSUE 2: Whether the discharge will adversely affect the underground aquifer?
- ISSUE 3: Whether the discharge will increase pollutant concentration levels to levels that will result in substantial and imminent harm to health and the environment?
- ISSUE 5: Whether the limited aquatic life classification for Steele Creek is correct?

⁶ Mr. Humphries acquired the subject property in 1987. His familiarity with the stream is based on more than 20 years of personal observation and experience. His request and Reply are incorporated herein for all purposes.

⁷ This request is incorporated herein for all purposes.

- ISSUE 7: Whether the discharge will degrade Steele Creek?
ISSUE 8: Whether the discharge will adversely affect the recreational and aesthetic use and enjoyment of Steele Creek?

A contested case hearing is warranted and should be granted on these and other issues.

VI. Additional Concerns

The Executive Director's finding that the processed effluent will have no adverse impact on wildlife and downstream habitat fails to address: (a) whether the chlorine and other chemicals used in the treatment process will be removed prior to discharge and if not, its impact on wildlife and habitat; (b) whether the nutrients in the effluent will alter the stream or habitat by promoting the growth of algae or other aquatic growth; and (c) whether the high amount of dissolved oxygen in the water in Steele Creek will be reduced. Additionally, the segment including Steele Creek is not presently listed on the State's inventory of impaired and threatened waters, however, the TCEQ has not performed a Waste Load Evaluation for the segment should the major permit amendment be issued.

VII. Duration of the Contested Case History

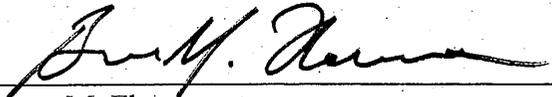
The Owners agree with the Executive Director's recommendation of a nine-month duration for the contested case hearing, between preliminary hearing and the presentation of a proposal for decision before the Commission.

VIII. Conclusion

The Owners have provided sufficient evidence that they are "affected persons" who will suffer potentially adverse effects from the proposed amendment of the discharge permit. Their request for a contested case hearing was timely filed and substantially complied with 30 TAC 55.21. The request is amended hereby to include more specific information concerning location and distance of their properties from the applied for point of discharge and other more detailed information necessary to reduce and prevent pollutants from damaging the Owners' respective interests and the environment. The Owners timely filed their request with the chief clerk and their request is reasonable, supported by competent evidence, authorized by law, and necessary for the administration of justice. The Owners respectfully request that their request for a contested case hearing be granted.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN, P.C.

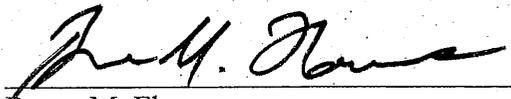
By: 
Bruce M. Flowers
State Bar No. 07175480

1601 Elm St., Suite 3700
Dallas, TX 75201
Tel: (214) 777-4200
Fax: (214) 777-4299

ATTORNEYS FOR OWNERS

CERTIFICATE OF SERVICE

I certify that on March 22, 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, Federal Express, inter-agency mail, facsimile, or hand delivery.


Bruce M. Flowers

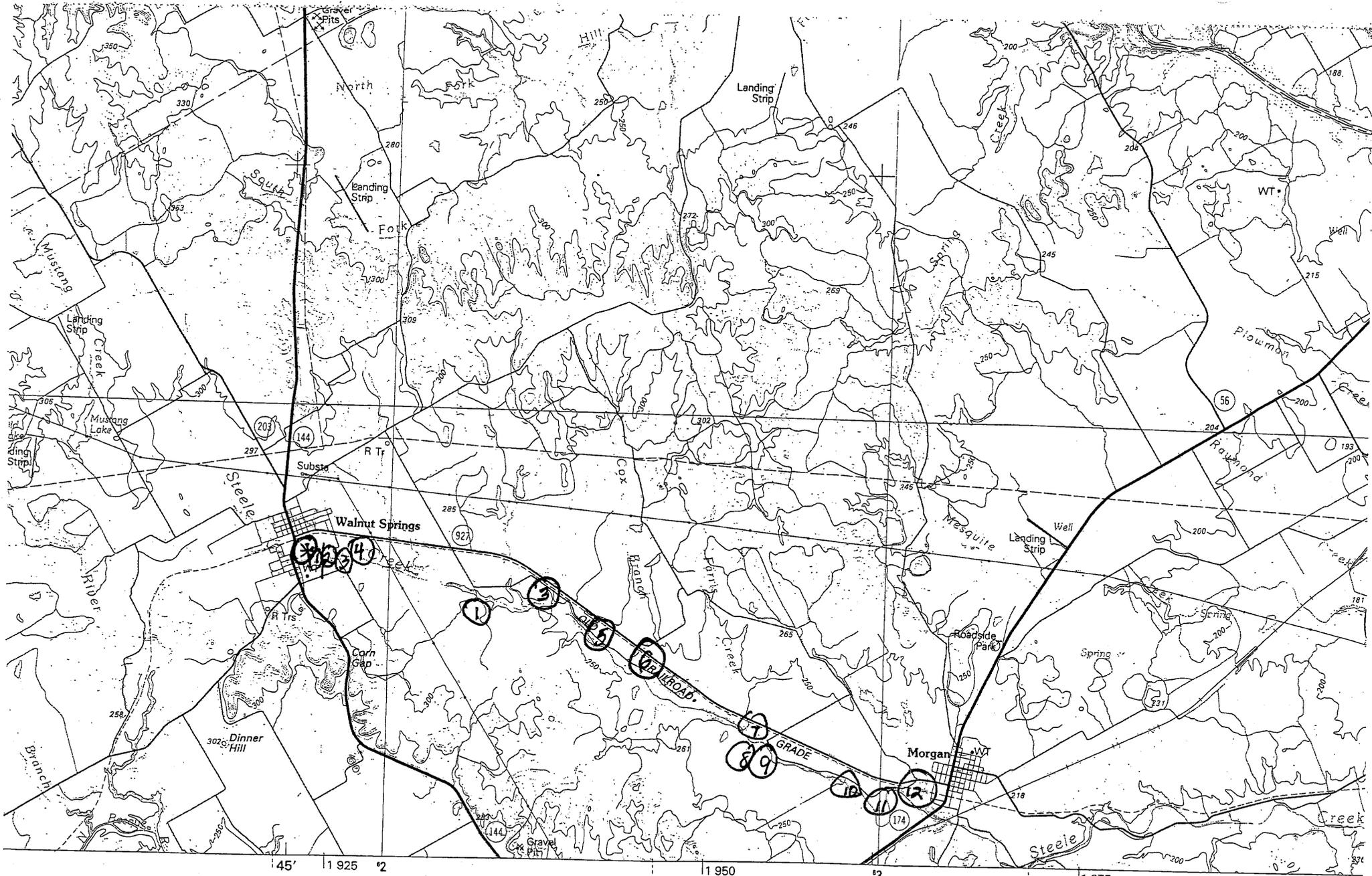
A

EXHIBIT A

LEGEND

- * City Facility
- 1 Martha Uloth
- 2 Yocham McNeily Properties
- 3 J.L. and Mary Varley
- 4 Charlie and Elicia Rankin
- 5 Davenport Family Trust
- 6 Russell Family Trust
- 7 Steel Creek Ranch, L.P.
- 8 Sztamenitis Family Limited Partnership
- 9 Ann and Sam Irizarry
- 10 Clay Humphries
- 11 Philip Butler, Trustee
- 12 Albert Timms

EXHIBIT A



B

1

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Gordon Beck Russell, who upon his oath being duly sworn by me stated under oath:

1. My name is Gordon Beck Russell. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. I am a member of the State Bar of Texas. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am the sole Trustee of The Russell Family Trust ("Trust").

3. The Trust the owner of approximately 415 acres in Bosque County, Texas ("Property"). The Property is downstream on Steele Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately 4.2 miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

4. Steele Creek crosses the Property in part and abuts the Property in part.

5. The Trust acquired the Property in 2003 and 2004. Since that time, my family and I have used the Property continually and without interruption for recreational and aesthetic and athletic use, including without limitation fishing, boating, nature watching, hiking, and running. The Creek contains abundant aquatic life, and the Property has abundant wildlife. It was described to me by representatives of the United States Department of Agriculture in Meridian, Texas, the county seat of Bosque County, Texas, as "turkey paradise". The Trust has also used the Creek for watering livestock in connection with our family farm and ranch cow-calf operation that is central to our identity as aspiring Texas farmers and ranchers. Attached are photographs of the Property, including the "Cole Hole" described in Section 7 below.

6. Steele Creek is pristine as it presently crosses the Property. It has a rock and gravel bottom, and the water is clear except following a rain. In my opinion, as a layman, it is not intermittent. From my observation, Steele Creek is perennial as it crosses the Property in that it has flowing water year-round during a typical year. Steele Creek is fed by a natural spring on the Property and supplemented by rainfall and runoff. Steele Creek on Martha Uloth's property, contiguous to and immediately downstream from the Facility, effectively at ground zero, is black and green with algae and yuck, and it smells different from the rest of Steele Creek east of Martha Uloth's property.

7. The Property was owned in the nineteenth and early twentieth centuries by the Milton Cole family. The Coles lived and died on the Property and the contiguous approximately 130 acres now owned by the Steele Creek Ranch Limited Partnership ("Partnership Property"). At different times, the Coles used the Partnership Property as a dairy and, because of Steele Creek and the natural spring located on the Trust Property, as a minnow farm. The Partnership Property was the railhead for cattle for the City of Morgan, Texas on the Texas Central Railroad. The Coles were baptized in the "Cole Hole" on Steele Creek on the Property. A photograph of the "Cole Hole" is attached. Members of the extended Cole family are buried in the Cole Cemetery located on the Trust Property.

8. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, including the many wild turkeys, coyote, deer, armadillos, foxes, road runners, and an occasional big cat, livestock, including our bulls, cows and calves, water quality, aquatic life including freshwater mussels, bass and catfish, recreational aesthetic and athletic use and enjoyment of the Property will be impaired, and there will be a threat to human health and the environment. Granting the amendment will neither reduce nor prevent

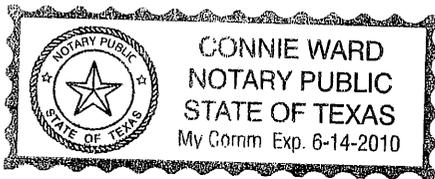
pollution; it will further degrade the environment and increase pollution.

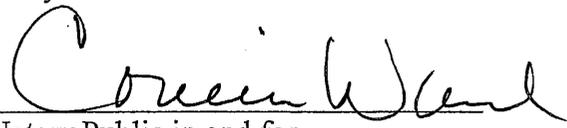
FURTHER AFFIANT SAYETH NAUGHT.



Gordon Beck Russell

21st SUBSCRIBED and sworn before me, a Notary Public, by Gordon Beck Russell on this day of March, 2008, to certify which witness my hand and seal of office.

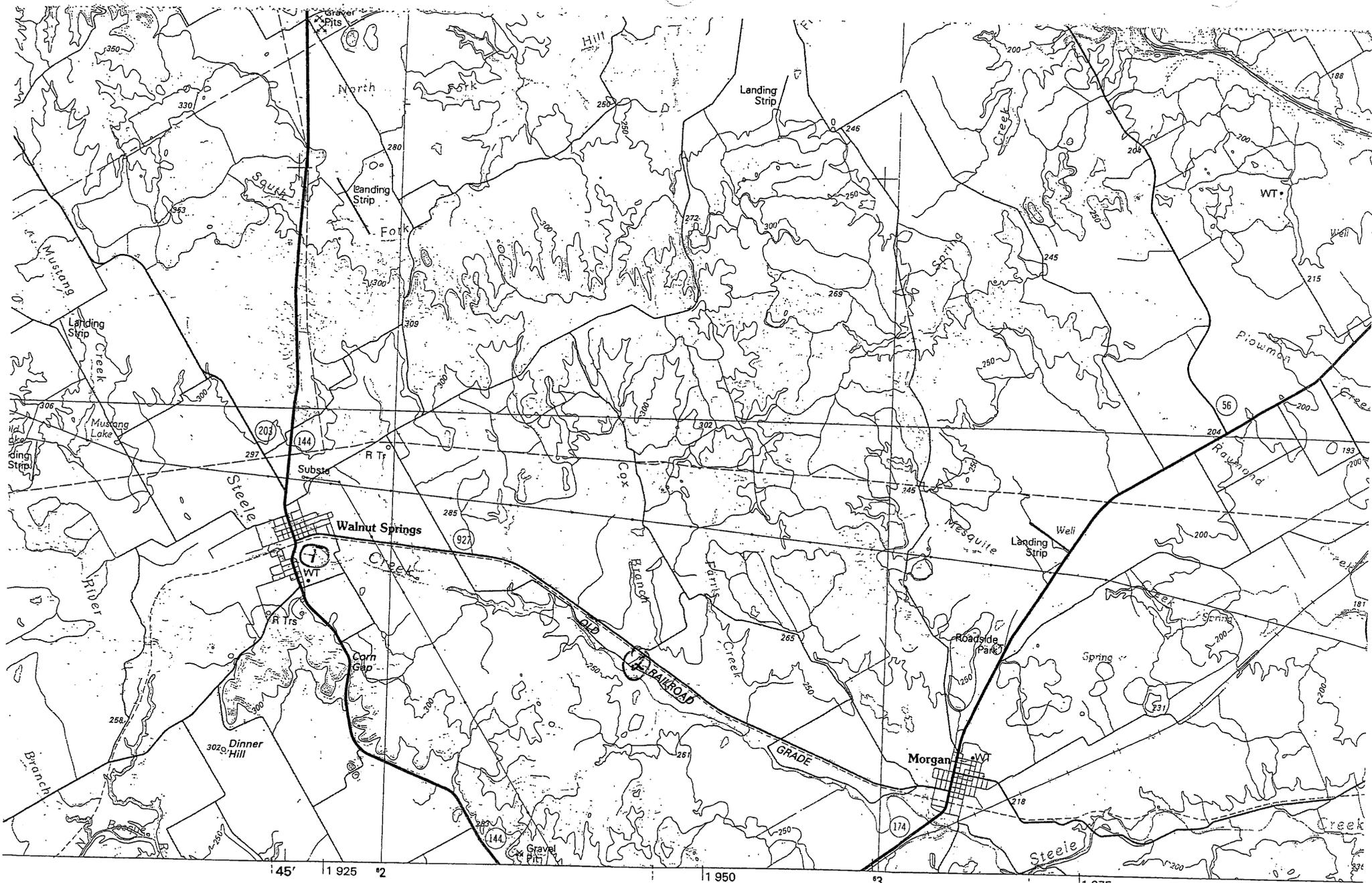




Notary Public in and for
the State of Texas

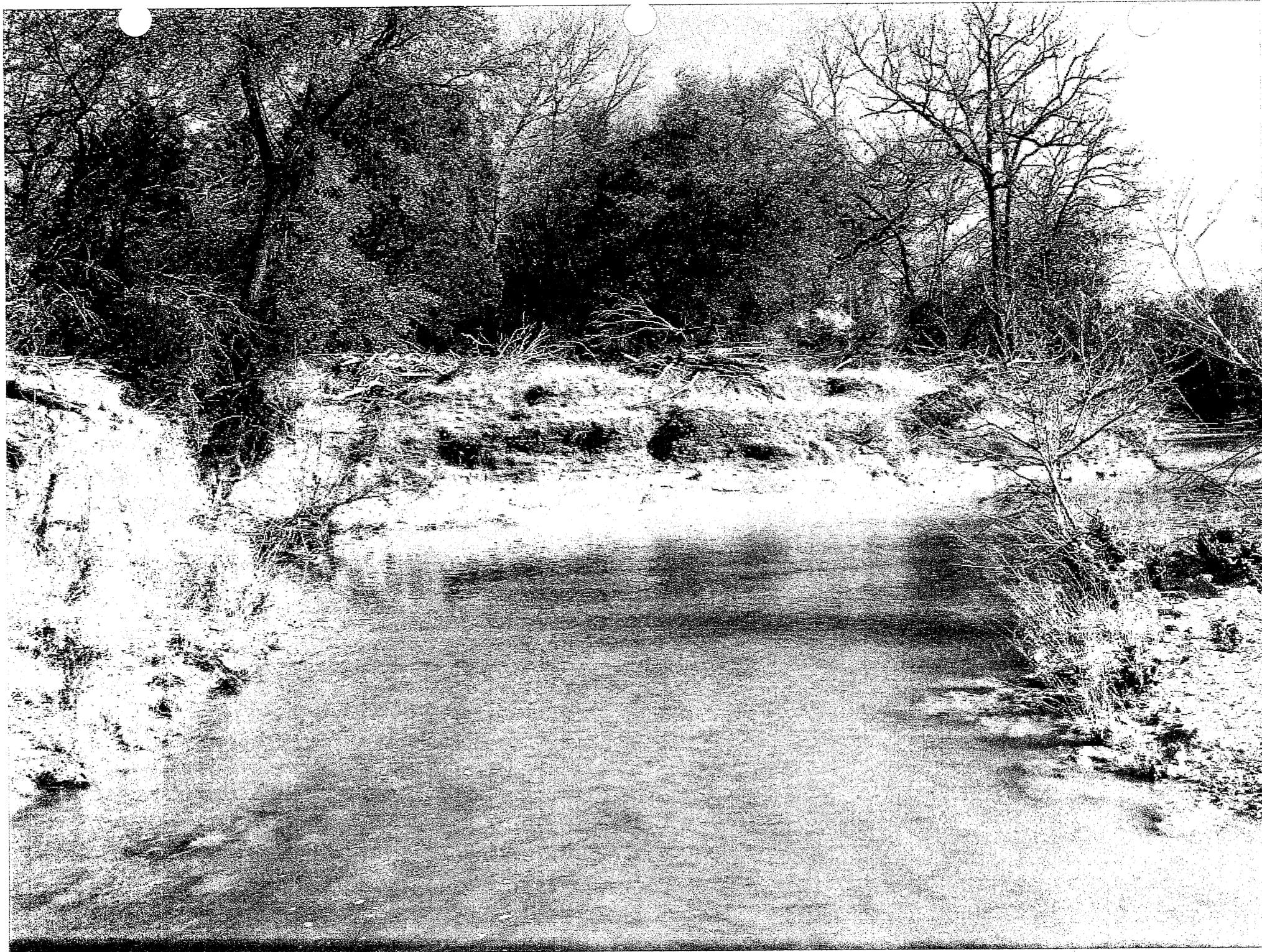
My Commission Expires: _____

EXHIBIT 4



- ① FACILITY
- ② PROPERTY





2

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Lindsay Karen Russell, who upon his oath being duly sworn by me stated under oath:

1. My name is Lindsay Karen Russell. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am a shareholder, officer and director of Steele Creek Ranch, LLC, a Texas limited liability company, the sole general partner of Steele Creek Ranch Limited Partnership, a Texas limited partnership ("Limited Partnership").

3. The Limited Partnership is the owner of approximately 130 acres in Bosque County, Texas ("Property"). The Property is downstream on Steele Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately 4.6 miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

4. Steele Creek crosses the Property.

5. The Limited Partnership acquired the Property in 2003. Since that time, my family and I have used the Property continually and without interruption for recreational and aesthetic and athletic use, including without limitation fishing, boating, nature watching, hiking, and running. The Creek contains abundant aquatic life, and the Property has abundant wildlife. It was described to me by representatives of the United States Department of Agriculture in Meridian, Texas, the county seat of Bosque County, Texas, as "turkey paradise". The Limited

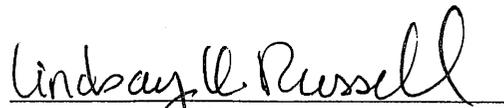
Partnership has also used the Creek for watering livestock in connection with our family farm and ranch cow-calf operation that is central to our identity as Texas farmers and ranchers.

6. Steele Creek is pristine. In my opinion, as a layperson, it is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year. Steele Creek water flows over a well defined rock and gravel bed and is fed by natural springs and supplemented by rainfall and runoff.

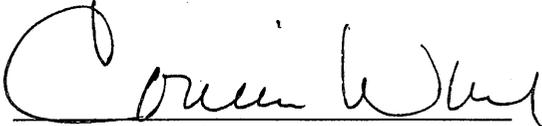
7. The Property was owned in the nineteenth and early twentieth centuries by the Milton Cole family. The Coles lived and died on the Property and the contiguous approximately 415 acres now owned by the Russell Family Trust ("Trust Property"). At different times, the Coles used the Trust Property as a dairy and, because of Steele Creek and the natural spring located on the Trust Property, as a minnow farm. The Property was the railhead for cattle for the City of Morgan, Texas on the Texas Central Railroad. The Coles were baptized in the "Cole Hole" on Steele Creek on the Property. A photograph of the "Cole Hole" is attached. Members of the extended Cole family are buried in the Cole Cemetery located on the Trust Property.

8. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, including the many wild turkeys, coyotes, deer, armadillos, foxes, road runners, and an occasional big cat, livestock, including our bulls, cows and calves, water quality, aquatic life, including bass and catfish, recreational aesthetic and athletic use and enjoyment of the Property will be impaired and there will be a threat to human health and the environment.

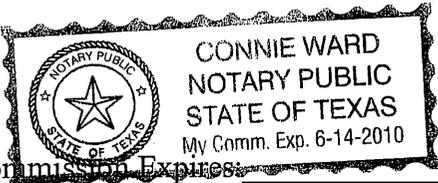
FURTHER AFFIANT SAYETH NAUGHT.


Lindsay Karen Russell

SUBSCRIBED and sworn before me, a Notary Public, by Lindsay Karen Russell on this _____ day of March, 2008, to certify which witness my hand and seal of office.

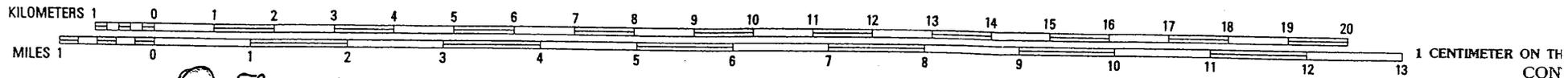
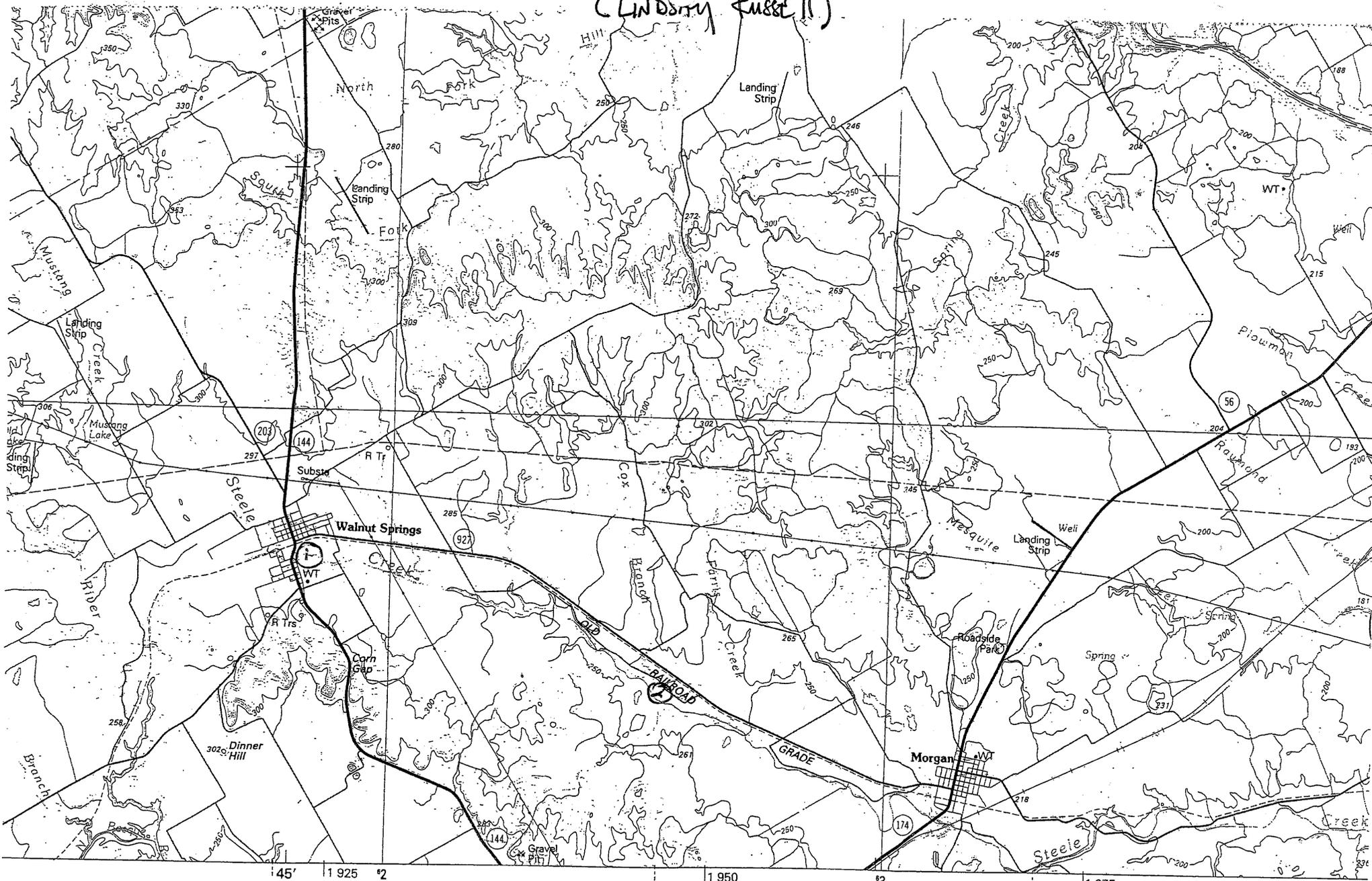


Notary Public in and for
the State of Texas



My Commission Expires: _____

EXHIBIT 15
(LINDSEY RUSSELL)



① FACILITY
② PROPERTY



3

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Ann B. Irizarry, who upon her oath being duly sworn by me stated under oath:

1. My name is Ann B. Irizarry. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. My husband and I are the owner of approximately 138 acres in Bosque County, Texas ("Property"). The Property is downstream on Steele Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately 6^{a.l.} miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Steele Creek ~~WAAAA~~_{r-r/A} [crosses] the Property.

4. This Property has been in my family since 1902. My mother and I were both born on the Property, and some member of my family has always resided here and used the Property continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. The Creek contains abundant aquatic life, and the Property has abundant wildlife. We have also used the Creek for watering livestock.

5. Steele Creek is pristine. In my opinion, as a layman, it is ~~not~~ intermittent except for extremely ~~dry~~^{wet} years. In the past this was not the case. ~~From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year.~~ Steele Creek water flows over a well defined bed and is fed by a natural spring and supplemented by rainfall and runoff.

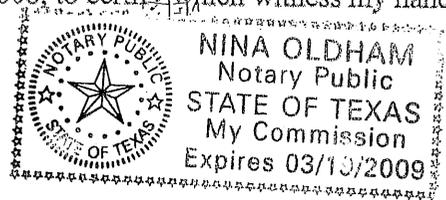
r-r/A

6. If the ^{H-11} amendment of the wastewater discharge permit requested by Walnut Springs is granted, I fear that open cess pools will form should it be dry enough that the creek stops running; wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Property will be impaired; and there will be a threat to human health and the environment.

FURTHER AFFIANT SAYETH NAUGHT.

Ann B. Irizarry
Ann B. Irizarry

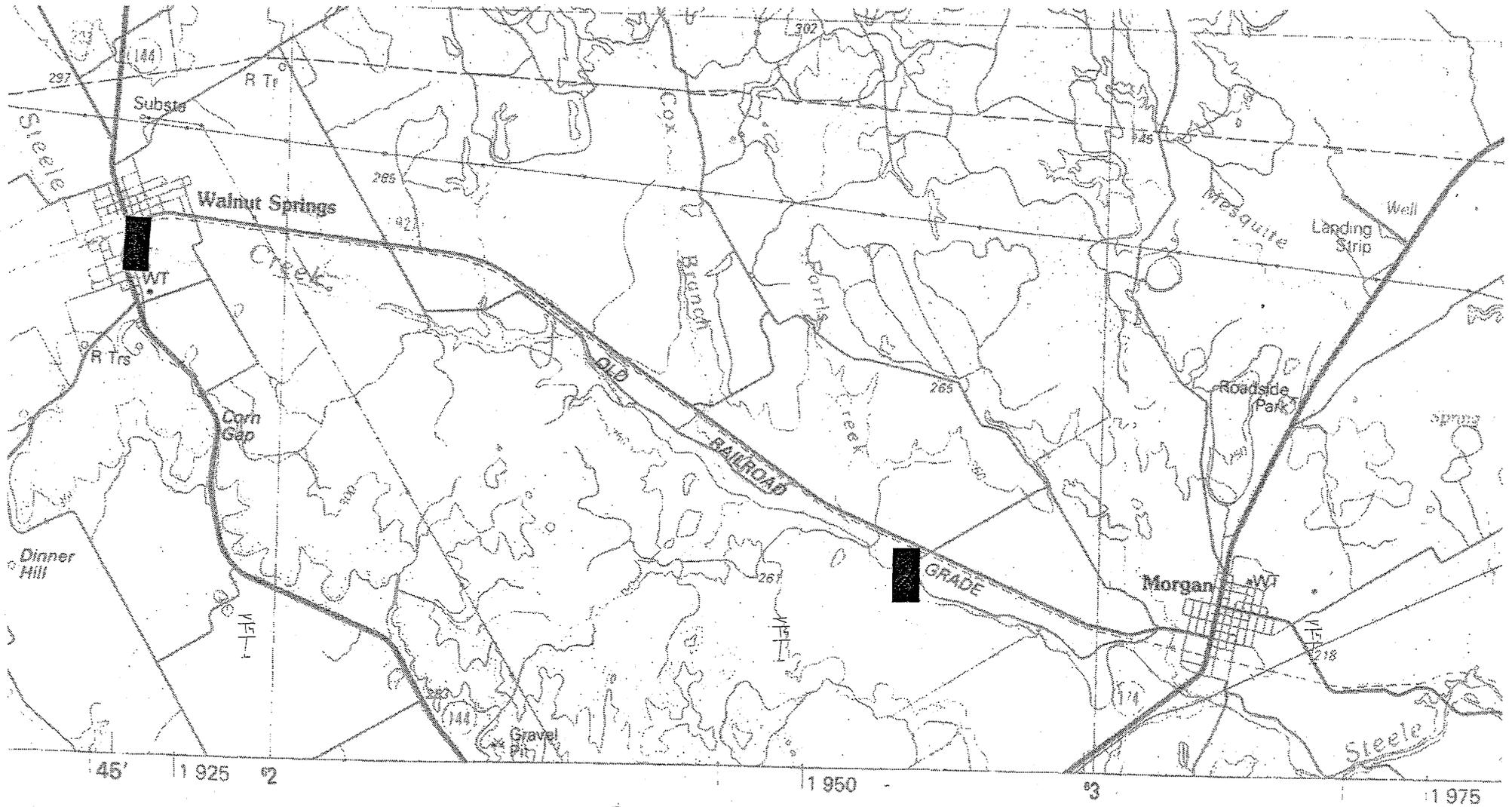
SUBSCRIBED and sworn before me, a Notary Public, by Ann B. Irizarry on this 20th day of March, 2008, to certify which witness my hand and seal of office.



Nina Oldham
Notary Public in and for
the State of Texas

My Commission Expires: 3-19-2009

EXHIBIT "A"



1 = FACILITY
2 = PROPERTY

4

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Philip B. Butler, who upon his oath, being duly sworn by me, stated under oath:

1. My name is Philip Butler. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am the owner of approximately 50 acres in Bosque County, Texas ("Property"). The Property is downstream on Steel Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the city of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately 7.6 miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Our property is a peninsula, bordered on three sides by the Creek. The Creek is one of the dominant features of our property. Attached is Exhibit "B," a topographic map of the area and surrounding property with the approximate boundaries of our Property marked. Any damage to the Creek would severely lower our property value for use or resale.

4. Our family acquired the Property around 1965. Since that time, our family has used the Property for recreational, commercial and aesthetic use. For a period of time, the Property was leased as pasture land, and the livestock pastured there used the Creek as their water source. Before our family owned the Property, the cold springs on the Property were known as "healing springs," and one previous owner had bathhouses where people came to soak in the healing and rejuvenating waters.

5. My wife and I have planned on building a Bed and Breakfast on the Property when we retire. A large part of the attraction would be the pristine waters of the Creek: wading, fishing, canoeing, hiking and nature watching. The Creek contains abundant aquatic life (catfish, blue bass), and the Property has abundant wildlife (our dogs love to chase the deer). Obviously, if the water quality or appearance changes for the worse, the damage will be immense and we will be forced to abandon our goal of helping to revitalize the area. Do you know anyone who wants to sit out on a porch and watch the sun set over a polluted Creek? Attached are photographs of the Property.

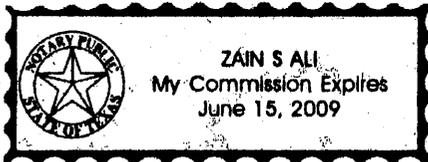
6. The Creek is pristine. From my observations, the Creek is perennial in that it has flowing water year-round during a typical year. The Creek flows over a well-defined bed and is fed by a natural spring, supplemented by rainfall and runoff.

7. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, livestock, water quality, aquatic life, recreational, retirement and aesthetic use and enjoyment of the Property will be impaired and there will be a threat to human health and the environment.

FURTHER AFFIANT SAYETH NAUGHT.


Philip B. Butler

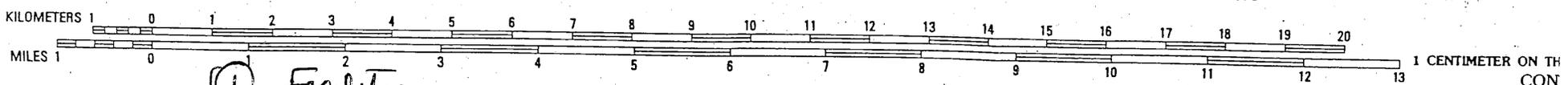
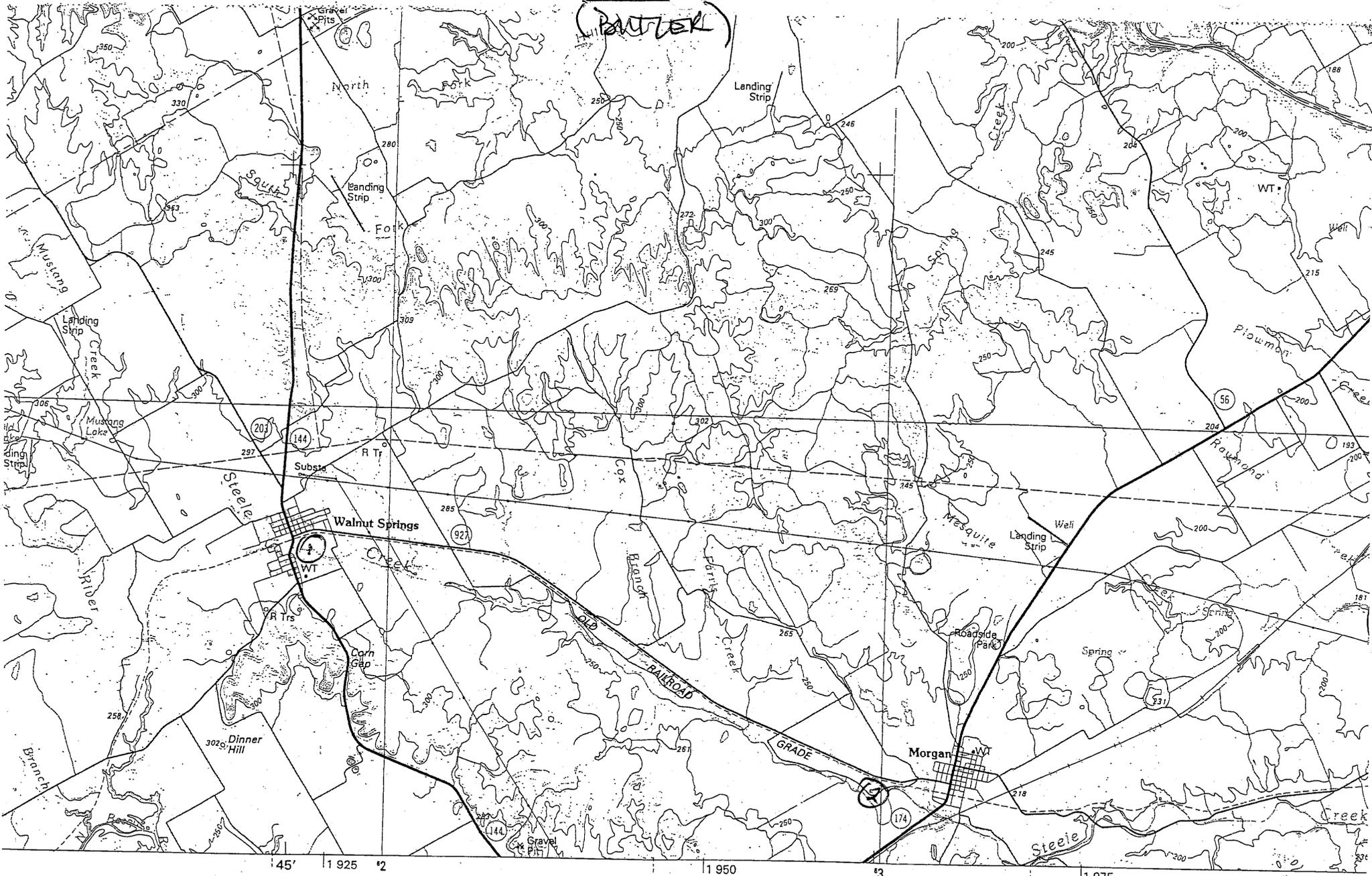
Subscribed and sworn before me, a Notary Public, by Philip B. Butler on this 20th day of March, 2008, to certify which witness my hand and seal of office.




Notary Public in and for
The State of Texas

My Commission expires: 6/15/09

Exhibit "A"
(PARTIAL)



- ① Facility
- ② Property

topozone

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0 0.1 0.2 0.3 0.4 0.5 km
0 0.09 0.18 0.27 0.36 0.45 mi

UTM 14 629993E 3542240N (NAD27)
USGS Morgan (TX) Quadrangle
Projection is UTM Zone 14 NAD83 Datum

M=4.959
G=0.73

●●● Boundaries of Property

EXHIBIT "B"



2008 MAR 24 AM 10:50

TCEQ Docket Number 2007-1941-MWD

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

**MOTION FOR LEAVE TO REQUEST AND REQUEST FOR
 CONTESTED CASE HEARING**

This Motion for Leave to Request and Request for Contested Case Hearing ("Motion") is respectfully submitted on behalf of Albert Timms, The Davenport Family Trust, Mary E. Varley, J. L. Varley, Jr., Charles and Elicia Rankin, Yocham McNeely Properties, and Martha Uloth (collectively, the "East Owners"), and in conjunction with the Requests for Contested Case Hearing previously submitted by The Russell Family Trust, Steele Creek Ranch, L.P., Sam Irizarry and Ann Irizarry, Phillip B. Butler, Trustee of the Lucille C. Butler Revocable Family Trust, and The Sztamenitis Family Limited Partnership (collectively, the "Owners"), and the Request for Contested Case Hearing by Clay Humphries, all on the same issues. Pursuant to 30 TEX. ADMIN. CODE § 55.21(g)(2), the East Owners hereby respectfully request that the Commission extend the time for the East Owners to file this request, process this late filing, and grant this request for a contested case hearing. Copies of this Motion have been provided to all parties and all persons on the attached mailing list.

I. The East Owners' Properties

The East Owners are "affected persons" as defined in 30 TEX. ADMIN. CODE § 55.29 and 55.203(a) and (c). The East Owners each own one or more parcels of real property that abut one or both sides of Steele Creek near the wastewater discharge point identified by the City of Walnut Springs, Texas ("City") in its request for a major amendment of Permit Number WQ0013436001. The locations of these properties are depicted on Exhibits "A" and "B", attached hereto and incorporated for all purposes. Exhibits "A" and "B" evidence the East Owners' properties are proximately located contiguous to and near the proposed discharge point. One of the East Owners' properties is directly across Steele Creek from the discharge point. Four of the East Owners' properties are within a distance of approximately .6 miles from the discharge point. All East Owners have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application referenced above. The attached photographs are intended to help illustrate the vibrant nature of these properties and the true nature of Steele Creek. The East Owners' interests are protected by law. A reasonable relationship exists between these interests and the activity regulated such that the likely impact of the regulated activity on the East Owners' health and safety, property, and use and enjoyment of Steele Creek will be adverse. The potential adverse impact to the East Owners and their property rights if the City is allowed to discharge into Steele Creek is personal to them and beyond any claim or interest common to the general public. The East Owners should be allowed, at the least,

the opportunity to present evidence at hearing to show how the proposed daily discharge of up to 65,000 gallons of partially treated wastewater, including sewage sludge, would and will adversely impact the respective property rights and economic interests particular to each owner.

All of the East Owners can be reached through communication with the undersigned, who will be responsible for receiving all communications and documents for the East Owners.

After having reviewed the "Notice of Application and Preliminary Decision for TPDES Permit and Municipal Wastewater Amendment," and the November 5, 2007 Decision of the Executive Director related to the City of Walnut Springs' Permit No. WQ0013436001, the East Owners are very concerned about the potential personal and environmental consequences of the requested major permit amendment. The requested amendment would cause partially treated sewage sludge to be discharged into the now pristine Steele Creek. As Exhibits "A" and "B" shows, the East Owners' properties are proximately located to the proposed discharge point. A significant portion of Steele Creek runs through the East Owners' properties, which are actively being used as homesteads, working ranches, farm land, and for agricultural, livestock, recreational and other purposes. Degradation of the water quality in Steele Creek is a certainty. It will greatly damage the value of the East Owners' properties and their families' ability to use and enjoy Steele Creek. The East Owners are also concerned that the organic and inorganic compounds in the discharge would adversely impact their health and safety. All of the East Owners and their families personally use and make use of the water from both the creek and the water wells on the East Owners' respective properties. As such, the East Owners strongly object to the requested major permit amendment and ask that the amendment be denied.

The TCEQ appears to have performed only limited studies, if any, on a small portion of the affected creek, and instead rely on data several years old. Further, as Steele Creek has been classified – wrongfully we believe – to have only limited aquatic land uses, the TCEQ does not address the true impact the requested amendment would have on Steele Creek. The aquatic land uses for Steele Creek should not be classified as "limited." There is no valid basis for this vibrant, historical creek to have such a classification and certainly the classification is based on limited information and is without any current substantive inquiry and comprehensive study of the creek and the properties it directly impacts. The East Owners should be protected from the degradation of the waters found in Steele Creek.

We also have reason to believe that Steele Creek may currently be home to one or more protected species, including without limitation, one or more type of fresh water mussels. I have a shell in my office from Steele Creek that is understood to be from one of these mussels presently living in the creek. I would be pleased to provide it to the TCEQ for analysis.

The East Owners respectfully request a contested case hearing to contest fully and fairly the application for the permit amendment. As interested, impacted and affected persons, they seek an opportunity to provide additional comments and to be provided with additional information concerning the determination of existing uses, anticipated impacts of the discharge, baseline conditions, and the necessity of the discharge as degradation of the water quality in Steele Creek is expected by all involved in the process. The East Owners plan to offer evidence at the hearing concerning the determination of existing uses and criteria; the assessment of degradation under the appropriate Tier; any alleged social and economic justification for

lowering water quality; requirements and conditions necessary to preclude degradation; and any other issues which bear upon the implementation of the requested permit amendment.

As previously stated, the proposed amendment will have a material adverse impact on the East Owners and their families, as well as other downstream land East Owners, in many ways including without limitation:

1. Since Steele Creek is spring fed, pollution which enters the stream may also pollute the underground aquifer which supplies drinking water;
2. In those portions of Steele Creek that may be referred to as intermittent (primarily West or upstream of the discharge point) during periods of drought and especially when Steele Creek is not running, the concentration of pollutants will increase and has the strong potential to adversely affect the abundant wildlife and livestock that depend on Steele Creek for drinking water;
3. The increase in pollutant concentration levels may result in a substantial and imminent harm to health and the environment;
4. The East Owners and their families would no longer be able to swim, fish, or enjoy the aesthetic value of Steele Creek; and
5. The market and intrinsic value of the East Owners' properties will be substantially damaged and materially decreased.

The East Owners are skeptical that the effluent proposed to be discharged will evaporate, be taken up by plants, or will not infiltrate the creek bed. We have seen no evidence of any study measuring the potential resulting impact to: (1) air quality from the evaporation; (2) animals and others that feed on the plants absorbing the effluent; or (3) animals and others from the potential leeching of contaminants that infiltrate the stream beds over time.

The TCEQ has stated that the portion of Steele creek receiving the effluent is "presumed" to have limited aquatic life use. The waters of our state are more important than to simply rely on a presumption – there should be a study involving real facts, rather than presumptions, before allowing effluent to be discharged that could have irreversible adverse effects on human health and the environment. According to the TCEQ's own records Steele Creek is a water body with high aquatic use a relatively short distance from the wastewater treatment plant. A receiving water assessment is warranted for the waters that regularly flow over the East Owners' respective properties. An anti-degradation review is also warranted because Steele Creek, at the areas the East Owners' properties will be impacted, has an aquatic life use that is or will be shown to be classified as intermediate or higher. There is no evidence to the contrary.

Furthermore, there is agreement within the TCEQ for the Owners' and Mr. Humphries' positions relative to their earlier submitted Requests for Contested Case Hearing. Ms. Christina Mann, of the Office Public Interest Counsel ("OPIC") for the TCEQ, states in her Response to

Requests for Hearing that she performed an analysis of the issues raised in the Owners'¹ and Mr. Humphries' hearing requests and recommended the following disputed issues be heard at the State Office of Administrative Hearings ("SOAH") for a contested hearing:

1. Use and Enjoyment;
2. Groundwater Concerns;
3. Surface Water Quality and Environmental concerns; and
4. Antidegradation Review.

II. Steele Creek

Originally known as Steels or Steeles Creek, the watercourse is probably named for James S. Steele, whose land grant at the junction of Steele Creek and the Brazos River is dated August 7, 1835. By mid-century the creek was a focus of settlement, with clusters of families located both near the stream's mouth and near the site of future Walnut Springs on the stream's western side. The Texas Central Railroad closely followed the path of Steele Creek as it built westward across Bosque County in 1880.² Other writers state that the creek was probably named for local settler and San Jacinto veteran Alfonso Steele.³

The *Handbook of Texas Online* provides that Steele Creek rises 3½ miles northwest of Walnut Springs in northern Bosque County (at 32°07' N, 97°46'W) and is intermittent in only its upper reaches, with the stream flowing southeast for 40½ miles to its mouth on Lake Whitney, on the Brazos River south of Lakeside Village (at 32°00' N, 97°26' W). Appendix "D" of the Texas Surface Water Quality Standards, 30 TAC, Chapter 307, that Steele Creek at 2.4 km above the confluence of Cox Branch as a perennial water body with high aquatic life use and dissolved oxygen of 5.0. For these reasons set forth below, the East Owners assert that the perennial nature of Steele Creek and high aquatic life use extend far beyond the location indicated in Appendix "D". Given the opportunity, the East Owners will prove these facts at hearing.

The attached affidavits and photographs evidence that Steele Creek's clear spring-fed waters run almost continuously across a smooth limestone bottom, providing an ideal habitat for many forms of aquatic life. The stream is home to large-mouth bass, small-mouth bass, catfish, red-ear, blue-gill, blotched and diamondback water snakes, crayfish, turtles, a variety of mussels, ducks, beaver, and a host of other creatures that comprise an as yet unspoiled ecosystem. Steele Creek is exceptional for its aquatic life, aesthetic value, and human enjoyment.

Further, the "Executive Director bases his recommended effluent limits on low flow conditions" in Steele Creek. However, the creek is identified at www.riverfacts.com as Class II+ whitewater for 10 miles from Morgan to FM 56. This classification is according to American

¹ Ms. Mann did not make any determination that Owners were "affected persons," and stated that the Owners could file a reply and provide more specific information so as to make this determination.

² *Handbook of Texas Online*, s.v. "," <http://www.tshaonline.org/handbook/online/articles/SS/rbsgl.html> (accessed March 12, 2008).

³ John J. Germann and Myron Janzen, *Texas Post Offices by County* (1986). Ray A. Walter, *A History of Limestone County* (Austin: Von Boeckmann-Jones, 1959).

Whitewater.⁴ Both www.dallasrafting.com and www.houstonrafting.com identify Steele Creek for rafting on their websites.⁵

There is a high degree of human use and contact with the stream – much greater than normally expected for an “intermittent, pooled stream” as the creek is referred to by the Executive Director in his response.” Unlike virtually any ordinary drainage way, Steele Creek is suitable for and actively used for kayaking, swimming, fishing, wading, inner-tubing and canoeing. The presence of people riding on inner-tubes or kayaks is generally contrary to the notion of an “intermittent, pooled stream.”

Contrary to the Executive Director’s suggestion, the near continuous flow of this creek makes it apparent that the proposed discharge of effluent is not likely to “evaporate” or “aspirate” prior to reaching the Owners' properties. The Executive Director partially bases this suggestion on false premises – that these are periods of “no flow.” Based on the Owners' personal observations, any period of no flow would be extremely rare. While the tree-lined banks of this beautiful creek undoubtedly absorb their fair share of life-giving water, any suggestion that its waters will aspirate thru the limestone creek bottom is 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.

The East Owners, including Ms. Uloth, owner of two tracts contiguous to the City's existing wastewater treatment facility and requested discharge point, state in their affidavits that they have for many years used their properties and the creek for fishing, boating, hiking, and nature watching. The East Owners further state that Steele Creek is “pristine” and “perennial in that it has flowing water year-round during a typical year,” and has a well defined rock bed. They also recite that Steele Creek is fed by natural springs and supplemented by rainfall and runoff. It appears that some of the TCEQ's confusion as to whether the creek is intermittent may be as a result of Steele Creek apparently being fed mostly by rainfall and runoff upstream of the City, but having significant amounts of water added by springs located in or near the City. This would explain the creek being more intermittent upstream from the discharge point, but perennial downstream and at the location of East Owners' properties.

The East Owners also testify in their affidavits about the abundant aquatic life in Steele Creek, and the abundant wildlife on their properties. One or more of the East Owners also uses Steele Creek for watering their livestock. Each of the East Owners expresses that “[i]f the major amendment of the wastewater discharge permit requested by the City is granted, the value of

⁴ Founded in 1954, American Whitewater is a national organization with a mission “to conserve and restore America’s whitewater resources and to enhance opportunities to enjoy them safely.” American Whitewater represents a broad diversity of individual whitewater enthusiasts, river conservationists, and more than 100 local paddling club affiliates across America. The organization is the primary advocate for the preservation and protection of whitewater resources throughout the United States, and connects the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission.

⁵ A more than four minute video of several people whitewater rafting on Steele Creek during a high water period can be found at <http://www.youtube.com/watch?v=0hC5MR6FThk&mode=user&search>.

their respective properties would decrease, and wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of their properties will be impaired and there will be a threat to human health and the environment."

East Owner, Charles Rankin, who owns property approximately .6 miles downstream from the discharge point, states that his kids love to swim and fish in Steele Creek, even having a two foot long pet catfish in the creek. His cattle and deer drink from the creek. He "strongly opposes" the requested amendment.

The East Owners regularly use, enjoy and rely upon the flowing waters of Steele Creek. Does the State really believe it is protective of the Owners' interests and the environment to allow up to 65,000 gallons of partially treated sewage and wastewater to be dumped into Steele Creek each day without even the safeguards of a hearing? As Mr. Rankin questions: "Doesn't this go against everything we have been taught to preserve our national resources? Are we moving backwards?" A contested hearing is necessary to maintain the rights of the Owners and to protect the environment.

IV. The Facts Require at Least a Tier 2 Degradation Determination

The Executive Director's "preliminary" determination that no water bodies with exceptional, high, or even intermediate aquatic life are present within the stream is misplaced. Regrettably, this "preliminary" determination means that no Tier 2 or Tier 3 degradation determination is required. Starting from a false premise means also that the rights of the East Owners, as well as the quality of our Texas environment, is at risk.

The TCEQ provides the "preliminary determination can be reexamined and may be modified if new information is received." This Motion for Leave to Request, and Request for, Contested Case Hearing, as well as the Request and Reply filed by the Owners⁶, and the Request and Reply filed by Clay Humphries,⁷ provides such new information, which contradicts the determination of the Executive Director and instead evidences an active creek environment, teeming with aquatic and other wildlife. This, combined with the creek's high recreational use make at least a Tier 2 degradation determination vital to protection of existing uses, human health and the environment. The Owners further contend that because of Steele Creeks' exceptional recreational and ecological significance, Steele Creek may be shown to deserve a Tier 3 degradation determination.

The State admits that "high aquatic life" begins at least "3.3 miles downstream of the wastewater treatment plant outfall location." Steele Creek is similarly listed in Appendix "D" of the Texas Surface Water Quality Standards, as a perennial water body with high aquatic life use downstream of the outfall location and 2.4 km above the confluence of Cox Branch. The East Owners assert that the Executive Director's "preliminary" determination that any affected area of

⁶ The Russell Family Trust, Steele Creek Ranch, L.P., Sam Irizarry and Ann Irizarry, Phillip B. Butler, Trustee of the Lucille C. Butler Revocable Family Trust, and The Sztamenitis Family Limited Partnership. Their Request and Reply are incorporated herein for all purposes.

⁷ Mr. Humphries acquired the subject property in 1987. His familiarity with the stream is based on more than 20 years of personal observation and experience. His Request and Reply are incorporated herein for all purposes.

Steele Creek has low aquatic life use is in error. Moreover, there has been no determination of whether the distance intermediate aquatic life use extends toward, and perhaps past, the requested discharge point.

V. The Issues the Executive Director Determined Proper for Hearing

In his Response, the Executive Director set forth that following issues are relevant and material to the TCEQ's decision on the permit application, involve a disputed question of fact that has not been withdrawn, and are referable to SOAH because they meet the relevant criteria.

- ISSUE 1: Whether the discharge will adversely affect the wildlife and livestock?
- ISSUE 2: Whether the discharge will adversely affect the underground aquifer?
- ISSUE 3: Whether the discharge will increase pollutant concentration levels to levels that will result in substantial and imminent harm to health and the environment?
- ISSUE 5: Whether the limited aquatic life classification for Steele Creek is correct?
- ISSUE 7: Whether the discharge will degrade Steele Creek?
- ISSUE 8: Whether the discharge will adversely affect the recreational and aesthetic use and enjoyment of Steele Creek?

A contested case hearing is warranted and should be granted on these and other issues.

VI. Additional Concerns

The Executive Director's finding that the processed effluent will have no adverse impact on wildlife and downstream habitat fails to address: (a) whether the chlorine and other chemicals used in the treatment process will be removed prior to discharge and if not, its impact on wildlife and habitat; (b) whether the nutrients in the effluent will alter the stream or habitat by promoting the growth of algae or other aquatic growth; and (c) whether high dissolved oxygen in the water in Steele Creek will be reduced. Additionally, the segment including Steele Creek is not presently listed on the State's inventory of impaired and threatened waters, however, the TCEQ has not performed a Waste Load Evaluation for the segment should the major permit amendment be issued.

VII. Duration of the Contested Case History

The East Owners agree with the Executive Director's recommendation in response to Owners' and Mr. Humphries' hearing requests of a nine-month duration for the contested case hearing, between preliminary hearing and the presentation of a proposal for decision before the Commission, should the requests be granted.

VIII. Conclusion

The East Owners have provided sufficient evidence that they are "affected persons" who will suffer material adverse effects from the proposed amendment of the discharge permit. Their request for a contested case hearing was timely filed and substantially complied with 30 TAC 55.21. The request is amended hereby to include more specific information concerning location and distance of their properties from the applied for point of discharge and other more detailed information necessary to reduce and prevent pollution of Steele Creek and the East Owners' properties. The East Owners timely filed their request with the chief clerk and their request is reasonable, supported by competent evidence, authorized by law, and necessary for the administration of justice. The East Owners respectfully request that their request for a contested case hearing be granted.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN, P.C.

By: 

Bruce M. Flowers
State Bar No. 07175480

1601 Elm St., Suite 3700
Dallas, TX 75201
Tel: (214) 777-4200
Fax: (214) 777-4299

ATTORNEYS FOR EAST OWNERS

CERTIFICATE OF SERVICE

I certify that on March 22, 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, Federal Express, inter-agency mail, facsimile, or hand delivery.



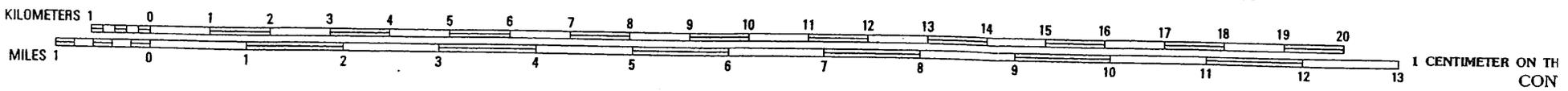
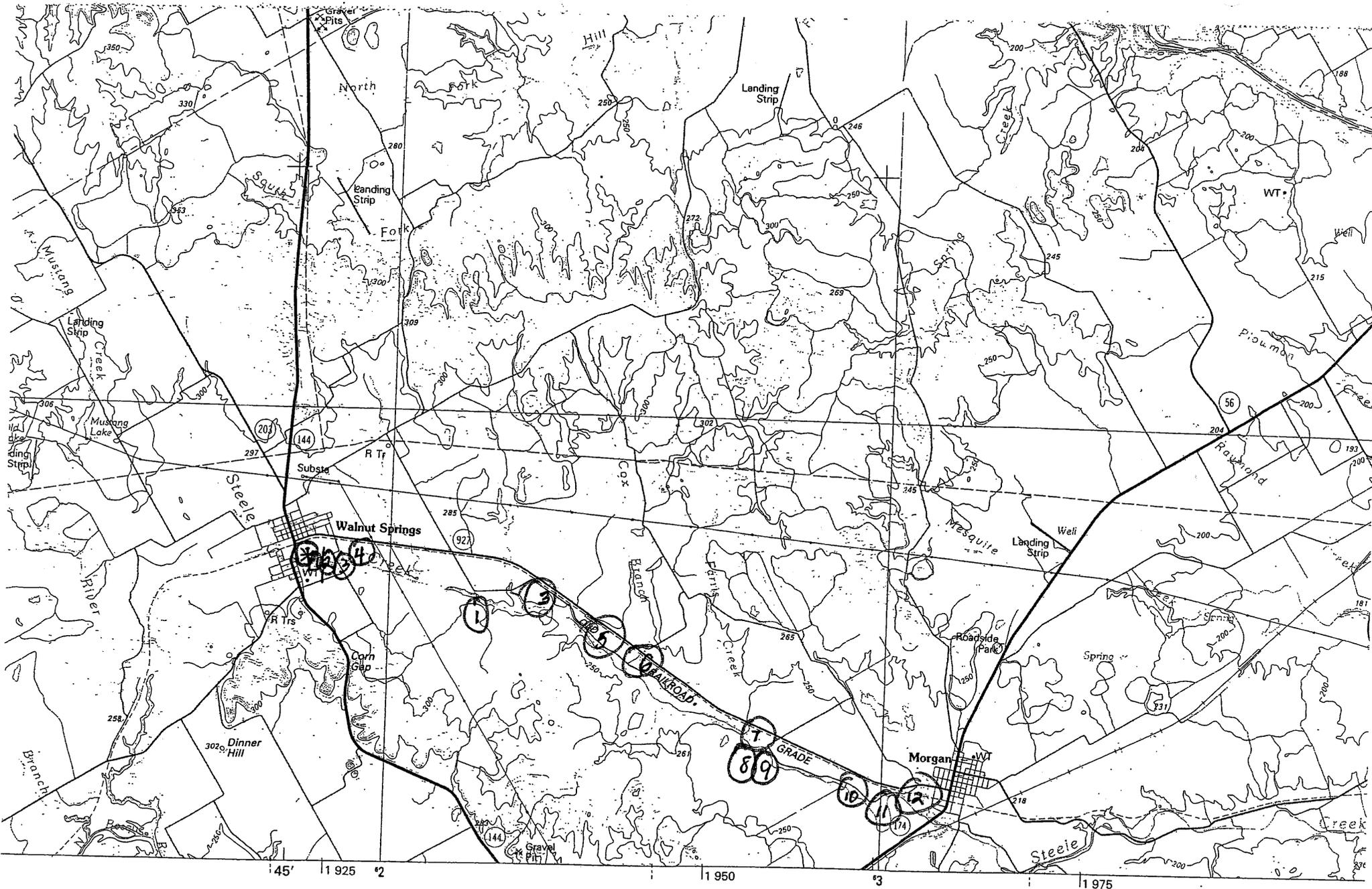
Bruce M. Flowers

A

EXHIBIT A

LEGEND

- * City Facility
- 1 Martha Uloth
- 2 Yocham McNeily Properties
- 3 J.L. and Mary Varley
- 4 Charlie and Elicia Rankin
- 5 Davenport Family Trust
- 6 Russell Family Trust
- 7 Steel Creek Ranch, L.P.
- 8 Sztamenitis Family Limited Partnership
- 9 Ann and Sam Irizarry
- 10 Clay Humphries
- 11 Philip Butler, Trustee
- 12 Albert Timms



B

1

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Martha Uloth, who upon her oath being duly sworn by me stated under oath:

1. My name is Martha Uloth. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am the owner of three tracts of land in Bosque County, Texas (together the "Properties"). The three tracts making up the Properties include one tract of approximately 319 acres ("Tract 1"); one tract of approximately 19 acres ("Tract 2"); and one tract of approximately 9 acres ("Tract 3"). Tract 2 and Tract 3 are contiguous to the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs"). Tract 1 is approximately 2.5 miles downstream from the Facility. The location of the Properties and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Steele Creek crosses all three of the Properties.

4. I acquired the Properties beginning in 1977. Tract 1 has been in my family since 1977, Tract 2 was acquired in 1984 and Tract 3 was acquired in 1997. My family and I have used the Properties continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. The Creek contains abundant aquatic life, and the Properties has abundant wildlife. We have also used the Creek for watering livestock. Attached are photographs of the Properties.

5. Steele Creek is pristine. In my opinion, as a layman, it is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical

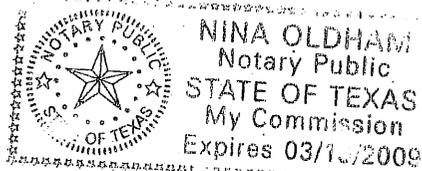
year. Steele Creek water flows over a well defined rock bed and is fed by a natural spring and supplemented by rainfall and runoff.

6. If the major amendment of the wastewater discharge permit requested by Walnut Springs is granted, the value of our Properties would decrease, and wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Properties will be impaired and there will be a threat to human health and the environment,

FURTHER AFFIANT SAYETH NAUGHT.

Martha Uloth
Martha Uloth

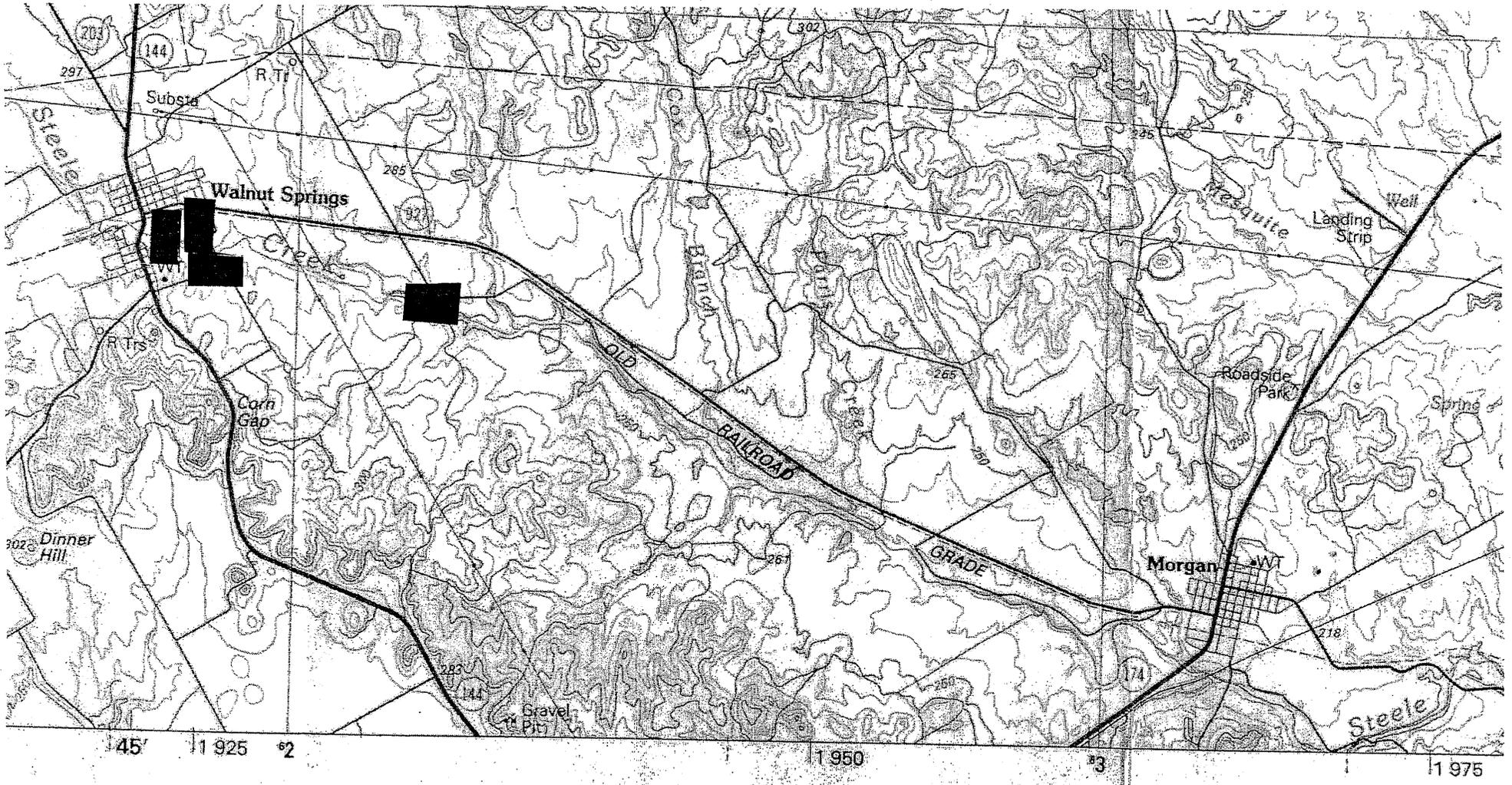
SUBSCRIBED and sworn before me, a Notary Public, by Martha Uloth on this 20th day of March, 2008, to certify which witness my hand and seal of office.



Nina Oldham
Notary Public in and for
the State of Texas

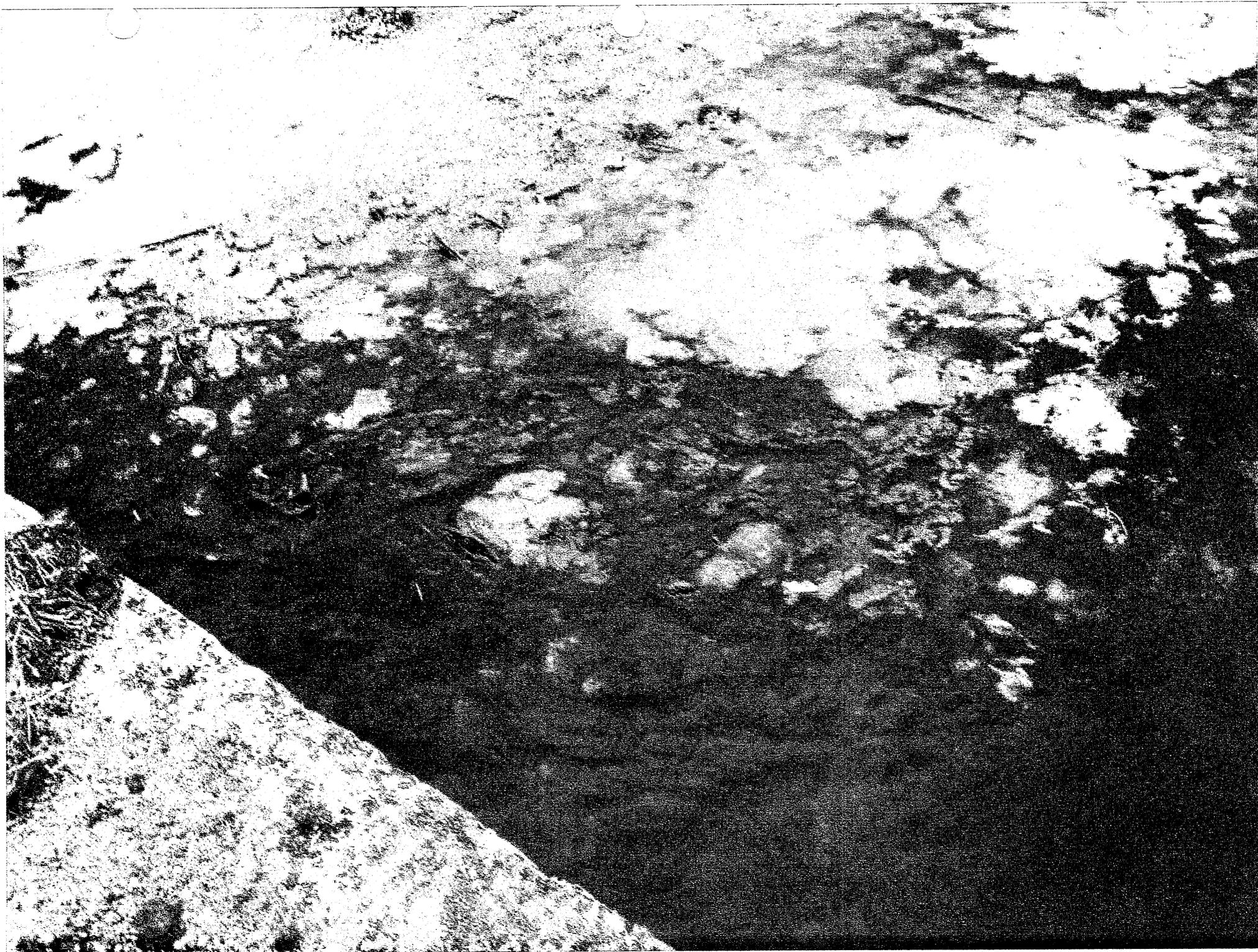
My Commission Expires: 3-19-2009

EXHIBIT "A"
(Uloth)



- 1 = FACILITY
- 2 = ULOTH RESIDENCE (TRACT 2)
- 3 = ULOTH 319 ACRES (TRACT **1**)
- 4 = ULOTH 9 ACRES (TRACT 3)





2

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared CHARLES RANKIN, who upon (his)(her) oath being duly sworn by me stated under oath:

1. My name is CHARLES RANKIN. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am the owner of approximately 550 acres in Bosque County, Texas ("Property"). The Property is downstream on Steele Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately .6 miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Steele Creek [abuts][crosses] the Property.

4. I acquired the Property in 1994. Since that time, my family and I have used the Property continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. The Creek contains abundant aquatic life, and the Property has abundant wildlife. [We have also used the Creek for watering livestock]. Attached are photographs of the Property.

5. Steele Creek is pristine. In my opinion, as a layman, it is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year. Steele Creek water flows over a well defined bed and is fed by a natural spring and supplemented by rainfall and runoff.

6. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Property will be impaired and there will be a threat to human health and the environment,

7. [Other special facts]: SEE ATTACHED

FURTHER AFFIANT SAYETH NAUGHT.

Charles Rankin

SUBSCRIBED and sworn before me, a Notary Public, by Charles Rankin on this 20th day of March, 2008, to certify which witness my hand and seal of office.



Kristi A. Trampe
Notary Public in and for
the State of Texas

My Commission Expires: 5/18/08

March 20, 2008

To the city of Walnut Springs:

I was appalled to learn of your intention to dump sewer waste into Steele creek. Doesn't this go against everything we have been taught to preserve our national resources? Are we moving backwards? The attraction to purchase my land was the two creeks.

My kids (and soon my grandkids) love to swim & fish in Steele creek. For years we even had pet catfish over two feet long that they would feed bread. I have cows and deer that drink and cool themselves in the creek. Red deer attract horseflies badly and their only relief is water & mud is their only defense. I have even seen a wolf drinking there. (It was not a coyote. I know the difference about 30 lbs.)

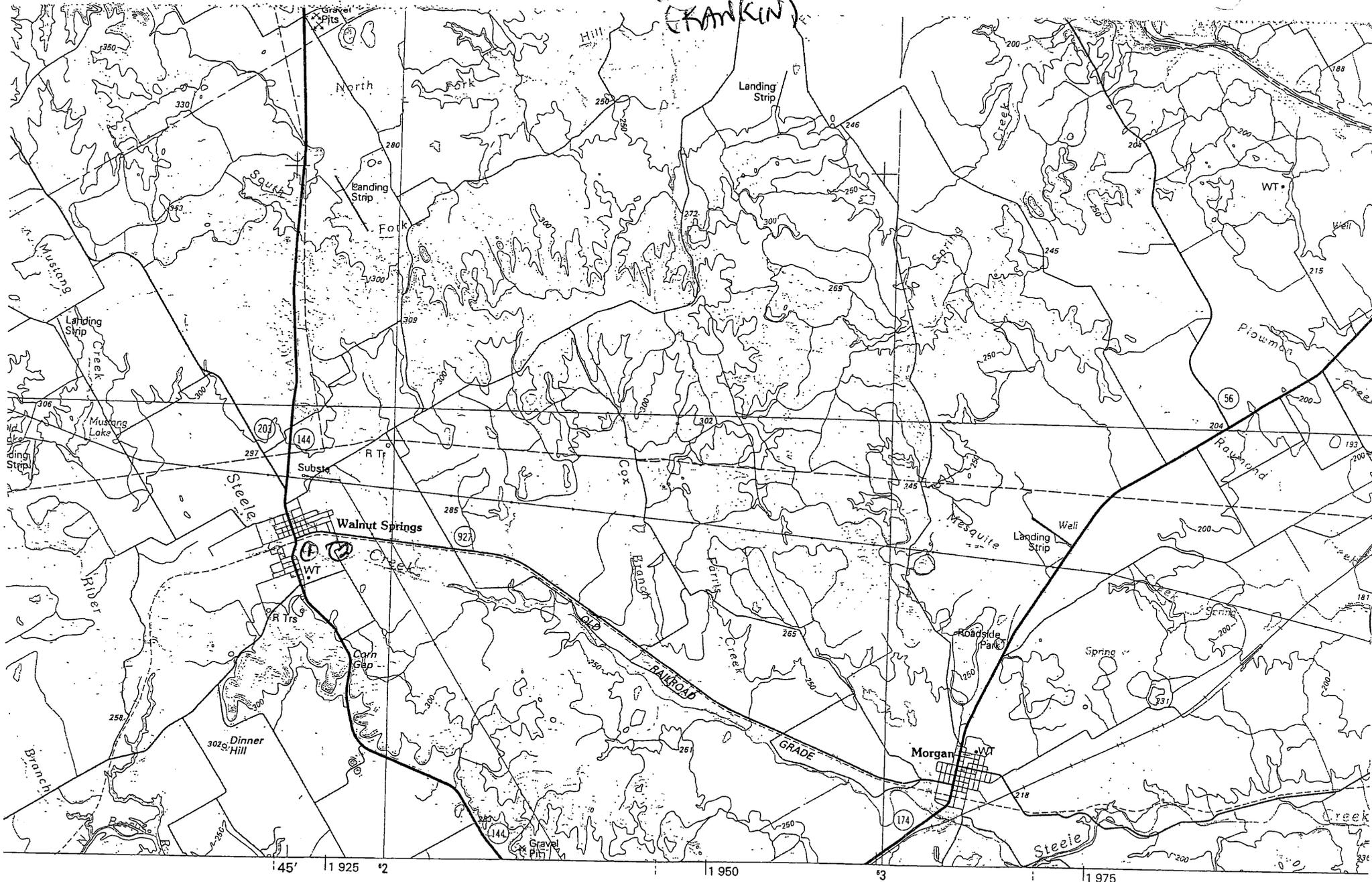
I strongly oppose your actions. I will be taking pictures of any "floaties" and forwarding them to everyone.

Please reconsider,
Charlie Rankin

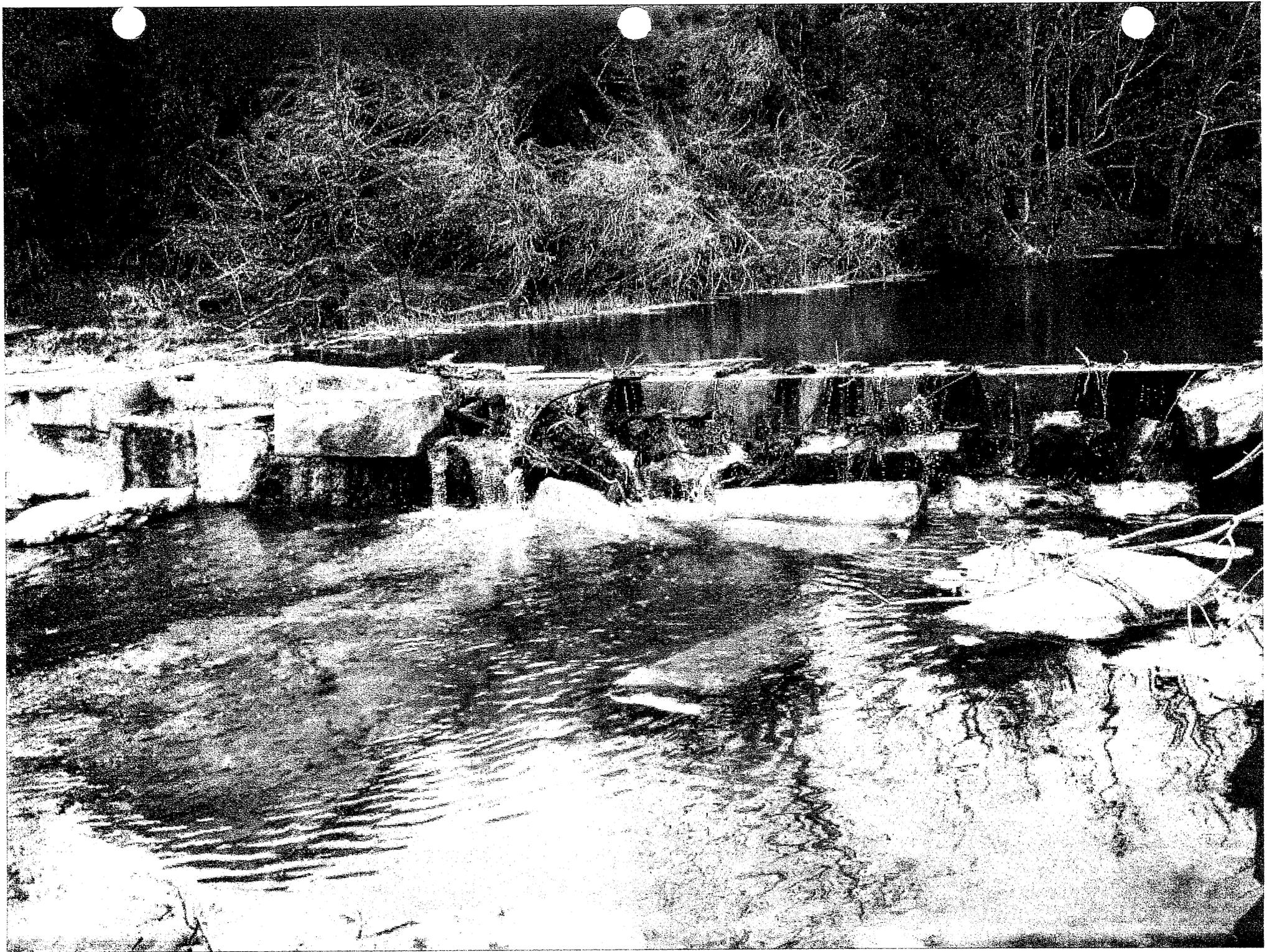
A handwritten signature in cursive script that reads "Charlie Rankin". The signature is written in black ink and is positioned below the typed name.

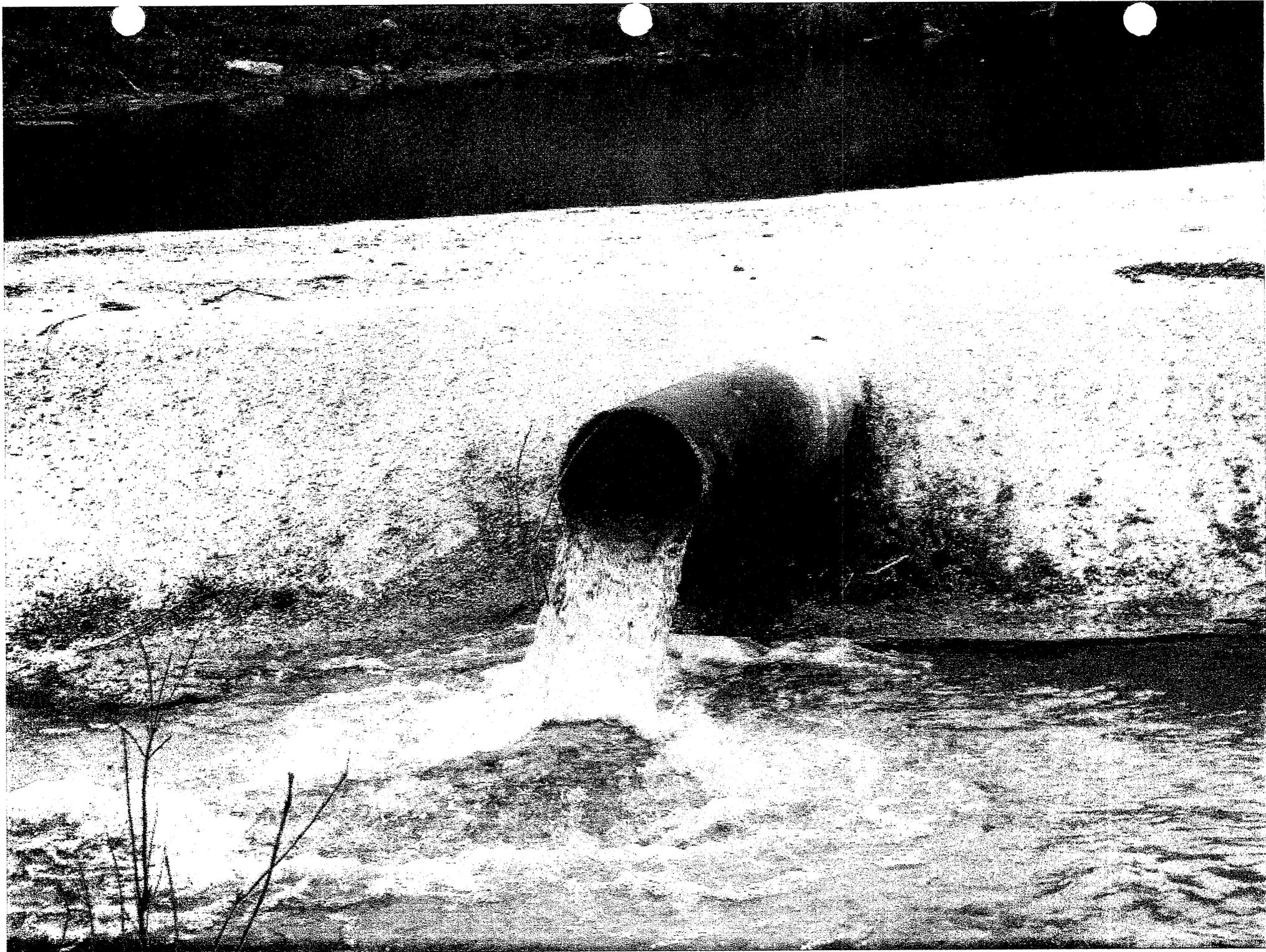
EXHIBIT A

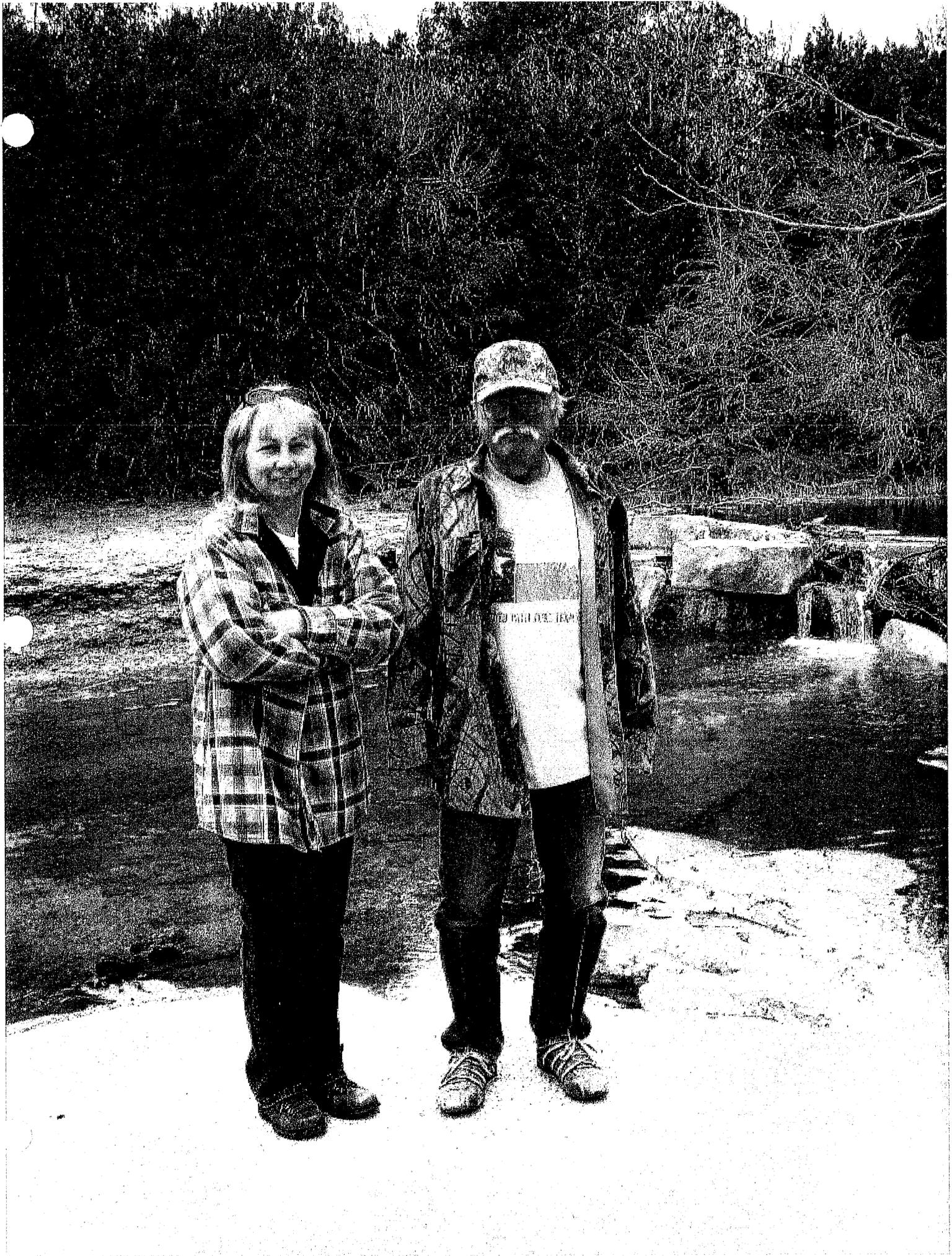
(KANKIN)



① FACILITY
 ② PROPERTY







3

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared J.L. Varley, Jr., who upon his oath being duly sworn by me stated under oath:

1. My name is J.L. Varley, Jr. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. Together with my wife, Mary E. Varley, I am the owner of two tracts of land totaling approximately 640 acres in Bosque County, Texas, downstream on Steele Creek ("Steele Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs"). The westerly tract is approximately 92 acres ("Westerly Tract"). The Westerly Tract is a distance of approximately three quarters of a mile from the Facility. The easterly tract is approximately 548 acres ("Easterly Tract"). The Easterly Tract is a distance of approximately three miles from the Facility. The Westerly Tract and the Easterly Tract are hereinafter together called the "Properties." The location of the Properties and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

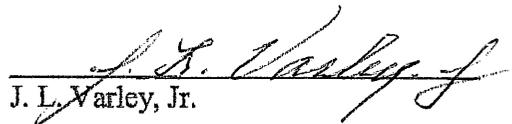
3. Steele Creek ^{J.L.V.} ~~abundant~~ [crosses] the Westerly Tract and ^{J.L.V.} ~~abundant~~ [crosses] the Easterly Tract.

4. Beginning in 1973, my wife and I acquired the Properties. Since that time, my family and I, and their children and their children, have used the Properties continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. Steele Creek contains abundant aquatic life, and the Properties have abundant wildlife. We have also used Steele Creek for watering livestock.

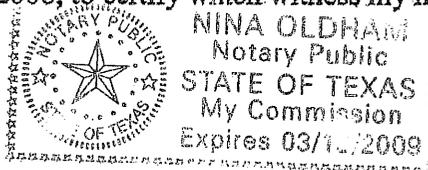
5. In my opinion, as a layman, Steele Creek is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year. Steele Creek water flows over a well defined rock bed and is fed by a natural spring and supplemented by rainfall and runoff when it occurs.

6. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Properties will be impaired and there will be a threat to human health and the environment,

FURTHER AFFIAN'T SAYETH NAUGHT.


J. L. Varley, Jr.

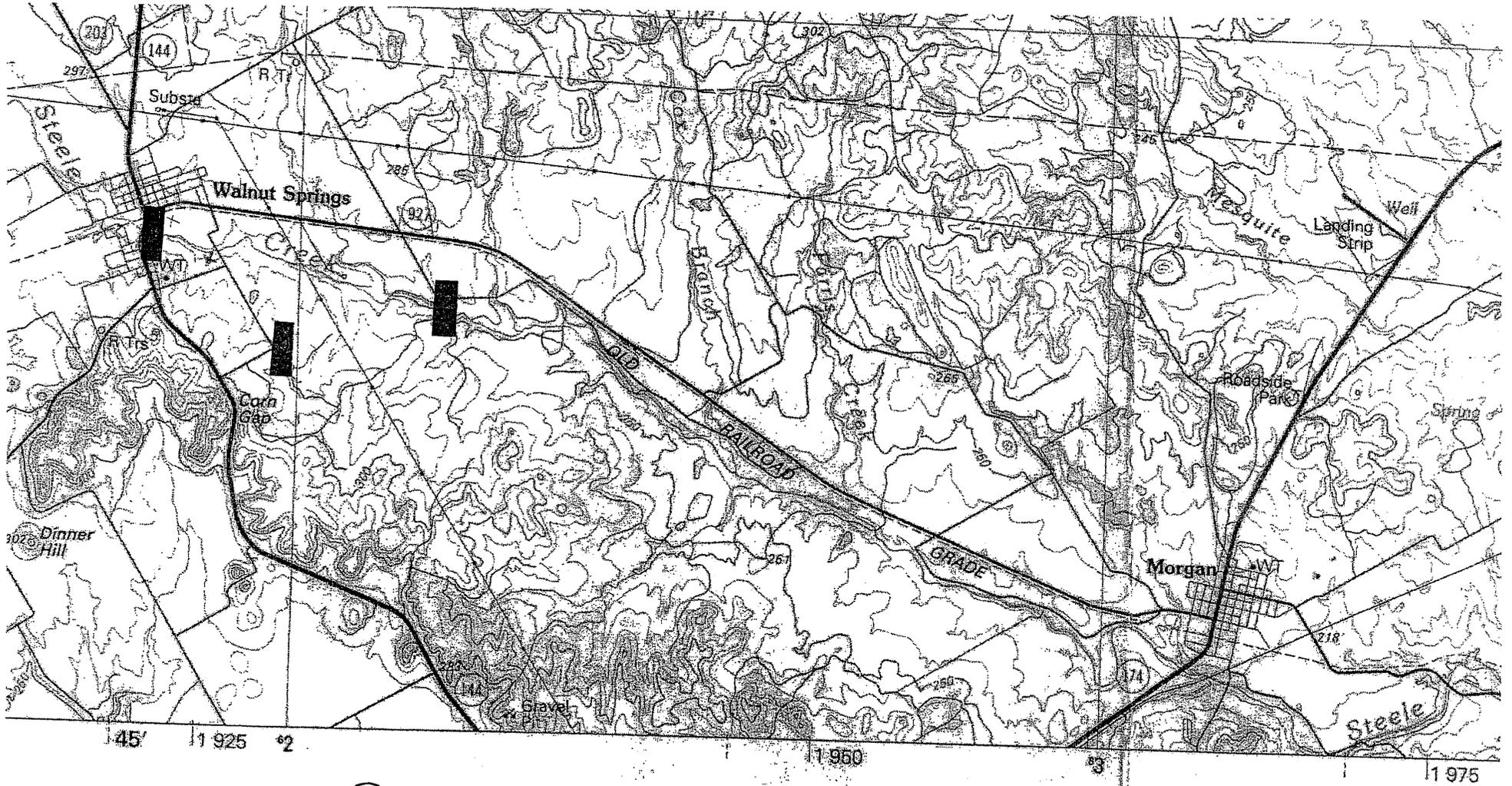
SUBSCRIBED and sworn before me, a Notary Public, by J.L. Varley, Jr. on this 20th day of March, 2008, to certify which witness my hand and seal of office.




Notary Public in and for
the State of Texas

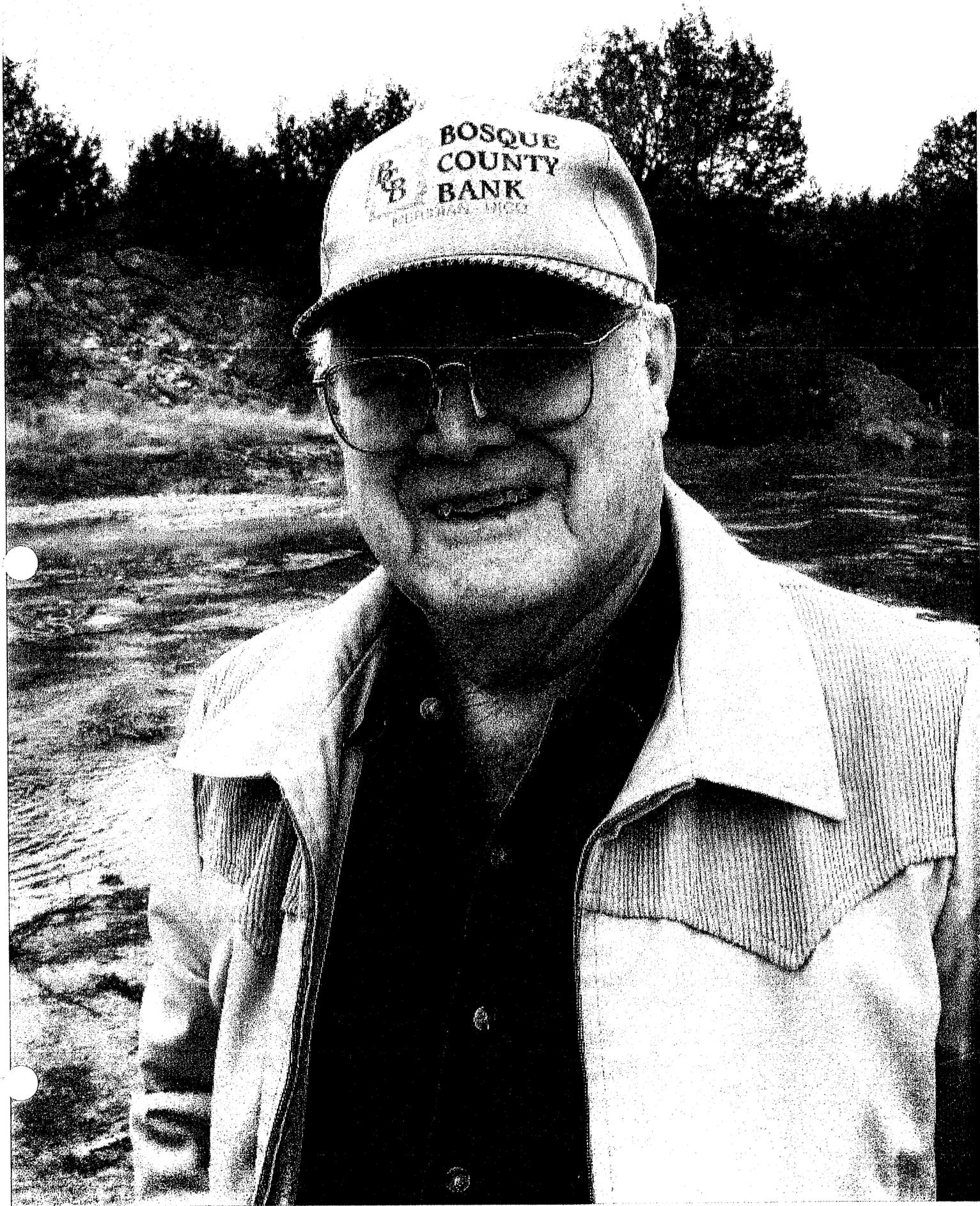
My Commission Expires: 3-19-2009

EXHIBIT "A"
(J.L. VARLEY)



- 1 = FACILITY
- 2 = VARLEY WESTERLY TRACT
- 3 = VARLEY EASTERLY TRACT





4

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared Mary E. Varley, who upon her oath being duly sworn by me stated under oath:

1. My name is Mary E. Varley. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. Together with my husband, J.L. Varley, Jr., I am the owner of two tracts of land totaling approximately 640 acres in Bosque County, Texas, downstream on Steele Creek ("Steele Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs"). The westerly tract is approximately 92 acres ("Westerly Tract"). The Westerly Tract is a distance of approximately three quarters of a mile from the Facility. The easterly tract is approximately 548 acres ("Easterly Tract"). The Easterly Tract is a distance of approximately three miles from the Facility. The Westerly Tract and the Easterly Tract are hereinafter together called the "Properties." The location of the Properties and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Steele Creek ^{MEV} ~~XXXX~~ [crosses] the Westerly Tract and ^{MEV} ~~XXXX~~ [crosses] the Easterly Tract.

4. Beginning in ^{M.E.V.} ~~1973~~ ¹⁹⁷⁷, my husband and I acquired the Properties. Since that time, my family and I, and their children and their children, have used the Properties continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. Steele Creek contains abundant aquatic life, and the Properties have abundant wildlife. We have also used Steele Creek for watering livestock.

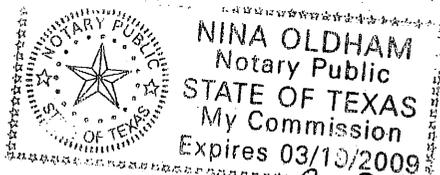
5. In my opinion, as a layman, Steele Creek is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year. Steele Creek water flows over a well defined rock bed and is fed by a natural spring and supplemented by rainfall and runoff when it occurs.

6. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Properties will be impaired and there will be a threat to human health and the environment,

FURTHER AFFIANT SAYETH NAUGHT.

Mary E. Varley
Mary E. Varley

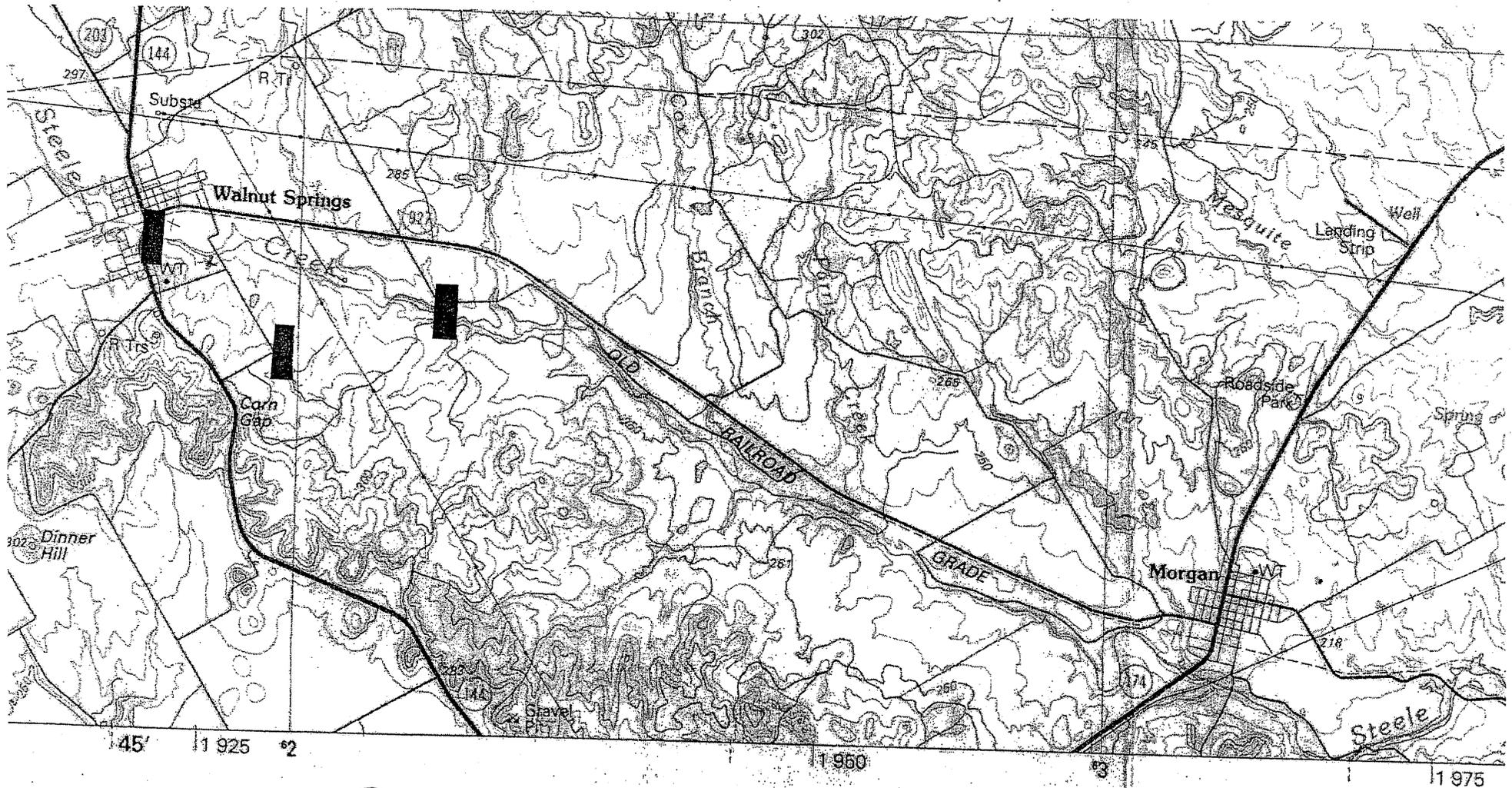
SUBSCRIBED and sworn before me, a Notary Public, by Mary E. Varley on this 20th day of March, 2008, to certify which witness my hand and seal of office.



Nina Oldham
Notary Public in and for
the State of Texas

My Commission Expires: 3-19-2009

EXHIBIT "A"
(MARY VAREY)



- 1 = FACILITY
- 2 = VAREY WESTERLY TRACT
- 3 = VAREY EASTERLY TRACT

5

AFFIDAVIT

Before me, the undersigned Notary Public, on this day personally appeared __John G. Davenport_____, who upon (his)(her) oath being duly sworn by me stated under oath:

1. My name is John G. Davenport_____. I am more than 21 years old, of sound mind, and have never been convicted of a felony or crime of moral turpitude. I am not disqualified from giving an affidavit. All statements of fact set forth herein are true and correct and based on my personal knowledge.

2. I am the owner of approximately 322_____ acres in Bosque County, Texas ("Property"). The Property is downstream on Steele Creek ("Creek") in an easterly direction from the existing wastewater treatment facility ("Facility") in the City of Walnut Springs, Texas ("Walnut Springs") at a distance of approximately _5_____ miles from the Facility. The location of the Property and the Facility are generally depicted on Exhibit "A" attached hereto. Exhibit "A" is true, correct and complete in all material respects.

3. Steele Creek ~~flows~~ [crosses] the Property.

4. I acquired the Property in _August 1999_____. Since that time, my family and I have used the Property continually and without interruption for recreational and aesthetic use, including without limitation fishing, boating, hiking, and nature watching. The Creek contains abundant aquatic life, and the Property has abundant wildlife. [We have also used the Creek for watering livestock]. Attached are photographs of the Property.

5. Steele Creek is pristine. In my opinion, as a layman, it is not intermittent. From my observation, Steele Creek is perennial in that it has flowing water year-round during a typical year. Steele Creek water flows over a well defined bed and is fed by a natural spring and supplemented by rainfall and runoff.

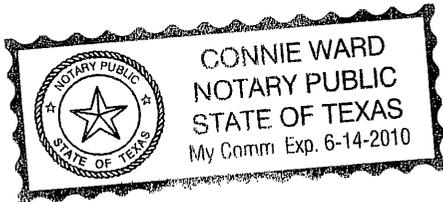
6. If the amendment of the wastewater discharge permit requested by Walnut Springs is granted, then wildlife, livestock, water quality, aquatic life, recreational and aesthetic use and enjoyment of the Property will be impaired and there will be a threat to human health and the environment,

7. [Other special facts]: Steele Creek is a large creek in Bosque Co. and runs through the approximate center of our ranch from west to east. It is the focal point of most outdoor activities on our ranch. It is hard to get enthusiastic about getting in this beautiful creek when waste is being drained in it from Walnut Springs. My family very much hopes this hazard can be eliminated. _____

FURTHER AFFIANT SAYETH NAUGHT.

[Handwritten signature]

SUBSCRIBED and sworn before me, a Notary Public, by John G. Haverant on this 21st day of March, 2008, to certify which witness my hand and seal of office.



[Handwritten signature]
Notary Public in and for
the State of Texas

My Commission Expires: _____



