

WISE COUNTY
WATER CONTROL AND IMPROVEMENT DISTRICT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

OCT 26, 2006 10:36

CHIEF CLERKS OFFICE

TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 76711-3087

MWD
54149

FROM: Wise County Water Control and Improvement District #1
P.O. Box 303
Bridgeport, Texas 76426

H OPA

OCT 30, 2006

BY

SUBJECT: Wise Service Company - Water, P.O. Box 269, Decatur, Texas 76234-0269 has applied to the Texas Commission on Environmental Quality for a new proposed permit No. WQ0014708001 to authorize the discharge of treated domestic wastewater.

The location of the proposed wastewater plant is directly above and in the watershed of Flood Water Retarding Structure #35 in the Big Sandy Creek Watershed of the Trinity River Project. We are a sponsor of this flood control project. This site is one of thirty-seven dams of which 18 have been completed.

We are concerned that the water quality, fish and wildlife habitat and other environmental features of this structure will be adversely affected by wastewater effluent.

Several adjoining landowners have expressed their concern about the location and long range affect that a sewer treatment plant would have on this pristine area.

The application submitted by Wise Service Company-Water describes Site #35 as an unnamed reservoir. This is certainly incorrect.

Attached is a REQUEST FOR A CONTESTED CASE HEARING.

Respectfully,

Lou V. Bridges

Lou V. Bridges, President
Wise County WCID #1
P.O. Box 303
Bridgeport, Texas 76426

MWD
54149

WISE COUNTY
WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

October 26, 2006

OCT 30 AM 10:36

CHIEF CLERKS OFFICE

OPA

OCT 30 2006

BY

RY

*MWD
54749*

TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

WE REQUEST A CONTESTED CASE HEARING

Name: Wise County Water Control and Improvement District #1
P. O. Box 303
Bridgeport, Texas 76426 940-627-5058 or 940-433-5136
Contact and Affected Person - Lou V. Bridges, President
To receive any correspondence

APPLICANTS NAME - WISE SERVICE COMPANY - WATER

PROPOSED PERMIT NUMBER - WQ0014708001

HOW WCID IS AFFECTED - The Wise County WCID #1 is a legal sponsor of the Big Sandy Watershed Project of which Site #35 is the site affected. We join the other three sponsors in operation and maintenance of all of these floodwater retarding structures planned and constructed in Wise County, Texas. We feel that placing sewer treatment plant effluent in this reservoir along with the possibility of plant treatment failure would adversely affect the water quality, fish and wildlife habitat and other environmental concerns in this structure. We have a legal, recorded easement from the landowners with specific responsibilities of our District. This is a perpetual easement.

Lou V. Bridges

SIGNED: LOU V. BRIDGES
PRESIDENT

WISE COUNTY
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426

MUSD
54149

OPA

FEB 19 2008

BY EB

2-15-2008

TO: Office of the Chief Clerk
MC 105 TCEQ
P.O. Box 13087
Austin, Texas 76711 - 3087

CHIEF CLERKS OFFICE

2008 FEB 15 PM 3:59

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FROM: Wise County Water Control & Improvement District #1
P.O. Box 303
Bridgeport, Texas 76426

SUBJECT: Wise Service Company - Water
TPDES Permit No. WQ0014708001

This proposed wastewater treatment plant is directly above and in the watershed of Floodwater Retarding Structure #35 of the Big Sandy Creek Watershed Project. Our organization is a primary sponsor of the project and we hold an easement from all landowners involved.

Item #5 of the easement reads " Only grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above works of improvement"

Therefore, we feel that Wise Service Company - Water would be pumping wastewater into the lake and raising the water level which violates Item #5 of our easement.

We strongly suggest further investigation into this permit request.

Respectfully,

Lou V. Bridges

Lou V. Bridges, President

WISE COUNTY
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426

2008 FEB 19 AM 10:37

CHIEF CLERKS OFFICE

OPA

FEB 19 2008

BY EB

MWD
54149

2-15-2008

TO: Office of the Chief Clerk
MC 105 TCEQ
P.O. Box 13087
Austin, Texas 78711 - 3087

FROM: Wise County Water Control & Improvement District #1
P.O. Box 303
Bridgeport, Texas 76426

SUBJECT: Wise Service Company - Water
TPDES Permit No. WQ0014708001

This proposed wastewater treatment plant is directly above and in the watershed of Floodwater Retarding Structure #35 of the Big Sandy Creek Watershed Project. Our organization is a primary sponsor of the project and we hold an easement from all landowners involved.

Item #5 of the easement reads " Only grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above works of improvement"

Therefore, we feel that Wise Service Company - Water would be pumping wastewater into the lake and raising the water level which violates Item #5 of our easement.

We strongly suggest further investigation into this permit request.

Respectfully,

Lou V. Bridges

Lou V. Bridges, President

MW

TCEQ Public Participation Form
Wise Service Company
Public Meeting

#6

Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

CHIEF CLERK'S OFFICE

APR 3 2007 11:55

TCEQ'S
COMMISSION
ON ENVIRONMENTAL
QUALITY

PLEASE PRINT:

Name: Lon Bridges
Address: 193 E. HWY 114
City/State: Paradise Tx Zip: 76073
Phone: (409) 433-5136

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? New County Water Control Improvement
Dist #1

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓/BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

34

Lou V. Bridges
Wise County Water Control and Improvement District No. 1
P.O. Box 303
Bridgeport, Texas 76426

OPA RECEIVED

APR 03 2007

Proposed Permit No. – WQ0014708001

AT PUBLIC MEETING

Comment:

My name is Lou Bridges and I'm President of the Wise County Water Control and Improvement District No. 1. We're (1) of the (3) Sponsoring Local Organizations of Floodwater Retarding Structure, Site Number 35 of Big Sandy Creek Watershed Project of the Trinity River Watershed Project, which is the site being affected by the proposed waste treatment facility. We join the Wise Soil and Water Conservation District and Wise County Commissioners Court in the operation and maintenance of all floodwater retarding structures in Wise County. We feel that placing sewer treatment plant effluent in this reservoir along with the possibility of plant treatment failure would adversely affect the water quality, fish and wildlife habitat and other environmental features of this structure.

CHIEF CLERK'S OFFICE

APR 03 2007 PM 1:55

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

MW

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 19 PM 3:32

CHIEF CLERKS OFFICE

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

February 15, 2008

Via Fax (512) 239-3311 and
Federal Express #790940855302
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle
Bldg. F
Austin, Texas 78753

H OPA
RFR FEB 20 2008
BY EB

MWD
54149

Re: **Nancy F. Carnahan's Request for Reconsideration of Proposed TPDES Permit No. WQ0014708001 and Request for Contested Case Hearing Applicant: Wise Service Company-Water**

Dear Clerk:

I am the owner of an undivided interest in the 200 acre property immediately adjacent to the proposed sewer plant and along the discharge route. Further, the "unnamed reservoir" (a federally constructed flood and erosion control lake which is properly identified as the Big Sandy Creek Watershed Lake No. 35) into which Applicant proposes to dump 75,000 gallons of sewer water each day is located entirely on my property, the James E. Forbis Estate Farm a/k/a Forbis Farm. Thus, I have a substantial personal and justiciable interest in the outcome of the applicant's permit request. I hereby request that the Executive Director reconsider its decision that the above-referenced permit application meets the requirements of applicable law, and **I hereby request a contested case hearing.**

In compliance with TCEQ's request for information on page two of its January 17, 2008 letter, and in order to process my request for a contested case hearing, my contact information for all future communications and documents is as follows:

Nancy Forbis Carnahan
Carnahan Thomas LLP
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel. 817-424-1001
Fax: 817-424-1003
Doc. #60976

MWD

February 15, 2008

Page 2

Email: ncarnahan@carnahanthomas.com

I dispute the Executive Director's response to comments 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 18, 19, 20, and 21. Further, I hereby incorporate the objections and commentary included in my previous letters dated November 6, 2006, and April 3, 2007, and the comments made at the public meeting held in Decatur, Texas on April 3, 2007.

Response to Comment 1. I dispute the Executive Director's response to Comment 1 to the effect that it does not expect water quality or high aquatic life uses and the like to be affected or the water quality or chemical makeup to change substantially. TCEQ draws these conclusions does not provide any specific evidentiary support for this expectation, and made only a brief visit to the site, so that all the wild and aquatic life which might be affected could not have been observed. Further, TCEQ did not take water samples from the reservoir, and they declined my brother's invitation to inspect the receiving waters whose character has been completely misrepresented by Applicant. I am uncertain how TCEQ can support its expectation. How can an expectation or a clear picture of the current state of the reservoir and the wildlife it supports be made without taking water samples of the specific chemical makeup of the water as it currently exists and determining the specific fowl and waterfowl, fish and other wildlife that inhabit or utilize the lake? This should be required in order to make an informed decision as to what effect effluent would have on the reservoir. In short, TCEQ simply did not develop enough information, or undertake sufficient investigation to support their position.

Response to Comment No. 2, 4, and 5. The gist of each of these comments is that neither the application itself, nor any of the later notice documents properly identify or describe the receiving waters, or the Big Sandy Creek Watershed Lake No. 35 (hereinafter "Watershed Lake No. 35") into which Applicant proposes to dump its effluent. To my knowledge, neither the application nor the draft permit has ever been amended or corrected to properly identify the bodies of water to be directly affected by the permit. TCEQ's Responses to these Comment Nos. 2, 4, and 5 seem to applaud their own ability to determine which tributaries and reservoirs Applicant was talking about, and make an evaluation of the effects on those bodies of water despite the lack of specificity in the application. This is completely beside the point; the real issue is that the Applicant failed to provide proper notice of the propose discharge route.

TCEQ suggests that properly identifying the reservoir would have made no difference, because TCEQ was able to determine exactly which bodies of water meant to identify and TCEQ then considered the affect on those bodies of water in connection with its decision. TCEQ apparently possesses an almost psychic ability to interpret sewer permit applications; they can see information in the application that isn't actually there. The most important purpose of requiring a proper description of the discharge route and affected bodies of water is not to assist TCEQ, but to notify the public of the proposed discharge route so that they can determine if they will be affected and whether or not they oppose the application. Moreover, the application will later serve as a record of discharge route that TCEQ has authorized based on that application.

What if every sewer permit applicant simply identified their proposed discharge route, in the following fashion: "water will be discharged somewhere beginning in a creek bed, which flows into another unnamed tributary, then an unnamed stream lake, which flows into an

unnamed river, and then eventually into the Gulf of Mexico.”? If sewer permit applicants are not required to clearly and carefully identify the proposed discharge route, its location, and the bodies of water potentially affected by the sewer permit, why have an application process at all? If applicant is not required to re-apply and clearly and accurately identify the affected waters and discharge route, and may simply identify these waters as unnamed tributaries and reservoirs, at some point in the future it may become unclear what route was actually authorized by the permit. Failing to require this information to be very clearly and accurately stated in the application is a very dangerous practice; it fails to provide the general public with enough information to determine whether they wish to object to the application and may cause confusion in the future as to what discharge route was actually authorized.

The Executive Director's January 17, 2008 letter points out several times that pursuant to the Water Code and related Administrative Regulations, an applicant must “under penalty of law” submit information in the application that is “true, accurate, and complete” to the best of their knowledge and belief. Applicant has not met the statutory requirements for this permit. If TCEQ approves this application, it is failing to follow its own guidelines. At a minimum, Applicant should be required to start over, submit a corrected application, and go through the process again, this time complying with the statutory requirements.

Chapter 26 of the Water Code and the related Administrative Code provisions for permitting require that the Applicant give its name, address and phone, and identify the location of the proposed treatment plant (which is also misstated –the coordinates given, when plotted on a map by the Wise County Appraisal District locate the site over 1 mile north of the location described by Applicant in the public meetings), and to identify the discharge route, and any affected bodies of water. TCEQ has chosen to overlook the fact that NONE of these requirements are met by the application. Instead, TCEQ makes the conclusory statement that, “it appears that the notice requirements for this application have been met.” I couldn't disagree more.

Applicants' own address is misstated (they gave the public library's address, where the public document viewing was to take place), gave erroneous coordinates for the location of the treatment plant, which are apparently off by over 1 mile, no specific bodies of water were identified and the application was never amended or corrected in writing.

Response to Comment No. 3. TCEQ's response to Comment 3 does not really respond to the public's comments at all. TCEQ simply states that the applicant would be responsible for installing “adequate safeguards” to prevent an accidental discharge of untreated or insufficiently treated effluent, but does not specify what safeguards will be employed. Without specific information regarding what safeguards will be required of Applicant, it is impossible for the public to evaluate the efficacy of such “safeguards.”

Moreover, TCEQ goes on to say that if there IS an accidental discharge, Applicant will have to report it within 24 hours. This is of very little comfort, and would be “too little, too late.” The Exxon Valdez eventually reported its oil spill, but it took years to clean up the mess and the surrounding area and wildlife have never fully recovered. If such a discharge occurs, it will undoubtedly immediately adversely affect the wildlife and high aquatic uses of the

Watershed Lake No. 35 and, depending on the levels of discharge and the nature of the pollutants, it could take years to repair the damage from one short, accidental discharge. Imposing a penalty on the Applicant for mismanaging the plant could not repair the damage to the environment, and would be of little comfort to those affected by the pollutants.

TCEQ describes its hotline for reporting violations of the TCEQ standards and mechanism for filing a complaint. However, if TCEQ treats complaints with the same level of interest as the public comments and objections to permit applications, the process will likely be an exercise in futility. Based on the response to public comments and the TCEQ's recommendation for approval of this permit, strict compliance with the Water Code and with TCEQ's administrative regulations will apparently not be required.

Response to Comment No. 6. TCEQ states that effluent limits set out in the draft permits were set out using numerical models. Any "numerical model" would be based on certain assumptions, and in this case, many of the assumptions made by TCEQ regarding water movement, the nature of the receiving waters, and other factors are flawed. The receiving waters have been misrepresented as an intermittent stream as defined by Texas Surface Water Quality Standards. The undersigned is uncertain what photos were provided with the permit application, but if they reflect an intermittent stream, the photos are misrepresentative of the actual location discharge route.

Further, the response states that "information was collected by water quality monitoring stations in the watershed," but TCEQ fails to identify when, where, and by whom such water monitoring stations were operated. This information would be needed in order for the public to determine whether the information collected was objective and accurate.

Response to Comment No. 8. Nothing authorizes TCEQ to "assist" the Applicant to correct any inaccuracies in its application or to construe the application in the light most favorable to the Applicant, yet TCEQ appears to have done just that in order to render a decision in favor of applicant. Ninety percent of what an application for a sewer permit should be dealing with is what water and nearby property could be adversely affected, and yet TCEQ has allowed Applicant to misrepresent the location of the facility. When plotted by the Wise County Appraisal District, the coordinates given in the application place the plant over 1 mile north and slightly to the east of the area described by applicant in later public meetings. Further, as previously discussed, the application does not properly identify the discharge route, or the bodies of water that will be directly affected. See information regarding response to Comments 2, 4, and 5 herein.

Response to Comment 9. TCEQ again misses the point of the comments. The undersigned does not dispute TCEQ's authority to grant a permit for discharge of pollutants into a private body of water. The comments were intended to point out Applicant's erroneous position that any creekbed constitutes public property. Such discharge of polluted water into another's property constitutes a trespass and/or a public nuisance which the undersigned will seek legal redress in a court of law against Applicant.

Response to Comment 10. It appears that TCEQ completely missed the point of these comments. The gist of the comments was that the Applicants application was sloppy, indicating a level of carelessness that may be indicative of how carefully (or rather negligently) the opponents of the application expect this inexperienced operator (the Applicant) to conduct their sewage treatment operations. The comments regarding the library address were completely misconstrued by TCEQ, who apparently went to great lengths to verify the address of the Decatur Public Library. The public comments regarding the library's address were not that Applicant had misstated the library's address, but were intended to point out that on the original application, the Application listed its address as follows:

Brighton Water Systems
1700 South FM 51
Decatur, Texas 76092

The address given for Applicant is not its own address, but that of the Decatur Public Library. See Exhibit "A" attached. Not only is this another example of Applicant's carelessness in preparation of the application, but it raises yet another notice issue: anyone who wished to send correspondence or questions to the Applicant regarding the application (including, presumably TCEQ), would have been unable to reach Brighton, as their correspondence would instead have been received by the Decatur Public Library, whose address was erroneously given as Applicant's street address.

The Water Code and TCEQ's Administrative Code require that Applicant state its address, and Applicant failed to do even that correctly.

Response to Comment 11. TCEQ states in response to this letter that, "Based upon information obtained during the public meeting held on April 3, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. *In this case, it would seem to be unlikely that the level would rise above sea level.*" (emphasis added) TCEQ provides absolutely no objective data or other support for this statement, and in the undersigned's opinion, has not sufficiently studied the potential affects of the discharge of the effluent on water levels or quality.

Response to Comment No. 18. Although this sort of inefficiency seems to typify our government, it appears that TCEQ would propose to grant the permit first, and do a thorough inspection later. It would clearly be a colossal waste of resources to allow Applicant to build its sewer plant, and for TCEQ to conduct a *thorough* site inspection only after completion of the plant's construction to determine if the information in the application is correct, whether the discharge route is viable, etc., based upon which the permit could be denied.

Response to Comment 20. The undersigned disputes TCEQ's position that the "unnamed tributary" is a "naturally flowing tributary" rather than a flood control district drainage ditch. The Watershed Lake No. 35 can be fairly designated as a flood control district drainage ditch, albeit a large one, and as such Applicant was required to identify where it was discharged into this area, but Applicant failed to do so. Therefore, the application should be denied.

February 15, 2008

Page 6

Response to Comment 21. TCEQ has absolutely no data to support the allegations in this paragraph, and cannot fairly state that the structural integrity of this dam will not be compromised by introduction of the additional water which Applicant proposes to introduce into the Watershed Lake No. 35.

In summary, the Applicant for this permit failed to clearly and accurately identify the discharge route and bodies of water affected, failed to clearly and accurately identify the proposed location of the plant, failed to provide adjacent property owners with the required personal notice of the application, and even failed to correctly set forth its own address. The requirements of the Water Code for such permits were not met, and the permit should be denied. Further, TCEQ failed to undertake a thorough investigation of the receiving waters or the existing conditions of the flood and erosion control lake known as the Big Sandy Creek Watershed Lake No. 35 which will be most affected by the granting of this permit, and their decision was based on a number of erroneous assumptions regarding the receiving waters and possibly even the proposed location of the sewer plant site, such that their evaluation of the permit was fundamentally flawed.

For all of the foregoing reasons, as well as the reasons stated in my previous letters dated November 6, 2008 and April 3, 2008, as well as the public comments made at the April 3, 2008 meeting regarding the permit application, the TCEQ's Executive Director should reconsider and reverse its decision that the above-reference permit application meets the requirements of applicable law because in truth, the requirements have not been met. If TCEQ's Executive Director is not willing to reverse its decision immediately, **I hereby request a contested case hearing.**

Sincerely,



Nancy F. Carnahan
Carnahan Thomas LLP
State Bar No. 07226150
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel (817) 424-1001
Fax (817) 424-1003

NFC/nc
Attachment

EXHIBIT "A"

APPLICATION for a PERMIT

to

DISCHARGE, DEPOSIT or DISPOSE of WASTE

Applicant:

**BRIGHTON WATER SYSTEMS
1700 FM 51
DECATUR, TEXAS 76234**

Prepared by:

**WASTELINE ENGINEERING, INC.
P.O. BOX 421
ALEDO, TEXAS 76008**

APRIL 2006

* * * Communication Result Report (Feb. 15. 2008 4:42PM) * * *

1) CARNAHAN THOMAS
2)

Date/Time: Feb. 15. 2008 4:33PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
1995 Memory TX	15122393311	P. 9	OK	

Reason for error

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E. 3) No answer	E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size	

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

Fax

To: Office of Chief Clerk/TCEQ Fax: (512) 239-3311

To: Fax:

Pages: 9 (including fax cover sheet) Date: 2/15/2008

From: Nancy F. Carnahan Phone: (817) 424-1001

Urgent For Review Please Comment Please Reply Please Recycle

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From: Origin ID: GLEA (817)424-1001
Nancy Carnahan
CARNAHAN THOMAS LLP
1190 N. CARROLL AVE



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S/N: 59604331
Account: S*****

MMRA

SOUTHLAKE, TX 76092

Delivery Address Bar Code



SHIP TO: 800-687-4040

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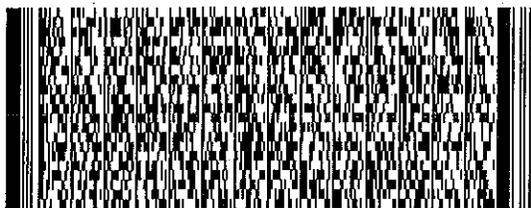
Office of the Chief Clerk
TCEQ
12100 PARK 35 CIR BLDG F

RECEIVED
Ref # TCEQ sewer permit matter
Invoice #
PO # FEB 19 2008
Dept #

TCEQ MAIL CENTER
MM

AUSTIN, TX 787531808

MON - 18FEB



TRK# 7909 4085 5302
0201

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CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 19 PM 3:32

CHIEF CLERKS OFFICE

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

February 15, 2008

Via Fax (512) 239-3311 and
Federal Express 790940855302
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

H OPA
RFR FEB 23 2008
BY EB
MWD
54149

Re: **Wise County Water Control and Improvement District No. 1's
Request for Reconsideration of Proposed TPDES Permit No. WQ0014708001 and
Request for Contested Case Hearing
Applicant, Wise Service Company-Water**

Dear Clerk:

I represent and write on behalf of my client the Wise County Water Control and Improvement District No.1 (hereinafter "Wise County WCID No. 1") to request reconsideration of the TCEQ's decision that the above-referenced permit application meets the requirements of applicable law, and to **request a contested case hearing** on their behalf.

In compliance with the information requested by TCEQ on page two of its January 17, 2008 letter, to process the request for a contested case hearing, my name, address, phone and fax, are set forth at the conclusion of this letter. Further, contact information for the person responsible for receiving all communications and documents for the Wise County WCID No. 1 is as follows:

Lou V. Bridges
President
Wise County Water Control and Improvement District No.1
P.O. Box 303
Bridgeport, Texas 76426
Daytime Tel. 940-433-5136
Fax: 940-627-5098

MW

The Wise County WCID No. 1's purpose is in part to control erosion, flooding and water levels throughout its district, and to protect the integrity of the watershed projects and improvements it has sponsored, including the Big Sandy Creek Watershed Lake No. 35 (identified in an amendment to the relevant application as the "unnamed reservoir") into which the applicant proposes to dump effluent in connection with its proposed sewer treatment plant.

Further, the acreage upon which the proposed sewer plant will reside, as well as the Forbis Farm upon which the Big Sandy Creek Watershed Lake No. 35 sits, are both subject to easements in favor of the WCID No. 1, which gives WCID No. 1 the sole right to control the level of both the receiving waters and the Big Sandy Creek Watershed Lake No. 35 (hereinafter "Watershed Lake No. 35"). A copy of one of these easements is attached hereto as Exhibit "A". Further, WCID No. 1 is charged with specific responsibilities in connection with controlling and regulating the water level, soil erosion, and flooding in the area concerned. The discharge route proposed in the application proposes to attempt to affect the water levels, as well as the water quality of the Watershed Lake No. 35 and thus, WCID No. 1 has a vested and justiciable interest in the proposed permit application.

As a preliminary matter, although the Executive Director's letter is dated January 17, 2008, WCID No. 1 did not receive the decision letter of the TCEQ's Executive Director recommending approval of the proposed application until February 5, nearly three weeks after the date on the letter. Since WCID No. 1's response deadline runs from the date of the director's letter, rather than the date when it was received, WCID No.1 was given a much abbreviated time period in which to prepare a response, and its rights may have been prejudiced by such late notice. WCID No. 1 reserves the right to make further complaint in the future regarding said late notice, and the manner in which its rights may have been prejudiced by same.

Further, WCID No. 1 hereby incorporates and reurges the concerns and comments set forth in two previous letters dated October 26, 2006, signed by its President, Lou V. Bridges, which are attached hereto for ease of reference as Exhibits "B" and "C", as well as the comments made by President Bridges during the public meeting held in Decatur, Texas on April 3, 2007.

Wise County WCID No. 1 wishes to reurge its concerns that the Watershed Lake No. 35 will be negatively impacted in a number of ways if the permit is granted. WCID No. 1 is concerned that the water quality, fish and wildlife habitat, environment, and the surrounding area will be negatively affected by the granting of the permit.

Further, WCID No. 1 notes that, based on an easement in favor of Wise County WCID No. 1 by the previous owner of the Canyon Springs property (the housing development for which Applicant seeks its sewer permit), only the WCID No. 1 can control the water levels in the Watershed Lake No. 35 and the proposed receiving waters leading up to that lake.

Further, WCID No. 1 disputes a number of the responses to comments in the decision, which apparently formed the basis for the Executive Director's decision. Among other things, the Applicant failed to clearly and accurately identify the discharge route and bodies of water affected, identifying the Big Sandy Creek Watershed Lake No. 5, a federally constructed flood and erosion control lake sponsored by WCID No. 1, as simply an "unnamed reservoir", failing to even point out the flood and erosion controlling purposes of the reservoir. Further, Applicant failed to clearly and accurately identify the proposed location of the plant, and even failed to correctly set forth its own address. In short, the requirements of the Water Code for such permits were not met, and the permit should be denied.

Applicant has not met the requirements of the statute which require it to identify the discharge route and affected bodies of water. While TCEQ claims it was able to identify the discharge route and the reservoir, despite Applicant's failure to properly identify them, this is really beside the point; the public could not fairly determine what bodies of water would be affected based on the information contained in the application, so the notice requirements simply haven't been met. It is hard to conceive of what information would be more important to clearly and carefully identify than the location of the plant, the discharge route, and the bodies of water affected, and yet TCEQ opines that Applicant met the requirements for permit approval, when none of this information was correctly stated in the application.

Further, while TCEQ's Executive Director's decision letter dated January 17, 2008 responds that it does not expect the waters of either the Watershed Lake No. 35 or the wild and aquatic life dependent on that lake to be effected by the effluent to be dumped into the lake, TCEQ does not provide any evidentiary basis for these conclusory statements.

TCEQ failed to undertake a thorough investigation of the receiving waters or the existing conditions of the flood and erosion control lake known as the Big Sandy Creek Watershed Lake No. 35 which will be most affected by the granting of this permit. TCEQ did not take water samples from the lake to determine its chemical make up and how it might be affected by the 75,000 gallons per day of effluent. TCEQ stated that based on "numerical models" it does not expect the oxygen levels of the lake or its chemical make up to be substantially affected. TCEQ fails to elaborate on what numerical models it used or what assumptions were made in connection with the construction of such numerical models. We do know however, that TCEQ has presumed that the receiving waters of the lake are an "intermittent stream" which is dry at least one week out of the year, a presumption that is erroneous. It can only be presumed that the TCEQ's other assumptions in connection with their evaluation are similarly erroneous, such that their evaluation of the permit and its affect on the lake and its "high aquatic life uses" was fundamentally flawed.

February 15, 2008

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For all of the above reasons, as well as those previously stated in its letters and the comments made at the public meeting, the TCEQ's Executive Director should reconsider and reverse its decision that the above-reference permit application meets the requirements of applicable law because in truth, the requirements have not been met. If TCEQ's Executive Director is not willing to reverse its decision immediately, Wise County WCID No. 1 hereby requests a contested case hearing.

Sincerely,



Nancy F. Carnahan
Carnahan Thomas LLP
State Bar No. 07226150
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel (817) 424-1001
Fax (817) 424-1003

NFC/nc
Attachment

cc: Lou V. Bridges (President, Water Control and Improvement District No. 1)
(via U.S. Mail)
Al Scott (Water Control and Improvement District No. 1) (via fax 940-627-5098)

EXHIBIT "A"

No. 256

EASEMENT

THE STATE OF TEXAS
COUNTY OF

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, C. L. Gage, Jr., C. L. Gage, Jr., Guardian for Lewis W. Gage
William C. Gage and Traci L. Gage

of Wise County, Texas (hereinafter called "Grantor"),

does hereby grant, bargain, sell, convey and release unto Wise Co., W.C.T.D. #1 and Wise Soil
and Water Conservation District

its successors and assigns, (hereinafter called "Grantee"), an easement in,
over and upon the following described land situated in the County of Wise, State of Texas, to-wit:

258.07 acres of land, more or less, in the D. Moore Survey A-587, G. M. Mills Survey A-605, and the R. Salmon Survey A-758 all of which being in Wise County, Texas being more fully described in an Exchange Deed from the Forest Service, United States Department of Agriculture to James C. Thomason, Trustee dated June 2, 1987 : recorded Volume 248 Page 410, Real Records, Wise County, Texas, and more fully described in a Special Warranty Deed from Tim Truman and James C. Thomason to C. L. Gage, Jr., Lewis W. Gage, William C. Gage and Traci L. Gage recorded volume 544 page 751 and 758, Real Records, Wise County, Texas.

or the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land; for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the 'above' described land that is 'caused' by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works,
Big Sandy Creek
Watershed

And, involving or affecting 1.50 acres, more or less, of the above described land.

This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along useable access routes designated by Grantor.

There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, its successors and assigns, of the rights and privileges herein granted.

The rights and privileges herein granted are subject to all encumbrances, rights-of-way, mineral reservations or other rights now outstanding in third parties.

The Grantee is responsible for operating and maintaining the above described works of improvement.

Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.

The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.

The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.

This easement (does) ~~include~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.

Special Provisions:

In the event construction of the above described works of improvement is not commenced within 5 years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

TO HAVE AND TO HOLD the aforesaid easement in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, his successors and assigns, forever.

IN WITNESS WHEREOF the Grantor has executed this instrument on the 11 day of MARCH, A. D., 19 96

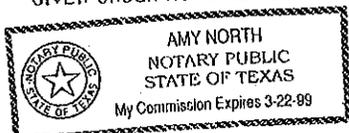
C. L. Gage, Jr. (GRANTOR)
Traci K Gage (GRANTOR)
William C Gage (GRANTOR)

(GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C. L. Gage, Jr., Traci K Gage, William C Gage, known to me to be the person(s) whose name(s) are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 11th day of March, A. D. 19 96.



Amy North
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires 3-22-99

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19 _____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

Filed for Record form with fields for No., EASEMENT TO REAL ESTATE FROM TO, FILED FOR RECORD, RECORDED, A. D. 19, County Clerk, and Notary Public information.

Handwritten note: 1) Notary, same

U.S. FOREST SERVICE

C.1

MRS. ALTHEA FORBIS

Construction
Campsite

Access Road

Iron Pin
Sta. 17140 R-1

T.B.M.-2

830.0

507.5

507.5

F.L. 887.1

F.L. 880.6

Iron Pin
Sta. 6740 R-1

T.B.M.-1

Mitchell Energy Corporation
Gas Pipeline

H.C. RUSSELL

COUNTY ROAD
FORT WORTH & DENVER
R. R.

LEGEND



EXHIBIT "B"

027 147 2000 17.20 3400270000
**WISE COUNTY
WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426**

October 26, 2006

*Mailed
10-27-06
ACJ*

**TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 76711-3087**

**FROM: Wise County Water Control and Improvement District #1
P.O. Box 303
Bridgeport, Texas 76426**

SUBJECT: Wise Service Company - Water, P.O. Box 269, Decatur, Texas 76234-0269 has applied to the Texas Commission on Environmental Quality for a new proposed permit No. WQ0014708001 to authorize the discharge of treated domestic wastewater.

The location of the proposed wastewater plant is directly above and in the watershed of Flood Water Retarding Structure #35 in the Big Sandy Creek Watershed of the Trinity River Project. We are a sponsor of this flood control project. This site is one of thirty-seven dams of which 18 have been completed.

We are concerned that the water quality, fish and wildlife habitat and other environmental features of this structure will be adversely affected by wastewater effluent.

Several adjoining landowners have expressed their concern about the location and long range affect that a sewer treatment plant would have on this pristine area.

The application submitted by Wise Service Company-Water describes Site #35 as an unnamed reservoir. This is certainly incorrect.

Attached is a **REQUEST FOR A CONTESTED CASE HEARING.**

Respectfully,

Lou V. Bridges

Lou V. Bridges, President
Wise County WCID #1
P.O. Box 303
Bridgeport, Texas 76426

EXHIBIT "C"

WISE COUNTY
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426

*Marked
10-27-06
aw*

October 26, 2006

TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087

WE REQUEST A CONTESTED CASE HEARING

Name: Wise County Water Control and Improvement District #1
P. O. Box 303
Bridgeport, Texas 76426 940-627-5058 or 940-433-5136
Contact and Affected Person - Lou V. Bridges, President
To receive any correspondence

APPLICANTS NAME - WISE SERVICE COMPANY - WATER

PROPOSED PERMIT NUMBER - WQ0014708001

HOW WCID IS AFFECTED - The Wise County WCID #1 is a legal sponsor of the Big Sandy Watershed Project of which Site #35 is the site affected. We join the other three sponsors in operation and maintenance of all of these floodwater retarding structures planned and constructed in Wise County, Texas. We feel that placing sewer treatment plant effluent in this reservoir along with the possibility of plant treatment failure would adversely affect the water quality, fish and wildlife habitat and other environmental concerns in this structure. We have a legal, recorded easement from the landowners with specific responsibilities of our District. This is a perpetual easement.

Lou V. Bridges

SIGNED: LOU V. BRIDGES
PRESIDENT

* * * Communi ion Result Report (Feb. 15. 200. 3:16PM) * * *

}}
2}}

Date/Time: Feb. 15. 2008 3:12PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
9214	Memory TX	G3-AT :15122393311	P. 14	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

Fax

To: Office of Chief Clerk/TCEQ Fax: (512) 239-3311

To: Fax

Pages: 14 (including fax cover sheet) Date: 2/15/2008

Re:

From: Nancy F. Carnahan Phone: (617) 424-1001

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:** UNLESS OTHERWISE INDICATED OR DEVIOUS FROM THE NATURE OF THIS TRANSMISSION, THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIAL, INTENDED FOR THE USE OF THE NAMED RECIPIENT (OR EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT). YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS HEREBY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE BELOW ADDRESS AT OUR EXPENSE. THANK YOU.

From: Origin ID: GLEA (817)424-1001
Nancy Carnahan
CARNAHAN THOMAS LLP
1190 N. CARROLL AVE



Ship Date: 15 FEB 2008
A.M. (T.L.B.)
Serial #: 528053310270001
Account #: S*****

MMRA

SOUTHLAKE, TX 76092

Delivery Address Bar Code

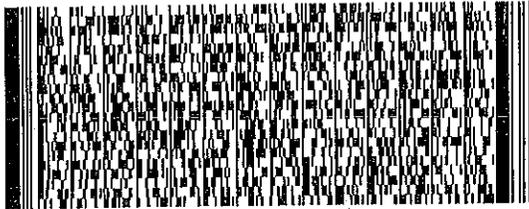


SHIP TO: 800-687-4040 BILL SENDER
Office of the Chief Clerk
TCEQ
12100 PARK 35 CIR BLDG F

AUSTIN, TX 787531808

Ref # TCEQ sewer permit matter
Invoice #
PO # FEB 19 2008
Dept #

TCEQ MAIL CENTER
MM



TRK# 7909 4085 5302
0201

MON - 18FEB
STANDARD OVERNIGHT

XH MMRA

78753
TX-US
AUS



Shipping Label: Your shipment is complete

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3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

MWD
BH149

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 FEB 15 PM 4: 25
CHIEF CLERKS OFFICE

February 15, 2008

Via Fax (512) 239-3311 and
Federal Express #790940855302
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle
Bldg. F
Austin, Texas 78753

RFR
H
OPA
FEB 19 2008
BY EB

Re: **Nancy F. Carnahan's Request for Reconsideration of Proposed TPDES Permit No. WQ0014708001 and Request for Contested Case Hearing**
Applicant: Wise Service Company-Water

Dear Clerk:

I am the owner of an undivided interest in the 200 acre property immediately adjacent to the proposed sewer plant and along the discharge route. Further, the "unnamed reservoir" (a federally constructed flood and erosion control lake which is properly identified as the Big Sandy Creek Watershed Lake No. 35) into which Applicant proposes to dump 75,000 gallons of sewer water each day is located entirely on my property, the James E. Forbis Estate Farm a/k/a Forbis Farm. Thus, I have a substantial personal and justiciable interest in the outcome of the applicant's permit request. I hereby request that the Executive Director reconsider its decision that the above-referenced permit application meets the requirements of applicable law, and **I hereby request a contested case hearing.**

In compliance with TCEQ's request for information on page two of its January 17, 2008 letter, and in order to process my request for a contested case hearing, my contact information for all future communications and documents is as follows:

Nancy Forbis Carnahan
Carnahan Thomas LLP
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel. 817-424-1001
Fax: 817-424-1003
Doc. #60976

MWD

February 15, 2008

Page 2

Email: ncarnahan@carnahanthomas.com

I dispute the Executive Director's response to comments 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 18, 19, 20, and 21. Further, I hereby incorporate the objections and commentary included in my previous letters dated November 6, 2006, and April 3, 2007, and the comments made at the public meeting held in Decatur, Texas on April 3, 2007.

Response to Comment 1. I dispute the Executive Director's response to Comment 1 to the effect that it does not expect water quality or high aquatic life uses and the like to be affected or the water quality or chemical makeup to change substantially. TCEQ draws these conclusions does not provide any specific evidentiary support for this expectation, and made only a brief visit to the site, so that all the wild and aquatic life which might be affected could not have been observed. Further, TCEQ did not take water samples from the reservoir, and they declined my brother's invitation to inspect the receiving waters whose character has been completely misrepresented by Applicant. I am uncertain how TCEQ can support its expectation. How can an expectation or a clear picture of the current state of the reservoir and the wildlife it supports be made without taking water samples of the specific chemical makeup of the water as it currently exists and determining the specific fowl and waterfowl, fish and other wildlife that inhabit or utilize the lake? This should be required in order to make an informed decision as to what effect effluent would have on the reservoir. In short, TCEQ simply did not develop enough information, or undertake sufficient investigation to support their position.

Response to Comment No. 2, 4, and 5. The gist of each of these comments is that neither the application itself, nor any of the later notice documents properly identify or describe the receiving waters, or the Big Sandy Creek Watershed Lake No. 35 (hereinafter "Watershed Lake No. 35) into which Applicant proposes to dump its effluent. To my knowledge, neither the application nor the draft permit has ever been amended or corrected to properly identify the bodies of water to be directly affected by the permit. TCEQ's Responses to these Comment Nos. 2, 4, and 5 seem to applaud their own ability to determine which tributaries and reservoirs Applicant was talking about, and make an evaluation of the effects on those bodies of water despite the lack of specificity in the application. This is completely beside the point; the real issue is that the Applicant failed to provide proper notice of the propose discharge route.

TCEQ suggests that properly identifying the reservoir would have made no difference, because TCEQ was able to determine exactly which bodies of water meant to identify and TCEQ then considered the affect on those bodies of water in connection with its decision. TCEQ apparently possesses an almost psychic ability to interpret sewer permit applications; they can see information in the application that isn't actually there. The most important purpose of requiring a proper description of the discharge route and affected bodies of water is not to assist TCEQ, but to notify the public of the proposed discharge route so that they can determine if they will be affected and whether or not they oppose the application. Moreover, the application will later serve as a record of discharge route that TCEQ has authorized based on that application.

What if every sewer permit applicant simply identified their proposed discharge route, in the following fashion: "water will be discharged somewhere beginning in a creek bed, which flows into another unnamed tributary, then an unnamed stream lake, which flows into an

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unnamed river, and then eventually into the Gulf of Mexico.”? If sewer permit applicants are not required to clearly and carefully identify the proposed discharge route, its location, and the bodies of water potentially affected by the sewer permit, why have an application process at all? If applicant is not required to re-apply and clearly and accurately identify the affected waters and discharge route, and may simply identify these waters as unnamed tributaries and reservoirs, at some point in the future it may become unclear what route was actually authorized by the permit. Failing to require this information to be very clearly and accurately stated in the application is a very dangerous practice; it fails to provide the general public with enough information to determine whether they wish to object to the application and may cause confusion in the future as to what discharge route was actually authorized.

The Executive Director's January 17, 2008 letter points out several times that pursuant to the Water Code and related Administrative Regulations, an applicant must “under penalty of law” submit information in the application that is “true, accurate, and complete” to the best of their knowledge and belief. Applicant has not met the statutory requirements for this permit. If TCEQ approves this application, it is failing to follow its own guidelines. At a minimum, Applicant should be required to start over, submit a corrected application, and go through the process again, this time complying with the statutory requirements.

Chapter 26 of the Water Code and the related Administrative Code provisions for permitting require that the Applicant give its name, address and phone, and identify the location of the proposed treatment plant (which is also misstated –the coordinates given, when plotted on a map by the Wise County Appraisal District locate the site over 1 mile north of the location described by Applicant in the public meetings), and to identify the discharge route, and any affected bodies of water. TCEQ has chosen to overlook the fact that NONE of these requirements are met by the application. Instead, TCEQ makes the conclusory statement that, “it appears that the notice requirements for this application have been met.” I couldn't disagree more.

Applicants' own address is misstated (they gave the public library's address, where the public document viewing was to take place), gave erroneous coordinates for the location of the treatment plant, which are apparently off by over 1 mile, no specific bodies of water were identified and the application was never amended or corrected in writing.

Response to Comment No. 3. TCEQ's response to Comment 3 does not really respond to the public's comments at all. TCEQ simply states that the applicant would be responsible for installing “adequate safeguards” to prevent an accidental discharge of untreated or insufficiently treated effluent, but does not specify what safeguards will be employed. Without specific information regarding what safeguards will be required of Applicant, it is impossible for the public to evaluate the efficacy of such “safeguards.”

Moreover, TCEQ goes on to say that if there IS an accidental discharge, Applicant will have to report it within 24 hours. This is of very little comfort, and would be “too little, too late.” The Exxon Valdez eventually reported its oil spill, but it took years to clean up the mess and the surrounding area and wildlife have never fully recovered. If such a discharge occurs, it will undoubtedly immediately adversely affect the wildlife and high aquatic uses of the

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Watershed Lake No. 35 and, depending on the levels of discharge and the nature of the pollutants, it could take years to repair the damage from one short, accidental discharge. Imposing a penalty on the Applicant for mismanaging the plant could not repair the damage to the environment, and would be of little comfort to those affected by the pollutants.

TCEQ describes its hotline for reporting violations of the TCEQ standards and mechanism for filing a complaint. However, if TCEQ treats complaints with the same level of interest as the public comments and objections to permit applications, the process will likely be an exercise in futility. Based on the response to public comments and the TCEQ's recommendation for approval of this permit, strict compliance with the Water Code and with TCEQ's administrative regulations will apparently not be required.

Response to Comment No. 6. TCEQ states that effluent limits set out in the draft permits were set out using numerical models. Any "numerical model" would be based on certain assumptions, and in this case, many of the assumptions made by TCEQ regarding water movement, the nature of the receiving waters, and other factors are flawed. The receiving waters have been misrepresented as an intermittent stream as defined by Texas Surface Water Quality Standards. The undersigned is uncertain what photos were provided with the permit application, but if they reflect an intermittent stream, the photos are misrepresentative of the actual location discharge route.

Further, the response states that "information was collected by water quality monitoring stations in the watershed," but TCEQ fails to identify when, where, and by whom such water monitoring stations were operated. This information would be needed in order for the public to determine whether the information collected was objective and accurate.

Response to Comment No. 8. Nothing authorizes TCEQ to "assist" the Applicant to correct any inaccuracies in its application or to construe the application in the light most favorable to the Applicant, yet TCEQ appears to have done just that in order to render a decision in favor of applicant. Ninety percent of what an application for a sewer permit should be dealing with is what water and nearby property could be adversely affected, and yet TCEQ has allowed Applicant to misrepresent the location of the facility. When plotted by the Wise County Appraisal District, the coordinates given in the application place the plant over 1 mile north and slightly to the east of the area described by applicant in later public meetings. Further, as previously discussed, the application does not properly identify the discharge route, or the bodies of water that will be directly affected. See information regarding response to Comments 2, 4, and 5 herein.

Response to Comment 9. TCEQ again misses the point of the comments. The undersigned does not dispute TCEQ's authority to grant a permit for discharge of pollutants into a private body of water. The comments were intended to point out Applicant's erroneous position that any creekbed constitutes public property. Such discharge of polluted water into another's property constitutes a trespass and/or a public nuisance which the undersigned will seek legal redress in a court of law against Applicant.

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Page 5

Response to Comment 10. It appears that TCEQ completely missed the point of these comments. The gist of the comments was that the Applicants application was sloppy, indicating a level of carelessness that may be indicative of how carefully (or rather negligently) the opponents of the application expect this inexperienced operator (the Applicant) to conduct their sewage treatment operations. The comments regarding the library address were completely misconstrued by TCEQ, who apparently went to great lengths to verify the address of the Decatur Public Library. The public comments regarding the library's address were not that Applicant had misstated the library's address, but were intended to point out that on the original application, the Application listed its address as follows:

Brighton Water Systems
1700 South FM 51
Decatur, Texas 76092

The address given for Applicant is not its own address, but that of the Decatur Public Library. See Exhibit "A" attached. Not only is this another example of Applicant's carelessness in preparation of the application, but it raises yet another notice issue: anyone who wished to send correspondence or questions to the Applicant regarding the application (including, presumably TCEQ), would have been unable to reach Brighton, as their correspondence would instead have been received by the Decatur Public Library, whose address was erroneously given as Applicant's street address.

The Water Code and TCEQ's Administrative Code require that Applicant state its address, and Applicant failed to do even that correctly.

Response to Comment 11. TCEQ states in response to this letter that, "Based upon information obtained during the public meeting held on April 3, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. *In this case, it would seem to be unlikely that the level would rise above sea level.*" (emphasis added) TCEQ provides absolutely no objective data or other support for this statement, and in the undersigned's opinion, has not sufficiently studied the potential affects of the discharge of the effluent on water levels or quality.

Response to Comment No. 18. Although this sort of inefficiency seems to typify our government, it appears that TCEQ would propose to grant the permit first, and do a thorough inspection later. It would clearly be a colossal waste of resources to allow Applicant to build its sewer plant, and for TCEQ to conduct a *thorough* site inspection only after completion of the plant's construction to determine if the information in the application is correct, whether the discharge route is viable, etc., based upon which the permit could be denied.

Response to Comment 20. The undersigned disputes TCEQ's position that the "unnamed tributary" is a "naturally flowing tributary" rather than a flood control district drainage ditch. The Watershed Lake No. 35 can be fairly designated as a flood control district drainage ditch, albeit a large one, and as such Applicant was required to identify where it was discharged into this area, but Applicant failed to do so. Therefore, the application should be denied.

February 15, 2008
Page 6

Response to Comment 21. TCEQ has absolutely no data to support the allegations in this paragraph, and cannot fairly state that the structural integrity of this dam will not be compromised by introduction of the additional water which Applicant proposes to introduce into the Watershed Lake No. 35.

In summary, the Applicant for this permit failed to clearly and accurately identify the discharge route and bodies of water affected, failed to clearly and accurately identify the proposed location of the plant, failed to provide adjacent property owners with the required personal notice of the application, and even failed to correctly set forth its own address. The requirements of the Water Code for such permits were not met, and the permit should be denied. Further, TCEQ failed to undertake a thorough investigation of the receiving waters or the existing conditions of the flood and erosion control lake known as the Big Sandy Creek Watershed Lake No. 35 which will be most affected by the granting of this permit, and their decision was based on a number of erroneous assumptions regarding the receiving waters and possibly even the proposed location of the sewer plant site, such that their evaluation of the permit was fundamentally flawed.

For all of the foregoing reasons, as well as the reasons stated in my previous letters dated November 6, 2008 and April 3, 2008, as well as the public comments made at the April 3, 2008 meeting regarding the permit application, the TCEQ's Executive Director should reconsider and reverse its decision that the above-reference permit application meets the requirements of applicable law because in truth, the requirements have not been met. If TCEQ's Executive Director is not willing to reverse its decision immediately, **I hereby request a contested case hearing.**

Sincerely,



Nancy F. Carnahan
Carnahan Thomas LLP
State Bar No. 07226150
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel (817) 424-1001
Fax (817) 424-1003

NFC/nc
Attachment

EXHIBIT "A"

APPLICATION for a PERMIT

to

DISCHARGE, DEPOSIT or DISPOSE of WASTE

Applicant:

**BRIGHTON WATER SYSTEMS
1700 FM 51
DECATUR, TEXAS 76234**

Prepared by:

**WASTELINE ENGINEERING, INC.
P.O. BOX 421
ALEDO, TEXAS 76008**

APRIL 2006

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 FEB 15 PM 4: 25
CHIEF CLERKS OFFICE

Fax

To: Office of Chief Clerk/TCEQ **Fax:** (512) 239-3311

To: **Fax:**

Pages: 9 (including fax cover sheet) **Date:** 2/15/2008

Re:

From: Nancy F. Carnahan **Phone:** (817) 424-1001

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:** UNLESS OTHERWISE INDICATED OR OBVIOUS FROM THE NATURE OF THIS TRANSMITTAL, THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIAL, INTENDED FOR THE USE OF THE NAMED RECIPIENT (OR EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT). YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS HEREBY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE BELOW ADDRESS AT OUR EXPENSE. THANK YOU.

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

MWD
54149

2008 FEB 15 PM 3:20
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

February 15, 2008

H OPA
FEB 19 2008
BY EB

Via Fax (512) 239-3311 and
Federal Express 790940855302
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

Re: **Wise County Water Control and Improvement District No. 1's
Request for Reconsideration of Proposed TPDES Permit No. WQ0014708001 and
Request for Contested Case Hearing
Applicant, Wise Service Company-Water**

Dear Clerk:

I represent and write on behalf of my client the Wise County Water Control and Improvement District No.1 (hereinafter "Wise County WCID No. 1") to request reconsideration of the TCEQ's decision that the above-referenced permit application meets the requirements of applicable law, and to **request a contested case hearing** on their behalf.

In compliance with the information requested by TCEQ on page two of its January 17, 2008 letter, to process the request for a contested case hearing, my name, address, phone and fax, are set forth at the conclusion of this letter. Further, contact information for the person responsible for receiving all communications and documents for the Wise County WCID No. 1 is as follows:

Lou V. Bridges
President
Wise County Water Control and Improvement District No.1
P.O. Box 303
Bridgeport, Texas 76426
Daytime Tel. 940-433-5136
Fax: 940-627-5098

MW

February 15, 2008

Page 2

The Wise County WCID No. 1's purpose is in part to control erosion, flooding and water levels throughout its district, and to protect the integrity of the watershed projects and improvements it has sponsored, including the Big Sandy Creek Watershed Lake No. 35 (identified in an amendment to the relevant application as the "unnamed reservoir") into which the applicant proposes to dump effluent in connection with its proposed sewer treatment plant.

Further, the acreage upon which the proposed sewer plant will reside, as well as the Forbis Farm upon which the Big Sandy Creek Watershed Lake No. 35 sits, are both subject to easements in favor of the WCID No. 1, which gives WCID No. 1 the sole right to control the level of both the receiving waters and the Big Sandy Creek Watershed Lake No. 35 (hereinafter "Watershed Lake No. 35"). A copy of one of these easements is attached hereto as Exhibit "A". Further, WCID No. 1 is charged with specific responsibilities in connection with controlling and regulating the water level, soil erosion, and flooding in the area concerned. The discharge route proposed in the application proposes to attempt to affect the water levels, as well as the water quality of the Watershed Lake No. 35 and thus, WCID No. 1 has a vested and justiciable interest in the proposed permit application.

As a preliminary matter, although the Executive Director's letter is dated January 17, 2008, WCID No. 1 did not receive the decision letter of the TCEQ's Executive Director recommending approval of the proposed application until February 5, nearly three weeks after the date on the letter. Since WCID No. 1's response deadline runs from the date of the director's letter, rather than the date when it was received, WCID No.1 was given a much abbreviated time period in which to prepare a response, and its rights may have been prejudiced by such late notice. WCID No. 1 reserves the right to make further complaint in the future regarding said late notice, and the manner in which its rights may have been prejudiced by same.

Further, WCID No. 1 hereby incorporates and reurges the concerns and comments set forth in two previous letters dated October 26, 2006, signed by its President, Lou V. Bridges, which are attached hereto for ease of reference as Exhibits "B" and "C", as well as the comments made by President Bridges during the public meeting held in Decatur, Texas on April 3, 2007.

Wise County WCID No. 1 wishes to reurge its concerns that the Watershed Lake No. 35 will be negatively impacted in a number of ways if the permit is granted. WCID No. 1 is concerned that the water quality, fish and wildlife habitat, environment, and the surrounding area will be negatively affected by the granting of the permit.

Further, WCID No. 1 notes that, based on an easement in favor of Wise County WCID No. 1 by the previous owner of the Canyon Springs property (the housing development for which Applicant seeks its sewer permit), only the WCID No. 1 can control the water levels in the Watershed Lake No. 35 and the proposed receiving waters leading up to that lake.

February 15, 2008

Page 3

Further, WCID No. 1 disputes a number of the responses to comments in the decision, which apparently formed the basis for the Executive Director's decision. Among other things, the Applicant failed to clearly and accurately identify the discharge route and bodies of water affected, identifying the Big Sandy Creek Watershed Lake No. 5, a federally constructed flood and erosion control lake sponsored by WCID No. 1, as simply an "unnamed reservoir", failing to even point out the flood and erosion controlling purposes of the reservoir. Further, Applicant failed to clearly and accurately identify the proposed location of the plant, and even failed to correctly set forth its own address. In short, the requirements of the Water Code for such permits were not met, and the permit should be denied.

Applicant has not met the requirements of the statute which require it to identify the discharge route and affected bodies of water. While TCEQ claims it was able to identify the discharge route and the reservoir, despite Applicant's failure to properly identify them, this is really beside the point; the public could not fairly determine what bodies of water would be affected based on the information contained in the application, so the notice requirements simply haven't been met. It is hard to conceive of what information would be more important to clearly and carefully identify than the location of the plant, the discharge route, and the bodies of water affected, and yet TCEQ opines that Applicant met the requirements for permit approval, when none of this information was correctly stated in the application.

Further, while TCEQ's Executive Director's decision letter dated January 17, 2008 responds that it does not expect the waters of either the Watershed Lake No. 35 or the wild and aquatic life dependent on that lake to be effected by the effluent to be dumped into the lake, TCEQ does not provide any evidentiary basis for these conclusory statements.

TCEQ failed to undertake a thorough investigation of the receiving waters or the existing conditions of the flood and erosion control lake known as the Big Sandy Creek Watershed Lake No. 35 which will be most affected by the granting of this permit. TCEQ did not take water samples from the lake to determine its chemical make up and how it might be affected by the 75,000 gallons per day of effluent. TCEQ stated that based on "numerical models" it does not expect the oxygen levels of the lake or its chemical make up to be substantially affected. TCEQ fails to elaborate on what numerical models it used or what assumptions were made in connection with the construction of such numerical models. We do know however, that TCEQ has presumed that the receiving waters of the lake are an "intermittent stream" which is dry at least one week out of the year, a presumption that is erroneous. It can only be presumed that the TCEQ's other assumptions in connection with their evaluation are similarly erroneous, such that their evaluation of the permit and its affect on the lake and its "high aquatic life uses" was fundamentally flawed.

February 15, 2008

Page 4

For all of the above reasons, as well as those previously stated in its letters and the comments made at the public meeting, the TCEQ's Executive Director should reconsider and reverse its decision that the above-reference permit application meets the requirements of applicable law because in truth, the requirements have not been met. If TCEQ's Executive Director is not willing to reverse its decision immediately, Wise County WCID No. 1 hereby requests a contested case hearing.

Sincerely,



Nancy F. Carnahan
Carnahan Thomas LLP
State Bar No. 07226150
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel (817) 424-1001
Fax (817) 424-1003

NFC/nc
Attachment

cc: Lou V. Bridges (President, Water Control and Improvement District No. 1)
(via U.S. Mail)
Al Scott (Water Control and Improvement District No. 1) (via fax 940-627-5098)

EXHIBIT "A"

Feb. 15. 2008 3:14PM

Real No 216924 Vol 644 r

67 No. 9214 P. 7

No. 256

EASEMENT

THE STATE OF TEXAS
COUNTY OF

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, C. L. Gage, Jr., C. L. Gage, Jr. Guardian for Lewis W. Gage
William C. Gage and Traci L. Gage

of Wise County, Texas, (hereinafter called "Grantor"),

does hereby grant, bargain, sell, convey and release unto Wise Co. W.C.T.D. #1 and Wise Soil and Water Conservation District

its successors and assigns, (hereinafter called "Grantee"), an easement in, over and upon the following described land situated in the County of Wise State of Texas, to-wit:

258.07 acres of land, more or less, in the D. Moore Survey A-567, G. M. Mills Survey A-605, and the R. Salmon Survey A-758 all of which being in Wise County, Texas being more fully described in an Exchange Deed from the Forest Service, United States Department of Agriculture to James C. Thomason, Trustee dated June 2, 1987 : recorded Volume 248 Page 410, Real Records, Wise County, Texas, and more fully described in a Special Warranty Deed from Tim Truman and James C. Thomason to C. L. Gage, Jr., Lewis W. Gage, William C. Gage and Traci L. Gage recorded volume 544 page 751 and 758, Real Records, Wise County, Texas.

or the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land; for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the above described land that is caused by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works,
Big Sandy Creek Watershed

And, involving or affecting 1.50 acres, more or less, of the above described land.
This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along useable access routes designated by Grantor.

There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, its successors and assigns, of the rights and privileges herein granted.

The rights and privileges herein granted are subject to all easements, rights-of-way, mineral reservations or other rights now outstanding in third parties.

The Grantee is responsible for operating and maintaining the above described works of improvement.

Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.

The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.

The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.

This easement (does) ~~not~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.

Special Provisions:

In the event construction of the above described works of improvement is not commenced within 5 years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

No. 256 (Back)

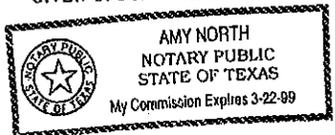
TO HAVE AND TO HOLD the aforesaid easement in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF the Grantor has executed this Instrument on the 11 day of MARCH A. D., 19 96

C. L. Oage, Jr. (GRANTOR)
Traci L. Oage (GRANTOR)
William C. Oage (GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C. L. Oage, Jr., Traci L. Oage, William C. Oage, known to me to be the person(s) whose name(s) they are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 11th day of March, A. D. 1996.



Amy North
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires 3-22-99

THE STATE OF Texas
COUNTY OF Wise

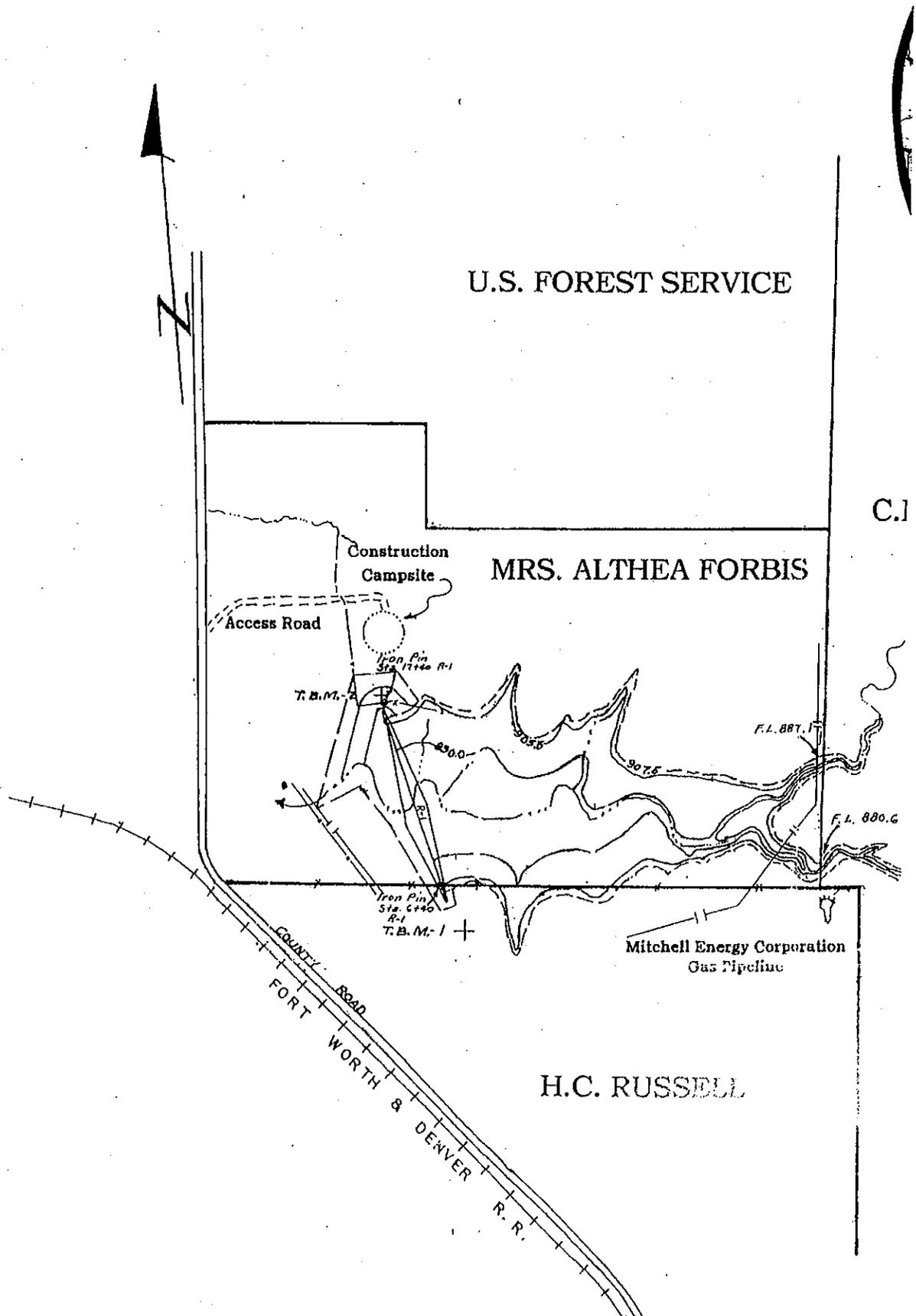
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19_____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

Form with fields for: FILED FOR RECORD, RECORDED, A. D. 19, County Clerk, County Clerk, This Instrument should be filed immediately with the County Clerk for Record.

Handwritten note: 1/11/96, Oage



RECEIVED.
Feb. 15. 2008 3:15PM

FEB 15 2008 03:14PM

No. 9214 P. 11

EXHIBIT "B"

Feb. 15. 2008 3:16PM

RECEIVED: 34062/5098

FEB 15 2008 03:14PM

No. 9214 P. 12 02

**WISE COUNTY
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426**

*Marked
10-27-06
af*

October 26, 2006

**TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 76711-3087**

**FROM: Wise County Water Control and Improvement District #1
P.O. Box 303
Bridgeport, Texas 76426**

SUBJECT: Wise Service Company - Water, P.O. Box 269, Decatur, Texas 76234-0269 has applied to the Texas Commission on Environmental Quality for a new proposed permit No. WQ0014708001 to authorize the discharge of treated domestic wastewater.

The location of the proposed wastewater plant is directly above and in the watershed of Flood Water Retarding Structure #35 in the Big Sandy Creek Watershed of the Trinity River Project. We are a sponsor of this flood control project. This site is one of thirty-seven dams of which 18 have been completed.

We are concerned that the water quality, fish and wildlife habitat and other environmental features of this structure will be adversely affected by wastewater effluent.

Several adjoining landowners have expressed their concern about the location and long range affect that a sewer treatment plant would have on this pristine area.

The application submitted by Wise Service Company-Water describes Site #35 as an unnamed reservoir. This is certainly incorrect.

Attached is a REQUEST FOR A CONTESTED CASE HEARING.

Respectfully,

Lou V. Bridges

**Lou V. Bridges, President
Wise County WCID #1
P.O. Box 303
Bridgeport, Texas 76426**

EXHIBIT "C"

**WISE COUNTY
WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1
P.O. BOX 303
BRIDGEPORT, TEXAS 76426**

*Marked
10-27-06
aw*

October 26, 2006

**TO: OFFICE OF THE CHIEF CLERK
MC 105, TCEQ
P.O. BOX 13087
AUSTIN, TEXAS 78711-3087**

WE REQUEST A CONTESTED CASE HEARING

**Name: Wise County Water Control and Improvement District #1
P. O. Box 303
Bridgeport, Texas 76426 940-627-5058 or 940-433-5136
Contact and Affected Person - Lou V. Bridges, President
To receive any correspondence**

APPLICANTS NAME - WISE SERVICE COMPANY - WATER

PROPOSED PERMIT NUMBER - WQ0014708001

HOW WCID IS AFFECTED - The Wise County WCID #1 is a legal sponsor of the Big Sandy Watershed Project of which Site #35 is the site affected. We join the other three sponsors in operation and maintenance of all of these floodwater retarding structures planned and constructed in Wise County, Texas. We feel that placing sewer treatment plant effluent in this reservoir along with the possibility of plant treatment failure would adversely affect the water quality, fish and wildlife habitat and other environmental concerns in this structure. We have a legal, recorded easement from the landowners with specific responsibilities of our District. This is a perpetual easement.

Lou V. Bridges

**SIGNED: LOU V. BRIDGES
PRESIDENT**

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

Fax

To: Office of Chief Clerk/TCEQ **Fax:** (512) 239-3311

To: **Fax:**

Pages: 14 (including fax cover sheet) **Date:** 2/15/2008

Re:

From: Nancy F. Carnahan **Phone:** (817) 424-1001

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

CHIEF CLERKS OFFICE
 2008 FEB 15 PM 3:28
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

● **Comments:** UNLESS OTHERWISE INDICATED OR OBVIOUS FROM THE NATURE OF THIS TRANSMITTAL, THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIAL, INTENDED FOR THE USE OF THE NAMED RECIPIENT (OR EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT). YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS HEREBY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE BELOW ADDRESS AT OUR EXPENSE. THANK YOU.

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

MWD
54149

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

February 15, 2008

Via Fax (512) 239-3311 and
Federal Express #790940855302
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle
Bldg. F
Austin, Texas 78753

RPR OPA
FEB 19 2008
BY EB

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY
CHIEF CLERKS OFFICE
FEB 15 PM 4:41

Re: **Nancy F. Carnahan's Request for Reconsideration of Proposed TPDES Permit No. WQ0014708001 and Request for Contested Case Hearing**
Applicant: Wise Service Company-Water

Dear Clerk:

I am the owner of an undivided interest in the 200 acre property immediately adjacent to the proposed sewer plant and along the discharge route. Further, the "unnamed reservoir" (a federally constructed flood and erosion control lake which is properly identified as the Big Sandy Creek Watershed Lake No. 35) into which Applicant proposes to dump 75,000 gallons of sewer water each day is located entirely on my property, the James E. Forbis Estate Farm a/k/a Forbis Farm. Thus, I have a substantial personal and justiciable interest in the outcome of the applicant's permit request. I hereby request that the Executive Director reconsider its decision that the above-referenced permit application meets the requirements of applicable law, and **I hereby request a contested case hearing.**

In compliance with TCEQ's request for information on page two of its January 17, 2008 letter, and in order to process my request for a contested case hearing, my contact information for all future communications and documents is as follows:

Nancy Forbis Carnahan
Carnahan Thomas LLP
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel. 817-424-1001
Fax: 817-424-1003
Doc. #60976

MWD

February 15, 2008

Page 2

Email: ncarnahan@carnahanthomas.com

I dispute the Executive Director's response to comments 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 18, 19, 20, and 21. Further, I hereby incorporate the objections and commentary included in my previous letters dated November 6, 2006, and April 3, 2007, and the comments made at the public meeting held in Decatur, Texas on April 3, 2007.

Response to Comment 1. I dispute the Executive Director's response to Comment 1 to the effect that it does not expect water quality or high aquatic life uses and the like to be affected or the water quality or chemical makeup to change substantially. TCEQ draws these conclusions does not provide any specific evidentiary support for this expectation, and made only a brief visit to the site, so that all the wild and aquatic life which might be affected could not have been observed. Further, TCEQ did not take water samples from the reservoir, and they declined my brother's invitation to inspect the receiving waters whose character has been completely misrepresented by Applicant. I am uncertain how TCEQ can support its expectation. How can an expectation or a clear picture of the current state of the reservoir and the wildlife it supports be made without taking water samples of the specific chemical makeup of the water as it currently exists and determining the specific fowl and waterfowl, fish and other wildlife that inhabit or utilize the lake? This should be required in order to make an informed decision as to what effect effluent would have on the reservoir. In short, TCEQ simply did not develop enough information, or undertake sufficient investigation to support their position.

Response to Comment No. 2, 4, and 5. The gist of each of these comments is that neither the application itself, nor any of the later notice documents properly identify or describe the receiving waters, or the Big Sandy Creek Watershed Lake No. 35 (hereinafter "Watershed Lake No. 35) into which Applicant proposes to dump its effluent. To my knowledge, neither the application nor the draft permit has ever been amended or corrected to properly identify the bodies of water to be directly affected by the permit. TCEQ's Responses to these Comment Nos. 2, 4, and 5 seem to applaud their own ability to determine which tributaries and reservoirs Applicant was talking about, and make an evaluation of the effects on those bodies of water despite the lack of specificity in the application. This is completely beside the point; the real issue is that the Applicant failed to provide proper notice of the propose discharge route.

TCEQ suggests that properly identifying the reservoir would have made no difference, because TCEQ was able to determine exactly which bodies of water meant to identify and TCEQ then considered the affect on those bodies of water in connection with its decision. TCEQ apparently possesses an almost psychic ability to interpret sewer permit applications; they can see information in the application that isn't actually there. The most important purpose of requiring a proper description of the discharge route and affected bodies of water is not to assist TCEQ, but to notify the public of the proposed discharge route so that they can determine if they will be affected and whether or not they oppose the application. Moreover, the application will later serve as a record of discharge route that TCEQ has authorized based on that application.

What if every sewer permit applicant simply identified their proposed discharge route, in the following fashion: "water will be discharged somewhere beginning in a creek bed, which flows into another unnamed tributary, then an unnamed stream lake, which flows into an

February 15, 2008

Page 3

unnamed river, and then eventually into the Gulf of Mexico.”? If sewer permit applicants are not required to clearly and carefully identify the proposed discharge route, its location, and the bodies of water potentially affected by the sewer permit, why have an application process at all? If applicant is not required to re-apply and clearly and accurately identify the affected waters and discharge route, and may simply identify these waters as unnamed tributaries and reservoirs, at some point in the future it may become unclear what route was actually authorized by the permit. Failing to require this information to be very clearly and accurately stated in the application is a very dangerous practice; it fails to provide the general public with enough information to determine whether they wish to object to the application and may cause confusion in the future as to what discharge route was actually authorized.

The Executive Director's January 17, 2008 letter points out several times that pursuant to the Water Code and related Administrative Regulations, an applicant must “under penalty of law” submit information in the application that is “true, accurate, and complete” to the best of their knowledge and belief. Applicant has not met the statutory requirements for this permit. If TCEQ approves this application, it is failing to follow its own guidelines. At a minimum, Applicant should be required to start over, submit a corrected application, and go through the process again, this time complying with the statutory requirements.

Chapter 26 of the Water Code and the related Administrative Code provisions for permitting require that the Applicant give its name, address and phone, and identify the location of the proposed treatment plant (which is also misstated –the coordinates given, when plotted on a map by the Wise County Appraisal District locate the site over 1 mile north of the location described by Applicant in the public meetings), and to identify the discharge route, and any affected bodies of water. TCEQ has chosen to overlook the fact that NONE of these requirements are met by the application. Instead, TCEQ makes the conclusory statement that, “it appears that the notice requirements for this application have been met.” I couldn't disagree more.

Applicants' own address is misstated (they gave the public library's address, where the public document viewing was to take place), gave erroneous coordinates for the location of the treatment plant, which are apparently off by over 1 mile, no specific bodies of water were identified and the application was never amended or corrected in writing.

Response to Comment No. 3. TCEQ's response to Comment 3 does not really respond to the public's comments at all. TCEQ simply states that the applicant would be responsible for installing “adequate safeguards” to prevent an accidental discharge of untreated or insufficiently treated effluent, but does not specify what safeguards will be employed. Without specific information regarding what safeguards will be required of Applicant, it is impossible for the public to evaluate the efficacy of such “safeguards.”

Moreover, TCEQ goes on to say that if there IS an accidental discharge, Applicant will have to report it within 24 hours. This is of very little comfort, and would be “too little, too late.” The Exxon Valdez eventually reported its oil spill, but it took years to clean up the mess and the surrounding area and wildlife have never fully recovered. If such a discharge occurs, it will undoubtedly immediately adversely affect the wildlife and high aquatic uses of the

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Page 4

Watershed Lake No. 35 and, depending on the levels of discharge and the nature of the pollutants, it could take years to repair the damage from one short, accidental discharge. Imposing a penalty on the Applicant for mismanaging the plant could not repair the damage to the environment, and would be of little comfort to those affected by the pollutants.

TCEQ describes its hotline for reporting violations of the TCEQ standards and mechanism for filing a complaint. However, if TCEQ treats complaints with the same level of interest as the public comments and objections to permit applications, the process will likely be an exercise in futility. Based on the response to public comments and the TCEQ's recommendation for approval of this permit, strict compliance with the Water Code and with TCEQ's administrative regulations will apparently not be required.

Response to Comment No. 6. TCEQ states that effluent limits set out in the draft permits were set out using numerical models. Any "numerical model" would be based on certain assumptions, and in this case, many of the assumptions made by TCEQ regarding water movement, the nature of the receiving waters, and other factors are flawed. The receiving waters have been misrepresented as an intermittent stream as defined by Texas Surface Water Quality Standards. The undersigned is uncertain what photos were provided with the permit application, but if they reflect an intermittent stream, the photos are misrepresentative of the actual location discharge route.

Further, the response states that "information was collected by water quality monitoring stations in the watershed," but TCEQ fails to identify when, where, and by whom such water monitoring stations were operated. This information would be needed in order for the public to determine whether the information collected was objective and accurate.

Response to Comment No. 8. Nothing authorizes TCEQ to "assist" the Applicant to correct any inaccuracies in its application or to construe the application in the light most favorable to the Applicant, yet TCEQ appears to have done just that in order to render a decision in favor of applicant. Ninety percent of what an application for a sewer permit should be dealing with is what water and nearby property could be adversely affected, and yet TCEQ has allowed Applicant to misrepresent the location of the facility. When plotted by the Wise County Appraisal District, the coordinates given in the application place the plant over 1 mile north and slightly to the east of the area described by applicant in later public meetings. Further, as previously discussed, the application does not properly identify the discharge route, or the bodies of water that will be directly affected. See information regarding response to Comments 2, 4, and 5 herein.

Response to Comment 9. TCEQ again misses the point of the comments. The undersigned does not dispute TCEQ's authority to grant a permit for discharge of pollutants into a private body of water. The comments were intended to point out Applicant's erroneous position that any creekbed constitutes public property. Such discharge of polluted water into another's property constitutes a trespass and/or a public nuisance which the undersigned will seek legal redress in a court of law against Applicant.

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Response to Comment 10. It appears that TCEQ completely missed the point of these comments. The gist of the comments was that the Applicant's application was sloppy, indicating a level of carelessness that may be indicative of how carefully (or rather negligently) the opponents of the application expect this inexperienced operator (the Applicant) to conduct their sewage treatment operations. The comments regarding the library address were completely misconstrued by TCEQ, who apparently went to great lengths to verify the address of the Decatur Public Library. The public comments regarding the library's address were not that Applicant had misstated the library's address, but were intended to point out that on the original application, the Application listed its address as follows:

Brighton Water Systems
1700 South FM 51
Decatur, Texas 76092

The address given for Applicant is not its own address, but that of the Decatur Public Library. See Exhibit "A" attached. Not only is this another example of Applicant's carelessness in preparation of the application, but it raises yet another notice issue: anyone who wished to send correspondence or questions to the Applicant regarding the application (including, presumably TCEQ), would have been unable to reach Brighton, as their correspondence would instead have been received by the Decatur Public Library, whose address was erroneously given as Applicant's street address.

The Water Code and TCEQ's Administrative Code require that Applicant state its address, and Applicant failed to do even that correctly.

Response to Comment 11. TCEQ states in response to this letter that, "Based upon information obtained during the public meeting held on April 3, 2007 in Decatur, Texas, there is an overflow valve that allows the water to flow out of the reservoir when it reaches a certain level. *In this case, it would seem to be unlikely that the level would rise above sea level.*" (emphasis added) TCEQ provides absolutely no objective data or other support for this statement, and in the undersigned's opinion, has not sufficiently studied the potential affects of the discharge of the effluent on water levels or quality.

Response to Comment No. 18. Although this sort of inefficiency seems to typify our government, it appears that TCEQ would propose to grant the permit first, and do a thorough inspection later. It would clearly be a colossal waste of resources to allow Applicant to build its sewer plant, and for TCEQ to conduct a *thorough* site inspection only after completion of the plant's construction to determine if the information in the application is correct, whether the discharge route is viable, etc., based upon which the permit could be denied.

Response to Comment 20. The undersigned disputes TCEQ's position that the "unnamed tributary" is a "naturally flowing tributary" rather than a flood control district drainage ditch. The Watershed Lake No. 35 can be fairly designated as a flood control district drainage ditch, albeit a large one, and as such Applicant was required to identify where it was discharged into this area, but Applicant failed to do so. Therefore, the application should be denied.

February 15, 2008

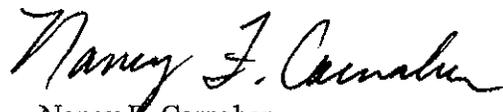
Page 6

Response to Comment 21. TCEQ has absolutely no data to support the allegations in this paragraph, and cannot fairly state that the structural integrity of this dam will not be compromised by introduction of the additional water which Applicant proposes to introduce into the Watershed Lake No. 35.

In summary, the Applicant for this permit failed to clearly and accurately identify the discharge route and bodies of water affected, failed to clearly and accurately identify the proposed location of the plant, failed to provide adjacent property owners with the required personal notice of the application, and even failed to correctly set forth its own address. The requirements of the Water Code for such permits were not met, and the permit should be denied. Further, TCEQ failed to undertake a thorough investigation of the receiving waters or the existing conditions of the flood and erosion control lake known as the Big Sandy Creek Watershed Lake No. 35 which will be most affected by the granting of this permit, and their decision was based on a number of erroneous assumptions regarding the receiving waters and possibly even the proposed location of the sewer plant site, such that their evaluation of the permit was fundamentally flawed.

For all of the foregoing reasons, as well as the reasons stated in my previous letters dated November 6, 2008 and April 3, 2008, as well as the public comments made at the April 3, 2008 meeting regarding the permit application, the TCEQ's Executive Director should reconsider and reverse its decision that the above-reference permit application meets the requirements of applicable law because in truth, the requirements have not been met. If TCEQ's Executive Director is not willing to reverse its decision immediately, **I hereby request a contested case hearing.**

Sincerely,



Nancy F. Carnahan
Carnahan Thomas LLP
State Bar No. 07226150
1190 N. Carroll Avenue
Southlake, Texas 76092
Tel (817) 424-1001
Fax (817) 424-1003

NFC/nc
Attachment

Received:

Feb 15 2008 04:34pm

Feb. 15. 2008 4:37PM CARNAHAN THOMAS

No. 1995 P. 8

EXHIBIT "A"

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 FEB 15 PM 4:41
CHIEF CLERKS OFFICE

Fax

To: Office of Chief Clerk/TCEQ **Fax:** (512) 239-3311

To: **Fax:**

Pages: 9 (including fax cover sheet) **Date:** 2/15/2008

Re:

From: Nancy F. Carnahan **Phone:** (817) 424-1001

Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:** UNLESS OTHERWISE INDICATED OR OBVIOUS FROM THE NATURE OF THIS TRANSMITTAL, THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIAL, INTENDED FOR THE USE OF THE NAMED RECIPIENT (OR EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT). YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS HEREBY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE BELOW ADDRESS AT OUR EXPENSE. THANK YOU.

APPLICATION for a PERMIT

to

DISCHARGE, DEPOSIT or DISPOSE of WASTE

Applicant:

**BRIGHTON WATER SYSTEMS
1700 FM 51
DECATUR, TEXAS 76234**

Prepared by:

**WASTELINE ENGINEERING, INC.
P.O. BOX 421
ALEDO, TEXAS 76008**

APRIL 2006

CARNAHAN THOMAS LLP

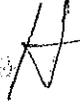
ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APR 1 5 4

CHIEF CLERK'S OFFICE

OPA RECEIVED 

APR 3 2007

AT PUBLIC MEETING

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

April 3, 2007

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **Comments in Opposition to Proposed Permit No. WQ0014708001 at April 3, 2007
Public Meeting Regarding Proposed Permit No. WQ0014708001
Applicant, Wise Service Company-Water**

To Whom it May Concern:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, in the event that the TCEQ grants the proposed permit referenced above, I hereby request a Contested Case Hearing regarding the proposed permit. I submitted preliminary comments in opposition to the proposed permit in a letter dated November 6, 2006, which is attached hereto as Exhibit "1" and incorporated herein in their entirety by this reference.

I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). See Exhibit "2". Further, the "unnamed reservoir" into which Applicant proposed to dump 75,000 gallons of sewer water each day is located entirely on my property. That lake, which is identified throughout the application as simply and "unnamed reservoir" is really a named, federally constructed, conservation lake, The Big Sandy Creek Watershed No. 35. My adjacent property, which I will hereafter identify my property as the "Forbis Farm," and the federally constructed conservation lake in which the Applicant proposed to dump its effluent, will be directly and materially adversely affected by the construction of the proposed sewer plant and the granting of the Proposed Permit. I oppose the permit.

MW

This lake, hereafter referred to as "Conservation Lake" has been identified in local records since its construction was first proposed by the government in the 1950's, but it was not constructed until 1999, using (I was told at the time) approximately \$750,000 of federal taxpayer funds. Conservation Lake was intended to control soil erosion and floodwaters on the surrounding lands. The lake also acts as a wildlife refuge for deer, raccoons, fish, wild turkeys, various waterfowl, including wood ducks, not to mention acting as a potable water source for cattle which we sometimes place on the 200 acre farm property to graze. My mother's twelve grandchildren, and five great grandchildren, frequent the Conservation to fish, seek wildlife, and boat on this lake.. On occasion, our children wade into (or on occasion "fall") into the lake. While this seems safe enough now, if the permit is granted, obviously we would not continue to allow children to play in and around this water, and I cannot believe it will have no effect on the surrounding wildlife.

The permit should be denied for a number of reasons, including, among other things:

- 1) **To date, proper notice was not provided all adjacent and directly affected property holders.** I, along with my siblings and my mother, own an undivided interest in the adjacent, and directly affected property. No member of my family received any sort of notice when the application was originally made in April of 2006 and only my mother, Althea Forbis, received notice in August when the application was apparently amended.
- 2) **The application makes material misrepresentations regarding the nature, characteristics, and qualities of the lake (identified in the Application as simply an "unnamed reservoir").** Nowhere in the application is a current, legible map with all the relevant property lines marked appear. I am attaching as Exhibit "2" an aerial photograph which depicts the location of the lake and clearly shows that the discharge is literally take place almost right along the fence line on onto my property and right into the mouth of the Conservation Lake. Among other problems, the application makes the following erroneous statements and misrepresentations:
 - a) **the application misleads or misidentifies the Conservation Lake and does not make clear the lake's soil erosion controlling purpose.** The application refers to the lake as an simply an "unnamed reservoir", minimizing its size, purpose and nature for the purposes of its own application. The reservoir has been on maps and plats of the property since the 1950's and the developers of the Canyon Springs development, for whom this proposed sewer plant would be constructed are clearly aware of the existence of the lake, as their property contains an easement pertaining to and specifically naming the Conservation Lake and giving local water authorities the sole right to control its water level and because they offered to buy the Forbis Farm and lake shortly after the lake was completed. Further, failure to properly identify the lake or to disclose its soil erosion controlling purpose is simply misleading.

- b) **the application misrepresents the discharge route in that it suggests that this is a continuously flowing stream to the Trinity River and beyond.** Specifically, the application suggests that the unnamed tributary flows into the "unnamed reservoir" and then flows into another creek which then dumps into various tributaries and ends up in the Trinity River. This is at best misleading, as it suggests a continuously flowing route of creek beds etc. into the Trinity River. The Conservation Lake contains an overflow valve, in the form of a sort of hollow "tower" that rises above the normal levels of the lake. See Exhibit "3". Any water that flows into the lake stays in the lake unless the lake reaches a high enough level to begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow out of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant. I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake.
- c) **Applicant's April 2006 application does not include required boundaries of affected property owners.** On Page 11 of the Domestic Administrative Report submitted by Applicant, Applicant failed to check the boxes or to submit a landowners map or drawing of "1) property boundaries of the landowners along the watercourse for a ½ mile radius from the point of discharge if the point of discharge is into a lake," when for all intents and purposes it dumps into said lake; or 2) The property boundaries of all landowners surrounding the applicant's property boundaries where the effluent disposal site is located.
- d) **Page 8 of the Technical Report submitted with application states that the receiving waters are a "stream" when in fact they are a lake or pond with a surface area of approximately 16 acres (more after periods of heavy rain).**
- e) **Page 9 subpart c. of the Technical Report states that the West Fork of the Trinity River joins the receiving water within three miles downstream of the discharge point, when in fact the water stagnates and stays in the Conservation lake, unless the water reaches a high enough level to spill into the overflow valve Exhibit "3" hereto.**
- f) **Page 9, subpart d of the Technical Report states that the receiving water characteristics DO NOT change within three miles of the discharge point, into a reservoir, when in fact, they dump into the man-made**

Conservation Lake within approximately 150 FEET of the discharge point.

- g) **Page 9, subpart e of the Technical Report states that the receiving waters during normal dry weather conditions is "dry, no flow present," which is false, as is demonstrated from the pictures attached as Exhibit "4" which were taken approximately 150 feet from the discharge point, where the water is approximately 10 feet or more deep at present.**
- h) **Page 10, top section of the Technical Report states that the downstream of proposed discharge area is "intermittent with perennial pools" when again, as demonstrated by the Exhibit "4" pictures, the water is several feet deep and almost never dry since the Conservation Lake was constructed.**
- i) **Page 12, of the Technical Report states that the stream was evaluated for 500 feet, which could not have occurred without a trespass onto this owner's property, and further states that the average stream width is 10 feet and only 6 inches deep. As the pictures in Exhibit "4" demonstrate, the water is many feet deep and approximately 25-30 feet wide.**

In short, the application was not carefully prepared and misrepresents the nature and characteristics of the discharge area, the Conservation Lake, and the receiving waters and should be denied.

3) Applicant and/or TCEQ have not undertaken sufficient study of the effects on the quality of water in the lake.

The application states that Applicant undertook a Tier 2 investigation of the effects on the "unnamed reservoir" and determined that there would be no significant effect on the wildlife. A complete and thorough study of the make up and quality of the water itself and the fish and wildlife that frequent it, could only be undertaken by taking water samples from the lake itself and observing the types of fish and wildlife that frequent the lake. Since this could not be accomplished without trespassing on my property, I assume this sort of thorough study was not undertaken and should be in order to determine what real effects, the dumping of this effluent might have. The water does not flow continuously as represented by Applicant, and therefore, water is not likely to reach the oxygen levels suggested by Applicant in the application which are necessary to prevent damage to the "high aquatic wildlife uses" that Applicant concedes currently exist.

Moreover, no discussion or consideration has been given to what will have in the event there is a break down of the machinery or equipment at the sewer treatment plant, which I have been told is a regular occurrence even at the best of sewer treatment plants. It is unlikely that the plant can hold several days of sewer water from the proposed 750 residents for days on end without releasing it. Therefore,

it seems likely that effluent which does not meet government standards will without question eventually if not regularly, be discharged into the Conservation Lake. The impact of such a release on the high aquatic uses of this area and the surrounding ecosystem should be carefully studied and considered by TCEQ and have not been discussed, to my knowledge, to date. My mother's twelve grandchildren and five great grandchildren use this conservation lake for recreation including fishing, wading (and occasionally falling) into the lake. While we currently consider the water quality to be safe enough, if effluent is discharged into the lake, I will no longer be comfortable with children participating in those activities in and around the lake.

- 4) **Applicant and/or TCEQ have not undertaken sufficient study of the effects of such a sewer plant and the level of water it will discharge on the watershed/erosion control purpose of the Conservation Lake.** Dumping 75,000 gallons per day of effluent will no doubt raise the normal levels of the Conservation Lake from its normal 16 acres to potentially 48 acres or more (its capacity level) and cause it to remain at that higher level most of the time. This will undoubtedly effect both the ecosystems in and around the Conservation Lake and could completely thwart the erosion control purpose of the lake. At a minimum, the effect needs to be addressed and carefully studied.
- 5) **Discharge of effluent by the Applicant pursuant to the Proposed Permit would constitute a clear trespass onto my adjacent property, which this property owner will never agree to.** Discharge of the quantity of effluent requested by Applicants permit will constitute a trespass no different than dumping large quantities of unwanted solid trash onto someone else's property. If someone were proposing to dump 75,000 cubic feet per day of purportedly clean, but unwanted trash on someone else's property, would it even be open for discussion?

The proposed permit states that:

"the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route."

Applicant has not acquired such property rights and will never be granted such rights by this property owner. Because the activities

that Applicant seeks to undertake by way of the permit could only be accomplished by a trespass

- 6) **Any discharge of effluent by the Applicant would violate the easement of record which currently exists on the proposed sewer plant site (and a similar easement which exists on the Forbis Farm), which was granted to the Wise County Water Control Independent District ("Wise County WCID") and the Wise Soil and Water Conservation District (Wise S & W Conservation) in 1998 when the Conservation Lake was constructed, giving them the sole right to control the water levels in the Conservation Lake. The existing easements state that only Wise County WCID and Wise S & W Conservation shall have the right to control the level of water impounded by Conservation Lake. A copy of the easement on the Canyon Springs property is attached hereto as Exhibit "5." By constructing a sewer plant which dumps water onto the easement area, Applicant will be controlling the water level into the Conservation Lake, which violates the restrictions set forth in the existing easement.**

- 7) **Insufficient safeguards have been put in place for this Applicant's proposed permit; the permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience whatsoever in constructing, operating or maintaining a sewer treatment plant. Because Applicant has no previous experience in connection with reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.**

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,



Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

EXHIBIT "1"

**Original November 6, 2006
Carnahan letter and
preliminary comments to
TCEQ**

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

November 6, 2006

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: Comments in Opposition to Proposed Permit No. WQ0014708001 and
Request for Public Meeting Regarding Proposed Permit No. WQ0014708001
Applicant, Wise Service Company-Water**

Dear Clerk:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, please consider this letter as a timely request for a public meeting in connection with this proposed permit, and a request to be added to the mailing list for any and all correspondence or other documentation regarding this proposed permit.

Summary of Grounds for Denial of Permit

As detailed below, Applicant Wise Service Company-Water's proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 should be denied for a number of reasons:

1. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself;
2. Applicant has made material misrepresentations and omissions in its application; including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.

3. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water, which will not flow downstream, but based on past history, will stagnate in the lake except during periods of very heavy rain. Such stagnation will degrade the water quality of the lake, and negatively impact the surrounding ecosystems. If the lake does hit levels to trigger the overflow valve (which seems unlikely based on past history) and does flow downstream as Applicant represents, it will thwart the erosion and flood control purpose of the lake.

4. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. Moreover, TCEQ's granting of the proposed permit thereby authorizing a continual trespass on private property would be tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, its current application should therefore be denied.

5. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience whatsoever in constructing, operating or maintaining a sewer treatment plant.

6. TCEQ should closely scrutinize the potential effect of this sewer treatment facility and the stormwater runoff created by the construction of the proposed wastewater treatment facility and the housing development to determine what effect it may have on the erosion control and flood control purposes of the lake, as well as the water quality of the lake, since it will not flow as represented by applicant, nor will it regularly reach the Trinity River as represented by Applicant.

II. Background

I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). Further, the "unnamed reservoir" described in the application into which 75,000 gallons of sewer water is proposed to be dumped each day, is located entirely on my property. This unnamed reservoir has a name: The Big Sandy Creek Watershed No. 35. This lake has been identified in local records since its construction was first proposed by the government in the 1950's. My father, Ed Forbis, was aware of the proposed lake project from plats of the property when he purchased it back in 1972. Although identified on the maps of the property and slated for construction since the 1950's, this 16 acre watershed lake project was not completed until 1999, using (I was told at the time) approximately \$750,000

of federal taxpayer funds. The lake project was intended to control soil erosion and floodwaters on the surrounding lands. The lake also acts as a wildlife refuge for deer, raccoons, fish, various waterfowl, including wood ducks, not to mention acting as a potable water source for cattle which we sometimes place on the 200 acre farm property to graze.

Applicant proposes to construct its sewer treatment facility on property adjacent to my family's 200 acre property, the Forbis, Long, Woodruff, Carnahan Property (hereinafter the "Forbis Farm"). It appears that the sewer facility is to be located less than 100 yards from the boundary line of to our property, and proposes to discharge treated sewer water into "*an unnamed tributary, thence to an unnamed reservoir; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin*" (emphasis my own). The "unnamed tributary" (which we called Watson Creek or sometimes "Black Creek" growing up -- I played there frequently as a child) and the "unnamed reservoir," (Big Sandy Creek Watershed Project No. 35) are both located on my property. Indeed, the lake is located entirely on my property, the Forbis Farm. It is as if they are building their sewer treatment plant as close to our property line as possible so as to dump their "liquid trash" over the fence, and into our private soil conservation lake. Of course, this is not what we had in mind when the lake was constructed. As you might expect, I strongly oppose this permit.

III. Arguments in Opposition to the Permit

A. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself.

I am alarmed that although I am a record title holder to the Forbis Farm property which abuts and will be directly and negatively impacted by this proposed sewer treatment facility and the liquid trash it will produce, I did not receive any direct notice from the Applicant or TCEQ regarding this application. I am on the taxing authority's mailing list for this property, as I receive annual tax invoices regarding this property. I am truly amazed that the taxing authorities know where to find me, but an entity proposing to construct a sewer facility, proposing to dump 75,000 gallons of sewer water into the lake on my property, were unable to find or identify me.

Instead, I first learned of the proposed sewer treatment facility and related proposed TCEQ permit application at a local baby shower I attended on October 8th, which was also attended by some other affected and unhappy nearby property owners. These property owners advised me that when they called the Applicant's office to inquire and protest, they were told by the Applicant's representatives that the sewer treatment facility was already a "done deal." (This commentary suggests that perhaps the TCEQ has already made up its mind about this application without going through the required application process, investigation process, public commentary, public meeting, etc., but I digress.) This is not how one would reasonably expect to be notified of such a proposed facility and sewer treatment facility, particularly when the deadline for proposing any objections was only thirty days hence. In short, I object to the Applicant's failure to provide timely and personal written notice to ALL directly affected adjacent property holders including myself, and ask that the permit be denied on this basis.

B. Applicant has made material misrepresentations and omissions in its application, including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.

It is my understanding from review of documents placed at the John A. and Katherine G. Jackson Public Library that Applicant first made its application around April 2006, but failed to mention the "unnamed reservoir" (Big Sandy Creek Watershed Project No. 35) at all and did not do so for several months. By the submission of their August application, Big Sandy Creek Watershed Project No. 35 does appear on the application as an "unnamed reservoir," but has still never been identified, despite my naming the reservoir for them in a recent meeting of the Applicant's Board of Directors.

One of the developers of the Canyon Springs housing development which this proposed sewer would be constructed to support approached my family a few years ago offering to purchase the Forbis Farm (our family was not receptive to the idea). I find it difficult to believe that the developer was unaware of the existence of the "unnamed reservoir," since he inquired about purchasing the Forbis Farm shortly after the construction of the lake. Moreover, as previously mentioned, the maps and title records for the Forbis Farm Property have disclosed the future site of the proposed lake since at least the 1950's. Accordingly, the Applicant either knew of the existence of this reservoir from the inception of its application in April 2006 and failed to disclose it, or the Applicant did a poor job of investigating the proposed discharge route and its potential ramifications. In short, Applicant's failure to properly disclose and properly identify the "unnamed reservoir" and its purpose as a soil erosion and flood control lake, was either sloppy or it was dishonest. In either event, Applicant made material misrepresentations and omissions in the permit application which to date Applicant has failed to correct. Therefore, the permit application should be denied.

C. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water. Based on past history, the treated water will not flow downstream as represented by Applicant. Except during periods of very heavy rain, the effluent will stagnate in the lake degrading the water quality and negatively impacting the surrounding ecosystems.

As previously stated, the Big Sandy Creek Watershed Lake No. 35, located on the Forbis Farm, was created to control soil erosion and flooding in the surrounding land areas. The application for the permit suggests that the sewer water will first be discharged into the "unnamed tributary" (Watson Creek), which will then flow into the "unnamed reservoir" Big Sandy Creek Watershed Lake), and then into another unnamed tributary, and so on until it eventually supposedly reaches the Trinity River. The Watershed Lake contains an overflow valve, in the form of a sort of hollow "tower" that rises above the normal levels of the lake. Any water that flows into the lake stays in the lake unless the lake reaches a high enough level to

begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow *out* of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant.

Accordingly, the supposed discharge route as described in the application is unrealistic, and inaccurate. The application should have stated that the discharged sewer water will flow into the Watson Creek located on the Forbis Farm, thence into their private soil and erosion control lake where it will stagnate and most likely remain forever in all its effluent glory.

I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake. There does not appear to be ample time from the dumping point to the mouth of the lake, nor enough water in the lake for dilution to allow the oxygen levels to increase to this level. Moreover, without having tested the current make up of the water in the lake (which could not have been accomplished without a clear trespass on the private property of yours truly), Applicant cannot have sampled the lake water's current makeup, nor properly evaluated the potential effect of the effluent chemicals on the lake's water quality. Thus, a fair evaluation of the impact on the water quality of the lake cannot have been made. Even if thoroughly chlorinated (and this lake is most certainly not intended to be a chlorinated swimming pool, which won't support aquatic life at all), the treated effluent is being discharged so close to the mouth of this lake that there will not be sufficient time for aeration or dilution of the water before it stagnates in the lake.

In the alternative, and Applicant may well argue that it is possible that the 75,000 gallons of effluent discharged each day will so greatly effect the lake levels that the overflow valve will be in constant operation, and water will indeed flow downstream as represented in the application, causing the level of the lake to be much higher on a normal basis, greatly increasing the size of the lake. If this should happen, the ecosystem of the lake will be negatively affected for other reasons. For example, the duck nesting area in the middle of the lake will then be constantly under water, preventing their nesting there at all and negatively impacting the ecosystem of the lake, and thwarting the erosion and flood control purpose of the lake.

In either event, the application has not fully disclosed or investigated the impact that the discharged water will have on the erosion control lake, and whether the proposed discharge route is realistic. Since the treated effluent is unlikely to regularly flow downstream from the lake as represented by Applicant, TCEQ should closely scrutinize this sewer treatment facility and the stormwater runoff created by its construction, to determine what effect it may have on the erosion and flood control purposes of the lake as well as its water quality and the surrounding ecosystems. These issues should be fully investigated and the results of such investigation disclosed in any connection with any permit application. The application as it now exists should be denied until such further investigation is completed.

D. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route and has made no effort to obtain and will never be granted property rights to use this discharge route.

The proposed permit states that:

“the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route.”

The entire first two segments of the discharge route are located on private property. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route on the Forbis Farm. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. One of the the Canyon Springs developers, Mr. J. K. Miller, owns a great deal of property immediately to the south of the proposed treatment plant. An alternative discharge route across developer's own property, should be immediately investigated, because such a route would not require such a trespass.

Moreover, TCEQ's granting of the proposed permit authorizes a continuing trespass over private property. Granting such a permit and authorizing such a trespass is tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, and the discharge will result in a trespass and unconstitutional taking of private property, Applicant's current application should be denied. Applicant should be required to seek a discharge route which does not trespass on private property.

E. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant.

Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant. Therefore, self-reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of

November 6, 2006

Page 7

water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a formal public meeting regarding the permit, and I reserve the right to request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,

Original signed
by Nancy Forks Carnahan
Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

EXHIBIT "2"

**Aerial Map of Relevant
Area showing Conservation
Lake and Property Lines**

EXHIBIT "3"

**Photo of portion of
Conservation Lake at High
Level and Depicting
Overflow valve**



Long, Woodruff,
Forbis, Carnahan
Land

Conservation Lake

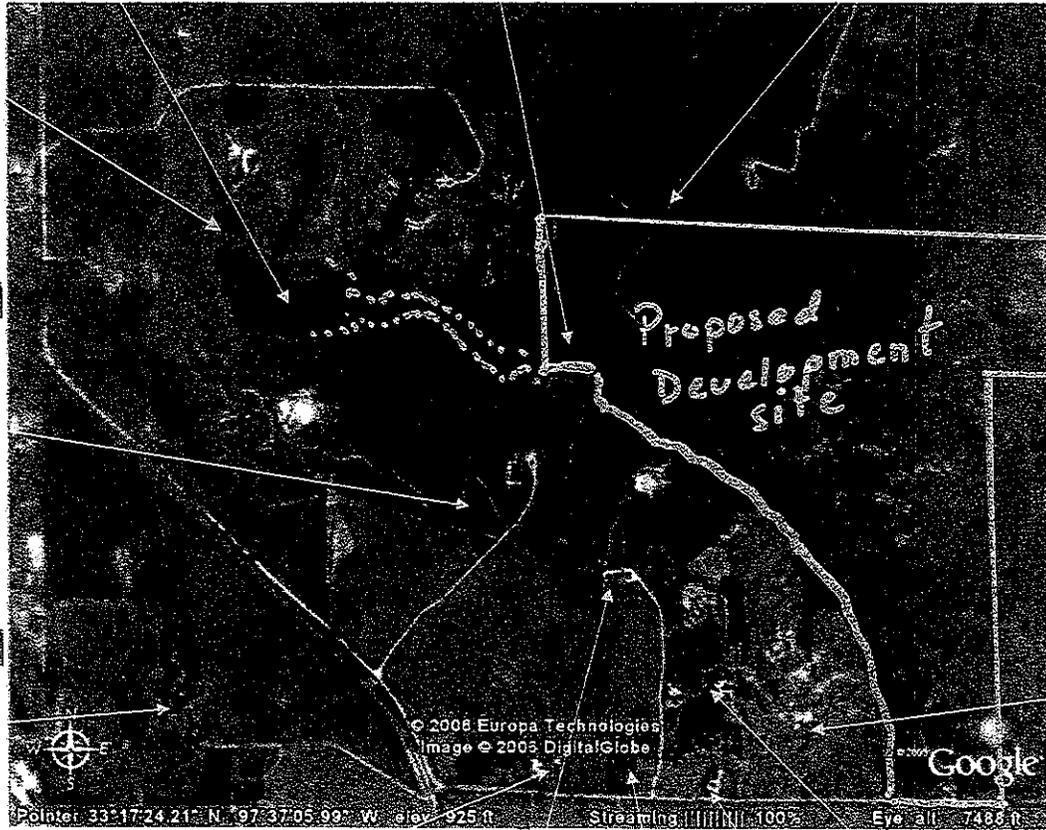
Proposed Sewage Plant

Southern Boundary
of LBJ National
Grasslands

*I have tried to
show with dotted
lines that the lake
water backs up
beyond the sewer
treatment site.*

Rob and
Stephanie
Fothergill
Home

Ed and
Ann
Jolley
Home



Meridian Hwy (Old Denton Rd.)

Gordon
and
Roxie
Ploeger
Home

Catherine Russell Home

Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Approximately 1,000 yards

EXHIBIT "4"

**Photos Showing Correct
Depth and Character of
Immediate Receiving
Waters at Mouth of
Proposed Discharge Route**













EXHIBIT "5"

**Easement existing on
Canyon Springs proposed
sewer site granting
exclusive right to Wise
County Water Control
Board to control water level
in Conservation Lake**

No. 256

EASEMENT

THE STATE OF TEXAS)
COUNTY OF)

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged. C. L. Gage, Jr., C. L. Gage, Jr., Guardian for Lewis W. Gage, William C. Gage and Traci L. Gage

of Wise County, Texas, (hereinafter called "Grantor"),

does hereby grant, bargain, sell, convey and release unto Wise Co. W.C.T.D. #1 and Wild Soil and Water Conservation District, its successors and assigns, (hereinafter called "Grantee"), an easement in, over and upon the following described land situated in the County of Wise, State of Texas, to-wit:

258.07 acres of land, more or less, in the D. Moore Survey A-587, G. M. Milla Survey A-605, and the R. Salmon Survey A-758 all of which being in Wise County, Texas being more fully described in an Exchange Deed from the Forest Service, United States Department of Agriculture to James C. Thomason, Trustee dated June 2, 1987; recorded Volume 248 Page 410, Real Records, Wise County, Texas, and more fully described in a Special Warranty Deed from Tim Truman and James C. Thomason to C. L. Gage, Jr., Lewis W. Gage, William C. Gage and Traci L. Gage recorded volume 544 page 751 and 758, Real Records, Wise County, Texas.

for the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land; for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the above described land that is caused by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works, Big Sandy Creek Watershed

And, involving or affecting 1.60 acres, more or less, of the above described land.

- 1. This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along useable access routes designated by Grantor,
2. There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, his successors and assigns, of the rights and privileges herein granted.
3. The rights and privileges herein granted are subject to all easements, rights-of-way, mineral reservations or other rights now outstanding in third parties.
4. The Grantee is responsible for operating and maintaining the above described works of improvement.
5. Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.
6. The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.
7. The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.

This easement (does) ~~not~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.

Special Provisions:

In the event construction of the above described works of improvement is not commenced within 5 years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

Real No

724 Vol

No. 256 (Back)

TO HAVE AND TO HOLD the aforesaid easement in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, his successors and assigns, forever.

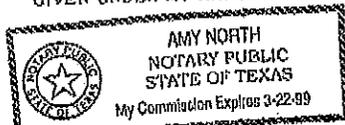
IN WITNESS WHEREOF the Grantor has executed this instrument on the 11 day of MARCH A. D., 19 96

C. L. Gage, Jr. (GRANTOR)
C. L. Gage, Jr. Guardian (GRANTOR)
Traci L. Gage (GRANTOR)
William C. Gage (GRANTOR)
(GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C. L. Gage, Jr., Traci L. Gage, William C. Gage, known to me to be the person(s) whose name(s) they are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 11th day of March, A. D. 19 96.



Amy North
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires 3-22-99

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

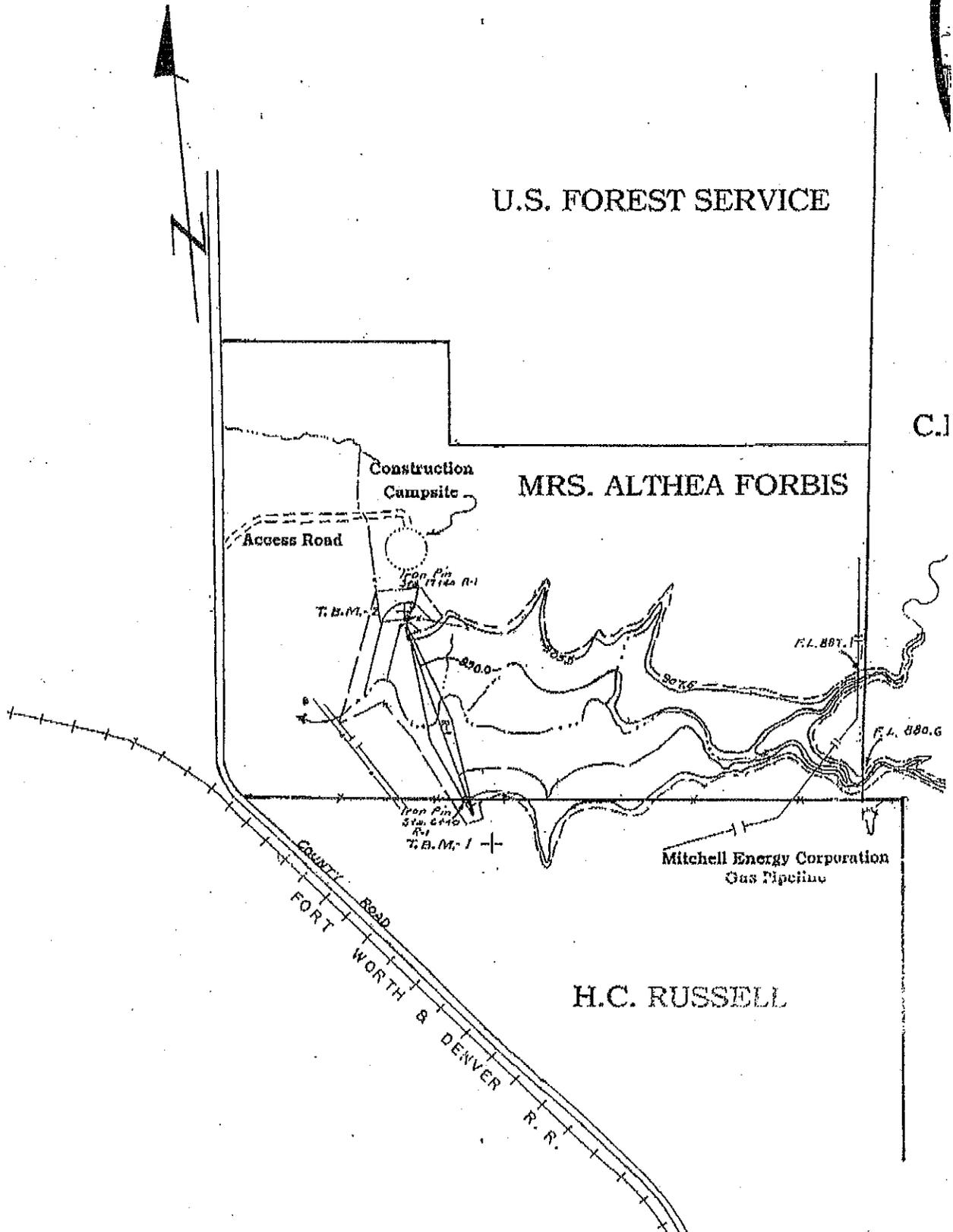
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19 _____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

Form with fields for FILED FOR RECORD, RECORDED, A. D., County Clerk, and EASEMENT TO REAL ESTATE FROM TO.

Handwritten note: 1/11/96, 10:00 AM



CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

APR 3 2007 1:54

CHIEF CLERK'S OFFICE

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahantthomas.com

OPA RECEIVED *H*

APR 03 2007

April 3, 2007

AT PUBLIC MEETING

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **Comments in Opposition to Proposed Permit No. WQ0014708001 at April 3, 2007
Public Meeting Regarding Proposed Permit No. WQ0014708001
Applicant, Wise Service Company-Water**

To Whom it May Concern:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, in the event that the TCEQ grants the proposed permit referenced above, I hereby request a Contested Case Hearing regarding the proposed permit. I submitted preliminary comments in opposition to the proposed permit in a letter dated November 6, 2006, which is attached hereto as Exhibit "1" and incorporated herein in their entirety by this reference.

I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). See Exhibit "2". Further, the "unnamed reservoir" into which Applicant proposed to dump 75,000 gallons of sewer water each day is located entirely on my property. That lake, which is identified throughout the application as simply and "unnamed reservoir" is really a named, federally constructed, conservation lake, The Big Sandy Creek Watershed No. 35. My adjacent property, which I will hereafter identify my property as the "Forbis Farm," and the federally constructed conservation lake in which the Applicant proposed to dump its effluent, will be directly and materially adversely affected by the construction of the proposed sewer plant and the granting of the Proposed Permit. I oppose the permit.

26

This lake, hereafter referred to as "Conservation Lake" has been identified in local records since its construction was first proposed by the government in the 1950's, but it was not constructed until 1999, using (I was told at the time) approximately \$750,000 of federal taxpayer funds. Conservation Lake was intended to control soil erosion and floodwaters on the surrounding lands. The lake also acts as a wildlife refuge for deer, raccoons, fish, wild turkeys, various waterfowl, including wood ducks, not to mention acting as a potable water source for cattle which we sometimes place on the 200 acre farm property to graze. My mother's twelve grandchildren, and five great grandchildren, frequent the Conservation to fish, seek wildlife, and boat on this lake.. On occasion, our children wade into (or on occasion "fall") into the lake. While this seems safe enough now, if the permit is granted, obviously we would not continue to allow children to play in and around this water, and I cannot believe it will have no effect on the surrounding wildlife.

The permit should be denied for a number of reasons, including, among other things:

- 1) **To date, proper notice was not provided all adjacent and directly affected property holders.** I, along with my siblings and my mother, own an undivided interest in the adjacent, and directly affected property. No member of my family received any sort of notice when the application was originally made in April of 2006 and only my mother, Althea Forbis, received notice in August when the application was apparently amended.
- 2) **The application makes material misrepresentations regarding the nature, characteristics, and qualities of the lake (identified in the Application as simply an "unnamed reservoir").** Nowhere in the application is a current, legible map with all the relevant property lines marked appear. I am attaching as Exhibit "2" an aerial photograph which depicts the location of the lake and clearly shows that the discharge is literally take place almost right along the fence line on onto my property and right into the mouth of the Conservation Lake. Among other problems, the application makes the following erroneous statements and misrepresentations:
 - a) **the application misleads or misidentifies the Conservation Lake and does not make clear the lake's soil erosion controlling purpose.** The application refers to the lake as an simply an "unnamed reservoir", minimizing its size, purpose and nature for the purposes of its own application. The reservoir has been on maps and plats of the property since the 1950's and the developers of the Canyon Springs development, for whom this proposed sewer plant would be constructed are clearly aware of the existence of the lake, as their property contains an easement pertaining to and specifically naming the Conservation Lake and giving local water authorities the sole right to control its water level and because they offered to buy the Forbis Farm and lake shortly after the lake was completed. Further, failure to properly identify the lake or to disclose its soil erosion controlling purpose is simply misleading.

- b) **the application misrepresents the discharge route in that it suggests that this is a continuously flowing stream to the Trinity River and beyond.** Specifically, the application suggests that the unnamed tributary flows into the "unnamed reservoir" and then flows into another creek which then dumps into various tributaries and ends up in the Trinity River. This is at best misleading, as it suggests a continuously flowing route of creek beds etc. into the Trinity River. The Conservation Lake contains an overflow valve, in the form of a sort of hollow "tower" that rises above the normal levels of the lake. See Exhibit "3". Any water that flows into the lake stays in the lake unless the lake reaches a high enough level to begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow *out* of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant. I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake.
- c) **Applicant's April 2006 application does not include required boundaries of affected property owners.** On Page 11 of the Domestic Administrative Report submitted by Applicant, Applicant failed to check the boxes or to submit a landowners map or drawing of "1) property boundaries of the landowners along the watercourse for a ½ mile radius from the point of discharge if the point of discharge is into a lake," when for all intents and purposes it dumps into said lake; or 2) The property boundaries of all landowners surrounding the applicant's property boundaries where the effluent disposal site is located.
- d) **Page 8 of the Technical Report submitted with application states that the receiving waters are a "stream" when in fact they are a lake or pond with a surface area of approximately 16 acres (more after periods of heavy rain).**
- e) **Page 9 subpart c. of the Technical Report states that the West Fork of the Trinity River joins the receiving water within three miles downstream of the discharge point, when in fact the water stagnates and stays in the Conservation lake, unless the water reaches a high enough level to spill into the overflow valve Exhibit "3" hereto.**
- f) **Page 9, subpart d of the Technical Report states that the receiving water characteristics DO NOT change within three miles of the discharge point, into a reservoir, when in fact, they dump into the man-made**

Conservation Lake within approximately 150 FEET of the discharge point.

- g) **Page 9, subpart e of the Technical Report states that the receiving waters during normal dry weather conditions is "dry, no flow present," which is false, as is demonstrated from the pictures attached as Exhibit "4" which were taken approximately 150 feet from the discharge point, where the water is approximately 10 feet or more deep at present.**
- h) **Page 10, top section of the Technical Report states that the downstream of proposed discharge area is "intermittent with perennial pools" when again, as demonstrated by the Exhibit "4" pictures, the water is several feet deep and almost never dry since the Conservation Lake was constructed.**
- i) **Page 12, of the Technical Report states that the stream was evaluated for 500 feet, which could not have occurred without a trespass onto this owner's property, and further states that the average stream width is 10 feet and only 6 inches deep. As the pictures in Exhibit "4" demonstrate, the water is many feet deep and approximately 25-30 feet wide.**

In short, the application was not carefully prepared and misrepresents the nature and characteristics of the discharge area, the Conservation Lake, and the receiving waters and should be denied.

3) Applicant and/or TCEQ have not undertaken sufficient study of the effects on the quality of water in the lake.

The application states that Applicant undertook a Tier 2 investigation of the effects on the "unnamed reservoir" and determined that there would be no significant effect on the wildlife. A complete and thorough study of the make up and quality of the water itself and the fish and wildlife that frequent it, could only be undertaken by taking water samples from the lake itself and observing the types of fish and wildlife that frequent the lake. Since this could not be accomplished without trespassing on my property, I assume this sort of thorough study was not undertaken and should be in order to determine what real effects, the dumping of this effluent might have. The water does not flow continuously as represented by Applicant, and therefore, water is not likely to reach the oxygen levels suggested by Applicant in the application which are necessary to prevent damage to the "high aquatic wildlife uses" that Applicant concedes currently exist.

Moreover, no discussion or consideration has been given to what will have in the event there is a break down of the machinery or equipment at the sewer treatment plant, which I have been told is a regular occurrence even at the best of sewer treatment plants. It is unlikely that the plant can hold several days of sewer water from the proposed 750 residents for days on end without releasing it. Therefore,

it seems likely that effluent which does not meet government standards will without question eventually if not regularly, be discharged into the Conservation Lake. The impact of such a release on the high aquatic uses of this area and the surrounding ecosystem should be carefully studied and considered by TCEQ and have not been discussed, to my knowledge, to date. My mother's twelve grandchildren and five great grandchildren use this conservation lake for recreation including fishing, wading (and occasionally falling) into the lake. While we currently consider the water quality to be safe enough, if effluent is discharged into the lake, I will no longer be comfortable with children participating in those activities in and around the lake.

- 4) **Applicant and/or TCEQ have not undertaken sufficient study of the effects of such a sewer plant and the level of water it will discharge on the watershed/erosion control purpose of the Conservation Lake.** Dumping 75,000 gallons per day of effluent will no doubt raise the normal levels of the Conservation Lake from its normal 16 acres to potentially 48 acres or more (its capacity level) and cause it to remain at that higher level most of the time. This will undoubtedly effect both the ecosystems in and around the Conservation Lake and could completely thwart the erosion control purpose of the lake. At a minimum, the effect needs to be addressed and carefully studied.
- 5) **Discharge of effluent by the Applicant pursuant to the Proposed Permit would constitute a clear trespass onto my adjacent property, which this property owner will never agree to.** Discharge of the quantity of effluent requested by Applicants permit will constitute a trespass no different than dumping large quantities of unwanted solid trash onto someone else's property. If someone were proposing to dump 75,000 cubic feet per day of purportedly clean, but unwanted trash on someone else's property, would it even be open for discussion?

The proposed permit states that:

"the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route."

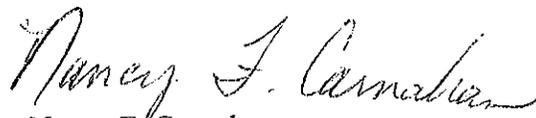
Applicant has not acquired such property rights and will never be granted such rights by this property owner. Because the activities

that Applicant seeks to undertake by way of the permit could only be accomplished by a trespass

- 6) **Any discharge of effluent by the Applicant would violate the easement of record which currently exists on the proposed sewer plant site (and a similar easement which exists on the Forbis Farm), which was granted to the Wise County Water Control Independent District ("Wise County WCID") and the Wise Soil and Water Conservation District (Wise S & W Conservation) in 1998 when the Conservation Lake was constructed, giving them the sole right to control the water levels in the Conservation Lake.** The existing easements state that only Wise County WCID and Wise S & W Conservation shall have the right to control the level of water impounded by Conservation Lake. A copy of the easement on the Canyon Springs property is attached hereto as Exhibit "5." By constructing a sewer plant which dumps water onto the easement area, Applicant will be controlling the water level into the Conservation Lake, which violates the restrictions set forth in the existing easement.
- 7) **Insufficient safeguards have been put in place for this Applicant's proposed permit; the permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience whatsoever in constructing, operating or maintaining a sewer treatment plant.** Because Applicant has no previous experience in connection with reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,



Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

EXHIBIT "1"

**Original November 6, 2006
Carnahan letter and
preliminary comments to
TCEQ**

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

November 6, 2006

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: Comments in Opposition to Proposed Permit No. WQ0014708001 and
Request for Public Meeting Regarding Proposed Permit No. WQ0014708001
Applicant, Wise Service Company-Water**

Dear Clerk:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, please consider this letter as a timely request for a public meeting in connection with this proposed permit, and a request to be added to the mailing list for any and all correspondence or other documentation regarding this proposed permit.

Summary of Grounds for Denial of Permit

As detailed below, Applicant Wise Service Company-Water's proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 should be denied for a number of reasons:

1. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself;
2. Applicant has made material misrepresentations and omissions in its application; including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.

3. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water, which will not flow downstream, but based on past history, will stagnate in the lake except during periods of very heavy rain. Such stagnation will degrade the water quality of the lake, and negatively impact the surrounding ecosystems. If the lake does hit levels to trigger the overflow valve (which seems unlikely based on past history) and does flow downstream as Applicant represents, it will thwart the erosion and flood control purpose of the lake.

4. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. Moreover, TCEQ's granting of the proposed permit thereby authorizing a continual trespass on private property would be tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, its current application should therefore be denied.

5. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience whatsoever in constructing, operating or maintaining a sewer treatment plant.

6. TCEQ should closely scrutinize the potential effect of this sewer treatment facility and the stormwater runoff created by the construction of the proposed wastewater treatment facility and the housing development to determine what effect it may have on the erosion control and flood control purposes of the lake, as well as the water quality of the lake, since it will not flow as represented by applicant, nor will it regularly reach the Trinity River as represented by Applicant.

II. Background

I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). Further, the "unnamed reservoir" described in the application into which 75,000 gallons of sewer water is proposed to be dumped each day, is located entirely on my property. This unnamed reservoir has a name: The Big Sandy Creek Watershed No. 35. This lake has been identified in local records since its construction was first proposed by the government in the 1950's. My father, Ed Forbis, was aware of the proposed lake project from plats of the property when he purchased it back in 1972. Although identified on the maps of the property and slated for construction since the 1950's, this 16 acre watershed lake project was not completed until 1999, using (I was told at the time) approximately \$750,000

of federal taxpayer funds. The lake project was intended to control soil erosion and floodwaters on the surrounding lands. The lake also acts as a wildlife refuge for deer, raccoons, fish, various waterfowl, including wood ducks, not to mention acting as a potable water source for cattle which we sometimes place on the 200 acre farm property to graze.

Applicant proposes to construct its sewer treatment facility on property adjacent to my family's 200 acre property, the Forbis, Long, Woodruff, Carnahan Property (hereinafter the "Forbis Farm"). It appears that the sewer facility is to be located less than 100 yards from the boundary line of to our property, and proposes to discharge treated sewer water into "*an unnamed tributary, thence to an unnamed reservoir; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin*" (emphasis my own). The "unnamed tributary" (which we called Watson Creek or sometimes "Black Creek" growing up -- I played there frequently as a child) and the "unnamed reservoir," (Big Sandy Creek Watershed Project No. 35) are both located on my property. Indeed, the lake is located entirely on my property, the Forbis Farm. It is as if they are building their sewer treatment plant as close to our property line as possible so as to dump their "liquid trash" over the fence, and into our private soil conservation lake. Of course, this is not what we had in mind when the lake was constructed. As you might expect, I strongly oppose this permit.

III. Arguments in Opposition to the Permit

A. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself.

I am alarmed that although I am a record title holder to the Forbis Farm property which abuts and will be directly and negatively impacted by this proposed sewer treatment facility and the liquid trash it will produce, I did not receive any direct notice from the Applicant or TCEQ regarding this application. I am on the taxing authority's mailing list for this property, as I receive annual tax invoices regarding this property. I am truly amazed that the taxing authorities know where to find me, but an entity proposing to construct a sewer facility, proposing to dump 75,000 gallons of sewer water into the lake on my property, were unable to find or identify me.

Instead, I first learned of the proposed sewer treatment facility and related proposed TCEQ permit application at a local baby shower I attended on October 8th, which was also attended by some other affected and unhappy nearby property owners. These property owners advised me that when they called the Applicant's office to inquire and protest, they were told by the Applicant's representatives that the sewer treatment facility was already a "done deal." (This commentary suggests that perhaps the TCEQ has already made up its mind about this application without going through the required application process, investigation process, public commentary, public meeting, etc., but I digress.) This is not how one would reasonably expect to be notified of such a proposed facility and sewer treatment facility, particularly when the deadline for proposing any objections was only thirty days hence. In short, I object to the Applicant's failure to provide timely and personal written notice to ALL directly affected adjacent property holders including myself, and ask that the permit be denied on this basis.

- B. Applicant has made material misrepresentations and omissions in its application, including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.***

It is my understanding from review of documents placed at the John A. and Katherine G. Jackson Public Library that Applicant first made its application around April 2006, but failed to mention the "unnamed reservoir" (Big Sandy Creek Watershed Project No. 35) at all and did not do so for several months. By the submission of their August application, Big Sandy Creek Watershed Project No. 35 does appear on the application as an "unnamed reservoir," but has still never been identified, despite my naming the reservoir for them in a recent meeting of the Applicant's Board of Directors.

One of the developers of the Canyon Springs housing development which this proposed sewer would be constructed to support approached my family a few years ago offering to purchase the Forbis Farm (our family was not receptive to the idea). I find it difficult to believe that the developer was unaware of the existence of the "unnamed reservoir," since he inquired about purchasing the Forbis Farm shortly after the construction of the lake. Moreover, as previously mentioned, the maps and title records for the Forbis Farm Property have disclosed the future site of the proposed lake since at least the 1950's. Accordingly, the Applicant either knew of the existence of this reservoir from the inception of its application in April 2006 and failed to disclose it, or the Applicant did a poor job of investigating the proposed discharge route and its potential ramifications. In short, Applicant's failure to properly disclose and properly identify the "unnamed reservoir" and its purpose as a soil erosion and flood control lake, was either sloppy or it was dishonest. In either event, Applicant made material misrepresentations and omissions in the permit application which to date Applicant has failed to correct. Therefore, the permit application should be denied.

- C. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water. Based on past history, the treated water will not flow downstream as represented by Applicant. Except during periods of very heavy rain, the effluent will stagnate in the lake degrading the water quality and negatively impacting the surrounding ecosystems.***

As previously stated, the Big Sandy Creek Watershed Lake No. 35, located on the Forbis Farm, was created to control soil erosion and flooding in the surrounding land areas. The application for the permit suggests that the sewer water will first be discharged into the "unnamed tributary" (Watson Creek), which will then flow into the "unnamed reservoir" (Big Sandy Creek Watershed Lake), and then into another unnamed tributary, and so on until it eventually supposedly reaches the Trinity River. The Watershed Lake contains an overflow valve, in the form of a sort of hollow "tower" that rises above the normal levels of the lake. Any water that flows into the lake stays in the lake unless the lake reaches a high enough level to

begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow *out* of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant.

Accordingly, the supposed discharge route as described in the application is unrealistic, and inaccurate. The application should have stated that the discharged sewer water will flow into the Watson Creek located on the Forbis Farm, thence into their private soil and erosion control lake where it will stagnate and most likely remain forever in all its effluent glory.

I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake. There does not appear to be ample time from the dumping point to the mouth of the lake, nor enough water in the lake for dilution to allow the oxygen levels to increase to this level. Moreover, without having tested the current make up of the water in the lake (which could not have been accomplished without a clear trespass on the private property of yours truly), Applicant cannot have sampled the lake water's current makeup, nor properly evaluated the potential effect of the effluent chemicals on the lake's water quality. Thus, a fair evaluation of the impact on the water quality of the lake cannot have been made. Even if thoroughly chlorinated (and this lake is most certainly not intended to be a chlorinated swimming pool, which won't support aquatic life at all), the treated effluent is being discharged so close to the mouth of this lake that there will not be sufficient time for aeration or dilution of the water before it stagnates in the lake.

In the alternative, and Applicant may well argue that it is possible that the 75,000 gallons of effluent discharged each day will so greatly effect the lake levels that the overflow valve will be in constant operation, and water will indeed flow downstream as represented in the application, causing the level of the lake to be much higher on a normal basis, greatly increasing the size of the lake. If this should happen, the ecosystem of the lake will be negatively affected for other reasons. For example, the duck nesting area in the middle of the lake will then be constantly under water, preventing their nesting there at all and negatively impacting the ecosystem of the lake, and thwarting the erosion and flood control purpose of the lake.

In either event, the application has not fully disclosed or investigated the impact that the discharged water will have on the erosion control lake, and whether the proposed discharge route is realistic. Since the treated effluent is unlikely to regularly flow downstream from the lake as represented by Applicant, TCEQ should closely scrutinize this sewer treatment facility and the stormwater runoff created by its construction, to determine what effect it may have on the erosion and flood control purposes of the lake as well as its water quality and the surrounding ecosystems. These issues should be fully investigated and the results of such investigation disclosed in any connection with any permit application. The application as it now exists should be denied until such further investigation is completed.

- D. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route and has made no effort to obtain and will never be granted property rights to use this discharge route.***

The proposed permit states that:

"the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route."

The entire first two segments of the discharge route are located on private property. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route on the Forbis Farm. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. One of the the Canyon Springs developers, Mr. J. K. Miller, owns a great deal of property immediately to the south of the proposed treatment plant. An alternative discharge route across developer's own property, should be immediately investigated, because such a route would not require such a trespass.

Moreover, TCEQ's granting of the proposed permit authorizes a continuing trespass over private property. Granting such a permit and authorizing such a trespass is tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, and the discharge will result in a trespass and unconstitutional taking of private property, Applicant's current application should be denied. Applicant should be required to seek a discharge route which does not trespass on private property.

- E. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant.***

Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant. Therefore, self-reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of

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water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a formal public meeting regarding the permit, and I reserve the right to request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,

Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

EXHIBIT “2”

**Aerial Map of Relevant
Area showing Conservation
Lake and Property Lines**

Long, Woodruff,
Forbis, Carnahan
Land

Conservation Lake

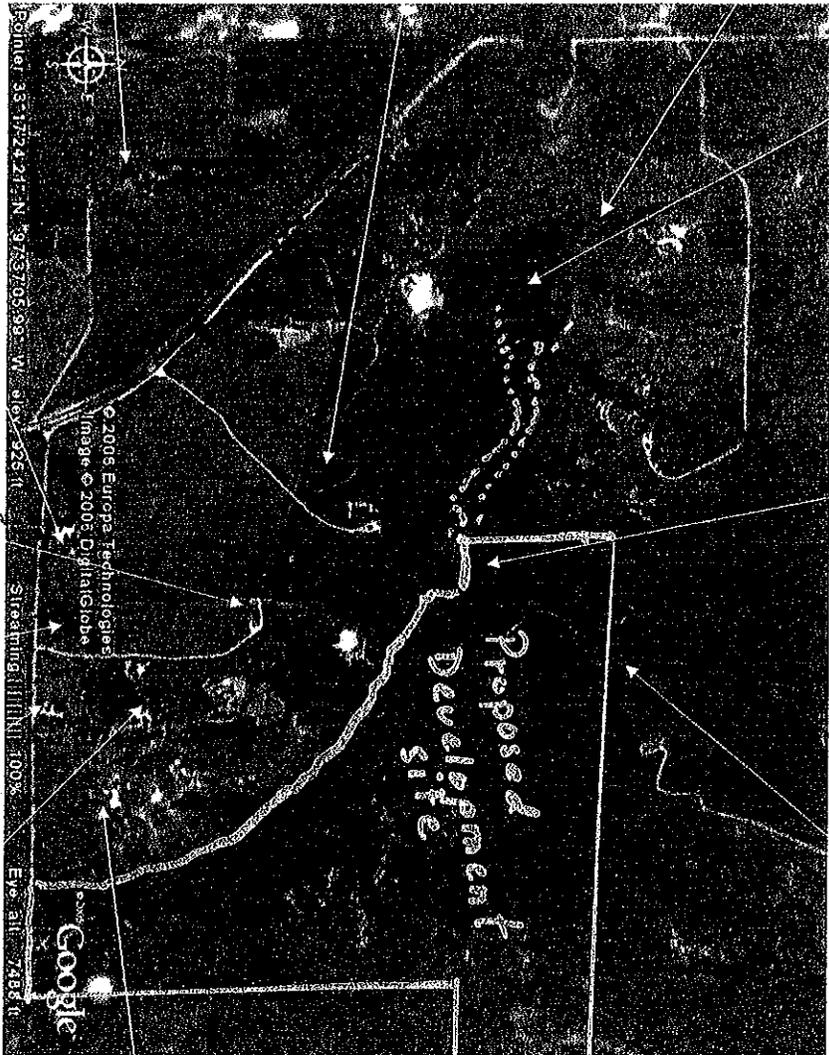
Proposed Sewage Plant

Southern Boundary
of LBJ National
Grasslands

*I have turned to
show with the lake
drain that the lake
assist back up
beyond the sewer
treatment site.*

Rob and
Stephanie
Pothergill
Home

Ed and
Ann
Jolley
Home



Catherine Russell Home

Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Gordon
and
Roxie
Ploeger
Home

Meridian Hwy (Old Decatur Rd.)

Approximately 1,000 yards

EXHIBIT “3”

**Photo of portion of
Conservation Lake at High
Level and Depicting
Overflow valve**

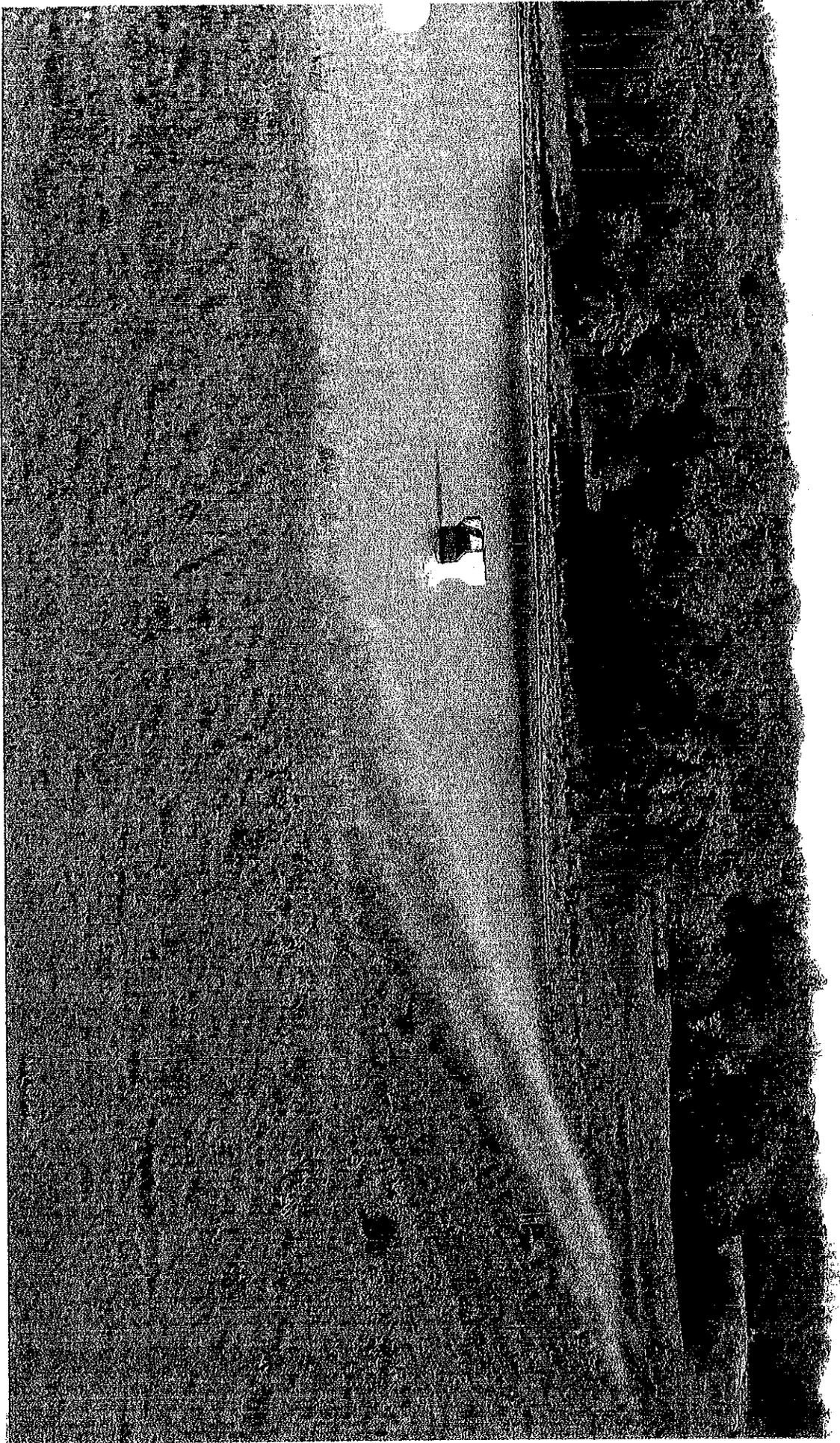




EXHIBIT "4"

**Photos Showing Correct
Depth and Character of
Immediate Receiving
Waters at Mouth of
Proposed Discharge Route**







EXHIBIT "5"

**Easement existing on
Canyon Springs proposed
sewer site granting
exclusive right to Wise
County Water Control
Board to control water level
in Conservation Lake**

No. 256

EASEMENT

THE STATE OF TEXAS
COUNTY OF

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, G. L. Gage, Jr., C. L. Gage, Jr., William C. Gage and Traci L. Gage

Guarantor For Lewis W. Gage

of Wise County, Texas

(hereinafter called "Grantor"),

do hereby grant, bargain, sell, convey and release unto Wise Co. W.C.T.D. #1 and Wise Soil and Water Conservation District

its successors and assigns, (hereinafter called "Grantee"), an easement in,

over and upon the following described land situated in the County of Wise State of Texas, to-wit:

258.07 acres of land, more or less, in the D. Moore Survey A-587, G. M. Milla Survey A-605, and the R. Salmon Survey A-758 all of which being in Wise County, Texas being more fully described in an Exchange Deed from the Forest Service, United States Department of Agriculture to James C. Thomason, Trustee dated June 2, 1987 : recorded Volume 248 Page 410, Real Records, Wise County, Texas, and more fully described in a Special Warranty Deed from Tim Truman and James C. Thomason to G. L. Gage, Jr., Lewis W. Gage, William C. Gage and Traci L. Gage recorded volume 544 page 751 and 756, Real Records, Wise County, Texas.

for the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land: for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the above described land that is caused by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works,
Big Sandy Creek Watershed

And, involving or affecting 1.50 acres, more or less, of the above described land.

- 1. This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along usable access routes designated by Grantor.
- 2. There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, his successors and assigns, of the rights and privileges herein granted.

The rights and privileges herein granted are subject to all easements, rights-of-way, mineral reservations or other rights now outstanding in third parties.

The Grantee is responsible for operating and maintaining the above described works of improvement.

Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.

The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.

The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.

This easement (does) ~~not~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.

Special Provisions:

In the event construction of the above described works of improvement is not commenced within 6 years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

TO HAVE AND TO HOLD the aforesaid payment in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, his successors and assigns, forever.

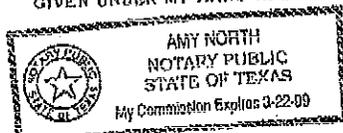
IN WITNESS WHEREOF the Grantor has executed this instrument on the 11 day of MARCH A. D., 19 76

Alfred C. Cannon (GRANTOR)
Alfred C. Cannon, Guardian (GRANTOR)
Traci L. Edge (GRANTOR)
William C. Edge (GRANTOR)
(GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared U.C. Edge, Jr., Traci L. Edge, William C. Edge, known to me to be the person(s) whose name(s) they are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 11th day of March, A. D. 19 76.



Amy North
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires 3-22-09

THE STATE OF Texas
COUNTY OF Wise

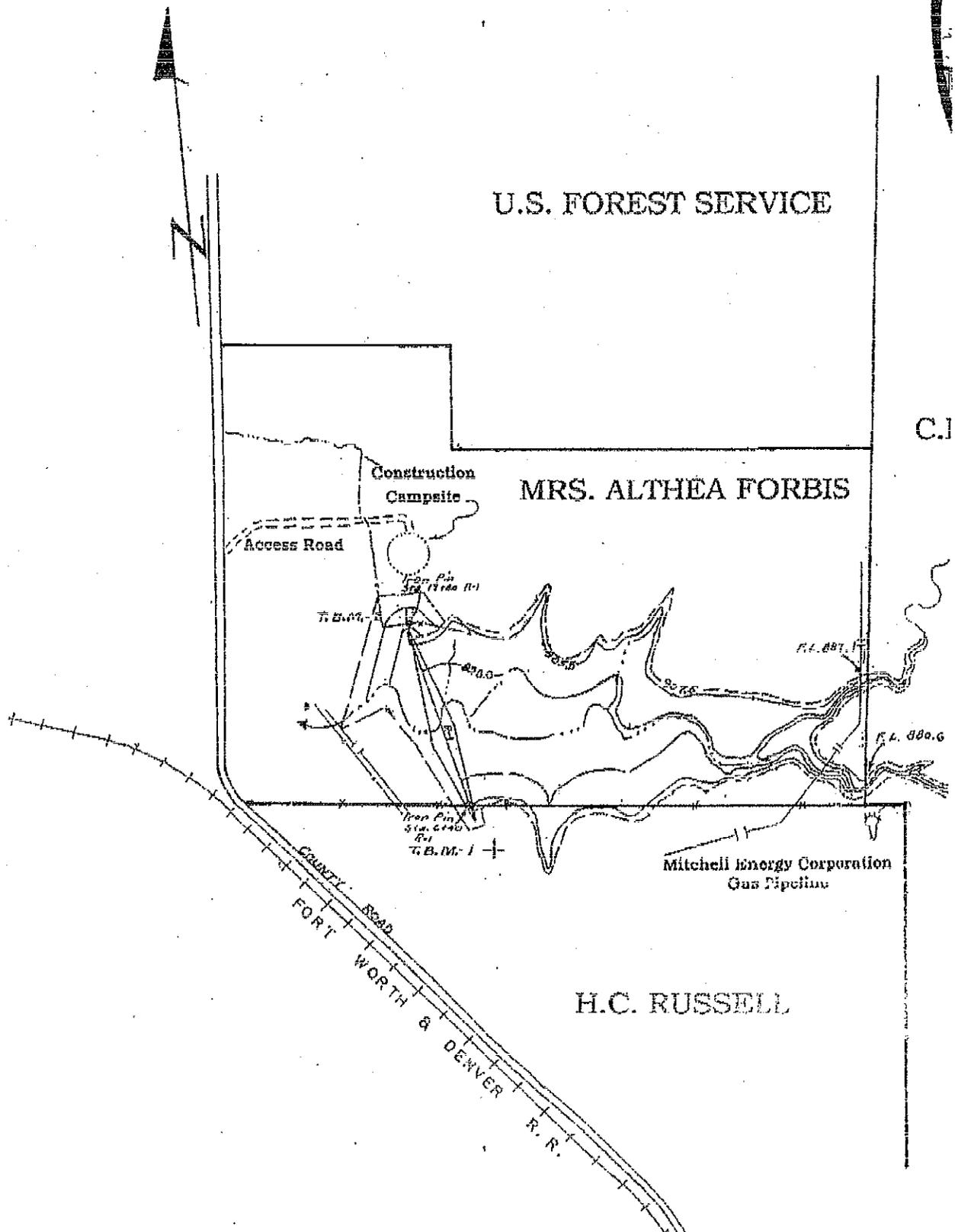
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19 _____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

Form with fields for 'FILED FOR RECORD', 'RECORDED', 'COUNTY CLERK', 'No.', 'EASEMENT TO REAL ESTATE FROM', 'TO', 'This instrument should be filed immediately with the County Clerk for Record.'



#5

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CHIEF CLERK'S OFFICE

APR 3 2007 1:54 PM

PLEASE PRINT:

Name: Nancy Carnahan
Address: 1190 N. Carroll Ave
City/State: Southlake TX Zip: 76092
Phone: (214) 707-2856

Please add me to the mailing list. *I think I'm already on. Please check*

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

mw

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

OPA PM

NOV 07 2006

BY [Signature]

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahantomas.com

November 6, 2006

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

MWD
54149

CHIEF CLERK'S OFFICE

NOV -7 10 10:22

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Comments in Opposition to Proposed Permit No. WQ0014708001 and Request for Public Meeting Regarding Proposed Permit No. WQ0014708001 Applicant, Wise Service Company-Water

Dear Clerk:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, please consider this letter as a timely request for a public meeting in connection with this proposed permit, and a request to be added to the mailing list for any and all correspondence or other documentation regarding this proposed permit.

Summary of Grounds for Denial of Permit

As detailed below, Applicant Wise Service Company-Water's proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 should be denied for a number of reasons:

1. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself;
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[Handwritten mark]

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I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). Further, the "unnamed reservoir" described in the application into which 75,000 gallons of sewer water is proposed to be dumped each day, is located entirely on my property. This unnamed reservoir has a name: The Big Sandy Creek Watershed No. 35. This lake has been identified in local records since its construction was first proposed by the government in the 1950's. My father, Ed Forbis, was aware of the proposed lake project from plats of the property when he purchased it back in 1972. Although identified on the maps of the property and slated for construction since the 1950's, this 16 acre watershed lake project was not completed until 1999, using (I was told at the time) approximately \$750,000

November 6, 2006

Page 3

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Applicant proposes to construct its sewer treatment facility on property adjacent to my family's 200 acre property, the Forbis, Long, Woodruff, Carnahan Property (hereinafter the "Forbis Farm"). It appears that the sewer facility is to be located less than 100 yards from the boundary line of our property, and proposes to discharge treated sewer water into "an unnamed tributary; thence to an unnamed reservoir; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin" (emphasis my own). The "unnamed tributary" (which we called Watson Creek or sometimes "Black Creek" growing up -- I played there frequently as a child) and the "unnamed reservoir," (Big Sandy Creek Watershed Project No. 35) are both located on my property. Indeed, the lake is located entirely on my property, the Forbis Farm. It is as if they are building their sewer treatment plant as close to our property line as possible so as to dump their "liquid trash" over the fence, and into our private soil conservation lake. Of course, this is not what we had in mind when the lake was constructed. As you might expect, I strongly oppose this permit.

III. Arguments in Opposition to the Permit

A. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself.

I am alarmed that although I am a record title holder to the Forbis Farm property which abuts and will be directly and negatively impacted by this proposed sewer treatment facility and the liquid trash it will produce, I did not receive any direct notice from the Applicant or TCEQ regarding this application. I am on the taxing authority's mailing list for this property, as I receive annual tax invoices regarding this property. I am truly amazed that the taxing authorities know where to find me, but an entity proposing to construct a sewer facility, proposing to dump 75,000 gallons of sewer water into the lake on my property, were unable to find or identify me.

Instead, I first learned of the proposed sewer treatment facility and related proposed TCEQ permit application at a local baby shower I attended on October 8th, which was also attended by some other affected and unhappy nearby property owners. These property owners advised me that when they called the Applicant's office to inquire and protest, they were told by the Applicant's representatives that the sewer treatment facility was already a "done deal." (This commentary suggests that perhaps the TCEQ has already made up its mind about this application without going through the required application process, investigation process, public commentary, public meeting, etc., but I digress.) This is not how one would reasonably expect to be notified of such a proposed facility and sewer treatment facility, particularly when the deadline for proposing any objections was only thirty days hence. In short, I object to the Applicant's failure to provide timely and personal written notice to ALL directly affected adjacent property holders including myself, and ask that the permit be denied on this basis.

November 6, 2006

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- B. Applicant has made material misrepresentations and omissions in its application, including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.***

It is my understanding from review of documents placed at the John A. and Katherine G. Jackson Public Library that Applicant first made its application around April 2006, but failed to mention the "unnamed reservoir" (Big Sandy Creek Watershed Project No. 35) at all and did not do so for several months. By the submission of their August application, Big Sandy Creek Watershed Project No. 35 does appear on the application as an "unnamed reservoir," but has still never been identified despite my naming the reservoir for them in a recent meeting of the Applicant's Board of Directors.

One of the developers of the Canyon Springs housing development which this proposed sewer would be constructed to support approached my family a few years ago offering to purchase the Forbis Farm (our family was not receptive to the idea). I find it difficult to believe that the developer was unaware of the existence of the "unnamed reservoir," since he inquired about purchasing the Forbis Farm shortly after the construction of the lake. Moreover, as previously mentioned, the maps and title records for the Forbis Farm Property have disclosed the future site of the proposed lake since at least the 1950's. Accordingly, the Applicant either knew of the existence of this reservoir from the inception of its application in April 2006 and failed to disclose it, or the Applicant did a poor job of investigating the proposed discharge route and its potential ramifications. In short, Applicant's failure to properly disclose and properly identify the "unnamed reservoir" and its purpose as a soil erosion and flood control lake, was either sloppy or it was dishonest. In either event, Applicant made material misrepresentations and omissions in the permit application which to date Applicant has failed to correct. Therefore, the permit application should be denied.

- C. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water. Based on past history, the treated water will not flow downstream as represented by Applicant. Except during periods of very heavy rain, the effluent will stagnate in the lake degrading the water quality and negatively impacting the surrounding ecosystems.***

As previously stated, the Big Sandy Creek Watershed Lake No. 35, located on the Forbis Farm, was created to control soil erosion and flooding in the surrounding land areas. The application for the permit suggests that the sewer water will first be discharged into the "unnamed tributary" (Watson Creek), which will then flow into the "unnamed reservoir" (Big Sandy Creek Watershed Lake), and then into another unnamed tributary, and so on until it eventually supposedly reaches the Trinity River. The Watershed Lake contains an overflow valve, in the form of a sort of hollow "tower" that rises above the normal levels of the lake. Any water that flows into the lake stays in the lake unless the lake reaches a high enough level to

November 6, 2006

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begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow *out* of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant.

Accordingly, the supposed discharge route as described in the application is unrealistic, and inaccurate. The application should have stated that the discharged sewer water will flow into the Watson Creek located on the Forbis Farm, thence into their private soil and erosion control lake where it will stagnate and most likely remain forever in all its effluent glory.

I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake. There does not appear to be ample time from the dumping point to the mouth of the lake, nor enough water in the lake for dilution to allow the oxygen levels to increase to this level. Moreover, without having tested the current make up of the water in the lake (which could not have been accomplished without a clear trespass on the private property of yours truly), Applicant cannot have sampled the lake water's current makeup, nor properly evaluated the potential effect of the effluent chemicals on the lake's water quality. Thus, a fair evaluation of the impact on the water quality of the lake cannot have been made. Even if thoroughly chlorinated (and this lake is most certainly not intended to be a chlorinated swimming pool, which won't support aquatic life at all), the treated effluent is being discharged so close to the mouth of this lake that there will not be sufficient time for aeration or dilution of the water before it stagnates in the lake.

In the alternative, and Applicant may well argue that it is possible that the 75,000 gallons of effluent discharged each day will so greatly effect the lake levels that the overflow valve will be in constant operation, and water will indeed flow downstream as represented in the application, causing the level of the lake to be much higher on a normal basis, greatly increasing the size of the lake. If this should happen, the ecosystem of the lake will be negatively affected for other reasons. For example, the duck nesting area in the middle of the lake will then be constantly under water, preventing their nesting there at all and negatively impacting the ecosystem of the lake, and thwarting the erosion and flood control purpose of the lake.

In either event, the application has not fully disclosed or investigated the impact that the discharged water will have on the erosion control lake, and whether the proposed discharge route is realistic. Since the treated effluent is unlikely to regularly flow downstream from the lake as represented by Applicant, TCEQ should closely scrutinize this sewer treatment facility and the stormwater runoff created by its construction, to determine what effect it may have on the erosion and flood control purposes of the lake as well as its water quality and the surrounding ecosystems. These issues should be fully investigated and the results of such investigation disclosed in any connection with any permit application. The application as it now exists should be denied until such further investigation is completed.

November 6, 2006

Page 6

D. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route and has made no effort to obtain and will never be granted property rights to use this discharge route.

The proposed permit states that:

"the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route."

The entire first two segments of the discharge route are located on private property. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route on the Forbis Farm. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. One of the the Canyon Springs developers, Mr. J. K. Miller, owns a great deal of property immediately to the south of the proposed treatment plant. An alternative discharge route across developer's own property, should be immediately investigated, because such a route would not require such a trespass.

Moreover, TCEQ's granting of the proposed permit authorizes a continuing trespass over private property. Granting such a permit and authorizing such a trespass is tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, and the discharge will result in a trespass and unconstitutional taking of private property, Applicant's current application should be denied. Applicant should be required to seek a discharge route which does not trespass on private property.

E. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant.

Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant. Therefore, self-reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of

November 6, 2006

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water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a formal public meeting regarding the permit, and I reserve the right to request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,



Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

Fax

CHIEF CLERKS OFFICE

NOV -7 AM 10:21

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

To: Office of Chief Clerk @ TCEQ **Fax:** 512 239 3311

To: **Fax:**

Pages: 8 (including fax cover sheet) **Date:** 11/7/2006

Re:

From: Nancy F. Carnahan **Phone:** (817) 424-1001

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Please see attached letter mailed yesterday in connection with TCEQ permit application WQ0014708001

● **Comments:** UNLESS OTHERWISE INDICATED OR OBVIOUS FROM THE NATURE OF THIS TRANSMITTAL, THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIAL, INTENDED FOR THE USE OF THE NAMED RECIPIENT (OR EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT). YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS HEREBY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY COLLECT TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE BELOW ADDRESS AT OUR EXPENSE. THANK YOU.

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

PM
OPA

NOV 13 2006

BY DM

NANCY F. CARNAHAN
Mobile: 214.707.2856
Direct Fax: 1.866.518.5899
ncarnahan@carnahanthomas.com

November 6, 2006

Via Certified Mail RRR
Via Fax (512) 239-3311
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

6/11/06
DM

CHIEF CLERK'S OFFICE

NOV 13 PM 2:46

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Comments in Opposition to Proposed Permit No. WQ0014708001 and Request for Public Meeting Regarding Proposed Permit No. WQ0014708001 Applicant, Wise Service Company-Water

Dear Clerk:

Please consider these timely comments in connection with the above-referenced proposed permit. In addition, please consider this letter as a timely request for a public meeting in connection with this proposed permit, and a request to be added to the mailing list for any and all correspondence or other documentation regarding this proposed permit.

Summary of Grounds for Denial of Permit

As detailed below, Applicant Wise Service Company-Water's proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 should be denied for a number of reasons:

1. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself;
2. Applicant has made material misrepresentations and omissions in its application; including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.

Handwritten initials or mark.

3. A federally constructed soil erosion and flood control lake (Big Sandy Creek Watershed Lake No. 35 a/k/a the "unnamed reservoir") located on my adjacent property will be negatively impacted by the introduction of large quantities of unanticipated and potentially unsafe treated sewer water, which will not flow downstream, but based on past history, will stagnate in the lake except during periods of very heavy rain. Such stagnation will degrade the water quality of the lake, and negatively impact the surrounding ecosystems. If the lake does hit levels to trigger the overflow valve (which seems unlikely based on past history) and does flow downstream as Applicant represents, it will thwart the erosion and flood control purpose of the lake.

4. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route. Applicant has made no effort to obtain and will never be granted property rights to use this discharge route. The discharge of up to 75,000 gallons per day of sewer water in the Big Sandy Creek lake will constitute a trespass onto my private property and as such, Applicant's proposed discharge route is not a viable route. Moreover, TCEQ's granting of the proposed permit thereby authorizing a continual trespass on private property would be tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, its current application should therefore be denied.

5. Insufficient safeguards have been put in place for this Applicant's proposed permit. The permit allows the monitoring for water quality, discharge levels etc. to be done almost entirely through self-reporting, despite the fact that Applicant has no previous experience whatsoever in constructing, operating or maintaining a sewer treatment plant.

6. TCEQ should closely scrutinize the potential effect of this sewer treatment facility and the stormwater runoff created by the construction of the proposed wastewater treatment facility and the housing development to determine what effect it may have on the erosion control and flood control purposes of the lake, as well as the water quality of the lake, since it will not flow as represented by applicant, nor will it regularly reach the Trinity River as represented by Applicant.

II. Background

I own an undivided interest in the property which abuts the proposed sewer treatment facility, identified in proposed Texas Pollutant Discharge Elimination System Permit no. WQ0014708001 (hereinafter, the "Proposed Permit") which is sought by the Wise Service Company-Water (hereinafter, the "Applicant"). Further, the "unnamed reservoir" described in the application into which 75,000 gallons of sewer water is proposed to be dumped each day, is located entirely on my property. This unnamed reservoir has a name: The Big Sandy Creek Watershed No. 35. This lake has been identified in local records since its construction was first proposed by the government in the 1950's. My father, Ed Forbis, was aware of the proposed lake project from plats of the property when he purchased it back in 1972. Although identified on the maps of the property and slated for construction since the 1950's, this 16 acre watershed lake project was not completed until 1999, using (I was told at the time) approximately \$750,000

of federal taxpayer funds. The lake project was intended to control soil erosion and floodwaters on the surrounding lands. The lake also acts as a wildlife refuge for deer, raccoons, fish, various waterfowl, including wood ducks, not to mention acting as a potable water source for cattle which we sometimes place on the 200 acre farm property to graze.

Applicant proposes to construct its sewer treatment facility on property adjacent to my family's 200 acre property, the Forbis, Long, Woodruff, Carnahan Property (hereinafter the "Forbis Farm"). It appears that the sewer facility is to be located less than 100 yards from the boundary line of to our property, and proposes to discharge treated sewer water into "*an unnamed tributary, thence to an unnamed reservoir*; thence to an unnamed tributary; thence to Watson Branch; thence to Sandy Branch; thence to West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin" (emphasis my own). The "unnamed tributary" (which we called Watson Creek or sometimes "Black Creek" growing up -- I played there frequently as a child) and the "unnamed reservoir," (Big Sandy Creek Watershed Project No. 35) are both located on my property. Indeed, the lake is located entirely on my property, the Forbis Farm. It is as if they are building their sewer treatment plant as close to our property line as possible so as to dump their "liquid trash" over the fence, and into our private soil conservation lake. Of course, this is not what we had in mind when the lake was constructed. As you might expect, I strongly oppose this permit.

III. Arguments in Opposition to the Permit

A. Applicant failed to provide timely and personal written notice to ALL directly affected adjacent property holders including myself.

I am alarmed that although I am a record title holder to the Forbis Farm property which abuts and will be directly and negatively impacted by this proposed sewer treatment facility and the liquid trash it will produce, I did not receive any direct notice from the Applicant or TCEQ regarding this application. I am on the taxing authority's mailing list for this property, as I receive annual tax invoices regarding this property. I am truly amazed that the taxing authorities know where to find me, but an entity proposing to construct a sewer facility, proposing to dump 75,000 gallons of sewer water into the lake on my property, were unable to find or identify me.

Instead, I first learned of the proposed sewer treatment facility and related proposed TCEQ permit application at a local baby shower I attended on October 8th, which was also attended by some other affected and unhappy nearby property owners. These property owners advised me that when they called the Applicant's office to inquire and protest, they were told by the Applicant's representatives that the sewer treatment facility was already a "done deal." (This commentary suggests that perhaps the TCEQ has already made up its mind about this application without going through the required application process, investigation process, public commentary, public meeting, etc., but I digress.) This is not how one would reasonably expect to be notified of such a proposed facility and sewer treatment facility, particularly when the deadline for proposing any objections was only thirty days hence. In short, I object to the Applicant's failure to provide timely and personal written notice to ALL directly affected adjacent property holders including myself, and ask that the permit be denied on this basis.

B. Applicant has made material misrepresentations and omissions in its application, including material misrepresentations and omissions regarding the discharge route and the characteristics of the bodies of water along that route, and has failed to correct these material misrepresentations and omissions.

It is my understanding from review of documents placed at the John A. and Katherine G. Jackson Public Library that Applicant first made its application around April 2006, but failed to mention the "unnamed reservoir" (Big Sandy Creek Watershed Project No. 35) at all and did not do so for several months. By the submission of their August application, Big Sandy Creek Watershed Project No. 35 does appear on the application as an "unnamed reservoir," but has still never been identified, despite my naming the reservoir for them in a recent meeting of the Applicant's Board of Directors.

One of the developers of the Canyon Springs housing development which this proposed sewer would be constructed to support approached my family a few years ago offering to purchase the Forbis Farm (our family was not receptive to the idea). I find it difficult to believe that the developer was unaware of the existence of the "unnamed reservoir," since he inquired about purchasing the Forbis Farm shortly after the construction of the lake. Moreover, as previously mentioned, the maps and title records for the Forbis Farm Property have disclosed the future site of the proposed lake since at least the 1950's. Accordingly, the Applicant either knew of the existence of this reservoir from the inception of its application in April 2006 and failed to disclose it, or the Applicant did a poor job of investigating the proposed discharge route and its potential ramifications. In short, Applicant's failure to properly disclose and properly identify the "unnamed reservoir" and its purpose as a soil erosion and flood control lake, was either sloppy or it was dishonest. In either event, Applicant made material misrepresentations and omissions in the permit application which to date Applicant has failed to correct. Therefore, the permit application should be denied.

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begin spilling down into the hollow tower. Raising the lake water to these high levels is the only way that water will ever flow *out* of said lake. Since 1999 when the lake was first constructed, I am only aware of one period of time where the water levels in the lake ever reached a height sufficient to cause water to spill into the overflow valve, and this was during a very wet spring in 2005. Normally, any water that flows into the lake, stays in the lake and remains stagnant.

Accordingly, the supposed discharge route as described in the application is unrealistic, and inaccurate. The application should have stated that the discharged sewer water will flow into the Watson Creek located on the Forbis Farm, thence into their private soil and erosion control lake where it will stagnate and most likely remain forever in all its effluent glory.

I submit that the stagnation of the water will make it difficult if not impossible for the treated discharged water to achieve the oxygen level of 5mg/l DO in the lake which Applicant maintains will be sufficient to ensure no degradation of the "high aquatic life uses" which Applicant admits are currently supported by the lake. There does not appear to be ample time from the dumping point to the mouth of the lake, nor enough water in the lake for dilution to allow the oxygen levels to increase to this level. Moreover, without having tested the current make up of the water in the lake (which could not have been accomplished without a clear trespass on the private property of yours truly), Applicant cannot have sampled the lake water's current makeup, nor properly evaluated the potential effect of the effluent chemicals on the lake's water quality. Thus, a fair evaluation of the impact on the water quality of the lake cannot have been made. Even if thoroughly chlorinated (and this lake is most certainly not intended to be a chlorinated swimming pool, which won't support aquatic life at all), the treated effluent is being discharged so close to the mouth of this lake that there will not be sufficient time for aeration or dilution of the water before it stagnates in the lake.

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D. The entire first two segments of Applicant's proposed discharge route are located on private property. Applicant is required to acquire property rights as may be necessary along the discharge route and has made no effort to obtain and will never be granted property rights to use this discharge route.

The proposed permit states that:

“the issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary along the discharge route.”

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Moreover, TCEQ's granting of the proposed permit authorizes a continuing trespass over private property. Granting such a permit and authorizing such a trespass is tantamount to an unconstitutional taking of private property under the Texas constitution. Because Applicant can never obtain the required property rights to use the current proposed discharge route, and the discharge will result in a trespass and unconstitutional taking of private property, Applicant's current application should be denied. Applicant should be required to seek a discharge route which does not trespass on private property.

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Applicant has no previous experience or track record whatsoever in connection with operating and maintaining a sewer treatment plant. Therefore, self-reporting of water quality levels, and other information intended to ensure compliance with the Texas Water Quality Act should not be allowed. The permit should be denied until sufficient safeguards are included in the permit, including weekly testing by a TCEQ representative; immediate, automatic system shut down and prevention of all effluent discharge in the event of any equipment failure; alarm trigger in event of equipment failure; and computer and/or satellite monitoring and reporting of

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water quality testing, equipment malfunction, etc. immediately to TCEQ; and a licensed chief operator on site twenty-four hours a day, seven days a week.

For all of the foregoing reasons, the Applicant's proposed permit should be denied. I hereby request a formal public meeting regarding the permit, and I reserve the right to request a contested case hearing in this matter should the TCEQ fail to deny Applicant's proposed permit.

Sincerely,

A handwritten signature in cursive script that reads "Nancy F. Carnahan".

Nancy F. Carnahan
1190 N. Carroll Avenue
Southlake, Texas 76092
(214) 707-2856

MWD
521149

February 10, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 13 PM 2:27

CHIEF CLERKS OFFICE

To: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Glenn Shankle, Executive Director
LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 1308
Austin, Texas 78711-3087

OPA

H FEB 14 2008

BY *DL*

My name is Althea Forbis. My address is P.O. Box 534, Decatur, Texas 76234; my daytime telephone number is 940-627-5319. I, along with my four children, own the lake which your commission plans to permit Wise Service Company – Water to dump sewage into. Since my children and I are legal owners or “affected persons” and we do heartily disagree with the executive director’s decision to allow the permit, I believe we are entitled to request a contested case hearing.

I request a contested case hearing in objection to TCEQ’s decision to approve a permit to Wise Service Company – Water TPDES Permit No. WQ0014708001.

It is difficult to understand how a supposedly pro-environmental agency can in good conscience condone the pollution of a conservation lake to any degree. Your claim that the resulting effluvium will be dissipated by some kind of wall or silt fence is not very comforting. Neither is your assurance that the company in question will not begin any “earth disturbing activities” that your agency cannot handle after any such trouble occurs. This is all numerically and scientifically calculated by your in-house experts apparently. Well, suppose things do not turn out exactly as you planned; suppose as rumor has it, that something always goes wrong with such wastewater sewer treatment plants. There is no turning back. The lake will have had wastewater pumped into it and from then on, it is forever polluted. My grandchildren, the Cub Scout troop, none of us will swim or play in the lake again.

I have carefully read your responses to the comments you have collected from my family, friends and neighbors and I realize that you have been able to approach your decision from a careful distance so that for you there is no feeling for the land or the water involved. That is not the case for us; I do not wish to sound maudlin but, certainly, sentiment plays a part in this situation. I am upset when I read of Jerry Patersons’ wish to sell the Christmas Mountains to private owners or of Japan’s excessive slaughtering of whales and other abuses of world’s resources. I am also upset to know that the letterhead on your stationary doesn’t really mean that your agency is concerned with preserving environmental quality of Texas land and water resources but that you are more concerned with promoting big business. Contamination of a beautiful little lake and land that is used for pasture and recreation ought to cause your agency a bit of distress.

DL

You state that your only business with awarding of the permit in question is seeing that the applicant abides by TCEQ rules but you seem to have no concern with the fact that the lake was built as a flood control and recreational facility. These facts are apparently completely out of your sphere of interest. I do not understand why, as noted in your response 20, TCEQ does not require the Applicant to get authorization to discharge effluent to a flood control lake but it does to a district drainage ditch. That doesn't make any sense.

One would also assume that environmental quality would include such issues as to how the local water table would be impacted by construction of such a wastewater facility but as noted in response 19, your agency "cannot address" such concerns. It ought to. Your agency also ought to be able to address the issue of local water wells located too close for comfort to the wastewater facility as mentioned in comment 14.

As to odor control as referred to in response 13, one of the three options listed cannot be met by the applicant without obtaining extra easement needed for a satisfactory buffer zone from "adjacent property owners" and why would those property owners be put in such a position? And a 150-foot distance from the proposed facility may meet TCEQ requirements for odor control but it is probably not a realistic distance for most noses. Also, any noise at all from such a facility will be an imposition on the area. The peace and tranquility is a most important issue with country folk and your response overlooked that item entirely.

As to response 12, it is good to note that TCEQ does not authorize the Applicant to "discharge onto another's property without permission".

TCEQ has not shown much concern to the fact that the lake in question is a stagnant body of water in that there is no outlet. Any effluent pumped into the lake stays in the lake. Once contaminated, it is contaminated forever.

My children, grandchildren, neighbors and I are still of the opinion that it is a bad idea to pump any amount of sewage into our lake. It is the natural habitat for flocks of ducks and geese; beaver, deer and wild turkeys abound. It is stocked with fish and provides water for our cattle. It is peaceful, clean, quiet and beautiful. It has not always been so. It had been abused by cotton farming for many years and was gutted by ravines and gullies and much erosion. My late husband James Forbis and I began reclaiming the land some forty years ago, planting native grasses and building brush dams against erosion. The soil conservation folks interested us in the exciting idea of a conservation dam; however, it would be many years before the dam was built and unfortunately my husband did not live to see this dream come to fruition. So you can see how important it is for me to preserve this lake in all its pristine beauty, to always keep it fresh and clean.

Respectfully submitted,

Althea Forbis
Althea Forbis, Owner

P.O.Box 534 Decatur, Texas 76234

My family and I, as well as our neighbors and friends, are sure that the lake will suffer adversely by having wastewater pumped into it by the newly-formed subsidiary of Wise Electric Co-op called Brighton Water Systems. It has been said that the proposed type of system will be safe and provide clean wastewater that will not harm wildlife, but that has not been proven. Any kind of treated water may not be safe for waterfowl and fish; for example, I understand that fish may not lay their eggs in treated water. Our natural environment is not meant to be treated with chemicals when there is wildlife involved. There is no way to prove that such wastewater can be kept perfectly clean and safe for fish, beaver and wildfowl and for that reason it is clear that the permit applied for should not be granted.

I understand that Wise Electric Co-op's board is now saying that it did not know that there was a lake involved when it proposed its present plan to discharge wastewater; supposedly, the board believed there were only creeks with running water involved. As it is, wastewater pumped into the lake stays in the lake. It is stagnant water—there is no movement. What is pumped into it will stay in it. Furthermore, I have heard that this type of sewer project always has problems, that something always goes wrong. To my mind, it is not worth taking a chance on such unknown and uncertain results.

In addition, it is wrong for any company to have the right to pollute private property. It would be a travesty of justice to allow a sewage company to damage this natural habitat and quiet country lake. I believe it is the responsibility of my children and myself as owners and careful stewards of this property to see that no chances with any proposed wastewater procedures are taken. We want no wastewater facility to trespass on our property or lake.

Hopefully, the TCEQ will refuse to grant permit NO. WQ0014708001.

Respectfully submitted,



Althea Forbis, Owner
P.O. Box 534
Decatur, Texas 76234

Telephone-940-627-5319

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TCEQ REGIONAL OFFICE

APR 3 11:55

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

PLEASE PRINT:

Name: ARTHEA FORBIS
Address: BOX 534
City/State: DECATUR, TX. Zip: 76234
Phone: (940) 627-5319

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Althea Forbis
Box 534
Decatur, Texas 76234

OPA RECEIVED

April 3, 2007

APR 03 2007

AT PUBLIC MEETING

Via Hand Delivery
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: Comments in Opposition to Proposed Permit No. WQ0014708001 and
At Public Meeting Regarding Proposed Permit No. WQ0014708001
Applicant, Wise Service Company-Water**

To Whom It May Concern:

I am writing to protest the proposed permit being applied for Wise Service Company-Water which would authorize the discharge of wastewater into the conservation lake on my farm.

How can company in good conscience plan to pump polluted water into a conservation lake on someone else's property? And how can TCEQ whose avowed job is "Protecting Texas by Reducing and Preventing Pollution" as your letterhead stipulates even consider such a proposal.

My late husband and I bought our farm in 1972. The land was worn out from cotton farming. We spent many years putting brush dams in gullies, mending wash-outs with hay bails and loads of leaves and grass clippings in an effort to reclaim the land. We sprigged some pastures with Bermuda grass and were excited to learn of the possibility of a conservation dam which we knew would be wonderful to have to prevent further erosion. My husband did not live to see the opening of the lake in 1999. He would have loved this lake and would certainly have been up in arms at hearing of any proposed contamination of it. We intended to be good stewards of our land and water, always.

My four children and I enjoy an undivided interest in the land now. It is a beautiful place, much enhanced by the lake. It is the habitat of flocks of ducks and geese; beaver, deer and wild turkeys abound. It is stocked with fish and it provides for water for our small herd of cattle. Surrounding the lake are wooded areas, and wild plum and blackberry thickets as well as many pecan trees. Sometimes in spring, whole pastures are covered with daisies, sometimes lots of gallardia, paintbrush, and pinks. My children, grandchildren and their families enjoy fishing and boating as well as camping,

MW

Letter to TCEQ
April 3, 2007
Page 2 of 2

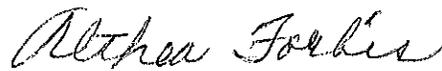
hiking, and picnicking there. If they jumped in the lake it is alright. How would they do this knowing there are nasty effluents in it?

The environmental concerns involved in this proposed pumping of wastewater into this lake are frightening to say the least, especially since this company has no past experience in this area. One person who has worked for a wastewater facility of this type has told me that something always goes wrong; that effluents become contaminated making a terrible problem not easy to fix. Even if the treatment plant only has an occasional problem, will they simply tell the 200 residents of this proposed development that they cannot flush the john or take a shower for a week? I doubt it. And I would doubt the facility has the capacity to store days worth of sewer water from the development, so it seems likely to me that at some point, and perhaps even quite often, effluent which does not meet TCEQ's standards will be dumped into the lake during these times, since there simply nowhere else for it to go. In addition, such pumping systems are said to be very noisy, and thus, spoil the peace and tranquility of the whole neighborhood.

At this time, our lake is quiet, clean of contaminants, and beautiful. Dumping pollutants into the water is simply wrong. We cannot condone having a wastewater facility managing our lake or trespassing on our property in any way at any time.

Certainly, TCEQ should refuse to grant Permit No. WQ0014708001.

Respectfully submitted,



Althea Forbis

ACF/nc

When the dam was constructed creating the lake, water backed into the "tributary" making it a part of the lake. Therefore, chemicals from cleaning products, human waste, and other pollutants would be released directly into the conservation lake after treatment. Any pollutants would remain essentially stagnant in the lake. This is not a moving body of water; therefore, concentrations of pollutants would continue to increase, causing danger to wildlife and livestock from this polluted water.

Over the past five years, my family has participated in a \$40,000 grant with the Wise Soil and Water Conservation District. This project helped us fight erosion and replant grass. One of the justifications for the grant's approval was that our land would provide a habitat for wildlife. Deer, wild turkey, and other species live on our farm and drink from this lake.

The Lyndon B. Johnson National Grasslands are located directly north of the proposed sewer site. Construction and completion of the sewer plant would prevent wildlife from the Grasslands from reaching our land as well as their conservation lake sanctuary which could be polluted. The Grasslands attract thousands of Texans who use the area for outdoor recreation. I believe that we have an obligation to preserve this environment so that future generations can learn to appreciate wildlife in their natural habitat.

I strongly encourage you to examine the feasibility of this project, which places a sewer treatment plant 3.75 miles from the small city of Decatur. This treatment plant would service a housing development, which would be built on terrain that is so rough that much of the north side can only be reached on horseback. The proposal would have a tremendous impact on wildlife by affecting their habitat on the Grasslands, our farm, and the conservation lake. The terrain of the proposed development site guarantees that the existing farms and homes in the area will be smothered in unwanted dust, noise, and odor pollution far into the foreseeable future. Other developers in the area have simply provided septic tanks for houses. It appears that this developer wants a sewer plant in order to subdivide his acreage into smaller lots. I certainly do not believe that the developer's desire to sell more lots warrants the damage that this project will do to our land, water, and the environment.

Landowners in the area are unanimously opposed to the project. I would also like to request a public meeting about this matter. Please place me on your permanent mailing list for Wise County. I sincerely appreciate your consideration of my comments. You may telephone me at 903-984-0464 (home) or 903-240-0823 (cell) or by e-mail at cathyfothergill@cablelynx.com.

Respectfully yours,



Cathy Russell Fothergill

Long, Woodruff,
Forbis, Camahan
Land

Conservation Lake

Proposed Sewage Plant

Southern Boundary
of LBJ National
Grasslands

*I have tried to
show with dotted
lines that the lake
water backs up
beyond the sewer
treatment site.*

Rob and
Stephanie
Fothergill
Home

Ed and
Ann
Jolley
Home

Catherine Russell Home

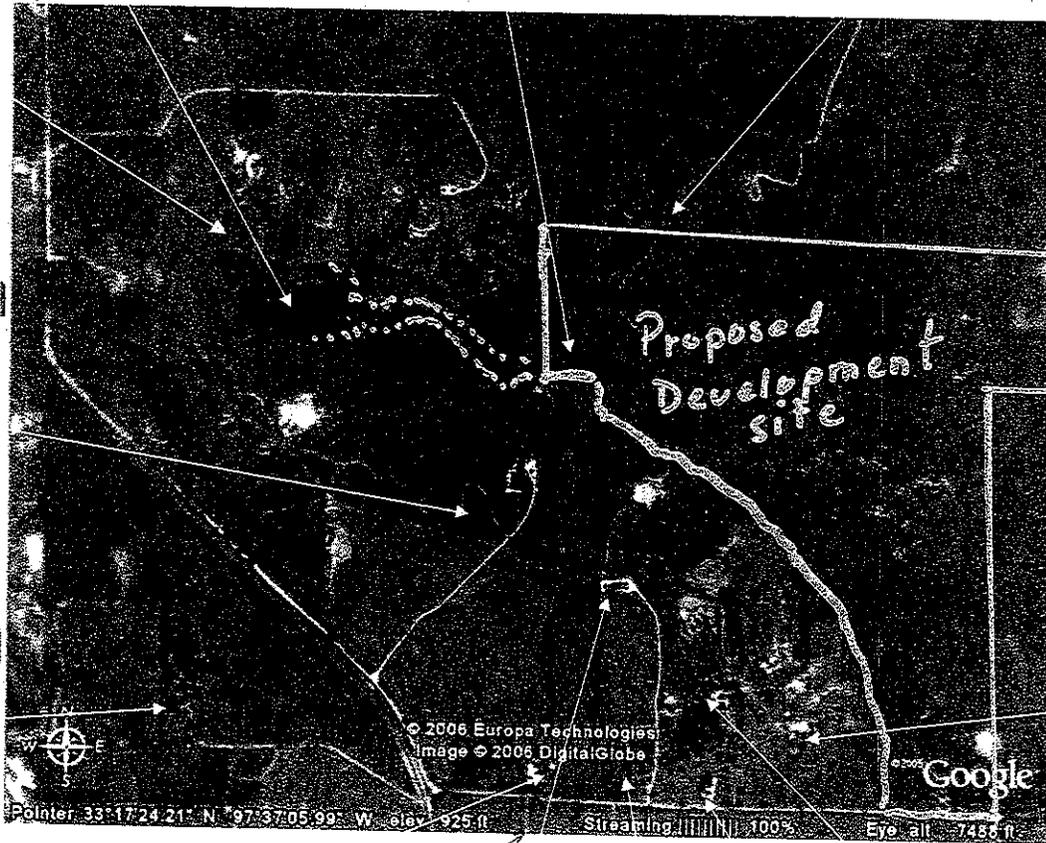
Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Gordon
and
Roxie
Ploeger
Home



Meridian Hwy (Old Deerbar Rd.)

Approximately 1,000 yards

COMMENT 1: When the dam was constructed creating the lake, water backed into the "tributary" to the point where the effluent will be released. It is only about 200 yards from the entrance to the lake. The portion of the tributary bordering our property on the north has essentially become part of the lake with waist deep standing water even when the lake is far below overflow levels. Therefore chemicals from cleaning products, human waste particulates, and other pollutants are certain to accumulate in what is essentially a stagnant lake. Water flows only when it reaches overflow levels. We challenge the notion that the water would remain safe for wildlife and livestock. We contend that the antidegradation review results cited by the applicant are both unreliable and invalid because they are based on data that is false.

DIRECTOR'S RESPONSE 2: The decision states: "Based on information provided by individuals at the public meeting held on April 3, 2007, the Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site #35 By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts."

COMMENT 2: Failure to name the reservoir was only one of numerous misrepresentations, omissions, and errors pointed out in the application by affected landowners. Yet, the decision only addresses this particular one in this response. In light of the many errors and misrepresentations apparently excused by the TCEQ in making a decision, we ask what kind of misrepresentation it would take to have a permit suspended or revoked.

DIRECTOR'S RESPONSE 4: "Applicant must identify affected landowners on either side of the receiving stream for approximately one mile downstream. The Applicant submitted correspondence dated July 13, 2007, which provided a revision to the landowner list and map that was previously submitted in the application...Based on the map, tracts 1-6 are owned by Larry Cole, ...tract 8 is owned by C. A. Russell, tract 9 is owned by James Forbis...tract 13 is owned by J. K. Miller and Gary S. Helton....tract 15 is owned by James Forbis. The TCEQ mails notice of the application to the listed landowners and others...."

COMMENT 4: The first application failed to identify adjoining property owners, Thomas Long, Nancy Carnahan, Jana Woodruff, and Shawn White, whose land would be impacted by the project. The revised landowner list is also incorrect. A search of the county records on January 30, 2008, still fails to reveal that Larry Cole owns any of the land in question. C. A. Russell is Cathy Fothergill's grandfather. He died on March 16, 1978, having already given ownership of the land to his son, H. C. Russell, in 1975. It would be impossible for him or James Forbis, who is also deceased, to receive notices from TCEQ. Another error appears here in that the 267 acres of land to be developed

appear on Wise County tax records belonging to J. K. Miller and Gary Shelton not Gary S. Helton. Does TCEQ only make decisions based on information provided by the Applicant, thereby ignoring comments made by landowners? This Applicant is clearly either careless or intentionally misrepresents pertinent facts. The notice requirements for this application were never properly met. The landowners list provided by the Applicant is still invalid.

DIRECTOR'S RESPONSE 5: Another reference is made to the requirement of true, accurate, and complete information from the Applicant, and to the fact that TCEQ may modify, revoke, or suspend permits based on misrepresentation or failure to disclose fully all relevant facts. The discharge route is reviewed.

COMMENT 5: This response was the reply to comments by Nancy Carnahan and Cathy Fothergill that the Applicant incorrectly classified the discharge route as a dry river that has no flow present. Both Ms. Carnahan and Ms. Fothergill commented that the Applicant falsely classified the discharge route as intermittent and that the discharge route will not reach the Trinity River as represented in the Application. Neither of these errors was addressed by the director's response. As previously stated, the tributary bordering our property which became part of the lake has never been dry since the dam was built in 1999. No response was made to comments that the Applicant stated that he observed no uses of water body when in fact the lake provides water for livestock and wildlife. Further, the Applicant listed the average stream width as 10 feet, when in truth it is much wider, probably at least 30 plus feet. The Applicant also listed the average stream depth as .5 feet (6 inches). It is at least 8 feet deep, and has been at least waist high at all times since the dam was built in 1999. Additionally, the Applicant stated that the receiving water would reach the West Fork Trinity River within three miles downstream of the discharge point. The West Fork of the Trinity River is at least 20 miles from the discharge point. The Applicant also checked Stream in the definition of the receiving waters, when in fact he should have checked "lake or pond."

Again, the question is posed: What level of untruth or inaccuracy would cause TCEQ to deny an application?

DIRECTOR'S RESPONSE 6: "The effluent limits set out in the draft permit for the protection of dissolved oxygen levels in the reservoir were developed with the aid of a numerical model. ... From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream;....In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is assigned an aquatic life use of 'no significant', but protection is still afforded to these streams.

COMMENT 6: The numerical model used by TCEQ was based on false and misleading information provided by the Applicant. Therefore, the numerical model cannot be reliable. The "stream" is neither dry nor intermittent; nor is it a stream. It is part of the lake.

DIRECTOR'S RESPONSE 7: "Texas Water Code § 26.027 authorizes TCEQ to issue permits for wastewater discharges into water in the state, provided the discharger does not violate applicable rules or regulations."

COMMENT 7: Dr. Thomas Long stated that existing easements only allow the Wise County WCID to control the level of water impounded by the lake and dam. He feels that the easements prevent the proposed activities. Cathy's parents, H. C. and Catherine Russell, entered into this agreement giving the right to control the level of water impounded into Big Sandy Watershed #35 to Wise County Water Control and Improvement District #1 and Wise Soil and Water Conservation District, on July 31, 1994. We believe that this easement prevents the Applicant from dumping sewage into the above described water.

DIRECTOR'S RESPONSE 8: "The Applicant provided the following coordinates for the outfall: Latitude-33 degrees, 17 minutes, 08 seconds; Longitude-97 degrees, 36 minutes, 19 seconds. Another reference is made to true, accurate, and complete information being required in the application.

COMMENT 8: Latitude: 33 degrees, 17 minutes, 08 seconds; Longitude: 97 degrees, 36 minutes, 19 seconds is located on property which adjoins the Applicant's and/or developer's land. Dr. and Mrs. Long pointed this out in the public meeting, and it can be verified in Google Earth or by competent engineers. It would seem that an Applicant who cannot correctly locate his own sewer plant is again in a poor position to operate one that requires strict adherence to guidelines. We are attaching a map which correctly shows the location of these coordinates. We are also attaching copies of the maps submitted by the Applicant with notations showing locations.

DIRECTOR'S RESPONSE 10: "The Executive Director's staff contacted the library and the address listed in the notices was confirmed."

COMMENT 10: The address of Brighton Water Systems on the title page of the application is listed as 1700 FM 51, Decatur, TX 76234. We realize that that is the correct address of the John A. and Katherine G. Jackson Public Library. However, it is not the correct address of Brighton Water Systems (otherwise known as Wise Service Company - Water). In addition, this is the same title page that contains the misspelled word "Appliation" rather than Application. We point this out to reiterate the fact that an Applicant who uses a preparer (WASTELINE ENGINEERING INC) who lists an incorrect address and misspells the word "Application" probably cannot manage a sewer plant properly.

DIRECTOR'S RESPONSE 13: "The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement..... The proposed facility meets the buffer zone requirement by ownership of a 150-foot distance from the proposed wastewater treatment facility to the Applicant's property line."

COMMENT 13: We have two concerns about this statement. One is that the owner of the land where the treatment plant "is/will be" is listed as Larry Cole (purchase is in

negotiation) on the application. Wise Electric Coop indicated in October, 2006, that J. K. Miller is the owner of the land. Wise County tax rolls in January, 2008, list J. K. Miller and Gary Shelton as the land owners. Immediately under the owner name on the application the following statement appears: *"If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases a lease may not suffice—see instructions."* The Applicant in this case is noted to be Brighton Water Systems now known to the TCEQ as Wise Service Company – Water. All references in the application are to Applicant's land. We do not believe that either the applicant or Larry Cole own any of this land.

Furthermore, as previously stated, the coordinates supplied on the application locate the sewer plant on property owned by Jackie Boyd or Jed Boyd. It is impossible to determine from the application either who owns the land or where the sewer plant is to be located.

Our second concern is that the buffer zone does not appear in the map to meet the 150 foot zone described by the Applicant. The sewer plant appears to be located on our property line.

DIRECTOR'S RESPONSE 14: "TCEQ rules require that a wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. Based on information from the Applicant, these requirements are met."

COMMENT 14: We do not believe that the Applicant has ever made any effort to locate water wells on our farm.

DIRECTOR'S RESPONSE 16: "Additional information was received in a revised permit application dated June 19, 2006, where the Applicant indicates that since the original filing of the application, secured ownership of the property had been obtained."

COMMENT 16: Wise County records have never indicated that Wise Service Company – Water and/or Brighton Water Systems have ever held any title to the land in question.

DIRECTOR'S RESPONSE 18: "TCEQ staff that participated in the public meeting visited the site, including the reservoir. However due to conditions of the land, an inspection of the entire site could not be conducted at that time."

COMMENT 18: Since TCEQ staff could not inspect the entire site, it would appear that comments made by landowners regarding the tributary and lake would have at least been considered. TCEQ staff has no way of knowing that false information was provided about the site.

The ability to complain about the facility after it has been built and is operating is not a viable alternative to having TCEQ staff make a complete visual inspection of the area before granting the application. An inspection by TCEQ still needs to be conducted.

The Decision of the Executive Director states that no changes to the draft permit have been made in response to public comment. It would appear that the Applicant should have made changes to reflect errors pointed out by several landowners who spoke at the public hearing.

The Decision states at least five times that errors or misrepresentations in an application may cause the application to be rejected. This application is filled with false statements. It should have been rejected.

For these reasons, we as affected landowners are asking for a contested case hearing so that our comments may be heard.

Respectfully submitted,

Cathy Russell Fothergill
Richard Russell Fothergill

Dr. Richard and Cathy Russell Fothergill
2802 Crestwood Lane
Kilgore, TX 75662
Home phone: 903-984-0464
Cell phones: 903-240-0823 or 903-240-0832

Addendum

In an effort to reinforce the comment made to "Director's Response Number Six", I am submitting the following examples to clarify what I feel is probably a key oversight in the TCEQ's TPDES Permit No. WQ0014708001.

"The effluent limits set out in the draft permit for the protection of dissolved oxygen level in the reservoir were developed with the aid of a numerical model. . . From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream; In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is assigned an aquatic life use of "no significant", but protection is still afforded to these streams."

The applicant's request was supported with photographs of conditions that existed in years prior to the construction of the Big Sandy Conservation Lake # 35. Since construction of that lake the water has backed into the tributaries in a manner that has essentially turned them into an extended portion of the Lake.

We are enclosing a copy of the two photographs (poor quality, B & W copies) that were submitted as part of their application showing a dry creek bed (which could no longer be relevant today).

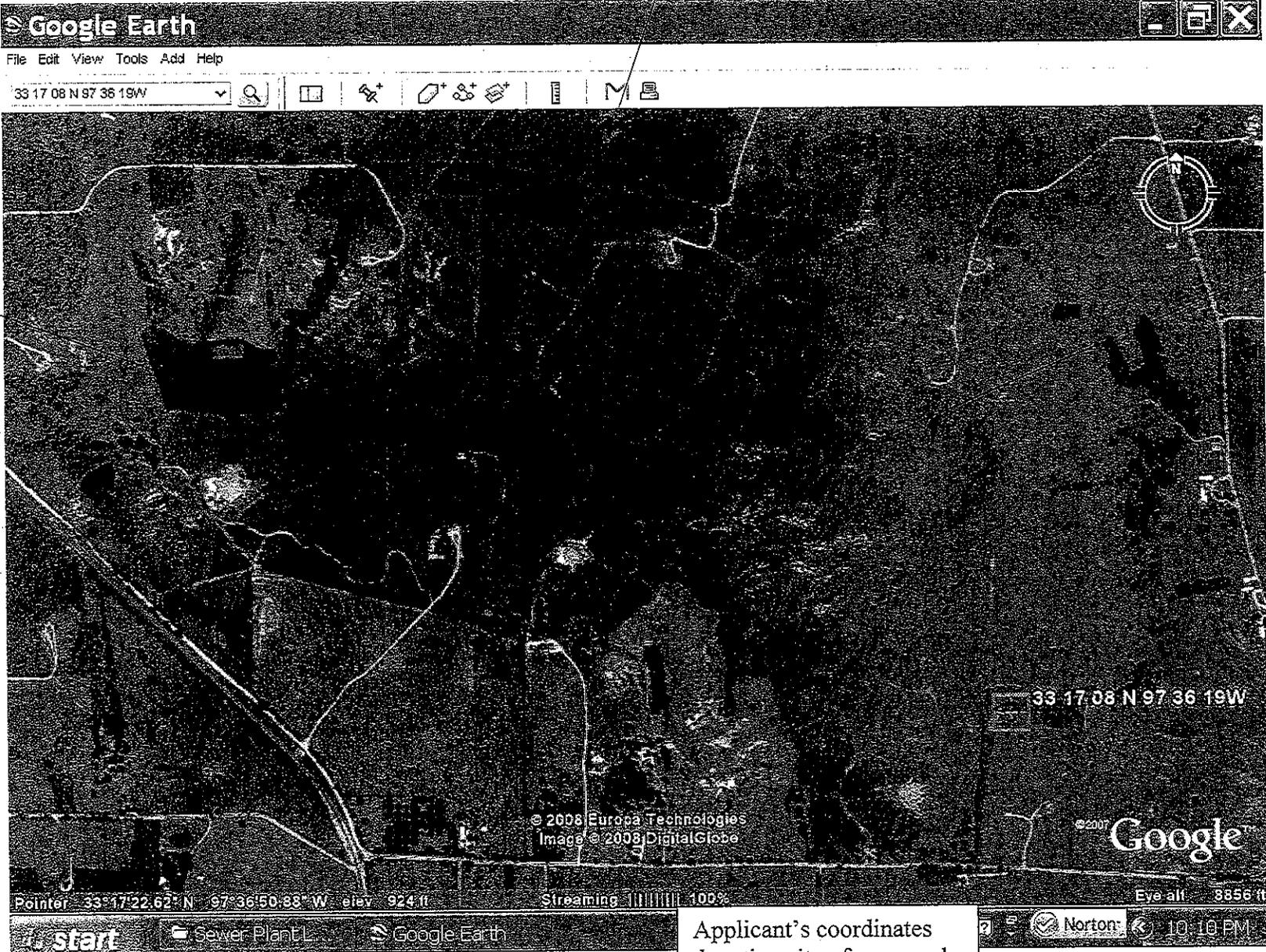
Also enclosed is a copy of the elevation drawing which designates the applicant's property and marks their proposed discharge point for a sewage treatment facility, (though "coordinates" that they listed could certainly be in error, since theirs would place the facility outside their own property, three-quarter's of a mile to the east!)

Also enclosed are 4 photographs (taken February 9, 2008) from locations designated on their elevation map which show the discharge site and the conditions that currently exist. As the colored photographs show the tributary into which the proposed plant would be releasing its effluent is **not an intermittent flowing stream!** These photographs were taken following several months of below average rainfall. **Not once since the construction of the lake has this creek bed been dry.** Even when the Lake was at its lowest point since its construction, the creek has never been below waist deep at the point of the proposed site. The only time that the creek has "flowed" was during the period of above average rainfall which caused the lake to reach overflow levels, so some water was released.

Effluent released at their proposed site would accumulate both upstream and downstream in the lake water so the numerical models cited by TCEQ are probably meaningless. Even minimum levels of contaminants are certain to accumulate using standards that apply to a "flowing" or "intermittent stream".

The visiting staff members admitted that they did not visit the discharge site, and it is inconceivable that they could make this decision without seeing it.

Designated sewage treatment site on Applicant's diagram



Big Sandy Creek Water Shed Project Site #35

Lake water remains backed up to this point

Applicant's coordinates denoting site of proposed sewage treatment plant



Applicant's Photo

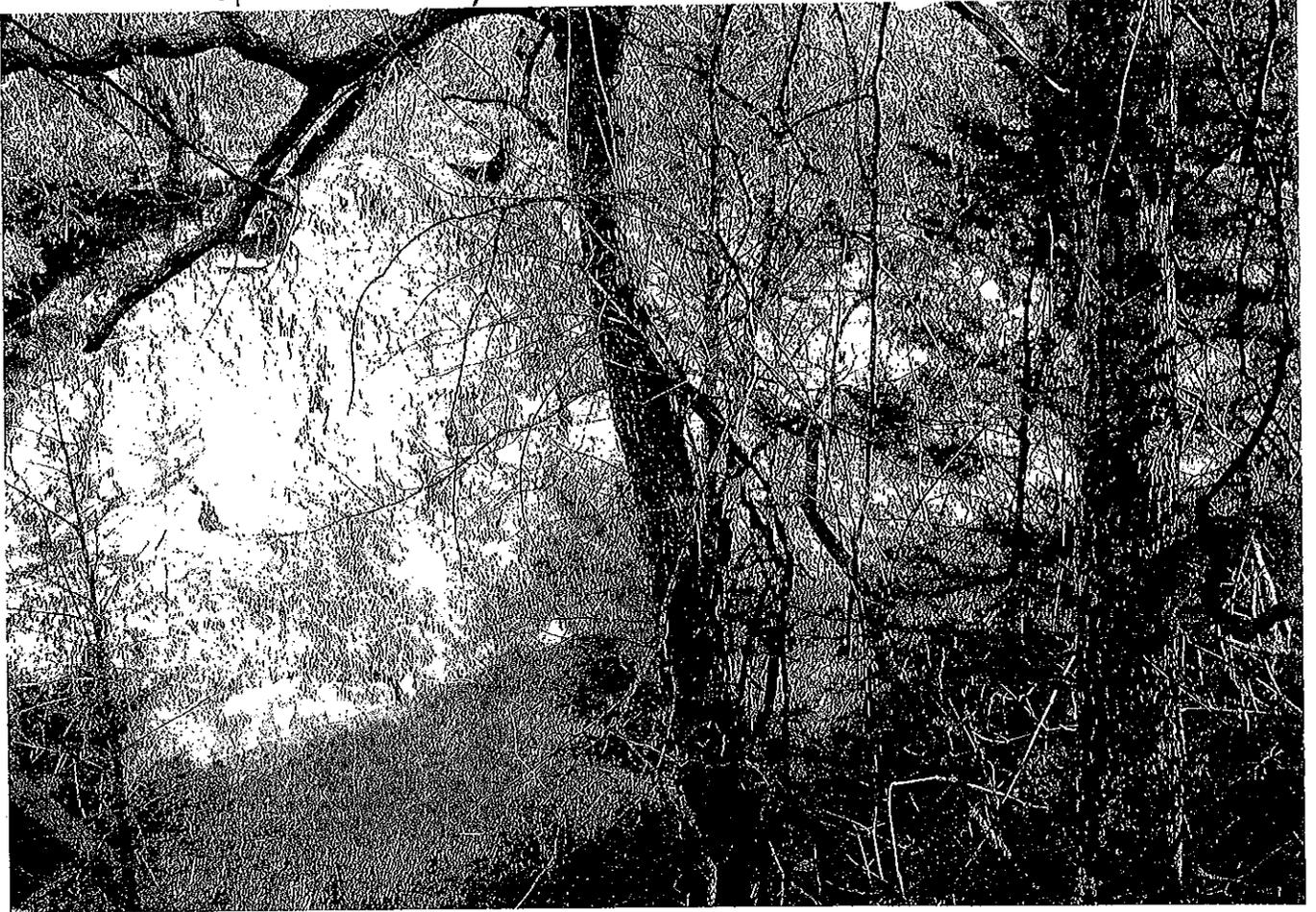


Applicants Photo

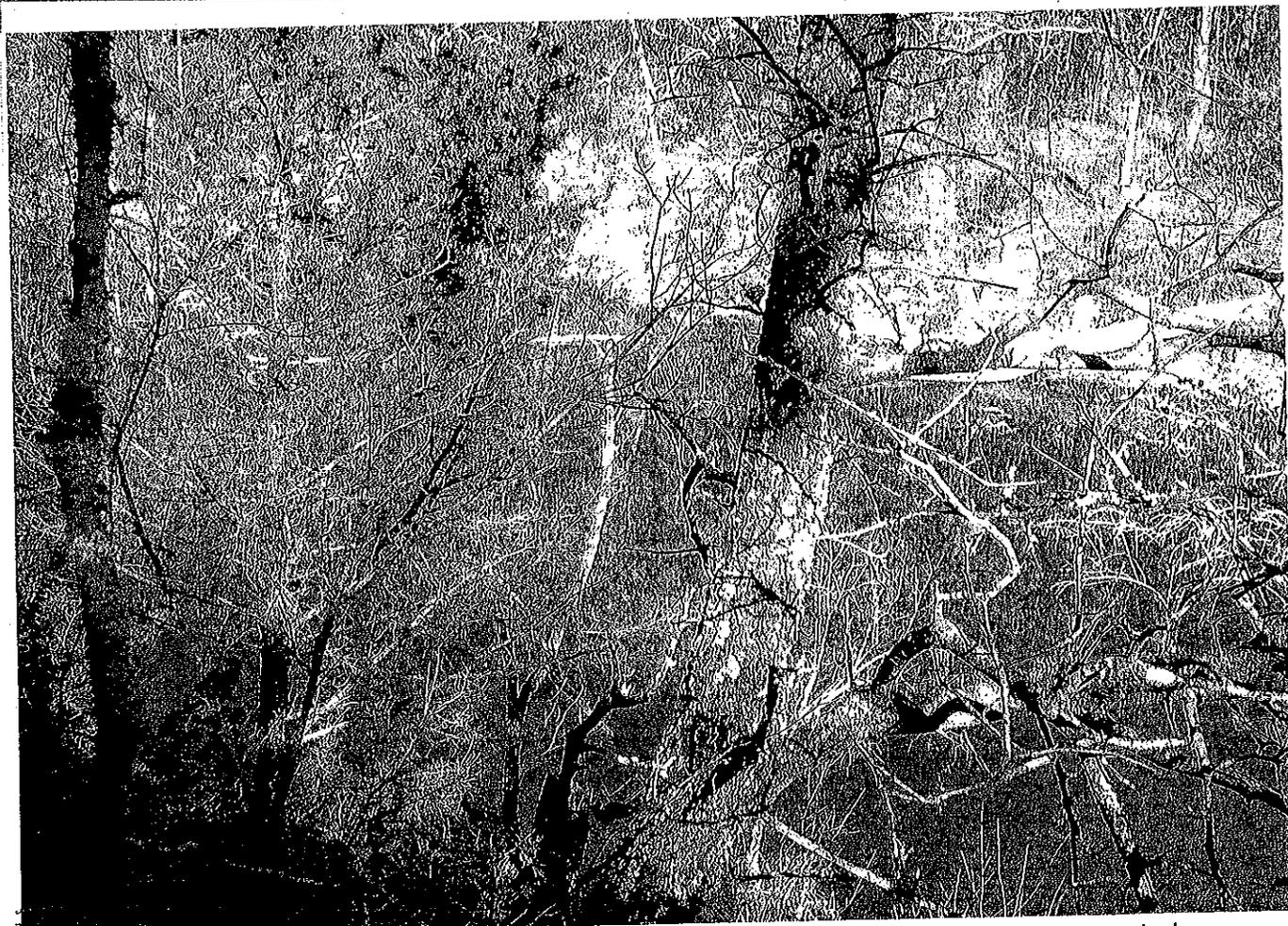
2

Proposed di: 'arge site

Ph. 1, 2 | water depth @ 6'



Looking upstream toward Prot. discharge site. Photos taken from ^{Wethergill-}isell property



#2

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

PLEASE PRINT:

Name: Cathy Fothergill

Address: 2802 Crestwood

City/State: Kilgore TX Zip: 75662

Phone: 903 984-0464

CHIEF CLEANUP OFFICE

2007 APR -4 PM 1:53

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

mw

OPA RECEIVED

APR 03 2007

AT PUBLIC MEETING

PERMITS OFFICE
APR 11 11:53 AM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ADDITIONAL WRITTEN COMMENTS OPPOSING PROPOSED PERMIT NO. WQ0014708001 FOR TCEQ PUBLIC MEETING CONSIDERING AN APPLICATION FOR WATER QUALITY TPDES NEW April 3, 2007, Decatur, Texas

On April 2, 2007, I, Cathy Fothergill, owner of the land immediately west and south of the proposed sewer plant location, was informed that the application that I had reviewed last fall in the Decatur Public Library had been changed. I have been unable to determine when the changes were substituted, but I do have a written statement from the library's technical service specialist that this application is the only copy available in the library at this time.

I immediately noticed that the word "APPLICATION" is misspelled on the title page. Additionally, on the title page it appears that Brighton Water Systems may share the location of the Decatur Public Library in the address shown there. May I point out once again that an applicant who pays limited attention to detail is a poor prospect to build and/or operate a project that has so much potential to cause harm to the environment.

I am further confused that the applicant uses the name "Wise Services Company—Water" on written notices to me, but on the application in the Decatur Public Library the applicant is listed as "Brighton Water Systems." The title page says "April, 2006", but the Domestic Administrative Report, TCEQ-10053 (Revised 10/05). I wonder which date this was actually composed. The addresses for Brighton Water Systems on the title page and on Page 2 of 12 are different, with the second address being the address of Wise Electric Cooperative. It is impossible to determine which company is the applicant.

Another concern of mine is that the owner of the land where the treatment plant "is/will be" is listed as Larry Cole (purchase is in negotiation) on the application. Wise Electric Cooperative indicated last October that J. K. Miller is the owner of the land. I checked Wise County tax rolls today and found J. K. Miller and Gary Shelton listed as the owners. Immediately under the owner name the following statement appears in the application: *"If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases a lease may not suffice—see instructions."* I would think that the applicant needs to inform TCEQ and other interested landowners exactly who owns the land.

On Page 11 of 12 the applicant has indicated with a check mark the affected landowner information. Noticeably absent later in the application are at least five adjacent landowners (four owners of the property containing the lake and Dr. Shawn White). There is no check mark beside the statement describing the point of discharge as a lake, when in truth the effluent will be discharged into the lake, the unnamed tributary and the unnamed reservoir (which is never mentioned in this application although it is mentioned in the second and third public notices) being essentially one body of water—the lake. The cross-referenced landowners map (ESRI ArcExplorer 2.0) and incomplete list of

mw

landowners is extremely difficult to decipher, and I believe it to be erroneous. (I am attaching a map showing correct landowner information.)

The most flagrant errors in the application are found on the Domestic Worksheet 2.0 – Receiving Waters. These errors are as follows:

#4. a. *Check the appropriate description of the receiving waters* (the applicant checked Stream, when in fact he should have checked “lake or pond”).

#4. b. *Check one of the following that best characterizes the area upstream of the discharge. For new discharges, characterize the area downstream of the discharge (check one).*

Applicant checked “Intermittent (dry for at least one week during most years)

This tributary which became a part of the lake when it was dammed in 1999 has never been dry since the dam was built in 1999 creating the lake.

#4. c. *List the name(s) of all perennial streams that join the receiving water within three miles downstream of the discharge point.* The applicant listed the “West Fork Trinity River”. The West Fork of the Trinity River must be some 20 miles from the discharge point.

#4. d. *Do the receiving water characteristics change within three miles downstream of the discharge (e. g., natural or man-made dams, ponds, reservoirs, etc.)?* Applicant checked “No”. Since 1999 Big Sandy Creek Water Shed #35 has existed immediately west of the discharge point. I do not believe that anyone making a personal observation would fail to notice this 16-acre lake and dam in the discharge path.

#4. e. *Provide general observations of the water body during normal dry weather conditions.* The applicant answered “Dry, no flow-present”. Again, since 1999, this area has not been dry. The applicant states that it was dry, no flow-present on March 9, 2006 1000 hrs.

This tributary which became a part of the lake when it was dammed in 1999 has never been dry since the dam was built in 1999 creating the lake.

#5. b. *Uses of water body, observed or evidences of (check as appropriate).* The applicant says “None observed”. I believe that the owners of the land surrounding the lake use it for many of the possibilities including livestock watering, fishing, and recreation.

In the *summary of measurements* (Instructions, Page 35), the following errors are apparent:

Average stream width is incorrect: 10 feet is listed, but it is much wider, possibly 30 feet.

Average stream depth in feet listed as .5 feet (6 inches) is incorrect. Currently it is possibly 6 feet deep, but it has been at least waist high since the dam was built in 1999.

My last observation about the application is that wind speed and direction are listed on the final page. The applicant has contended that no odor will be present. If this is so, why does he include this chart?

Thank you once again for considering my comments. I may be reached by cell phone 903-240-0823 or at my mother's home 940-627-2465 or my son and daughter-in-law's home 940-627-5777.

Respectfully submitted,

Cathy Fothergill

Cathy Russell Fothergill

April 3, 2007

APPLICATION for a PERMIT

to

DISCHARGE, DEPOSIT or DISPOSE of WASTE

Applicant:

BRIGHTON WATER SYSTEMS

1700 FM 51

DECATUR, TEXAS 76234

Prepared by:

WASTELINE ENGINEERING, INC.

P.O. BOX 421

ALEDO, TEXAS 76008

APRIL 2006

April 2, 2007
Librarian says
this is the only
copy of ^{the} application
available in the
Decatur Public
Library.

4/2/07 Suzzie Hubble
Technical Services Specialist

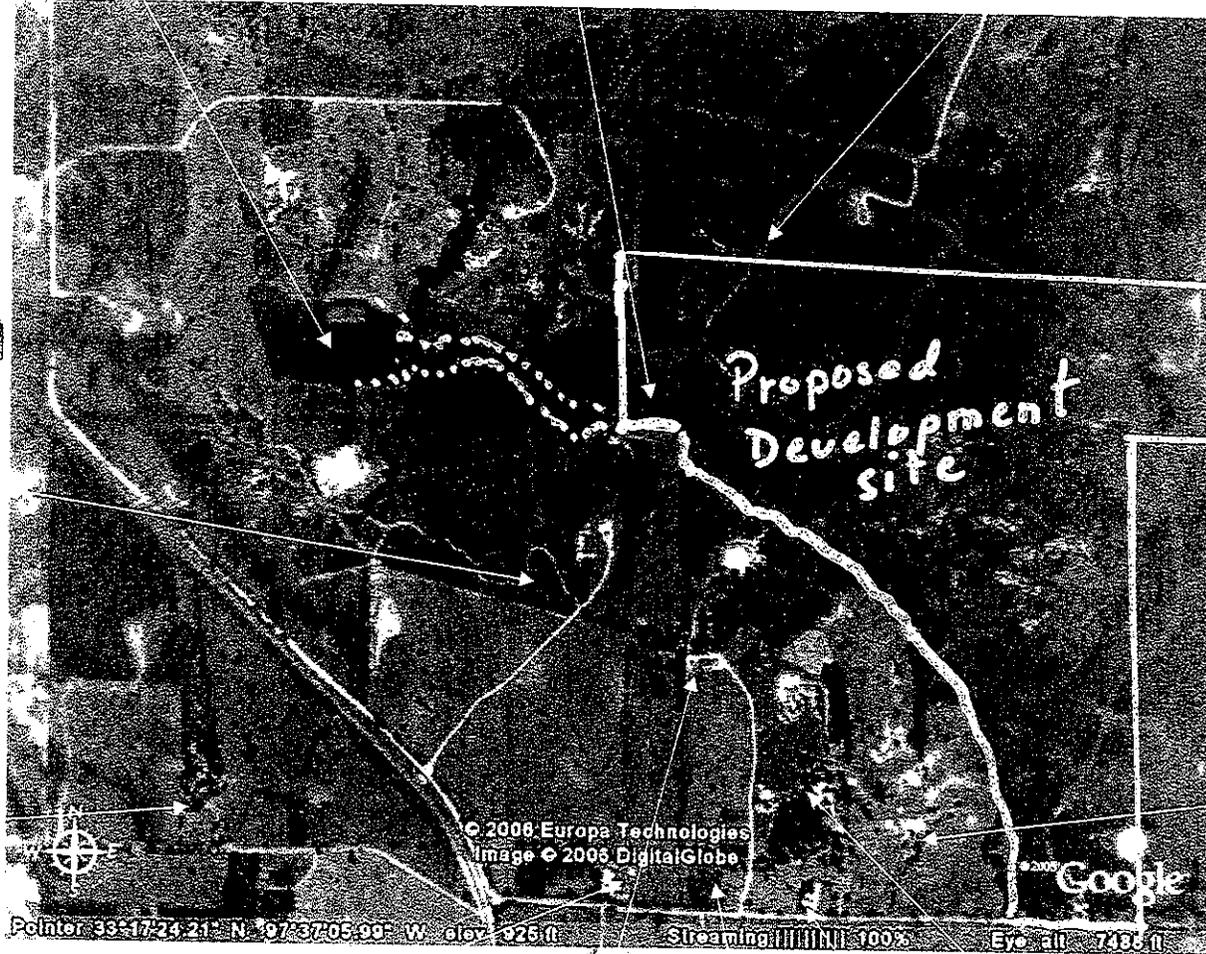
Conservation Lake

Proposed Sewage Plant

Southern Boundary
of LBJ National
Grasslands

*I have been
shown with letters
how the lake
could be used
near the sewage
treatment site*

Rob and
Stephanie
Fothergill
Home



Proposed
Development
site

Ed and
Ann
Jolley
Home

Gordon
and
Roxie
Ploeger
Home

Catherine Russell Home

Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Approximately 1,000 yards

McMurry Hwy (Old Ben Lk Rd)

RECEIVED

APR 03 2007

AT PUBLIC MEETING

**WRITTEN COMMENTS IN OPPOSITION TO PROPOSED PERMIT WQ0014708001
PREPARED FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
PUBLIC MEETING
APRIL 3, 2007, DECATUR, TEXAS**

Please deny Proposed Permit WQ0014708001 submitted by Wise Service Company-Water (CN601573843) operating under the umbrella of Wise Electric Cooperative. We, Richard and Cathy Fothergill, (with Cathy being the title holder) own the land that adjoins the west and south of the proposed site. The proposed sewer treatment plant appears to be located only a matter of feet immediately north of the northeast corner of our property. A portion of the unnamed tributary and unnamed reservoir frontage mentioned in the proposed permit as the first depository for the treated sewer water borders our property on the north side.

We are opposed to the wastewater treatment facility for the following reasons:

1. Catherine Russell, who is Cathy's mother, lives on the land (approximately 1000 yards from the proposed sewer site) and our son, daughter-in-law, and infant granddaughter, Rob, Stephanie, and Riley Fothergill, live on land they own that is about 400 yards from the proposed site. We raise beef cattle on our farm. Both farm homes have water wells providing drinking water for humans and farm animals. Our son's water well is well within a 1/2 mile radius of the plant. No one can guarantee that the discharged effluent will not contaminate our family's drinking water.
2. Big Sandy Creek Water Shed Project Site #35, which the applicant described as an unnamed reservoir, is a federally funded conservation lake built in 1999. It operates under local sponsorship including Wise Soil and Water Conservation District and Wise County Water Control and Improvement District #1. The boards of both these agencies have voted to support our effort to prevent this sewer plant from being built. This million dollar conservation lake was designed to prevent erosion and to provide a sanctuary for wildlife. An island was created in the lake to provide a safe haven for migratory birds to breed. Several species of ducks, fish, beaver, wild turkey, deer, and other wildlife depend on this lake.
3. When the dam was constructed creating the lake, water backed into the "tributary" to the point where the effluent will be released. The portion of the tributary bordering our property on the north has essentially become part of the lake with waist deep standing water even when the lake is far below overflow levels. Therefore chemicals from cleaning products, human waste particulates, and other pollutants are certain to accumulate in what is essentially a stagnant lake. Water flows only when it reaches overflow levels. We challenge the notion that the water would remain safe for wildlife and livestock. We contend that the antidegradation review results cited (if tests were actually conducted) by the applicant are both unreliable and invalid.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE
APR 11 11 53 AM '07

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4. The distance from the proposed treatment plant (as depicted on the application map) to this conservation lake appears to be less than two hundred yards.
5. Over the past five years, our family has participated in a \$40,000 grant with the Wise Soil and Water Conservation District. This project helped us fight erosion on our land and replant grass. One of the justifications for the grant's approval was that our land would provide a habitat for wildlife. We enjoy having deer, wild turkey, and other species live on our farm. These animals drink from the "unnamed tributary" and "unnamed conservation lake."
6. The Lyndon B. Johnson National Grasslands are located directly north of the proposed sewer site. In fact, the land where the site is proposed to be located was once part of the National Grasslands. Construction and completion of the sewer plant would more than likely prevent wildlife from the Grasslands from reaching our land as well as their conservation lake sanctuary which could also be polluted. The Grasslands attract thousands of Texans who use the area for outdoor recreation. We believe that we have an obligation to preserve this environment so that future generations can learn to appreciate wildlife in their natural habitat.
7. Approval of the sewer plant will lead to the creation of a housing development containing some 200 or more houses. We fear that the water requirements for such a densely populated development will severely strain the water table causing a water shortage for both personal consumption and agricultural activities on our farm.

We are further concerned that the applicant failed to reveal pertinent information in his proposal. The following errors are apparent:

- Failure to identify adjoining property owners whose land would be impacted by the project. (Long, Carnahan, Woodruff, and White)
- Failure to locate and identify water wells in the ½ mile radius of the plant.
- No mention of the conservation lake in the August 10, 2006, public notice.
- Reference to an unnamed reservoir in all documents when the lake clearly is named Big Sandy Creek Water Shed Project Site #35.
- Failure to describe the distance from the discharge point to the lake and the tributary.
- Implication that the discharge path flows.
- Allegation that the tributary has no significant aquatic life use and that the lake has high aquatic life use when they are one body of water with significant aquatic life use.
- Identification of land on map as "applicant's property" when Wise Service Company-Water holds no legal title to the land in question.
- Use of a map dated 1997 that does not show the conservation lake built in 1999. Current maps are available and attached.

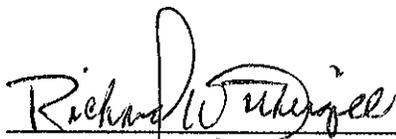
Whether these errors were meant to deceive or simply careless preparation, they indicate that the applicant is poorly equipped to operate a facility that could cause catastrophic long-term damage to the local ecological system should accidental discharge of solids or higher than allowable filtrates occur. In addition, Wise Service Company-Water has no experience in building or operating a sewage treatment facility.

We strongly encourage you to examine the feasibility of this project, which would service a housing development to be built on terrain that is so rough and wooded that some of the north side is difficult to reach, even on horseback. The proposed development site guarantees that existing farms and homes already established in the area will be smothered in unwanted dust and noise pollution far into the foreseeable future.

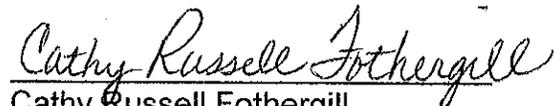
If the proposed permit is granted, we believe that the tree removal and dirt work for construction will create enough silt to destroy the tributary and lake long before we would be dealing with the water and odor pollution caused by the sewer plant.

For all of the above reasons, we request that you deny this permit. We enjoy being outdoors on our farm, and we have endeavored to improve it and preserve it from erosion. We are fearful that this sewer treatment plant will create an intolerable odor limiting outside activities to days when wind direction is favorable. Despite claims of the applicant we know it can pollute our water and lessen the supply, contribute to increased erosion, and discourage wildlife from our farm. Over fifty years of work and money spent making our farm a desirable place to live will be rendered useless every time the wind is in the wrong direction.

We are grateful for your consideration of our comments. We may be reached by phone at 903-984-0464; 903-240-0832; or 903-240-0823. Our mailing address is: 2802 Crestwood, Kilgore, Texas 75662.



Dr. Richard W. Fothergill



Cathy Russell Fothergill

April 3, 2007

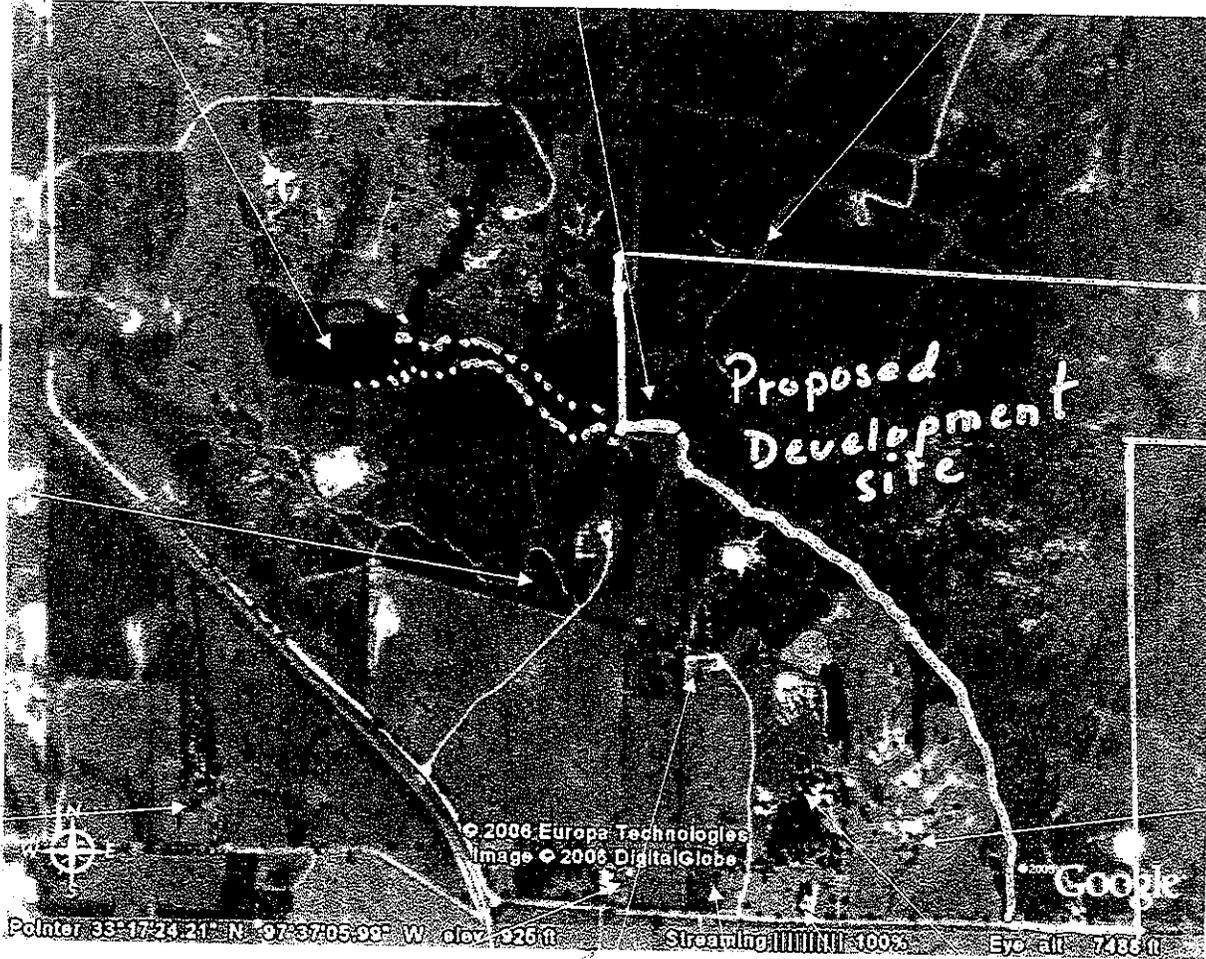
Conservation Lake

Proposed Sewage Plant

Southern Boundary
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Grasslands

*I have been to
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Rob and
Stephanie
Fothergill
Home



Ed and
Ann
Jolley
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Murder Hwy (Old Deer Park Rd)

Gordon
and
Roxie
Ploeger
Home

Catherine Russell Home

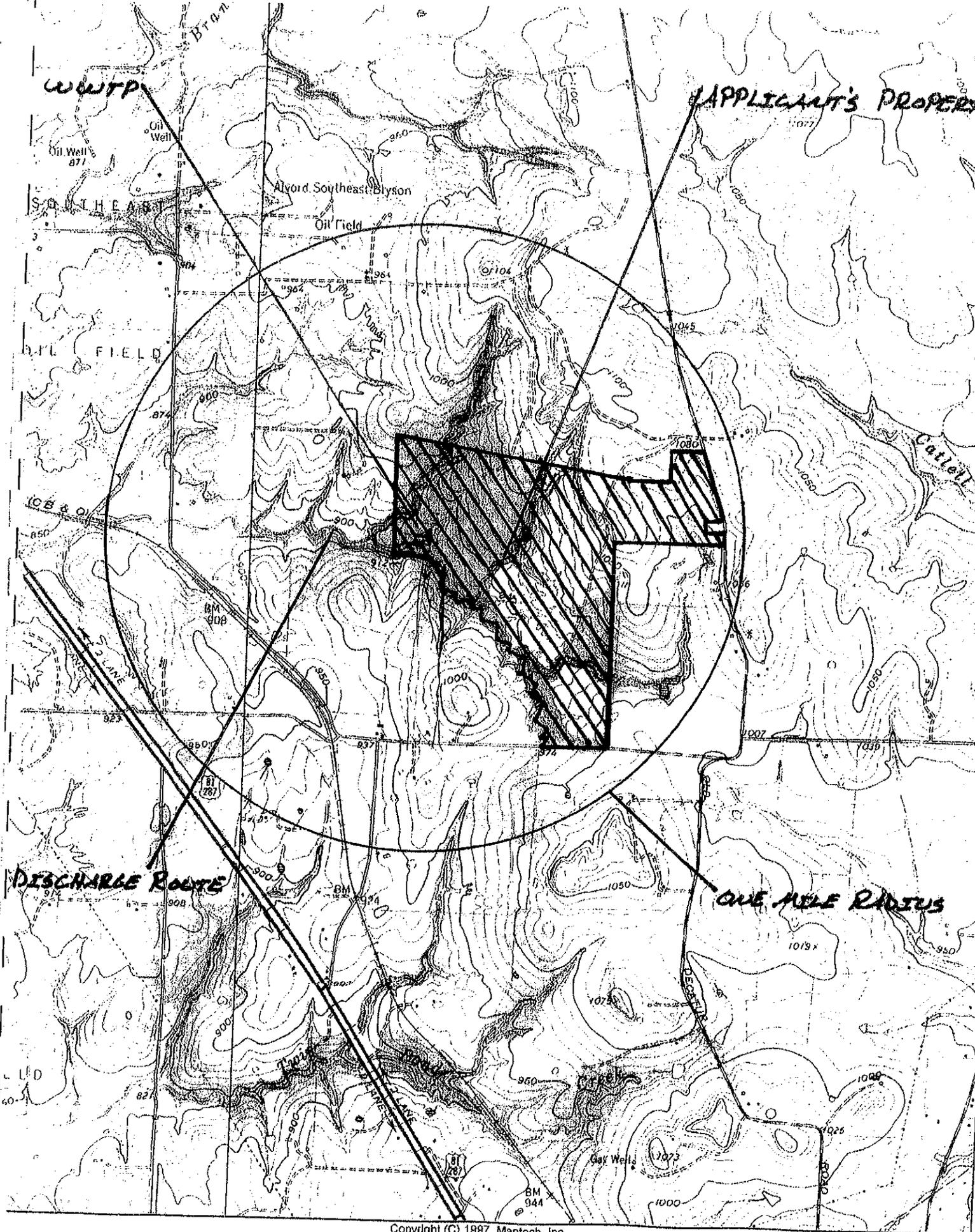
Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Approximately 1,000 yards



Copyright (C) 1987, Maptech, Inc.

Applicant's Map Submitted with Application

October 2, 2006

Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087

OPA

OCT 12 2006

CHIEF COMPLAINTS OFFICE

RECEIVED OCT 11 11 27 AM '06

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: Proposed Permit WQ0014708001

MWD
54149

BY DM

Dear Sir:

Having recently been informed of the proposed housing development, the neighbors living near the proposed site held a meeting on Sunday, October 1, to consider the environmental impact of the plan and came away unanimously opposed to it. There were a number of reasons given, not the least of which was the fact that all homeowners who will be affected by the development were not adequately notified, since the family living nearest the proposed waste treatment site had heard no mention of the plan. My family has owned land for over fifty years that borders the creek into which treated water from the proposed waste treatment site will be dumped. Our family's personal objections include the following:

1. Access to the proposed development site is on a narrow FM road that is barely adequate for the existing traffic, and certainly inadequate for an additional 115 households.
2. The proposed site would separate our property from the LBJ Grasslands. We recently participated in a \$40 thousand dollar partnership program with the Soil Conservation Service to improve our property. A major justification for the grant approval was that our property would provide a natural habitat for a variety of wildlife. Most of the wildlife from the Grasslands will be cut off from both our land and an adjoining lake that serves as a sanctuary for migratory birds and animals.
3. The lake (designated in the permit request simply as "*unnamed reservoir*") is properly named "Big Sandy Creek Water Shed Control Site #35". Construction was federally funded through consort of the following local entities:
 - a. Wise Soil and Water Conservation District
 - b. Tarrant Regional Water District
 - c. Wise County Water Control and Improvement Dist. #1
 - d. Wise County Commissioner's Court.

The projected plan is to release wastewater into a creek about a half mile from the dam that formed the lake, a distance which I fear is insufficient. The lake and wooded creek is currently providing a habitat for fish, beaver, several species of ducks, geese, turkey, deer and a variety of other kinds of wildlife. I don't feel there is a person living who can guarantee the safety of the treated water from the proposed development's treated sewage. The fact that the creek water moves only during times when the lake overflows makes it particularly susceptible to contamination. Then Wise County Electric Co-op's

newly formed "Service Company Water" has had no experience in building and supervising waste treatment facilities and can no more guarantee the water's safety than we can guarantee that our cows won't someday get through our fence and drink from it.

4. The lake was constructed in 1999 with a protective island in the middle to provide a breeding safe haven for migratory species. I am confident that any prolonged construction at the proposed site would drive all wildlife away from this sanctuary.

5. I have yet to see a sewage treatment plant that didn't emit an intolerable odor. My mother-in-law's home is less than a mile directly south of the proposed plant site, and my son's home is less than a half mile southwest of it. Any odor from such a plant would be intolerable, not only to our family, but to several of our neighbors living in the downwind path.

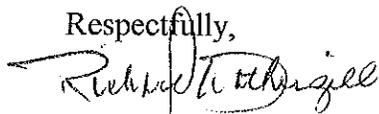
6. The site of the proposed development is such that large dirt moving equipment would be working non-stop for years to make lots suitable for construction. This means that the existing residents of the area would be exposed to unwanted, non-stop noise and dust far into the future.

7. We and our neighbors who would be impacted by the development feel that they have been betrayed because of the collusion between the developers and the Wise County Electric Co-Op. My mother-in-law, a member of the Co-Op, attended their open business meetings and the project was not mentioned.

8. Hunting and fishing activities would have to cease because of the possibility of contaminated water, the closeness of the planned development, and the fact that the development would interrupt the movement of game animals from our property.

For these reasons, I feel that a more complete visual inspection of the area should be made by representatives of the TCEQ, and following further consideration, permit WQ0014708001 will be rejected.

Respectfully,



Dr. Richard Fothergill
rwfgill@cablelynx.com

cc: Wise County Electric Co-op

PM OPA

OCT 12 2006

BY DM

2802 Crestwood
Kilgore, Texas
October 4, 2006

Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
PO BOX 13087
Austin, TX 78711-3087

MWD
54149

CHIEF CLERK'S OFFICE

OCT 11 11 09 AM

TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

Re: Proposed Permit WQ0014708001

Please reject the above proposed permit submitted by Wise Service Company-Water (sometimes called Brighton Water Systems) operating under the umbrella of Wise Electric Cooperative. I own the land that adjoins the west and south of the proposed site, and the site of the treatment plant is only a few feet from my property line. The unnamed tributary mentioned in the proposal is on the north border of my land. This land has been in my family for over 50 years, and we value the way of life it provides.

I am opposed to the wastewater treatment facility for the following reasons:

- Our land also adjoins the LBJ National Grasslands. The proposed site would cut off most of the wildlife from the Grasslands from both our land and an adjoining lake (also mentioned in the proposal) that serves as a sanctuary for migratory birds and animals. Over the past five years, we have participated in a \$40,000 grant with the Wise Soil and Water Conservation District. This project helped us fight erosion, replant grasses, and it also was designed to provide a natural habitat for wildlife on our farm. In addition to making the tributary water unsuitable for cattle, the water would become unsafe for wildlife as well.
- The creek called an unnamed tributary does not flow. It is blocked by the lake. The amount of water that can flow in this creek is limited to the amount that can escape through the overflow making it particularly susceptible to contamination.
- The unnamed reservoir in the application has a name. It is a federally funded conservation lake built in 1999. It is named Big Sandy Creek Water Shed Project Site #35, and it was built and operates under local sponsorship from Wise Soil and Water Conservation District; Wise County Water Control and Improvement District #1; Tarrant Regional Water District; and the Wise County Commissioner's Court. The lake is a sanctuary for wildlife including several species of ducks; geese, beaver, turkey, and deer. There is an island in the center of the lake which provides a haven for duck breeding. The distance from the proposed treatment plant to this conservation lake appears to be approximately one-

quarter of a mile. Water from this lake eventually is part of the Fort Worth, Texas water supply.

- The respective homes of my mother, Catherine Russell, and my son and daughter-in-law, Rob and Stephanie Fothergill, as well as other homes are within one-half mile of the proposed sewer dump site. I fear that the resulting contamination from this sewer will prevent my family and future generations of my family from being able to enjoy outdoor activities on this farm which was handed down by my grandparents.
- The LBJ Grasslands, which provides recreational areas and a wildlife habitat, will also undoubtedly be adversely affected by the proposal.
- Wise Service Company-Water (Wise Electric Cooperative) has no experience providing sewer services. This is a member cooperative (of which my mother and son and daughter-in-law are members), and we feel that they do not have proper expertise nor have they thoroughly researched the proposal.

Landowners in the area are unanimously opposed to the project. We would like to request a public meeting about this matter. I strongly encourage you to examine the feasibility of this project, which places a sewer treatment plant 3.75 miles from the small city of Decatur. This treatment plant would supposedly service a housing development. Other developers in the area have simply provided septic tanks for houses. It appears that this developer wants to subdivide his acreage into smaller lots. We certainly do not believe that the developer's desire to sell more lots warrants the damage that this project will do to our land, water, and the environment.

I would also like to be placed on your mailing list. I appreciate your consideration of my comments.

Respectfully yours,



Cathy Russell Fothergill

#1

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

CHIEF CLERK'S OFFICE

APR -4 PM 1:53

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PLEASE PRINT:

Name: Rob Fothergill

Address: 2067 CR 2395

City/State: Alvord TX, 76225 Zip: 76225

Phone: (940) 627-5777

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

mw

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APR 03 2007

AT PUBLIC MEETING

Written comments concerning Proposed Permit NO. WQ0014708001

The purpose of this letter is to provide written comments concerning the application for permit number WQ0014708001. My family and neighbors strongly oppose this application. I hope that the information below will help you understand our position. You may notice that my comments below are nearly identical to my original letter. My position on this issue has not changed, and I believe that my concerns are still valid.

The multiple versions of this permit request that you received do not provide accurate information. Because of the lack of information submitted on this permit, I do not believe you have been informed of the problems this proposed sewer site will cause.

I strongly oppose this proposal for the following reasons:

1. The permit request states "The discharge route is from the plant site via a pipe to an unnamed tributary/reservoir." This "unnamed" tributary is actually a federally funded lake named Big Sandy Creek Water Shed Project Site #35 which was constructed in 1999. This lake was sponsored by and operates under the Wise Soil and Water Conservation District. It was constructed with over \$1,000,000 of taxpayer money in an effort to control erosion and provide a sanctuary for local and migratory wildlife.
2. It is my understanding that in order for this type of sewer treatment facility to operate correctly, the discharge from the pipe would need to enter into moving water. The alleged tributary mentioned in the permit in which the water would be released does not flow at all. It is simply the back end portion of the lake. I believe the dam does have an overflow pipe; however any overflow would spill on to a pasture used for grazing cattle. At normal levels this overflow pipe would still allow cattle and wildlife to drink this tainted water. I would invite you to discuss this with the Wise County NRCS office for more information concerning the dam's capacity. I would like to note that you could not have been aware of this because the map we believe you were supplied with the permit does not show the lake at all. It concerns me that the requestor would provide a map dated in 1997 when the lake was built in 1999. This is either an indication of a poorly planned project and operation, or the requestor is providing false information to hide facts which would be a detriment to his project.
3. The property directly to the north of this proposed sewer site is part of the LBJ National Grasslands. The proposed sewer site and development would deface the southern portion of this land and make it unattractive for the thousands of Texans who visit the LBJ grasslands each year. In addition, it would displace the many species of wildlife that exist on this land.
4. The proposed sewer site, if approved, will be built and maintained by the Wise Electric Cooperative. This electric company has no prior experience with this type of system. My fear is they are getting into a project they know nothing about. Once the site is built, responsibility for maintaining and inspecting the site will belong to Wise County. I attended the meeting of the Wise County Water District, and they are not experienced with inspecting these facilities, nor do they intend to check the water quality of the water pumped into the lake. The bottom

WISCONSIN
STATE
DEPARTMENT
OF
NATURAL
RESOURCES

mw

line is that no one involved in this project knows anything about building or maintaining a sewer treatment facility. Any problem that occurs as a result of their inexperience would be disastrous.

5. Our family, as well as many of the surrounding neighbors, has participated in government funded cost share programs in an effort to increase the value and quality of our land and the land surrounding us. One of the primary purposes of these projects (including the EQUIP program in which our family participated) is to improve the area for wildlife habitat. All of the wildlife that live in this area uses the Big Sandy Watershed Project #35 as a source of water. This lake is now considered a wildlife sanctuary for native and migratory wildlife. It is inevitable that a water treatment facility would disrupt and displace the many species of wildlife that exist on this land.
6. My family and many of my neighbor's houses are within a ¼ mile radius of the proposed water treatment facility site. In fact my house is within 600-800 yards. The air quality for my family and my neighbors will be tainted and unbearable. This will reduce our quality of life as well as reduce the property value of the land we own.

This list is a few of the many reasons I am asking you to deny the permit Proposed Permit WQ0014708001. Our family and community need you to prevent this poorly planned, potential disaster from being approved. If you would like to discuss this issue with me over the phone or in person, feel free to contact me anytime. My family and community ask you to deny this proposed permit submitted by Wise Service Company-Water, a.k.a. Brighton Water Systems. This company is owned by Wise Electric Cooperative. **If necessary, I am requesting a contested case hearing on the Proposed Permit No. WQ0014708001.**

Best Regards,

Rob Fothergill
2067 CR 2395
Alvord, Texas. 76225
Ph. (940) 627-5777
Cell: (817) 291-8682
Dated 4/3/2007

Rob Fothergill 4/3/07

Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
PO BOX 13087
Austin, TX. 78711-3087

OPA *K*

OCT 26 2006

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

OCT 26 PM 2:29

CHIEF CLERKS OFFICE

Response to Proposed Permit NO. WQ0014708001

I am writing this letter to request a contested case hearing on the Proposed Permit No. WQ0014708001. My family and community ask you to deny this proposed permit submitted by Wise Service Company-Water, a.k.a. Brighton Water Systems. This company is owned by Wise Electric Cooperative.

My family owns the property directly south and west which joins the proposed sewer site. We have owned this property for over fifty years, and my grandmother has lived on this property from the time it was purchased. My family uses this land to operate a farm primarily for beef cattle production. In addition, my wife Stephanie and I own a portion of this land and are in the process of building a home on the site.

The reason for my letter opposing this permit is two-fold. First, my family and neighbors feel that we have not been treated fairly by the Wise Electric Cooperative in which we are members, because lack of information and input we feel is deserved. Second, and more importantly, the permit request that you received does not provide accurate information. Because of this lack of information submitted on this permit, I do not believe you have been informed of the problems this proposed sewer site will cause.

I strongly opposed the proposal for the following reasons:

1. The permit request states "The discharge route is from the plant site via a pipe to an unnamed tributary/reservoir." This "unnamed" tributary is actually a federally funded lake named Big Sandy Creek Water Shed Project Site #35 which was constructed in 1999. This lake was sponsored by and operates under the Wise Soil and Water Conservation District. It was constructed with over \$1,000,000 of taxpayer money in an effort to control erosion and provide a sanctuary for local and migratory wildlife.
2. It is my understanding that in order for this type of sewer treatment facility to operate correctly, the discharge from the pipe would need to enter into moving water. The alleged tributary mentioned in the permit in which the water would be released does not flow at all. It is simply the back end portion of the lake. I believe the dam does have an overflow pipe; however any overflow would spill on to a pasture used for grazing cattle. At normal levels this overflow pipe would still allow cattle and wildlife to drink this tainted water. I would invite you to discuss this with the Wise County NRCS office for more information concerning the damn capacity. I would like to note that you could not have been aware of this because the map we believe you were supplied with the permit does not show the lake at all. It concerns me that the requestor would provide a map dated in 1997 when the lake was built in 1999. This is either an indication of a poorly

planned project and operation, or the requestor is providing false information to hide facts which would be a detriment to his project.

3. The property directly to the north of this proposed sewer site is part of the LBJ National Grasslands. The proposed sewer site and development would deface the southern portion of this land and make it unattractive for the thousands of Texans who visit the LBJ grasslands each year. In addition, it would displace the many species of wildlife that exist on this land.

I invite you to contact the LBJ National Grasslands office located in Decatur for more information. It is my understanding from them that the developers are already misusing the roads and cutting locks on exterior gates to access this land even before they have the permits to start.

4. The proposed sewer site, if approved, will be built and maintained by the Wise Electric Cooperative. This electric company has no prior experience with this type of system. My fear is they are getting into a project they know nothing about. Once the site is built, responsibility for maintaining and inspecting the site will belong to Wise County. I attended the meeting of the Wise County Water District, and they are not experienced with inspecting these facilities, nor do they intend to check the water quality of the water pumped into the lake. The bottom line is that no one involved in this project knows anything about building or maintaining a sewer treatment facility. Any problem that occurs as a result of their inexperience would be disastrous.
5. Our family, as well as many of the surrounding neighbors, has participated in government funded cost share programs in an effort to increase the value and quality of our land and the land surrounding us. One of the primary purposes of these projects (including the EQUIP program in which our family participated) is to improve the area for wildlife habitat. All of the wildlife that live in this area uses the Big Sandy Watershed Project #35 as a source of water. This lake is now considered a wildlife sanctuary for native and migratory wildlife. It is inevitable that a water treatment facility would disrupt and displace the many species of wildlife that exist on this land.
6. My family and many of my neighbor's houses are within a ¼ mile radius of the proposed water treatment facility site. In fact my house is within 600-800 yards. The air quality for my family and my neighbors will be tainted and unbearable. This will reduce our quality of life as well as reduce the property value of the land we own.

This list is a few of the many reasons I am asking you to deny the permit Proposed Permit WQ0014708001. Our family and community need you to prevent this poorly planned, potential disaster from being approved. If you would like to discuss this issue with me over the phone or in person, feel free to contact me anytime.

Best Regards,

Rob Fothergill
2067 CR 2395
Decatur, Texas. 76234
Ph. (940) 627-5777
Cell: (817) 291-8682

CHIEF CLERK'S C

OCT 26 PM

1998
COMMISSIONER
OF ENVIRONMENT
AND NATURAL
RESOURCES

OPA
FEB 20 2008

BY EB

2067 CR 2395

Alvord, Texas 76225 2008 FEB 19 PM 3:28

February 11, 2008

CHIEF CLERKS OFFICE

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
MC-105
PO BOX 13087
Austin, TX 78711-3087

MWD
5/14/9

**REQUEST FOR CONTESTED CASE HEARING FOR Wise Service Company –
Water TPDES Permit No. WQ0014708001**

We, Rob and Stephanie Fothergill, request a contested case hearing.

We own an interior portion of the land that adjoins the west and south corner of the proposed site. Our home and water supply are located only a few hundred yards from the proposed site of the sewer treatment plant. Our 14 acre property is surrounded on all sides by my family's farm (with my mother, Cathy Fothergill being title holder of the surrounding acreage).

Our family uses this farm both as a means to raise beef cattle, as well as for hay production. We have recently participated in a federal EQUIP program through the Soil and Water Conservation Service which was intend to protect our property from soil erosion. This was accomplished by building flood control damns and establishing grass pastures to be used for wildlife, controlled grazing, and/or grass hay production. All of the work and grant money spent to complete this project is in danger if the applicant is allowed to follow through with building and operating the proposed sewer plant. The sewer plant will contaminate the drinking water for wildlife and livestock on our farm, as well as ruin the quality of life for my family due to intolerable odor and contaminated surroundings.

We are requesting a contested case hearing because the application has many obvious errors and misrepresentations which were ignored by the decision of the executive director issued on January 17, 2008.

You will be receiving a request from each of our family members who are directly affected by this decision. We can assure you that we all share the same view of this issue and have the same comments concerning each of the director's responses that are under dispute. We do not intend to comment on all of the issues brought to light by both my parents (Cathy and Richard Fothergill) and my grandmother (Catherine Russell), although we assure you that they are justified in the comments they are submitting to you.

The following are some of the responses that we dispute and would like to make further comment toward:

MWD

DIRECTOR'S RESPONSE 2: The decision states: "By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

OUR COMMENT: There are numerous misrepresentations, omissions, and errors which have been pointed out by various affected parties, most of which have been overlooked in your decision. However, in your **Response 5** you state: "While it is recognized that the applicant did not include the 16 acre lake in the application, the lake was identified by the TCEQ staff and fully considered in the development of the draft permit." This statement makes it clear that the applicant failed to submit information which was true, accurate, or complete (by your own admission). The applicant was aware of the 16 acre lake long before the any public comment period or your response.

DIRECTOR'S RESPONSE 14: "TCEQ rules require that a wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well..... Based on information from the Applicant, these requirements are met."

OUR COMMENT 14: We have not seen any evidence that the Applicant has identified all private water wells in the area. It is highly unlikely that the Applicant could identify all of the wells on our family's farm alone, much less the many other wells in the area. If possible, we would like to review the evidence and the date that each well is identified, so that we can compare it to personal knowledge of such wells. At your convenience, please mail a copy to our attention at the address listed below.

DIRECTOR'S RESPONSE 12: "Rob Fothergill and Kevin Smith comment that they are concerned that the developers may be misusing roads and cutting locks on gates to access the land before they have received the proper permits."

OUR COMMENT: If you review the opposition letter I submitted you in November of 2006, this is clearly not what was stated. My concern was that the proposed sewer site and development would deface the southern portion of this land and make it unattractive for the thousands of Texans who visit the LBJ grasslands each year. In addition, it would displace the many species of wildlife that exist on this land. The comment of "cutting locks on gates" was that of the LBJ Grasslands.

You state in **Response 1**, "Typically, the Executive Director does not consider land use concerns such as *such as* the movement of wildlife from the grasslands to other property or visual appeal to grasslands visitors during the permitting process." How can you not consider this as the Texas Commission for Environmental Quality? It would seem that this would be one of your core responsibilities.

In closing, the application has far too many errors and misrepresentations and should have been rejected.

Because it was not rejected, we as affected landowners are asking for a contested case hearing.

Sincerely,

Rob and Stephanie Fothergill
2067 CR 2395
Alvord, TX 76225

Home phone: 940-627-5777
Cell phone: 817-291-8682
e-mail: rfothergill@urnet.net

NWD
34149

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Ann Jolley
1354 County Road 2175
Decatur, TX 76234
940-627-3548
February 10, 2008

2008 FEB 12 AM 10: 24
CHIEF CLERKS OFFICE

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
MC-105
PO BOX 13087
Austin, TX 78711-3087

OPA
H FEB 14 2008
BY pl

Dear Executive Director:

In regard to Applicant: Wise Service Company – Water TPDES Permit No. WQ0014708001

I request a contested case hearing. The decision concerning this permit application makes my husband and me an "affected person."

I feel it my right, duty, and privilege to object to your decision that the above permit application "meets all requirements" and you will issue the permit. You should reconsider your decision. Obviously in your responses you have passed over "Permit conditions", part b: second sentence below:

ii "Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts:"

Wise Service Company – Water aka Brighton Water Systems, 4/06 application is a sham and outright dishonest.

The applicant does not own the property nor does Larry Cole intend to purchase this property in the future.

The drainage area is to be in a flood control creek to a flood control 16 acre lake # Site No. 35 on U. S. conservation maps as far back as the 1950's.

The property boundaries of all landowners along the discharge route have not been located, nor have they granted permission for this facility discharge to flood onto their land.

mwd

A current list of landowners included with the application from the Wise County Appraisal District is so out of date to be laughable, but this is not an issue to laugh about and should be considered unethical on the applicant's part.

Response 4 shows C. A. Russell as owning tract 8. He died in the 1970s. James Forbis died in the mid 90s and Gary S. Helton is not correct, he's Gary Shelton." Whatever map you were sent and used to issue this permit was erroneous as to landowners in 2006 or today.

Since the applicant and engineer filled out the application, corrections and additions to it so poorly, I cringe to think they will build and follow the guidelines in their application.

This water discharge will back up into Lyndon B. Johnson Grasslands after filling the flood control dammed lake in regard to paragraph seven on Response #1.

Your 31 pages of response to public comments has not been completely investigated and your staff has not sufficiently checked the materials sent for this permit.

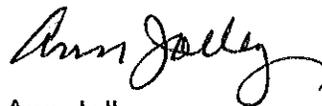
Our home is within the mile radius (approximately $\frac{3}{4}$ mile or less) of the proposed facility and our land would be not much further than a football field's distance from the discharge creek.

Prevailing easterly winds will certainly affect the quality of the air when facility malfunctions adversely affecting the condition of my lungs.

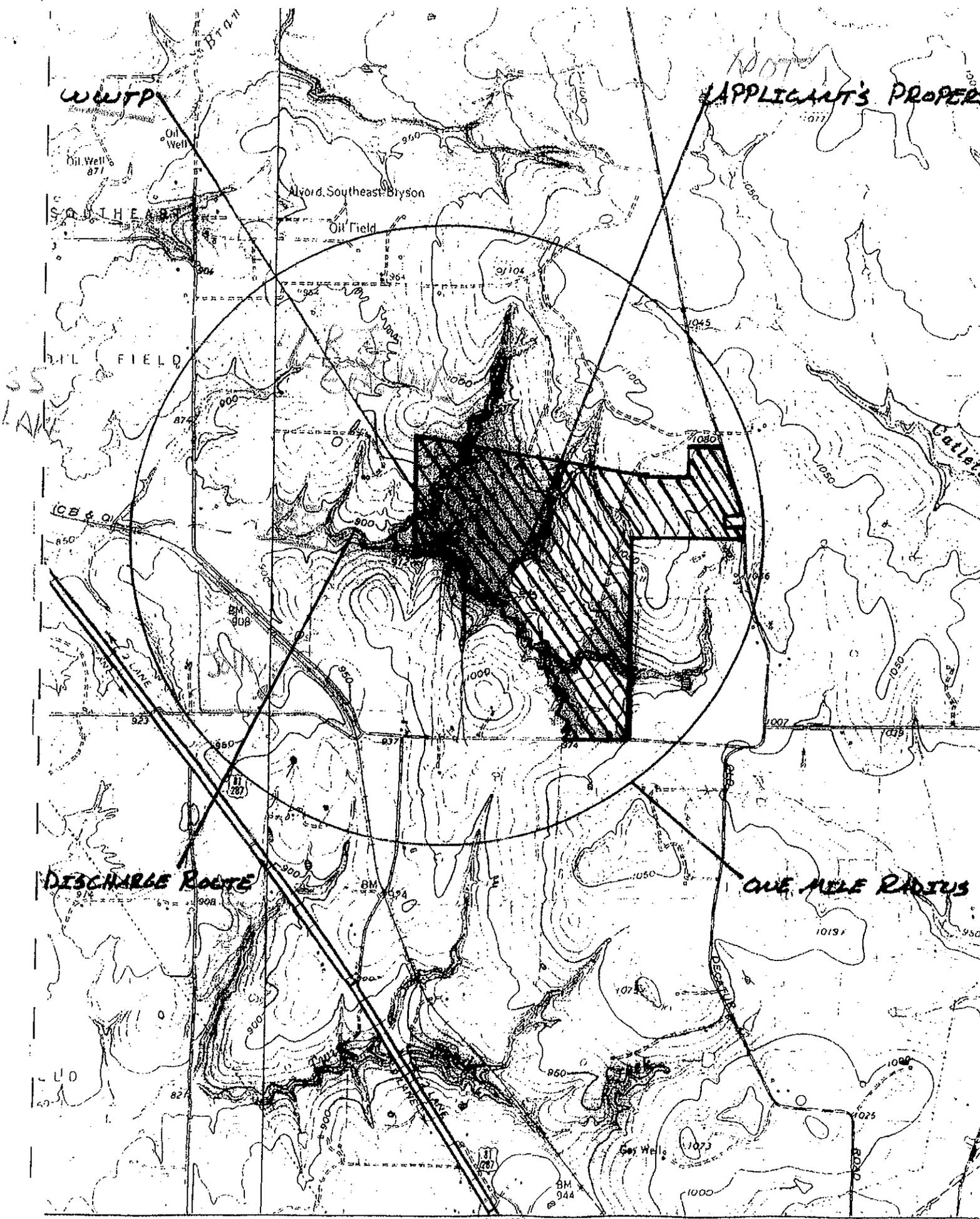
Your responses have almost as many issues of dispute as the applications for this permit. You need to further check information quality you have sent.

It was nice to finally get your response from the public meeting on April 3, 2007, in Decatur, Texas. It only took nine months.

Sincerely,



Ann Jolley
Landowner, taxpayer, and voter!



Copyright (C) 1997, Maptech, Inc.

outdated MAP since 1999 U.S. Coast & Engineers work

STATE OF TEXAS
DEPARTMENT OF ENVIRONMENTAL
QUALITY

OFFICE OF THE EXECUTIVE DIRECTOR

Mrs. Ann Jolley
1354 County Road 2175
Decatur, TX. 76234
October 16, 2006.

Dear Executive Director,

I believe the application you received from Wise Service Company- Water for a municipal waste water system called Canyon Springs Wastewater Treatment Center Facility SIC code 4952 does not contain all the relevant facts and must be reconsidered with current information:

1. TCEQ "Notice of Receipt of Application and intent to obtain water quality permit, Proposed Permit No. WQ0014708001, the discharge route from the plant site via a pipeline to an unnamed tributary; thence to Watson Branch, etc. leaves out an important 16 acre water control lake. This lake and dam was built with federal funds and dedicated in 1999 as Big Sandy Creek Watershed Project Site #35.
2. In the second Public Notice, dated September 21, 2006, TCEQ "Notice of Application and Preliminary decision for TPDES permit Municipal Wastewater, NEW, Proposed Permit no. WQ0014708001," the treated effluent will be discharged via pipeline to an unnamed tributary; thence to an unnamed reservoir, thence to an unnamed tributary; thence to Watson Branch; etc; the application has added an unnamed reservoir and another unnamed tributary after unnamed reservoir. This is not an unnamed reservoir! It has been a project site named on conservation maps since the 50's. Project Site #35 is located in the southern boundary of the famous Dust Bowl, with sandy loam soil which erodes and washes easily. In 1999 Project Site #35 was dedicated and attend by many. Members of the Water Control District board, Soil Conservation officials and employees, Wise County Commissioners, Judge, and county employees, landowners, neighbors, the press, interested public, and our then Congressman, Charles Stenholm, were invited to dedicate the (named) Big Sandy Creek Watershed Project Site #35.
3. This watershed Site #35, a 16 plus acre, with island and dam were built to stop water flow, erosion, and to provide a habitat for wildlife. Migrating ducks, birds, wild turkey, deer and more call the named lake "home". An island was added for their use. The water quality from a wastewater improvement facility would adversely affect wildlife and the quality of water.

4. The four sponsors of this project were; Wise County Water Control District 1, Wise County Commissioners Court, Wise Soil and Water Conservation District #548, and Tarrant Regional Water District, and very possible not on your mailing list. Several landowners this area goes through were not mailed Public Notices from TCEQ, maybe because the descriptions given in the notices were misleading and incorrect as stated. Certainly other federal and state organizations would not recognize the area as described in public notices.

5. The proposed waste water treatment plant, Canyon Springs Wastewater Treatment Facility, SIC code 4952, is to be located on former Caddo-Lyndon B Johnson National Grasslands, possibly less then ¼ mile from the named dammed lake (project #35). It does not make sense to destroy what has been in place since 1999 that is doing its job for flood control, erosion checks and habitat for wildlife. These tributaries mentioned do not flow normally.

6. This lake and dam was funded by tax payers dollars (approximately \$1,000,000) and was built to stop water flow and to check this gullied area from further erosion. The dam was built to cause the flowing of water to “back-up” into these eroded areas, not flow through them. Since 1999 there is not a tributary (as described in TCEQ second Public Notice) flowing from this named lake unless it is at flood stage. Wise County Public Water Works presently oversees and maintains the dam area.

Attached are map copies of this proposed area.

1. I believe the dated 1997 black and white map was with the application in April 2006. I do not believe Wise Service Company- Water, as applicant for wastewater facility owns this 266 acres and noted on map as “Applicant Property”. Map shows no lake.

2. Recent satellite NCTCOG map shows Project Site #35 lake and dam dedicated in 1999. Presently (October 2006) lake is in drought conditions and the island now a peninsula.

I hope I have given pertinent, corrected information and map so that you, Executive Directors and TCEQ, will not issue above mention Permit no. WQ00147800 for waste treatment facility, SIC code 4952.

Note: page 7 from TCEQ Permit to Discharge waste to Wise Service Company- Water TPDES Permit no. WQ0014708001 found at John A. Katherine G. Johnson Public Library, Decatur, Texas.

Page 7- Permit conditions

1. In part b. second sentence
 - ii. "Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;"

Sincerely,


Ann Jolley

Letter #

Mrs. Ann Jolley
1354 County Road 2175
Decatur, TX. 76234
940-627-3548
October 31, 2006.

NOV 02 2006

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

*MWD
54149
Crew*

OPA
NOV 03 2006
BY *RJ*

TCEQ Executive Director,

More comments requesting a public meeting and requesting a contested hearing if necessary in regard to: Application and Preliminary Decision, dated September 21, 2006 for a new permit for a proposed Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0014708001 EPA # TX 0128732. TCEQ received this first application April 20, 2006 from applicant: Wise Service Company- water.

We live 1/2 mile more or less from the proposed area for the waste water treatment plant. We have been a landowner at 1354 County Road 2175, Decatur, TX since March of 1970. The lake and dam mentioned in my first letter and in this second letter is less than 1/2 mile north east of our home and land. From the dam you can see our home's electric transformer. The Watson Branch tributary to be used is east of dam and lake area.

2006 NOV -3 AM 10:19
REGISTRATION OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

*File
9/12/07*

NOV 02 2006

Mrs. Ann Jolley
1354 County Road 2175
Decatur, TX. 76234
October 31, 2006.

Dear TCEQ staff and Executive Director,

More information is enclosed concerning the area to be used by a private development, Canyon Springs Ranch, WWTP. Proposed permit # WQ0014708001 (EPA I.D. # TX0128731 authorizing the discharge of treated wastewater from plant.

Both public notices in the local Wise County Messenger dated August 10 and October 8, 2006 have incorrect data in the description of the area to be used by this WWTP.

Public notice #1 says: discharge route from plant site via pipe (a matter of feet) to an unnamed tributary- NOT SO; it is the Watson Branch; thence to Watson Branch; thence to Sandy Creek etc.

Public notice #2 says: treated effluent discharged via pipeline still unnamed (Watson Branch) tributary; thence to an unnamed reservoir- NOT SO, it is on maps, in letters, papers, and charts as BIG SANDY CREEK Watershed Project Site #35 as early as 1955; thence to another unnamed tributary (no longer exists).

This information was part of the application sent by WWTP engineer Glenn Breisch, of Aledo, TX to TCEQ. Obviously outdated material given to him and Wise Service Company- Water (company owned by Wise Electric Cooperative).

Since this waste water will drain into a non-flowing tributary, then into a flood control dam with 16 acre lake, site #35. It will stay in this detention pool until flood level is reached by the dam and then proceed over spillway. But only after flooding over 44+ acres of other landowners property.

The US Corp. of Engineers built this million dollar dam (1999) to control rainwater, erosion, and as a wildlife habitat. It is hard to understand how TCEQ can issue a permit for waste water facility to use others land and cause flooding after all the money tax payers have spent to prevent this very thing.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
NOV 03 AM 10:10
CHIEF CLERK OF TCEQ

Certainly the quality of the water will be endangered as well as surrounding owners with private water wells in the area. We are asking you to consider the 200 homes to be built in this Canyon Springs development area's impact on water table which has been stressed because of several years of drought.

Hoping to hear from TCEQ in the near future about this proposed permit issuance. Would like to be on your mailing list for this WWTP permits and Wise Service Company- Water application

Sincerely,


Ann Jolley

WORK PLAN

BIG SANDY CREEK WATERSHED

of the Trinity River Watershed
in Montague, Wise, Clay and Jack Counties
Texas

Prepared by

SOIL CONSERVATION SERVICE

U.S. DEPARTMENT OF AGRICULTURE

Temple, Texas

August 1955

note title

Sorry copy is d.s.b. - note 1955 date

SUPPLEMENTAL WATERSHED PLAN NO. III

BIG SANDY CREEK WATERSHED
of the
Trinity River Watershed
Clay, Jack, Montague, Tarrant, and Wise Counties, Texas

Plan Prepared and Works of Improvement
To Be Installed Under the Authority
of the Flood Control Act of 1944,
as Amended and Supplemented

Prepared By:

Little Wichita Soil and Water Conservation District
Wise Soil and Water Conservation District
Upper Elm-Red Soil and Water Conservation District
Upper West Fork Soil and Water Conservation District
Montague County Commissioners Court
Wise County Commissioners Court
City of Bowie, Texas
Wise County Water Control and Improvement District No. 1

CHIEF CLERK
208 NOV - 3 11 10 AM '79
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

With Assistance By:

U.S. Department of Agriculture
Soil Conservation Service

In Cooperation With:

Forest Service, USDA
and
Fish and Wildlife Service, USDI

June 1979

TABLE 3 - STRUCTURAL DATA - DAMS WITH PLANNED STORAGE CAPACITY
 Big Sandy Creek Watershed, Texas
 (Trinity River Watershed)

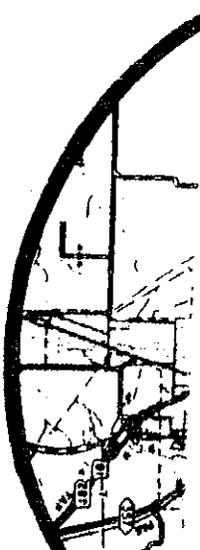
ITEM	UNIT	STRUCTURE NUMBER											
		31	32	33	34	35	36	37	38	39	40		
Class of Structure		B	B	A	A	B	A	B	A	A	A	A	
Drainage Area	Sq. Mi.	2.60	1.21	0.64	2.71	1.52	0.58	0.74	2.50	1.83	1.82		
Controlled	Sq. Mi.	-	-	-	-	-	-	-	-	-	-		
Runoff Curve No. (1-day) (AVC II)		74	71	73	70	72	77	74	74	73	80		
Elevation Top of Dam	Ft.	895.9	891.6	825.5	915.1	910.2	853.0	822.0	784.0	799.0	912.0		
Elevation Crest Emergency Spillway	Ft.	891.5	887.8	822.5	911.0	905.5	850.0	818.5	781.0	796.0	909.0		
Elevation Crest High Stage Inlet	Ft.	881.8	881.7	819.0	902.7	896.0	845.2	812.6	-	-	-		
Elevation Crest Low Stage Inlet	Ft.	875.2	877.3	814.8	897.0	890.0	841.0	809.0	-	-	-		
Elevation Crest Lowest Ungated Outlet	Ft.	874.0	877.3	814.8	896.6	890.0	841.0	809.0	-	-	-		
Maximum Height of Dam	Ft.	63	43	36	55	52	28	28	37	40	52		
Volume of Fill ^{2/}	Cu. Yd.	130,200	92,200	58,600	181,600	118,700	59,300	57,800	92,000	80,700	134,200		
Total Capacity ^{3/}	Ac. Ft.	929	519	251	823	543	278	257	653	545	544		
Sediment Submerged ^{3/}	Ac. Ft.	200	160	98	165	127	98	51	129	132	92		
Sediment Aerated	Ac. Ft.	88	68	41	69	54	41	21	55	56	23		
Sediment Pool (Lowest Ungated Outlet) ^{4/}	Ac. Ft.	175	160	98	153	127	98	51	129	132	92		
Floodwater Retarding	Ac. Ft.	641	291	112	589	362	139	185	469	357	429		
Between High and Low Stage	Ac. Ft.	110	52	28	116	65	25	31	-	-	-		
Surface Area													
Sediment Pool (Lowest Ungated Outlet)	Ac.	19	23	14	24	16	13	12	28	20	18		
Sediment Pool (Low Stage Inlet)	Ac.	21	23	14	26	16	13	12	28	20	18		
Floodwater Retarding Pool	Ac.	74	48	28	70	40	29	35	66	61	56		
Principal Spillway Design													
Rainfall Volume (Areal) (1-day)	In.	8.30	8.30	7.45	7.80	8.60	7.62	8.20	7.60	7.50	8.20		
Rainfall Volume (Areal) (10-day)	In.	13.60	13.60	12.35	12.85	14.05	12.60	13.50	12.55	12.45	13.50		
Runoff Volume (10-day)	In.	7.07	6.68	6.23	5.68	7.15	7.24	7.36	6.23	6.13	8.37		
Capacity of Low Stage (Max.)	C.F.S.	7.8	3.6	1.8	8.1	4.6	1.8	2.2	-	-	-		
Capacity of High Stage (Max.)	C.F.S.	82	69	33	75	77	34	56	68	37	80		
Diameter of Conduit	In.	24	24	18	24	24	18	24	24	18	24		
Emergency Spillway Design													
Frequency Operation - Emer. Spillway	% Chance	1.9	1.9	3.4	2.7	1.6	3.1	2.0	3.1	3.3	2.0		
Rainfall Volume (ESH) (Areal) ^{5/}	In.	9.50	9.50	6.90	7.90	9.50	6.70	9.50	6.70	6.70	6.70		
Runoff Volume (ESH)	In.	6.28	5.90	3.67	4.37	6.03	4.09	6.29	3.79	3.68	4.42		
Type		Veg.	Veg.	Veg.	Veg.	Veg.	Veg.	Veg.	Veg.	Veg.	Veg.		
Bottom Width	Ft.	200	100	50	120	100	50	50	100	80	100		
Velocity of Flow (V)	Ft./Sec.	6.7	3.7	2.1	2.7	6.4	0.0	4.2	1.1	0.0	0.0		
Slope of Exit Channel	Ft./Ft.	.076	.039	.078	.050	.083	.087	.046	.074	.087	.060		
Max. Reservoir Water Surface Elevation	Ft.	893.3	889.0	822.6	911.6	907.3	849.5	819.7	780.9	796.1	908.3		
Freeboard Design													
Rainfall Volume (FH) (Areal) ^{5/}	In.	16.20	16.20	9.60	12.90	16.20	9.60	16.20	9.60	9.60	9.60		
Runoff Volume (FH)	In.	12.63	12.15	6.25	8.88	12.31	6.75	12.63	6.37	6.25	7.13		
Max. Reservoir Water Surface Elevation	Ft.	895.9	891.6	824.4	915.1	910.2	851.5	822.0	783.9	798.8	911.2		
Capacity Equivalents													
Sediment Volume	In.	2.07	3.54	4.08	1.62	2.23	4.51	1.82	1.38	1.92	1.18		
Floodwater Retarding Volume	In.	4.63	4.50	3.27	4.08	4.47	4.48	4.68	3.52	3.66	4.42		

(See footnotes at end of table.)

U.S. FOREST SERVICE

LBS Handlands

VICINITY MAP



C.L. GAGE, JR.

*road across
Canyon Springs
Development*

MRS. ALTHEA FORBIS

Construction Campsite

Access Road

Iron Pin
T.M. 1126 R-1

T.B.M. 2

Iron Pin
518.6440
T.B.M. 1

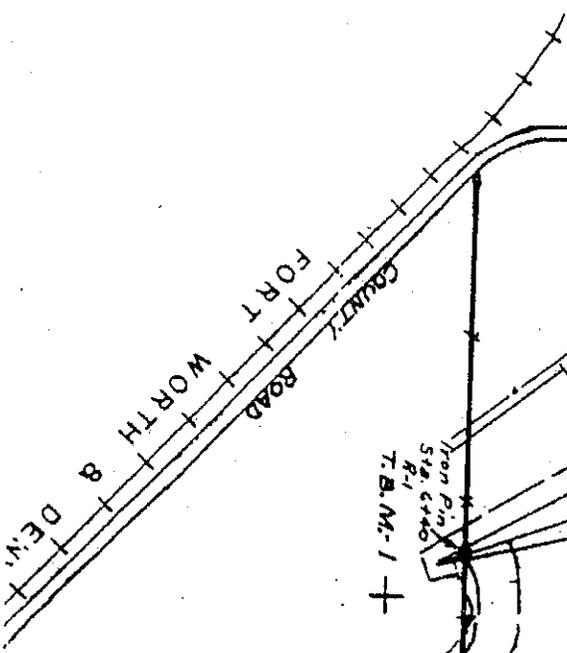
FL 881.1

FL 880.6

Mitchell Energy Corporation
Gas Pipeline

H.C. RUSSELL

Atty General's Territory



United States Department of Agriculture



Natural Resources Conservation Service
101 South Main Street
Temple, TX 76501-7602

January 6, 2004

The Honorable R.R. "Dick" Chase
County Judge
Wise County Commissioners Court
P.O. Box 393
Decatur, Texas 76234-0393

CHIEF CLERKS OFFICE

2004 NOV - 3 AM 10: 20

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Dear Judge Chase:

Alfonso Leal, Assistant State Conservationist for Field Operations has informed me that a satisfactory vegetative cover has been established on Site 35 of the Big Sandy Creek Watershed Project, Trinity River, Wise County. As sponsors of the project, you are responsible for the operation and maintenance of these works of improvements in accordance with the provisions of the Operations and Maintenance Agreement.

As of January 6, 2004, federal funds will not be expended except for available technical assistance that will be provided by the Natural Resources Conservation Service according to the provisions of the Operations and Maintenance Agreement.

Darnell Willis, District Conservationist, will be contacting you soon to arrange an onsite visit to review the O&M agreement and your maintenance responsibilities.

Sincerely,

LARRY D. BUTLER, Ph.D.
State Conservationist

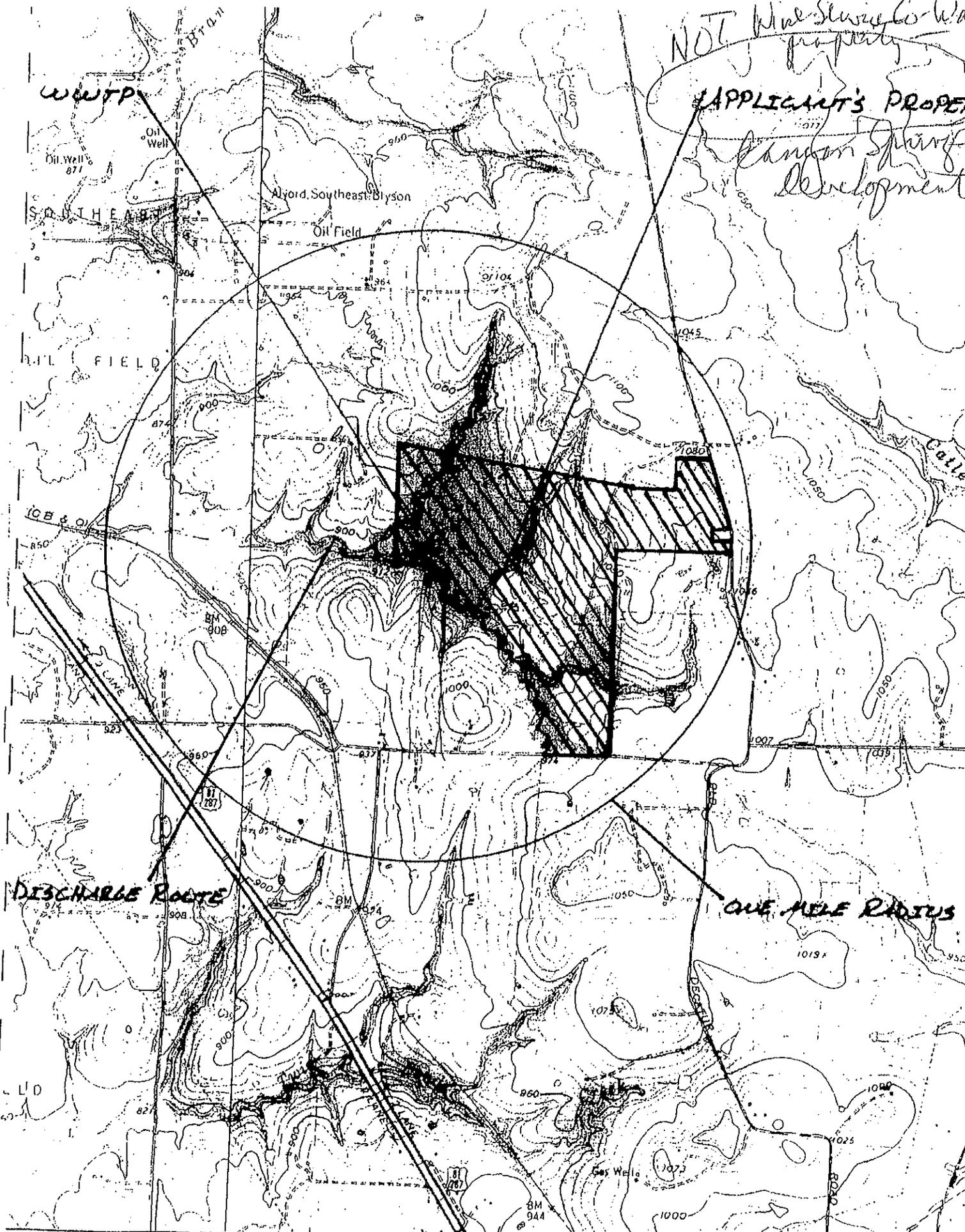
cc: Rex Isom, Interim Executive Director, TSSWCB, P.O. Box 658, Temple, TX 76503-0658
Alfonso Leal, ASTC (FO), NRCS, Weatherford
Darnell Willis, DC, NRCS, Decatur

Maintained by Wise Co. Public Works

NOT Water Sluiceway to Water
property

APPLICANT'S PROPERTY

Random Springs
Development



MWD
54149

Mrs. Ann Jolley
1354 County Road 2175
Decatur, TX. 76234
940-627-3548
March 16, 2007

Chief Clerk's Office, MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

CHIEF CLERK'S OFFICE

MAR 16 2007

COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ Executive Director and Staff,

I am submitting formal comments for a public meeting and requesting a contested hearing if necessary in regard to: Application and Preliminary Decision, dated September 21, 2006 for a new permit for a proposed Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0014708001. TCEQ received this first application April 20, 2006 from applicant: Wise Service Company- water.

We live 1/2 mile more or less from the proposed area for waste water treatment plant. We have been a landowner here at 1354 County Road 2175, Decatur, TX since March of 1970. The lake and dam mentioned in my letters is less than 1/2 mile north of our home and land. From the dam you can see our home's land and electric transformer. The Watson Branch tributary mentioned is east of the dam and lake area.

I regret I will be unable to attend Public Meeting here in Decatur on April 3, 2007.

Ann Jolley

H OPA PM

MAR 22 2007

BY *[Signature]*

MWD

4. The four sponsors of this project were; Wise County Water Control District 1, Wise County Commissioners Court, Wise Soil and Water Conservation District #548, and Tarrant Regional Water District, and very possibly not on your mailing list. Several landowners, this area goes through, were not mailed Public Notices from TCEQ, maybe because the descriptions given in the notices were misleading and incorrect as stated. Certainly other federal and state organizations would not recognize the area as described in public notices.

5. The proposed waste water treatment plant, Canyon Springs Wastewater Treatment Facility, SIC code 4952, is to be located on former Caddo-Lyndon B Johnson National Grasslands, possibly less than ¼ mile from the named dammed lake (project #35). It does not make sense to destroy what has been in place since 1999 that is doing its job for flood control, erosion checks and habitat for wildlife. These tributaries mentioned do not flow normally.

6. This lake and dam was funded by tax payer dollars (approximately \$1,000,000) and was built to stop water flow and to check this gullied area from further erosion. The dam was built to cause the flowing of water to "back-up" into these eroded areas, not flow through them. Since 1999 there is not a tributary (as described in TCEQ second Public Notice) flowing from this named lake unless it is at flood stage. Wise County Public Water Works presently oversees and maintains the dam area.

7. If this waste water treatment facility is issued a permit it will not flow onto the applicant's land, but onto others private land and home areas. This area would be flooded with waste water and not be aerated (mixed water with air), in such a short distance as not to be safe for our water table in surrounding area, recreation use, wildlife use or aquatic life. It would still be "impaired water", not safe.

8. Over 42 acres would have to be flooded into the 16 acre lake #35 before it is high enough to reach the dam spillway. This occurs only after the waste water backs up into gullied areas for which lake was designed; therefore, stopping further erosion (the lake's purpose when built in 1999 with taxpayers' money).

In closing my written formal comments to be included for the public meeting, April 3, 2007, in Decatur, Texas, I would like to state the following:

From many local politicians, neighbors, and folks "in the know" I have heard you cannot stop this Water Treatment Plant (sewage plant) once the permit has been issued. Well, that raises a red flag for me, as so much misinformation in the application sent to you, the Texas Commission for Environmental Quality

(TCEQ) in Austin. The application is incomplete, incorrect, and outdated. The most flagrant being no name for the "unnamed reservoir". This 16 acre lake built in 1999 by the Corps of Engineers at a cost of one million dollars of taxpayer and local money has been on maps and named in government documents since the forties and fifties as: Big Sandy Creek Watershed Project Site #35.

"If only" landowners, Co-op management, our county commissioner and commissioners' court, Wise County Public Works Department, U.S. Soil Conservation Office and Wise County Water District Board had sat down together and discussed this "progress" for the neighborhood and the affect on the environment already in place.

Note: page 7 from TCEQ Permit to Discharge waste to Wise Service Company Water TPDES Permit no. WQ0014708001 found at John A and Katherine G Johnson Public Library, Decatur, Texas.

Page 7-Permit conditions

1. In part b. second sentence
 - ii. "Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;"

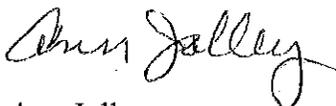
Attached are map copies of this proposed area.

1. I believe the dated 1997 black and white map was with the application in April 2006. Wise Service Company-Water, as applicant for wastewater facility does not own these 266 acres as noted on map as "Applicant Property". Map shows no lake.

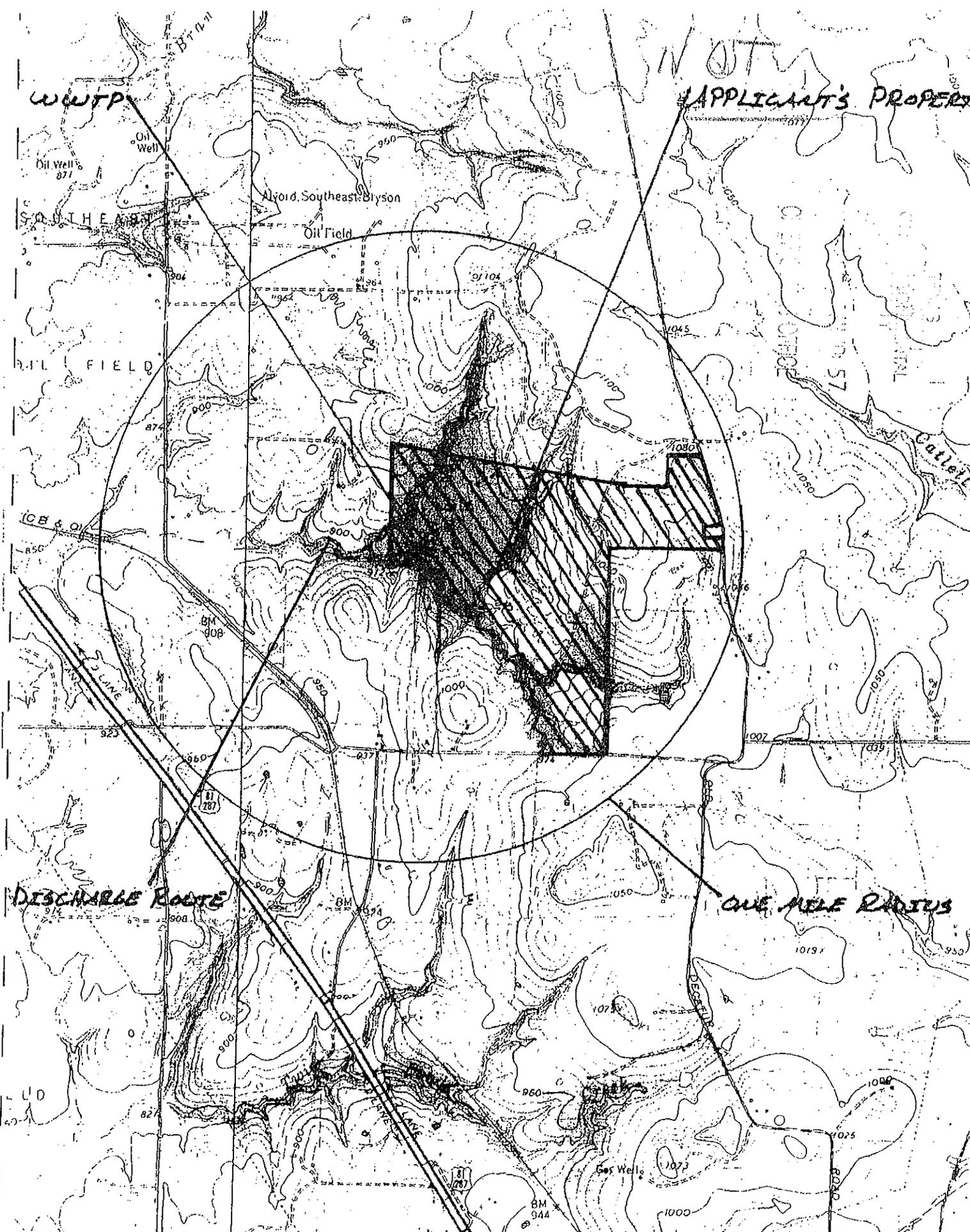
2. Recent satellite NCTCOG map shows Project Site #35 lake and dam dedicated in 1999. Presently (October 2006) lake is in drought conditions and the island now a peninsula.

I hope I have given pertinent, corrected information and map so that you, Executive Directors and TCEQ, will not issue above mention Permit no. WQ00147800 for waste treatment facility, SIC code 4952.

Sincerely,



Ann Jolley



U.S. FOREST SERVICE

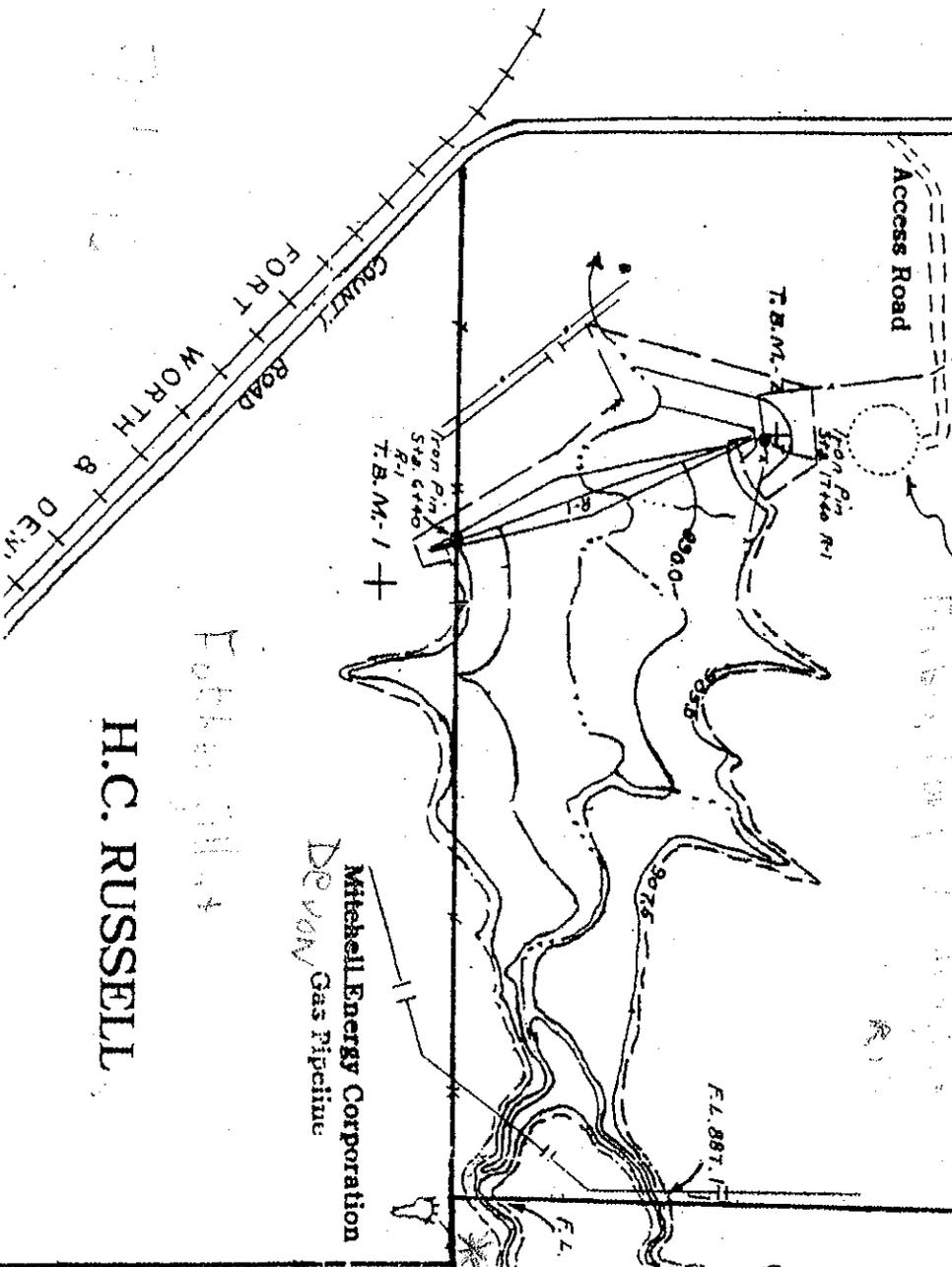
NOV 50

OFFICE

MRS. ALTHEA FORBIS

CONSTRUCTION CAMP SITE

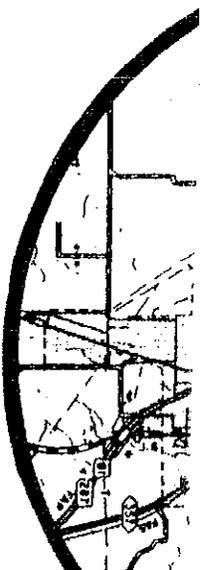
Access Road



FORBIS

H.C. RUSSELL

VICINITY MAP

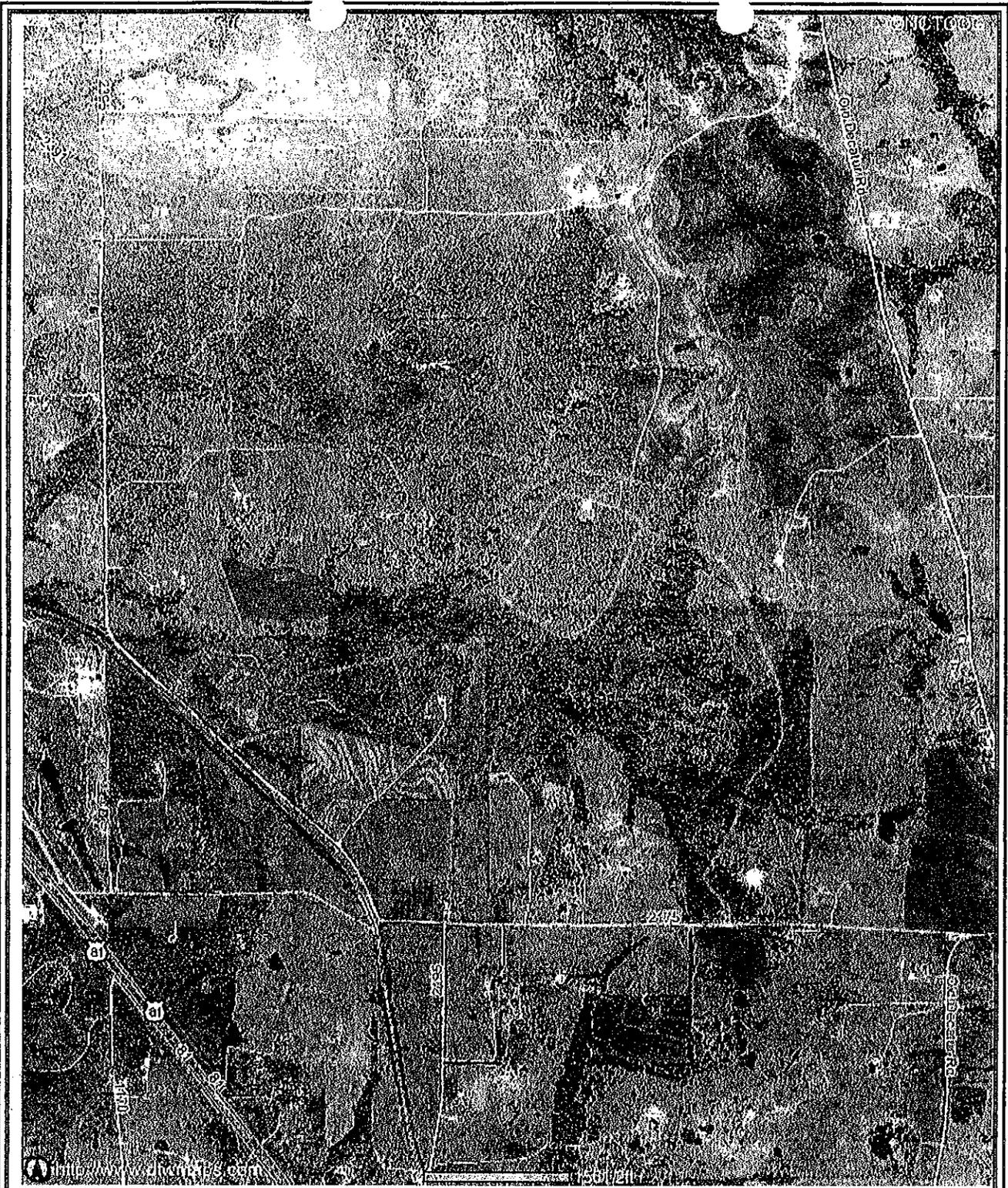


C.L. GAGE, JR.

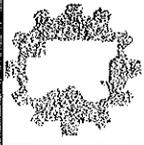
*Proposed
Sewer Treatment Plant*

Arizona

Property owned by...



<http://www.dfwmaps.com>



NCTCOG Maps
www.dfwmaps.com

DISCLAIMER

This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



60 100 150 200 250 300 350 400 450 500 550 600 650 700 750 800 850 900 950 1000

OFFICE

10 50

11



February 11, 2008

MWD
52149

REQUEST FOR CONTESTED CASE HEARING

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FOR

2008 FEB 13 PM 2:16

WISE SERVICE COMPANY—WATER
TPDES PERMIT NO. WQ0014708001

CHIEF CLERKS OFFICE

To: Texas Commission on Environmental Quality

OPA

From: Thomas N. Long, M.D.
1043 Old Reunion Rd.
Decatur, Texas 76234
Phone: 940-627-2000
Fax: : 940-627-8319

H FEB 14 2008

BY *llc*

Dear Sirs:

I request a contested case hearing for the above numbered permit application. I own an undivided interest in the James E. Forbis Estate, which is the property immediately west of and adjoining the applicant's property. The discharge point of the proposed wastewater treatment facility as indicated on the applicant's "Buffer Zone" map is approximately 200 feet east of my property boundary. The discharge route is into a tributary that runs directly onto my property and forms a government sponsored flood control lake. Therefore, I contend that I have status in this case as a directly affected party.

I must state that I am astounded that an application with so many obvious uncorrected errors and material misrepresentations has earned the Executive Director's nod to proceed toward the granting of a permit. While I understand from the Director's comments that the Commission is only empowered to deal with technical issues of a fairly narrow scope, it is difficult to believe that this application passed muster at any level. I will not recount all of the misrepresentations mentioned in my "Formal Comments" letter dated April 3, 2007. Instead, I will focus on the most glaring problems that I believe should have elicited a different response from TCEQ Staff.

I do not claim to be an expert on TCEQ rules and regulations, but surely two of the most important aspects of any wastewater treatment application are:

1. Where is the facility to be built?
2. What bodies of water will receive the effluent?

Both of these very basic questions were not answered accurately in the application. In the Director's Response to Comment 8, he repeats a set of coordinates provided by the applicant that, when plotted, would locate the discharge point more than 4,000 feet from the location illustrated on the "Buffer Zone" map. The area indicated by the coordinates is on Mr. Boyd's property, east of the applicant's property. Surely staff could have noted this gross inaccuracy from their computers in Austin.

MW

As I and many of my neighbors have noted, the original notice (NORI) published August 10, 2006, made no mention that the effluent would be discharged into a tributary and then directly into a flood control lake. There are two flagrant errors here. First, no member of my family, (heirs of the James E. Forbis Estate), ever received the original notice of this project, even though we are *the most directly impacted adjacent property* to the proposed facility. Though published notice is intended to “fill in” people who may have been overlooked, in this case, the fact that the reservoir was not mentioned in the notice made the discharge route unrecognizable, even if we had been pouring over all public notices. Also, how does the applicant explain “overlooking” notice to the adjacent property 200 feet downstream from the discharge point?

In this case, staff, (as stated in the public meeting), took it upon themselves to alter the application and add in the mention of an “unnamed reservoir” in the second public notice (NAPD). Again, I am no expert in TCEQ regulations, but in my limited research, I have yet to uncover a rule that allows staff to materially alter the facts in an application. The only change noted in the “Summary of Changes From Application” (page 3, Statement of Basis/Technical Summary and Executive Director's Preliminary Decision) are changes to the Total Phosphorus amounts allowed in the effluent.

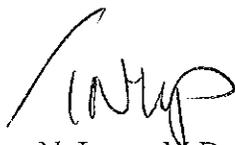
In this instance, staff has departed from it's regulatory role to actually edit and correct the most critical misrepresentation in the application on behalf of the applicant. If staff can unilaterally alter basic facts in an application to assist the applicant, doubt must certainly be cast on their ability to independently monitor the data reported during the operation of the facility.

In the Director's Response to Comment 18, he states “TCEQ staff that participated in the public meeting visited the site, including the reservoir. However, due to the conditions of the land, an inspection of the entire site could not be conducted at that time.”

This statement is completely false. My wife and I personally invited Ms. Martinez and the other visiting staff members to come onto our property to view the reservoir the day of the public meeting. Staff did accept the invitation and viewed the lake. At that time, I offered to take any staff member to view the receiving waters on our property boundary. Though the terrain is a little rough, the gentlemen in the group would have had no problem visiting the location. However, all staff members, male and female, declined the offer. Photos of the receiving stream were provided to staff and included in my “Formal Comments” letter dated April 3, 2007. It is clear in the photos, and would have been quite apparent to staff if they had taken the time to look, that the description of the receiving stream provided by the applicant is completely false. The stream is very deep and wide, and of course not moving since it is in fact part of the lake.

Although it seems far fetched at this juncture, I think it would be appropriate for staff and the Executive Director to reconsider the decision to move this application toward approval. If the applicant's performance in this case is typical of what routinely gets approved by the TCEQ, I have grave concerns for the quality of our state's environment in the future. If the Executive Director rules not to reconsider his decision in this case, I reiterate my request for a contested case hearing.

Respectfully,



Thomas N. Long, M.D.

4 & 7

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APR 3 11:54 AM '07
CHIEF CLERK'S OFFICE

PLEASE PRINT:

Name: Dr. & Mrs. Tom Long
Address: 1043 Old Remington Rd.
City/State: Decatur, TX Zip: 76234
Phone: (409) 627-2000

Please add me to the mailing list. already on

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

mcw

FORMAL COMMENTS

TCEQ PUBLIC MEETING
for

PROPOSED PERMIT NO. WQ0014708001

Submitted by Thomas N. Long, M.D. On April 3, 2007

OPA RECEIVED *H*
APR 03 2007

AT PUBLIC MEETING

APR -4 PM 1:54

CHIEF CLERKS OFFICE

My name is Dr. Thomas N. Long. I have lived in Decatur and practiced general and vascular surgery here for 28 years, and I own an undivided interest in the 200 acres immediately west or downstream from the discharge point for the proposed sewage plant. This land has belonged to my family since the mid 60's.

In 1999, after 30 years of waiting, the Wise County Water Control and Improvement District and the Wise County Soil and Conservation District completed a dam (Big Sandy Creek Watershed Structure # 35) to impound water flowing from the tributaries of Watson Branch. The lake when full to conservation levels covers 16 acres. Following the recent rains this past weekend, it is currently still approximately 8 feet below conservation level. The lake is home to the standard deer and turkey populations, with the addition of beaver and migratory ducks. We even built an island, called duck island, for protection of the water fowl from predators.

According to application, the sewer plant will discharge its effluent into the largest tributary feeding into the lake. This tributary is 50-100 feet wide near the lake, and is still very wide and deep at the boundary of our property and the developer's property, only a very short distance from the discharge point. I have enclosed photos of the lake, and of the tributary at our boundary near the discharge point. These photos were taken Sunday, April 1, 2007. The tributary is at least 30 ft wide at this point, and of unknown depth. An old boundary fence is completely covered in the middle of the channel, and the lake is still 8 feet low.

Now I would like to comment on at least some of the many inaccuracies in the application for a permit to discharge waste water. I will be referring to a document that was available at our local public library on Friday, March 30th, 2007. My wife and other interested parties here can attest that this document is a completely different document than the one available at the library in the fall of 2006. It seems easiest to consider the errors in their sequential order in the application.

First, on page 5 of 12, it states that the owner of the land where the treatment plant will be is "Larry Cole - Purchase is in Negotiation". In other words, no clear owner is specified. In the fall of 2006, months after the application was filed, neighbors had understand the owners included Mr. Gary Shelton and Mr. J.K. Miller. The document on file at the library in 2006 did not list owners of the parcel.

Next, on page 6 of 12, No. 5.b., an "accurate description" of the point of discharge and discharge route is requested. The description supplied fails to mention that the discharge would actually run from the "unnamed tributary" directly into the lake on our property. It is the 16 acre lake formed by the federally funded flood control dam mentioned above, and referred to on conservation maps as "Site 35". Also, no geographic coordinates are supplied for either the plant itself, or the discharge point. On the USGS Map supplied by the applicant, the point noted as "discharge route" is the center channel of what is now the lake. This fact has been apparent on all aerial photos taken since the lake filled, approximately 7 years ago.

ma

The next apparent error is on page 7 of 12, item 5.k. Here the question is posed "will the treated wastewater discharge to a city, county or state highway, or a **flood control drainage** ditch?" The applicant checked "No", though the effluent will clearly discharge into a flood control lake.

Again, on page 10 of 12, item No. 7, the applicant is requested to "Provide a description of the effluent discharge route", from the "point of discharge to the nearest major watercourse...". Here the applicant provides even less information, listing only the receiving segment of the Trinity River miles downstream.

The diagram showing the plant and the buffer zone would suggest that the plant is within 200 feet of the property's western border.

On page 11 of 12, the application requests information that should have been provided. The applicant fails to provide any surrounding property owners boundaries. Also, the applicant fails to show the lake and fails to mark the point of effluent discharge on any map.

In the DOMESTIC WORKSHEET 2.0- RECEIVING WATERS (pages 8 and 9 of 30), there are numerous errors and omissions. The description of the nature of the immediate receiving waters is grossly inaccurate. On April 1, 2007, I photographed the receiving stream on the border of our property and the applicant's property. Please refer to Photos C and D in the attachments. Also, an aerial view is also provided as a basis or orientation for the photos. On April 1st, with the lake still about 8 feet below conservation level, I would estimate the width of the receiving stream to be about 30 feet at our property border, and the depth mid-channel at 6-8 feet. Also, since this is the "backwater" of the lake, there is no movement in this water.

Items 4. a., b., c., d., and e. are all totally inaccurate. Again, the applicant fails to describe the receiving waters within 3 miles downstream of the discharge point, and answers "No" to item d. which specifically asks if there are any man-made dams or reservoirs within three miles of the discharge point. The applicant never requested to come onto our property to explore the receiving water downstream. Even after local residents informed the applicant of the lake's existence in September of 2006, no attempt was made to revise or correct the data in the application. The only change I am aware of was in the wording of the public notice. The notice published August 10, 2006, made no mention of a reservoir of any kind. The notice published October 8, 2006, added the term "unnamed reservoir" to the description of receiving waters.

In the technical report, on page 12 of 30, there is data describing the receiving stream at some point. There is no reference point for which 500 ft. of the stream was evaluated. I can only testify that at the western border of the applicant's property, the stream much larger and deeper than described, as evidenced by the attached photos.

Finally, the applicant failed miserably in their notification process. Neither the J.E. Forbis Trust, his widow, nor his heirs were notified as required as directly adjacent and most significantly affected landowners. No owner of our property is listed in the application's list of affected property owners.

Lastly, the Wise County WCID and Soil Conservation District built the lake to impound potential flood waters. At normal conservation levels, the lake covers 16 acres, but at flood level, it will cover 40.5 acres, and of course massively impact the size of the two tributaries exiting the applicant's property. That is why, when our family granted the sponsoring agencies an easement for the lake's construction in 1998, it was also necessary for them to obtain an easement from the C.L. Gage family, who at that time owned what is now shown as the applicant's property. I have attached the USDA's worksheet showing affected acreages, and also copies of the easements signed by our family and the Gage family. A similar easement exists signed by the Russell family. Please note provision # 5 on both easements states that **"Only the Grantee, it's agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement."** Apparently, the applicant chose to ignore the terms of this easement.

At this point in these proceedings, I would respectfully request that the TCEQ deny the application in question based on it's numerous and glaring errors and omissions. I would reiterate the comments made in my first letter to the agency that the applicant has no previous experience in building or operating a water treatment facility. Perhaps the state of this application further attests to the applicant's lack of experience. At any rate, a very viable and sensitive body of water is at risk here, and even the smallest mechanical or human error in a plant's operation could have disastrous consequences. Even if the application was totally complete and accurate, a water treatment facility discharging thousands of gallons of effluent daily into a flood control lake would surely not be in the public's best interest.

If the application for the Canyon Springs Wastewater Treatment Plant is not denied at this juncture, I hereby request a contested case hearing.

Respectfully submitted,



Thomas N. Long, M.D.
1043 Old Reunion Rd.
Decatur, Texas 76234

INDEX OF ATTACHMENTS

PHOTO A -- Aerial photo showing Forbis family property with lake and tributaries
Please use as a reference for orientation of photos listed below.

PHOTO B-- Main body of lake. Photographed April 1, 2007.

PHOTO C -- Main tributary of lake, also receiving stream of effluent.
Photo taken April 1, 2007 at western boundary of applicant's property facing west
(towards lake).

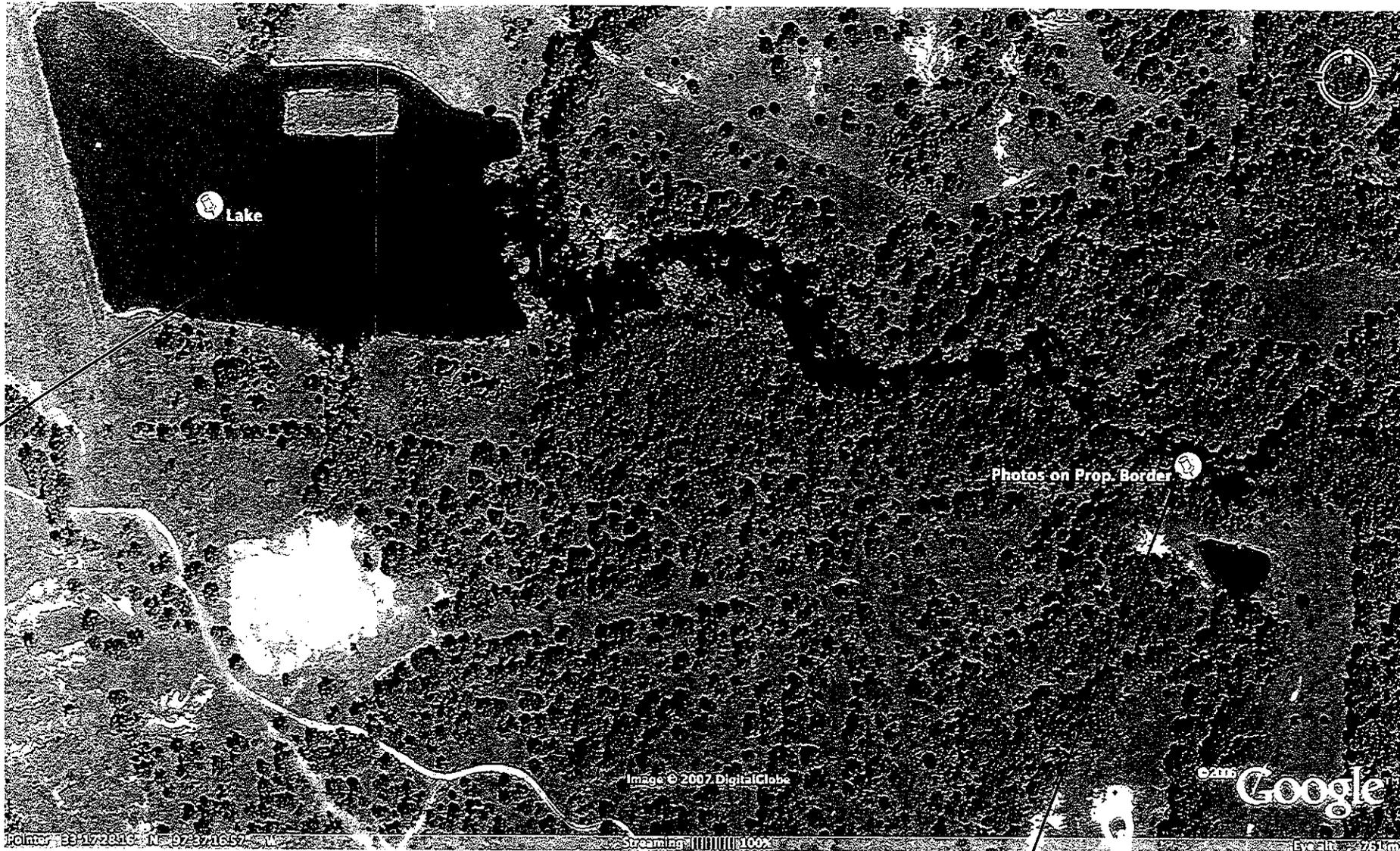
PHOTO D -- Main tributary of lake, also receiving stream of effluent. View is facing east towards
applicant's property. Note the same posts of the boundary fence are visible in both
photos C and D standing in the water. The central part of the fence is submerged.

ATTACHMENT E--- Copy of USDA's work sheets for construction of the lake. Acreages for
easements from Forbis, Russell, and Gage families are noted.

ATTACHMENT F -- Copy of easement granted by Forbis family and heirs in 1998 for construction of
Flood Control Structure # 35

ATTACHMENT G-- Copy of easement granted by Gage family in 1998 for lake construction. Gage
property is now owned by unspecified developers, and is shown as "applicant's
property" in the application.

Photo A



Site where photo B was taken facing west

Photos on Prop. Border

Site where photos C and D were taken

Image © 2007 DigitalGlobe

Google

Coordinates: 33°17'28.916"N 97°37'16.57"W Streaming 100% Eyeball 2761km

Photo D - Lake - site 30 - April 11, 2001



Photo C - Facing west to east



April, 2007

Boundary Fence



East ←

Boundary
Fence

April 1, 2007

Facing East to Applicant's property

OPA RECEIVED

APR 03 2007

AT PUBLIC MEETING



U.S. FOREST SERVICE

C.L.

MRS. ALTHEA FORBIS

Construction Campsite

Access Road

Iron Pin
Sta. 17140 R-1

T.B.M. 2

890.0

F.L. 887.1

F.L. 880.6

Iron Pin
Sta. 6710 R-1

T.B.M. 1

Mitchell Energy Corporation
Gas Pipeline

H.C. RUSSELL

COUNTY ROAD
FORT WORTH & DENVER
R. R.

LEGEND

Attachment F

No. 256

EASEMENT

THE STATE OF TEXAS
COUNTY OF

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, Althea Forbis, Thomas N. Long, Jana Sue Long Woodruff, Christopher N. Forbis and Nancy Jane Forbis Carnahan

of Wise County, Texas, (hereinafter called "Grantor"), does hereby grant, bargain, sell, convey and release unto Wise Co. W.C.I.D. #1 and Wise Soil & Water Conservation District #548 its successors and assigns, (hereinafter called "Grantee"), an easement in, over and upon the following described land situated in the County of Wise, State of Texas, to-wit:

100 acres of land, more or less, in the David Moore Survey A-587, being more fully described in a Warranty Deed from N.L. Sewell and wife, Ruth Sewell to James E. Forbis and wife, Althea Forbis, dated January 19, 1972; recorded in Vol. 316 Pg 73, Deed Records of Wise County, Texas.

for the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land; for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the above described land that is caused by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works, Big Sandy Creek Watershed

And, involving or affecting 33 acres, more or less, of the above described land.

1. This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along useable access routes designated by Grantor.
2. There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, its successors and assigns, of the rights and privileges herein granted.
3. The rights and privileges herein granted are subject to all easements, rights-of-way, mineral reservations or other rights now outstanding in third parties.
4. The Grantee is responsible for operating and maintaining the above described works of improvement.
5. Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.
6. The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.
7. The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.
8. This easement (does) ~~include~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.
9. Special Provisions:

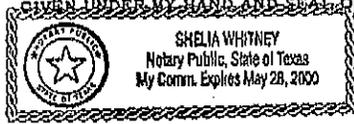
In the event construction of the above described works of improvement is not commenced within two (2) years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

06 (Back)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Jana Sue Long Woodruff and her husband, both known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 2nd day of April, A. D. 1998.



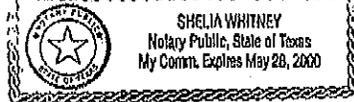
Shelia Whitney
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires May 28, 2000

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Christopher N. Forbis, known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 2nd day of April, A. D. 1998.



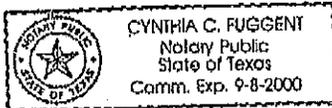
Shelia Whitney
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires May 28, 2000

THE STATE OF Texas
COUNTY OF Dallas

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Nancy Jane Forbis Carnahan, known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 9th day of April, A. D. 1998.



Cynthia C. Fuggent
Notary Public in and for Dallas County
State of Texas

SEAL
My Commission Expires 9-8-2000

THE STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

STATE OF TEXAS

No. _____

EASEMENT TO REAL ESTATE FROM _____ TO _____

FILED FOR RECORD

This _____ day of _____ at _____ M. o'clock 19____

County Clerk _____ Deputy _____

RECORDED _____ A. D. 19____

in _____ County Rec. _____

of _____ Book _____

Page _____

By _____ County Clerk _____ Deputy _____

This instrument should be filed immediately with the County Clerk for Record.

No. 256 (Back)

TO HAVE AND TO HOLD the aforesaid easement in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, its successors and assigns, forever.

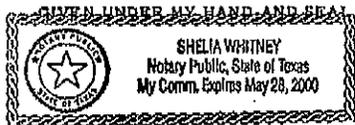
IN WITNESS WHEREOF the Grantor has executed this instrument on the 2nd day of April, A. D., 1998

John Althea Forbis (GRANTOR)
Thomas N Long (GRANTOR)
James S S (GRANTOR)
Christopher N Forbis (GRANTOR)
Nancy Jane Forbis (GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Althea Forbis, known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 2nd day of April, A. D. 1998.



Shelia Whitney
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires May 28, 2000

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Thomas N. Long, known to me to be the person(s) whose name(s) is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 3rd day of April, A. D. 1998.



Shelia Whitney
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires May 28, 2000

Form with fields for FILED FOR RECORD, RECORDED, A. D., 19, County Rec., County Clerk, Deputy, and EASEMENT TO REAL ESTATE FROM TO.

No. 256

EASEMENT

Attachment G

THE STATE OF TEXAS
COUNTY OF

FOR AND IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, C. L. Gage, Jr., C. L. Gage Jr. Guardian for Lewis W. Gage
William C. Gage and Traci L. Gage

of Wise County, Texas (hereinafter called "Grantor"),

does hereby grant, bargain, sell, convey and release unto Wise Co. W.C.T.D. #1 and Wise Soil
and Water Conservation District

its successors and assigns, (hereinafter called "Grantee"), an easement in,
over and upon the following described land situated in the County of Wise, State of Texas, to-wit:

258.07 acres of land, more or less, in the D. Moore Survey A-587, G. M. Mills Survey A-605, and the R. Salmon Survey A-758 all of which being in Wise County, Texas being more fully described in an Exchange Deed from the Forest Service, United States Department of Agriculture to James C. Thomason, Trustee dated June 2, 1987 : recorded Volume 248 Page 410, Real Records, Wise County, Texas, and more fully described in a Special Warranty Deed from Tim Truman and James C. Thomason to C. L. Gage, Jr., Lewis W. Gage, William C. Gage and Traci L. Gage recorded volume 544 page 751 and 758, Real Records, Wise County, Texas.

for the purposes of:

For or in connection with the construction, alteration, operation, maintenance and inspection of the following identified works of improvement to be located on or affecting the above described land; for the flowage of any waters in, over, upon or through such works of improvement; for the storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such works of improvement; and for the diversion or flowage of any waters to, from, on, over, or upon the above described land that is caused by or results from construction of the works of improvement; such works of improvement being identified as:

Floodwater Retarding Structure No. 35, and related works,
Big Sandy Creek Watershed

And, involving or affecting 1.50 acres, more or less, of the above described land.

This easement includes the right of ingress and egress at any time over and upon the above described land and over adjoining lands of Grantor along useable access routes designated by Grantor.

There is reserved to the grantor, his heirs and assigns, the right and privilege to use the above described land of the Grantor at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Grantee, its successors and assigns, of the rights and privileges herein granted.

The rights and privileges herein granted are subject to all easements, rights-of-way, mineral reservations or other rights now outstanding in third parties.

The Grantee is responsible for operating and maintaining the above described works of improvement.

Only Grantee, its agents, representatives, or licensees shall have the right to control the level of water impounded by the above described works of improvement.

The Grantee shall have the right to construct fences with gates or gaps around the constructed works of improvement and such fences, gates, or gaps shall not be changed in any way without consent of the Grantee. Any livestock found within such fences, except as authorized in writing by the Grantee, may be ejected therefrom by the Grantee.

The works of improvement will be constructed primarily of native earthen materials including rock and rock fragments taken from construction excavation areas and from borrow areas near the site of construction. This easement shall include the right to use such construction materials on or under the land covered by this easement.

This easement (does) ~~does not~~ include the right of Grantee's construction agent to use, during initial construction or later alteration, repair or maintenance of the works of improvement, such portion of the above described land as needed for a construction supply and equipment operations and maintenance work site headquarters.

Special Provisions:

In the event construction of the above described works of improvement is not commenced within 5 years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

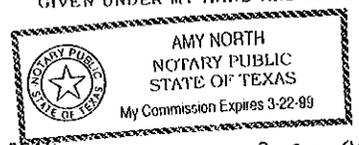
TO HAVE AND TO HOLD the aforesaid easement in, over and upon the above described land of the Grantor, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the Grantee, his successors and assigns, forever.

IN WITNESS WHEREOF the Grantor has executed this instrument on the 11 day of MARCH A. D., 19 96

C. L. Gage, Jr. (GRANTOR)
C. L. Gage, Jr. Guardian (GRANTOR)
David Gage (GRANTOR)
William C. Gage (GRANTOR)
(GRANTOR)

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C. L. Gage, Jr., Traci L. Gage, William C. Gage, known to me to be the person(s) whose name(s) are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 11th day of March, A. D. 19 96.



Amy North
Notary Public in and for Wise County
State of Texas

SEAL
My Commission Expires 3-22-99

THE STATE OF Texas
COUNTY OF Wise

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person(s) whose name(s) _____ subscribed to the foregoing instrument, and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the _____ day of _____, A. D. 19 _____.

Notary Public in and for _____ County
State of _____

SEAL
My Commission Expires _____

Form with fields for: No., EASEMENT TO REAL ESTATE FROM, TO, FILED FOR RECORD, This ___ day of ___ at ___ M., County Clerk, RECORDED, A. D. 19 ___, Book ___, Page ___, County Clerk, Dep, This instrument should be filed immediately with the County Clerk for Record.

54149

January 25, 2008

MWD
54149

OPA

FEB 11 2008

BY EB

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

RE: Wise Service Company – Water
TPDES Permit No. WQ0014708001

CHIEF CLERKS OFFICE

2008 JAN 31 PM 2:37

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

OPA

JAN 29 2008

Dear Ms. Bohac:

I am a directly affected party in the above numbered application for a wastewater treatment facility currently under consideration by the TCEQ. I am writing to request a copy of the TCEQ Rules and Regulations regarding the permitting of domestic wastewater treatment facilities, as well as a copy of Chapter 26 of the Texas Water Code. A copy of the general mission statement of the TCEQ would also be helpful.

We have just received the Executive Director's Response to Public Comment in this case. At this point, I am certainly planning to request a contested case hearing. However, to better assess my chances of success in pursuing this matter, it would be helpful if you could provide the following information based on TCEQ historical data.

1. Please reference the last application for a domestic wastewater treatment facility (TCEQ Application number and date), for which the Executive Director *did not* find that the application met the requirements of applicable law.
2. Please reference the last application for a domestic wastewater treatment facility that reached the contested case hearing stage, and for which the commission later overturned the decision of Staff and the Executive Director, and denied the application.
3. In the Executive Director's Response to Public Comment for this application, he makes a point of noting five times that an applicant must "under penalty of law" submit information in the application that is "true, accurate, and complete" to the best of their knowledge and belief. Please provide the most recent example of the TCEQ pursuing the penalties of law for an applicant who provided false or misleading information on an application. What penalties were assessed? Again, please reference the TCEQ Application number and date.

Thank you for your assistance in this matter. If the above requests require more than a brief period of time to research and formulate a response, Please forward a copy of TCEQ Rules and Regulations first.

MWD

I am under a time constraint to compose a response to the Executive Director's decision.

Thank you again for your help. I will look forward to hearing from you. If you have any questions, please contact me at the address or phone numbers listed below.

Respectfully,

A handwritten signature in black ink, appearing to read 'T. Long', written in a cursive style.

Thomas N. Long, M.D.
1043 Old Reunion Rd.
Decatur, Texas 76234

Home phone : 940-627-2000
Cell phone : 940-393-0683
E-mail : ralong@lfbeef.com

**I. Comments in Opposition to the Granting of
Proposed Permit No. WQ0014708001**

**II. Request for Public Meeting Regarding Proposed Permit
No. WQ0014708001**

Applicant: Wise Service Company-Water

To: Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, Tx. 78711-3087

Handwritten: *OPAPM*
Stamp: NOV 06 2006
Handwritten: *6/4/15*
Handwritten: *54149*
BY _____

November 2, 2006

Stamp: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Stamp: CHIEF CLERK'S OFFICE
Stamp: NOV - 6 AM 10:38

Dear Sir:

I. Please consider the following comments timely filed in the above numbered TCEQ application.

I am Thomas N. Long, M.D. My mailing address is 1043 Old Reunion Rd., Decatur, Texas, 76234. The application in question involves the building of a sewage treatment facility that will deliver up to 75,000 gallons of effluent daily into a government sponsored flood control lake. I am one of several owners of a parcel of land in rural Wise County on which the "unnamed reservoir" mentioned in the application (second public notice), is located. Members of my family have owned this property since 1972. The "unnamed reservoir" actually has an official, well documented designation. It is the "Big Sandy Watershed Project, Site 35". It is an integral part of a flood control plan that appeared on conservation maps as early as the 1950's. The structure forming this 16 acre lake was completed in 1999, at considerable taxpayer expense, and under the auspices of the following sponsoring groups:

- Wise County Water Control and Improvement District No. 1
- Wise Soil and Water Conservation District #548
- Wise County Commissioners Court
- Tarrant Regional Water District

Of the above named entities, only the Wise County Commissioners Court had any knowledge of this proposed project.

Although this application was filed in April, 2006, I received no notification whatsoever of the applicant's plans. It was only on September 29th and 30th that I began to hear from several neighbors about the proposed sewage treatment plant. I am astounded that an application to discharge up to 75,000 gallons of effluent per day into a lake located entirely on my property has proceeded to the "draft permit" stage with no notice to me whatsoever.

In the few days I and the other members of my family have had to try to research this matter, several pertinent facts have emerged. These facts I believe warrant the Commission's denial of this application.

1. On August 10, 2006, the applicant published a notice entitled "NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN WATER QUALITY PERMIT", "PROPOSED PERMIT NO. WQ0014708001" in the Wise County Messenger. (See Attachment A.). Please note that in this notice, there is no mention of an "unnamed reservoir" or a lake of any kind receiving effluent after a *very* brief passage from the plant via an "unnamed tributary."
2. According to application data made available at the John A. and Katherine G. Jackson Public Library, the application was filed on April 20, 2006, and additional information was submitted on June 21 and July 14 of 2006 (Statement of Basis/Technical Summary and Executive Director's Preliminary Decision, page 3). It is unclear at what date the applicant finally acknowledged to the TCEQ the existence of the reservoir. (Big Sandy Watershed Project, Site 35).
 - a. If the applicant submitted data to the TCEQ acknowledging that the lake was in the discharge zone in the June or July submissions, why did the August 10 published notice still not mention the existence of the lake?
 - b. How late in the application process can the applicant continue to alter the "facts" of the application?

It is apparent that one of two scenarios occurred:

1. The applicant knew of the existence of the lake (apparent on all aerial photos taken since 2000), and failed to disclose this fact in a timely manner.
- or
2. The applicant was grossly negligent in researching the immediate discharge zone of the proposed plant.

I contend that neither scenario would recommend the applicant as a responsible and viable operator of the proposed sewage treatment facility. Equally troubling is the fact that Wise Service-Water has no previous experience in the sewage treatment business. The building, operation, and maintenance of a sewage treatment facility obviously requires a high degree of technical expertise and vigilance. The applicant has no demonstrated ability in this field. This is especially worrisome in a system that depends heavily on self reporting for compliance.

As mentioned earlier, the effluent from the proposed plant will be discharged into a creek at a point that appears to be only a matter of a few hundred feet from the body of the lake. Of course, since the completion of the retention dam in 1999, the lake has filled and has backed up into the creeks which feed it. Therefore, the site of the proposed discharge is no longer a free flowing tributary, but simply part of the "backwater" of the lake. There would be little movement of this water to aid in the dissipation of remaining contaminants. In all but the extremely rare times that the lake is overflowing, there would be *no movement* of the effluent out of the lake. Years of daily effluent discharge and accumulation would pose a threat to the many and varied wildlife populations currently utilizing the lake (deer, turkey, fish, and a large variety of migratory water fowl including wood ducks). Any accidental discharge of solids or higher than allowable filtrates could have disastrous effects on the ecological system that this body of water now supports.

I strongly urge the Executive Director and the Commission to deny the requested permit based on the following :

1. The applicant failed to submit relevant facts in their permit application.
 - a. Failed to reveal existence of the lake in first public notice.
 - b. Failed to properly identify named government flood control lake in second notice.
 - c. Failed to reveal the distance of the discharge point from the lake and it's main tributary.
 - d. Failed to provide adequate notice to directly impacted property owners.

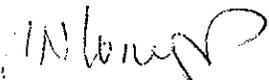
2. The effluent will be discharged into a non-moving body of water which according to the application has "high aquatic life uses". An accidental discharge of solids or higher than allowable filtrates would cause disastrous and long term detriment to the water quality in the lake. This possible circumstance is obviously one that the TCEQ encounters from time to time. Monitoring and Reporting Requirements (application, page 6), list the following anticipated non-compliance circumstances that must be reported:
 - i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

3. The applicant has no demonstrated ability in the building, operation, or maintenance of a sewage treatment facility.

II. I hereby submit a request for a public meeting regarding proposed TPDES Permit No. WQ0014708001 and request that I be placed on the mailing list for this application.

Thank you for the opportunity to comment on this application. I will look forward to your response.

Respectfully,



Thomas N. Long, M.D.
1043 Old Reunion Rd.
Decatur, Tx. 76234

Phone: 940-627-2000

WISE COUNTY MESSENGER, Decatur, Texas, Thursday, August 10, 2006



NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN WATER QUALITY PERMIT

PROPOSED PERMIT NO. WQ0014708001

APPLICATION. Wise Service Company-Water, P.O. Box 269, Decatur, Texas 76234-0269, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014708001 (EPA I.D. No. TX0128732) to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 75,000 gallons per day. The domestic wastewater treatment facility is located approximately 3.75 miles north northwest of the intersection of U.S. Highway 380 and Farm-to-Market Road 730 and approximately 1.4 miles east of the intersection of U.S. Highway 287 and County Road 2175 in Wise County, Texas. The discharge route is from the plant site via a pipe to an unnamed tributary; thence to Watson Branch; thence to Sandy Creek; thence to West Fork Trinity River. TCEQ received this application on April 20, 2006. The permit application is available for viewing and copying at the John A. and Katherine G. Jackson Public Library, 1700 South Farm-to-Market Road 51, Decatur, Texas.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting on this

Legal notices-910 /

application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application.

If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of an applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Wise Service Company-Water at the address stated above or by calling Mr. Rayce Cantwell at 940-627-2167. Issuance Date: July 20, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PROPOSED PERMIT WQ0014708001

908 CR 2175
DECATUR, TX 76234
OCTOBER 14, 2006

OFFICE OF THE CHIEF CLERK
MC 105
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
PO BOX 13087
AUSTIN, TX 78711-3087

*MWD
54149*

OPA
H OCT 19 2006
BY *ll*

RE; PROPOSED PERMIT WQ0014708001

THE PURPOSE OF THIS LETTER IS TO REQUEST A CONTESTED CASE HEARING ON THE ABOVE PROPOSED PERMIT SUBMITTED BY WISE SERVICE COMPANY- WATER (ALSO KNOWN AS BRIGHTON WATER SYSTEMS) AND OPERATING UNDER THE UMBRELLA OF WISE ELECTRIC COOPERATIVE, OF WHICH WE HAVE BEEN MEMBERS FOR 10 YEARS.

AFTER RETIRING ON 5-4-1996 WITH 35 1/2 YEARS OF SERVICE, MY WIFE ROXIE AND I BOUGHT OUR PLACE SO WE COULD LIVE AND ENJOY OUR RETIREMENT YEARS RAISING CATTLE AND HORSES. WE HAVE ENJOYED THE WILD LIFE THAT HAS INCREASED IN THE LAST 10 YRS DUE TO ALL THE NATURAL HABITAT WITHIN THE BIG SANDY CREEK WATER CANYON LAKE AND LBJ GRASSLANDS

WE ARE VERY CONCERNED OVER THE INCREASE OF ACTIVITIES RELATED TO THE PROPOSED TREATMENT PLANT CONSTRUCTION AND REMOVAL OF SLUDGE FOR YEARS TO COME. WHICH WILL HAVE AN IMPACK ON WILD LIFE ACTIVITIES AND THE POTENTIAL OF THE TREATMENT PLANTS' WATER FLOW NOT TO BE PROPERLY AIREATED GOING INTO THE BIG SANDY CREEK WATER SHED LAKE, WATER SHED PROJECT #35.

THERE WAS A MEETING OF ALL LIVING WITHIN THE AREA AND EVERYONE WAS CONCERNED FOR THE QUALITY OF LIFE WE DO NOW ALL ENJOY AS IT STANDS TODAY.

THANK YOU FOR TAKING THE TIME TO HEAR OUR OPINIONS.

RESPECTFULLY YOURS;

Gordon J Ploeger
GORDON J PLOEGER
Roxie L Ploeger
ROXIE L PLOEGER

CHIEF CLERK

RESPONSE 1: "The unclassified receiving water uses for the unnamed tributary are no significant aquatic life use. The unclassified receiving water uses for the reservoir are high aquatic use."

COMMENT 1: When the dam was constructed creating the lake, water backed into the "tributary" to the point where the effluent will be released. It is only about 200 yards from the entrance to the lake. The portion of the tributary bordering our property on the north has essentially become part of the lake with waist deep standing water even when the lake is far below overflow levels. Therefore chemicals from cleaning products, human waste particulates, and other pollutants are certain to accumulate in what is essentially a stagnant lake. Water flows only when it reaches overflow levels. I challenge the notion that the water would remain safe for wildlife and livestock. We contend that the antidegradation review results cited by the applicant are both unreliable and invalid because they are based on data that is false.

RESPONSE 2: The decision states: "Based on information provided by individuals at the public meeting held on April 3, 2007, the Director acknowledges that the "unnamed reservoir" is properly named Big Sandy Creek Watershed Site #35 By submitting a signed and completed application, the Applicant certified under penalty of law that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event the applicant or permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted information in an application or in any report to the Executive Director, it must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts."

COMMENT 2: Failure to name the reservoir was one of several misrepresentations, omissions, and errors pointed out in the application by affected landowners. Apparently the executive director excused the many errors and misrepresentations in the application. I ask what kind of falsifying of information it would take to have a permit suspended or revoked.

RESPONSE 3: "The proposed draft permit requires the Applicant to meet the design criteria requirements for domestic wastewater treatment plants prior to construction of the facility."

COMMENT 3: Judging from the number of errors, inattention to detail, untruths, and omissions in the application, how could this Applicant ever meet these design criteria requirements.

RESPONSE 4: "Applicant must identify affected landowners on either side of the receiving stream for approximately one mile downstream. The Applicant submitted correspondence dated July 13, 2007, which provided a revision to the landowner list and map that was previously submitted in the application...Based on the map, tracts 1-6 are owned by Larry Cole, ...tract 8 is owned by C. A. Russell, tract 9 is owned by James

Forbis...tract 13 is owned by J. K. Miller and Gary S. Helton...tract 15 is owned by James Forbis. The TCEQ mails notice of the application to the listed landowners and others....”

COMMENT 4: The first application failed to identify adjoining property owners correctly or completely. Thomas Long, Nancy Carnahan, Jana Woodruff, and Shawn White, were not on the original list. All four own land that both adjoins and that would be impacted by this project.

The revised landowner list is also incorrect. A search of the county records on January 30, 2008, still fails to reveal that Larry Cole owns any of the land in question. C. A. Russell is my deceased father-in-law, who died on March 16, 1978, having already given ownership of the land to his son, H. C. Russell, in 1975. It would be impossible for him or James Forbis, who is also deceased, to receive notices from TCEQ. Another error appears here in that the 267 acres of land to be developed appear on Wise County tax records belonging to J. K. Miller and Gary Shelton not Gary S. Helton. This Applicant is clearly either careless or intentionally misrepresents pertinent facts. The notice requirements for this application were never properly met, and the revised landowners list provided by the Applicant is still incorrect.

RESPONSE 5: This is one of five references made to the requirement of true, accurate, and complete information from the Applicant, and to the fact that TCEQ may modify, revoke, or suspend permits based on misrepresentation or failure to disclose fully all relevant facts. The discharge route is reviewed.

COMMENT 5: The Applicant falsely classified the discharge route as intermittent and stated that the discharge route will reach the Trinity River in three miles downstream. Neither of these errors was addressed by the director's response. As previously stated, the tributary bordering our property which became part of the lake has never been dry since the dam was built in 1999. No response was made to comments that the Applicant stated that he observed no uses of water body. Additionally, the Applicant listed the average stream width as 10 feet, when in truth it is much wider, probably at least 30 plus feet. The Applicant also listed the average stream depth as .5 feet (6 inches). It is at least 8 feet deep, and has been at least waist high at all times since the dam was built in 1999. The West Fork of the Trinity River is at least 20 miles from the discharge point. The Applicant also checked Stream in the definition of the receiving waters, when in fact he should have checked "lake or pond."

One would ask again: What level of untruth or inaccuracy would bring about a denial of an application?

RESPONSE 6: "The effluent limits set out in the draft permit for the protection of dissolved oxygen levels in the reservoir were developed with the aid of a numerical model. ... From the applicant's description and photos provided in the permit application, the initial point of discharge is into a dry portion of the stream;....In accordance with the Texas Surface Water Quality Standards, any stream which has zero flow for at least one week during most years is an intermittent stream and is

assigned an aquatic life use of 'no significant', but protection is still afforded to these streams."

COMMENT 6: I contend that the numerical model used by TCEQ is based on false and misleading information provided by the Applicant. Therefore, the numerical model cannot be reliable. The "stream" is neither dry nor intermittent; nor is it a stream. It is part of the lake.

RESPONSE 7: "Texas Water Code § 26.027 authorizes TCEQ to issue permits for wastewater discharges into water in the state, provided the discharger does not violate applicable rules or regulations."

COMMENT 7: Dr. Thomas Long stated that existing easements only allow the Wise County WCID to control the level of water impounded by the lake and dam. He feels that the easements prevent the proposed activities. My late husband, H. C. Russell, and I entered into an agreement on July 31, 1994, giving the right to control the level of water impounded into Big Sandy Watershed #35 to Wise County Water Control and Improvement District #1 and Wise Soil and Water Conservation District. Easements were also signed, I believe, by James (Ed) Forbis (whose descendents now own the land where the lake was built) and C. L. Gage, Jr. who sold his land to J. K. Miller. It is my contention these easements prevent the Applicant from dumping sewage into the above described water. In view of the easements, it would appear that TCEQ should have denied the application.

RESPONSE 8: "The Applicant provided the following coordinates for the outfall: Latitude-33 degrees, 17 minutes, 08 seconds; Longitude-97 degrees, 36 minutes, 19 seconds." Another reference is made to true, accurate, and complete information being required in the application.

COMMENT 8: Latitude: 33 degrees, 17 minutes, 08 seconds; Longitude: 97 degrees, 36 minutes, 19 seconds is located on property owned by Jackie Boyd and/or Jed Boyd. Dr. and Mrs. Long pointed this out in the public meeting on April 3, 2006, and it can be verified in Google Earth or by competent engineers. It would seem that an Applicant who cannot correctly locate his own sewer plant is again in a poor position to operate one that requires strict adherence to guidelines. If the applicant provided a map, he was not able to correctly plot coordinates or is unaware of what land he owns or does not own.

RESPONSE 10: "The Executive Director's staff contacted the library and the address listed in the notices was confirmed."

COMMENT 10: The address of Brighton Water Systems on the title page of the application is listed as 1700 FM 51, Decatur, TX 76234. This is the correct address of the John A. and Katherine G. Jackson Public Library. However, it is not the address of Brighton Water Systems (otherwise known as Wise Service Company - Water). In addition, this is the same title page that contains the misspelled word "Appliation" rather than Application. An Applicant who uses a preparer (WASTELINE ENGINEERING INC)

who lists an incorrect address and misspells the word "Application" probably cannot adhere to strict guidelines for a wastewater plant.

RESPONSE 13: "The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement..... The proposed facility meets the buffer zone requirement by ownership of a 150-foot distance from the proposed wastewater treatment facility to the Applicant's property line."

COMMENT 13: Looking at the maps submitted with the application, it appears to me that the Applicant plans to build the sewer plant on my property line. As you would suspect, I have no plans to give him an easement. Since the coordinates are obviously incorrect it is somewhat impossible to determine where the plant is to be located. I do not believe he has allowed for a 150 foot distance from my property line.

Furthermore, the owner of the land where the treatment plant "is/will be" is listed as Larry Cole (purchase is in negotiation) on the application. Wise Electric Coop indicated in October, 2006, that J. K. Miller is the owner of the land. Wise County tax rolls in January, 2008, list J. K. Miller and Gary Shelton as the land owners. Immediately under the owner name on the application the following statement appears: "*If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases a lease may not suffice—see instructions.*" The Applicant in this case is noted to be Brighton Water Systems now known to the TCEQ as Wise Service Company – Water. All references in the application are to Applicant's land. I do not believe that either the applicant or Larry Cole own any of this land.

RESPONSE 14: "TCEQ rules require that a wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. Based on information from the Applicant, these requirements are met."

COMMENT 14: The Applicant has never made any effort to locate the water wells on my farm.

RESPONSE 16: "Additional information was received in a revised permit application dated June 19, 2006, where the Applicant indicates that since the original filing of the application, secured ownership of the property had been obtained."

COMMENT 16: Wise County records have never indicated that Wise Service Company – Water and/or Brighton Water Systems have ever held any title to the land in question.

RESPONSE 18: "TCEQ staff that participated in the public meeting visited the site, including the reservoir. However due to conditions of the land, an inspection of the entire site could not be conducted at that time."

COMMENT 18: Based on this statement TCEQ staff has little personal knowledge of the site. Since they were unable to inspect the entire site, it would appear that comments made by landowners regarding the tributary and lake would have at least

been considered. TCEQ staff accepted false information was provided by the Applicant about the site. A complete visual inspection by TCEQ staff still needs to be conducted.

The Decision of the Executive Director states that no changes to the draft permit have been made in response to public comment. It would appear that the Applicant should have made changes to reflect errors pointed out by several landowners who spoke at the public hearing and submitted comments.

The Decision states at least five times that errors or misrepresentations in an application may cause the application to be rejected. This application is filled with false statements. It should have been rejected.

Based on the above disputed responses, I, an affected landowner, am asking for a contested case hearing so that my voice may be heard.

Respectfully submitted,

Catherine Russell

(Mrs.) Catherine Russell
1010 CR 2175
Decatur, Texas 76234
Phone: 940-627-2465

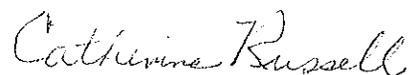
overflow making it particularly susceptible to contamination and disease.

4. The unnamed reservoir in the application is a federally funded million-dollar conservation lake that adjoins my farm and was built in 1999. Its proper name is Big Sandy Creek Water Shed Project Site #35, and it was built and operates under local sponsorship including Wise Soil and Water Conservation District and Wise County Water Control and Improvement District #1. Both agency boards have voted to support the community effort to stop the sewer plant. The lake is a sanctuary for wildlife including several species of ducks; geese; beaver; turkey; fish and deer. The distance from the proposed treatment plant to this conservation lake appears to be approximately one-quarter of a mile.
5. My home, my grandson and his wife's home, and several of my neighbors' homes are within a 1000 yard radius of this sewer plant. My grandson works hard on this farm, and he enjoys hunting, fishing, and outdoor activities on the farm. The sewer would probably put an end to his ability to enjoy these activities. I would certainly hope that my great grandchildren also would be able to drink our water, as well as to enjoy fishing and water activities on our farm without fear of contamination from human wastewater.
6. I limit my driving to day-time and avoid highway driving. The proposed housing development connected to the proposed sewer plant (the sewer plant means that the developer can build more houses than if septic tanks were required) will increase traffic on my road so much that I will have a difficult time getting out of my driveway and the development entrance is on the quiet country road I take to Decatur.

Adjoining landowners and other residents of our neighborhood are unanimously opposed to the project. In addition to a contested case hearing, we would like to request a public meeting about this matter. We do not believe that Wise Electric has the proper expertise to enter the sewer business, since they have no experience in this area. This concerns us, but we are even more concerned about the affect this project will have on our way of life, our water, and our environment.

Thank you for considering my comments. You may reach me by telephone at 940-627-2465.

Respectfully yours,



Catherine Russell

Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
PO BOX 13087
Austin, TX 78711-3087

1010 CR 2175
Decatur, Texas 76234
October 5, 2006

MWD
54149
PM

OPA

OCT 17 2006

BY *DC*

CHIEF CLERK

Re: Proposed Permit WQ0014708001

The purpose of this letter is to ask you to deny the proposed permit submitted by Wise Service Company-Water (sometimes known as Brighton Water Systems) and operating under the umbrella of Wise Electric Cooperative, of which I have been a member more than fifty years. I am an 83-year old widow residing on the land which joins the proposed sewer site. My late husband and I deeded this land to our daughter, Cathy Russell Fothergill, in a life estate. My son-in-law, Richard Fothergill, my daughter, and my grandson, Rob Fothergill, and his wife, Stephanie, and I operate a farm on this property raising beef cattle. My grandson and his wife own and are building a home on part of the original land, which was handed down to my husband and me by his parents.

I feel that I have been unfairly treated by my local electric cooperative. I regularly attend business meetings, and this proposal was never brought to public attention in those meetings. I am opposed to the sewer treatment plant for many reasons:

1. I limit my driving to day-time and avoid highway driving. The proposed housing development connected to the proposed sewer plant (the sewer plant means that the developer can build more houses than if septic tanks were required) will increase traffic on my road so much that I will have a difficult time getting out of my driveway and the development entrance is on the quiet country road I take to Decatur.
2. I spent a great deal of my savings to help my family participate in a grant program with the Wise Soil and Water Conservation District. A major justification for the grant approval was that our property would provide a natural habitat for a variety of wildlife. The proposed site would cut off most of the wildlife from the LBJ Grasslands and an adjoining lake that serves as a sanctuary for migratory birds and animals.
3. The tributary named in the proposed permit does not flow. It is damned by the lake known in the proposal as an unnamed reservoir. The treated water would only be able to escape through the overflow making it particularly susceptible to contamination and disease.
4. The unnamed reservoir in the application is a federally funded million-dollar conservation lake that adjoins my farm and was built in 1999. Its proper name is Big Sandy Creek Water Shed Project Site #35, and it was built and operates under local sponsorship from Wise Soil and Water Conservation District;

Wise County Water Control and Improvement District #1; Tarrant Regional Water District; and the Wise County Commissioner's Court. The lake is a sanctuary for wildlife including several species of ducks; geese, beaver, turkey, and deer. The distance from the proposed treatment plant to this conservation lake appears to be approximately one-quarter of a mile.

5. My home, my grandson and his wife's home, and three of my neighbors' homes are within a one-half mile radius of this sewer plant. My grandson works hard on the farm, and he enjoys hunting, fishing, and outdoor activities on the farm. The sewer would probably put an end to his ability to enjoy these activities. I would certainly hope that my great grandchildren also would be able to enjoy fishing and water activities on our farm without fear of contamination from human wastewater.

A landowners' meeting was held at my home last weekend. Adjoining landowners and other residents of our neighborhood are unanimously opposed to the project. We would like to request a public meeting about this matter. We do not believe that Wise Electric has the proper expertise to enter the sewer business, since they have no experience in this area. This concerns us, but we are even more concerned about the affect this project will have on our way of life, our water, and our environment.

Thank you for considering my comments.

Respectfully yours,

Catherine Russell

Catherine Russell

CHIEF CLERK

10/15/08

10/15/08

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

PLEASE PRINT:

Name: Catherine Russell

Address: 1010 CR 2115

City/State: Decatur, TX Zip: 76234

Phone: (940) 627-2465

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.

(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

WRITTEN COMMENTS OPPOSING PROPOSED PERMIT NO. WQ0014708001
FOR TCEQ PUBLIC MEETING CONSIDERING AN APPLICATION
FOR WATER QUALITY TPDES NEW
April 3, 2007, Decatur, Texas

OPA RECEIVED
APR 03 2007
AT PUBLIC MEETING

I earnestly request that the Executive Director and the Commission deny the above proposed permit submitted by Wise Service Company-Water. I, Catherine Russell, am a widow residing at 1010 CR 2175, Decatur, Texas, for the past 52 years on land which joins the proposed sewer site on the west and south. My late husband and I inherited this farm from his parents. We deeded this land to our daughter, Cathy Russell Fothergill, in a life estate. My son-in-law, Richard Fothergill, my daughter, and my grandson, Rob Fothergill, and his wife, Stephanie, and I operate a farm on this property raising beef cattle. My grandson and his wife own a home and part of the original farm land. My own home is within 1000 yards of the proposed sewer site. My personal reasons for opposing the creation of a sewer treatment plant near my home and farm are the following:

1. Both my water well and my grandson and his wife's water well are located within 1000 feet of the proposed site. I fear contamination of our drinking water.
2. I spent a great deal of my savings to help my family participate in a grant program with the Wise Soil and Water Conservation District. A major justification for the grant approval was that our property would provide a natural habitat for a variety of wildlife. The proposed development site would cut off most of the wildlife from the LBJ Grasslands and the adjoining lake that serves as a sanctuary for migratory birds and animals.
3. The "unnamed tributary" (Watson Creek) in the proposed permit constitutes part of the northern border of part of my farm. It does not flow. It is dammed by the lake known in the proposal only as an "unnamed reservoir". Since the treated human waste and household chemicals will essentially sit in standing water, I believe that they will accumulate to toxic levels even though they may be released in so-called acceptable levels.
4. The unnamed reservoir in the application is a federally funded million-dollar conservation lake that adjoins my farm and was built in 1999. Its proper name is Big Sandy Creek Water Shed Project Site #35, and it was built and operates under local sponsorship including Wise Soil and Water Conservation District and Wise County Water Control and Improvement District #1. Both agency boards have voted to support the community effort to stop the sewer plant. The lake is a sanctuary for wildlife including several species of ducks; geese; beaver; turkey; fish and deer.

MW

5. The distance from the proposed treatment plant to this conservation lake appears to be less than one-quarter of a mile.
6. My home, my grandson and his wife's home, and three of my neighbors' homes are within a 1000 feet radius of this sewer plant. My grandson works hard on our farm, and he enjoys hunting, fishing, and outdoor activities on the farm. The sewer plant would likely put an end to his ability to enjoy these activities. I want my great grandchildren (one of whom is the fifth generation of our family to live on this farm) to be able to safely drink our water, as well as to enjoy fishing and water activities on our farm without fear of contamination from human wastewater.
7. I fear that the resulting water demands for 200 or more homes to be built if the permit is approved will greatly diminish the water table for my home and farm activities.

In addition to the above reasons for opposing the sewer treatment plant, I have further concerns about the accuracy of the application. (Proposed Permit No. WQ0014708001)

- Legal ownership of the land tracts adjacent to the proposed sewer plant was not completely identified. (These include the four owners of the land where the conservation lake is located as well as Dr. Shawn White, whose land and water well are located as close to the site as my grandson's.)
- Water wells within one-half mile of the site were not identified in the application.
- The applicant (Wise Service Company–Water) does not hold legal title to the plot of land identified on the application map as "applicant's property".
- The map submitted with the application was created in 1997 and does not show the conservation lake which is named and is visible on all current aerial maps.
- The public notice of August 10, 2006, did not recognize the "unnamed reservoir" in the discharge path.
- Applicant did not acknowledge that the conservation lake dam causes the lake to back up into the creek causing neither to flow. The site of the proposed discharge is not a free flowing tributary, but part of the backwater of the lake.
- The application states that the unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life use for the unnamed reservoir. Since the unnamed tributary is part of the

backwater of the lake, it is actually one body of water, which I believe has the same significant aquatic life use.

Whether the errors in the application were attempts to defraud or simply careless research and/or presentation, they represent an attitude that makes the applicant a poor candidate to build or manage a facility with so much potential to harm the environment. The applicant also has exhibited little concern for nuisance odor prevention. When asked by a concerned landowner about possible foul odors from the sewer, the engineer representing the applicant at a public meeting at the Wise Electric Cooperative Building on October 24, 2006, stated that the sewer would smell "like money." Wise Service Company—Water has no expertise in sewer building or operating experience. This is their first venture into wastewater treatment.

I believe that the building and operation of this sewer treatment plant will destroy the conservation lake built with taxpayer dollars and planned for more than fifty years as part of the government's conservation efforts and to prevent erosion in the Trinity River Watershed. It will drive away wildlife and make their drinking water unsafe. It will affect the LBJ National Grasslands to the north of the site by making camping, hunting, and outdoor activities unpleasant and/or unsafe.

Please deny this application and preserve Big Sandy Creek Water Shed Project Site #35, protect wildlife, and keep my farm free of contamination from human wastewater.

I sincerely appreciate your consideration of my comments. I may be reached by phone at 940-627-2465.

Written comments submitted by Catherine Russell
Catherine Russell

Date: April 3, 2007

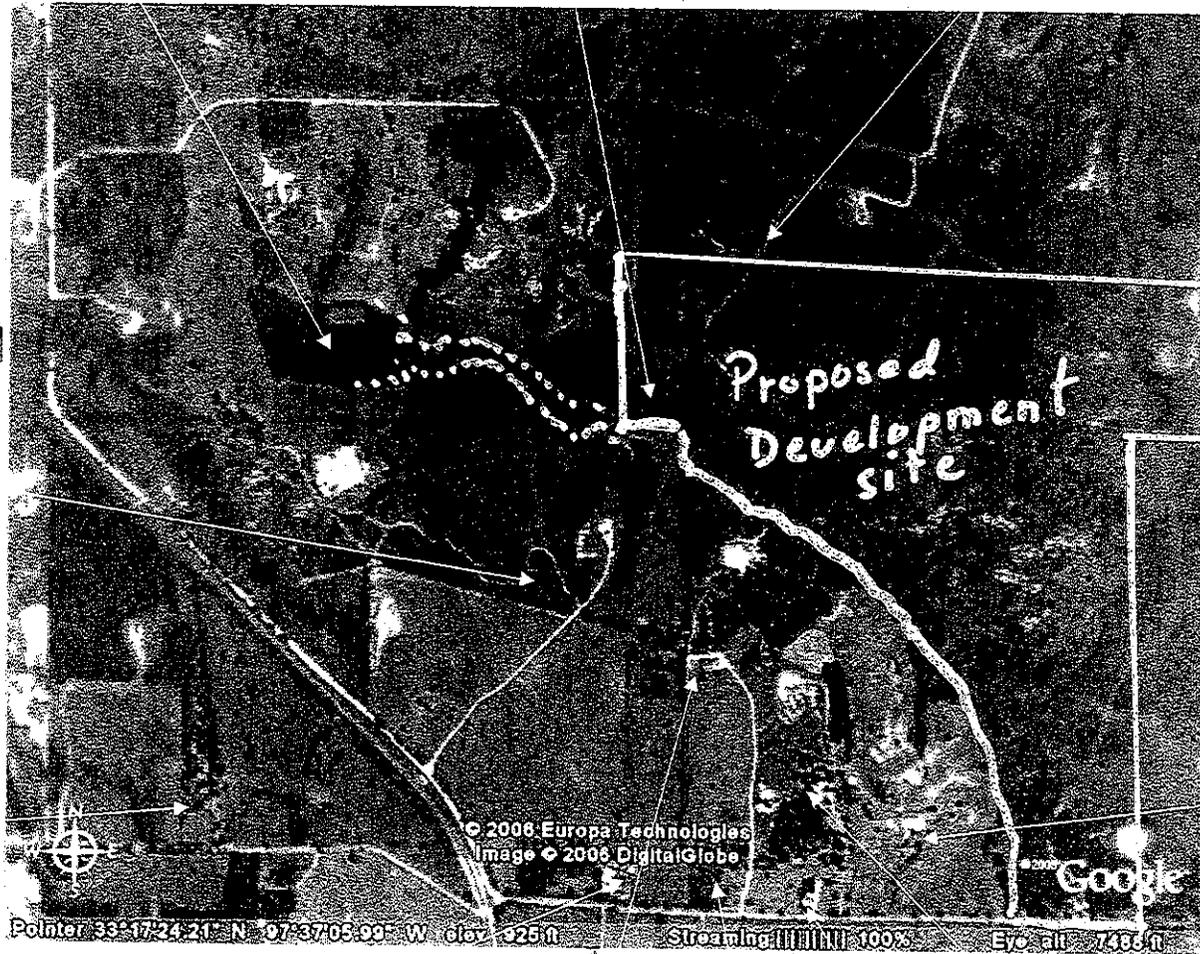
Conservation Lake

Proposed Sewage Plant

Southern Boundary
of LBJ National
Grasslands

*A flow line to
show water table
lines that the lake
water table is
higher than sewer
treatment site.*

Rob and
Stephanie
Fothergill
Home



Ed and
Ann
Jolley
Home

Gordon Hwy (Old Deer Park Rd)

Gordon
and
Roxie
Ploeger
Home

Catherine Russell Home

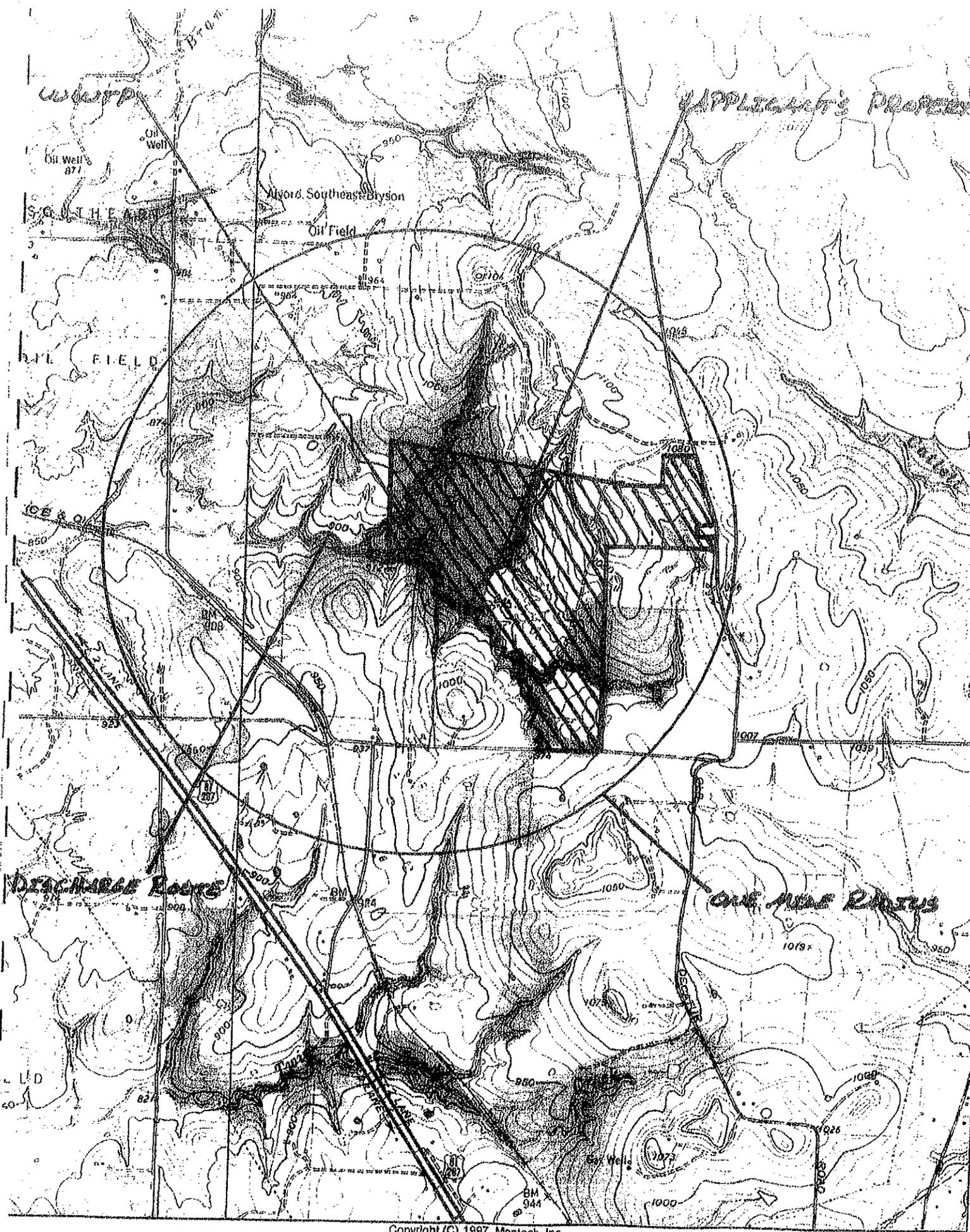
Dr. Shawn
and Debbie
White Home

Martha
White
Home

Kevin and
Dr. Rene
Smith
Home

Wesley
Simmons
Home

Approximately 1,000 yards



Copyright (C) 1997, Maptech, Inc.

Applicant's Map with Application

Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
PO BOX 1308
Austin, TX 78711-3087

OPA H

NOV 07 2006

[Signature]

CHIEF CLERKS OFFICE

NOV -7 11:01

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Response to Proposed Permit NO WQ0014708001 BY *[Signature]*

I am writing this letter to request a contested case hearing on the Proposed Permit No. WQ0014708001. My family and community ask you to deny this proposed permit submitted by Wise Service Company-Water, a.k.a. Brighton Water Systems. This company is owned by Wise Electric Cooperative.

My family owns property approximately ¼ to ½ mile from the proposed sewer site. No disclosure of the proposed sewer facility was provided to me or my family. Our concern is the poisoning of the ground water in the surrounding area that this plant will cause. Additionally the permit contains a great deal of erroneous information concerning the area that will be affected including the name of the reservoir the effluent will be discharged into and the creek that will also be affected.

6/11/06
S. H. H. S.

The reason for my letter opposing this permit is two-fold. First, my family and neighbors feel that we have not been treated fairly by the Wise Electric Cooperative in which we are members, because lack of information and input we feel is deserved. Specifically, it is my understanding that the original plat would have been submitted for approximately 100 lots (and presumably homes) which would each be served by independent wells and septic sewer systems. There has been a second proposed plat (although this has not been made public) that would allow for approximately 200 homes served by the sewer plant. Second, and more importantly, the permit request that you received does not provide accurate information. Because of this lack of information submitted on this permit, I do not believe you have been informed of the problems this proposed sewer site will cause.

I strongly opposed the proposal for the following reasons:

1. The permit request states "The discharge route is from the plant site via a pipe to an unnamed tributary/reservoir." This "unnamed" tributary is actually a federally funded lake named Big Sandy Creek Water Shed Project Site #35 which was constructed in 1999. This lake was sponsored by and operates under the Wise Soil and Water Conservation District. It was constructed with over \$1,000,000 of taxpayer money in an effort to control erosion and provide a sanctuary for local and migratory wildlife.
2. It is my understanding that in order for this type of sewer treatment facility to operate correctly, the discharge from the pipe would need to enter into moving water. The alleged tributary mentioned in the permit in which the water would be released does not flow at all. It is simply the back end portion of the lake. I believe the dam does have an overflow pipe; however any overflow would spill on to a pasture used for grazing cattle. At normal levels this overflow pipe would still allow cattle and wildlife to drink this tainted water. I would invite you to discuss this with the Wise County NRCS office for more information concerning

[Handwritten initials]

the dam capacity. I would like to note that you could not have been aware of this because the map we believe you were supplied with the permit does not show the lake at all. It concerns me that the requestor would provide a map dated in 1997 when the lake was built in 1999. This is either an indication of a poorly planned project and operation, or the requestor is providing false information to hide facts which would be a detriment to his project.

3. The property directly to the north of this proposed sewer site is part of the LBJ National Grasslands. The proposed sewer site and development would deface the southern portion of this land and make it unattractive for the thousands of Texans who visit the LBJ grasslands each year. In addition, it would displace the many species of wildlife that exist on this land.

I invite you to contact the LBJ National Grasslands office located in Decatur for more information. It is my understanding from them that the developers are already misusing the roads and cutting locks on exterior gates to access this land even before they have the permits to start.

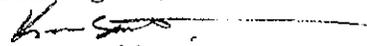
4. The proposed sewer site, if approved, will be built and maintained by the Wise Electric Cooperative. This electric company has no prior experience with this type of system. My fear is they are getting into a project they know nothing about. Once the site is built responsibility for maintaining and inspecting the site will belong to Wise County. I attended the meeting of the Wise County Water District and they are not experienced with inspecting these facilities, nor do they intend to check the water quality of the water pumped into the lake. They merely believe this is a new and very profitable revenue stream. In fact, an engineer working for the developer spoke at one of the meetings and when asked by an audience person what the facility would smell like, he stated "it smells like money to me". I am certainly not opposed to someone making a profit, however, I believe there is a time, and this is one of them, when our environment is more important than someone hitting a homerun! The bottom line is that no one involved in this project knows anything about building or maintaining a sewer treatment facility. Any problem that occurs as a result of their inexperience would be disastrous to the environment.
5. Many of the surrounding neighbors have participated in government funded cost share programs in an effort to increase the value and quality of our land and the land surrounding us. One of the primary purposes of these projects (including the EQUIP program in which our family participated) is to improve the area for wildlife habitat. All of the wildlife that live in this area uses the Big Sandy Watershed Project #35 as a source of water. This lake is now considered a wildlife sanctuary for native and migratory wildlife. It is inevitable that a water treatment facility would disrupt and displace the many species of wildlife that exist on this land.
6. My family and many of my neighbor's houses are within a ¼ to a ½ mile radius of the proposed water treatment facility site. In fact my house is within 600-800 yards. The air quality for my family and my neighbors will be tainted and unbearable. This will reduce our quality of life as well as reduce the property value of the land we own.

This list is a few of the many reasons I am asking you to deny the permit Proposed Permit WQ001470800. Our family and community need you to prevent this poorly planned,

potential disaster from being approved. If you would like to discuss this issue with me over the phone or in person, feel free to contact me anytime.

Please understand our frustration is that we believe you have been given either false and/or incomplete information and as such may grant a permit under false pretence for a facility that would greatly harm the environment. We believe the Wise County CO-OP companies mentioned above have already signed a contract in the belief that this permit will be granted carte-blanche. Please do not grant the permit and allow the environment and our community suffering irreparable damage.

Best Regards,



Kevin Smith

920 CR 2175

Decatur, Texas 76234

Ph. (940) 627-7938

Cell: (940) 389-2867

Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
PO BOX 13087
Austin, TX. 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

OPA HR

2008 NOV -9 AM 10: 20

NOV 09 2008

CHIEF CLERKS OFFICE BY DM

Response to Proposed Permit NO. WQ0014708001

I am writing this letter to request a contested case hearing on the Proposed Permit No. WQ0014708001. My family and community ask you to deny this proposed permit submitted by Wise Service Company-Water, a.k.a. Brighton Water Systems. This company is owned by Wise Electric Cooperative.

My family owns property approximately ¼ to ½ mile from the proposed sewer site. No disclosure of the proposed sewer facility was provided to me or my family. Our concern is the poisoning of the ground water in the surrounding area that this plant will cause. Additionally the permit contains a great deal of erroneous information concerning the area that will be affected including the name of the reservoir the effluent will be discharged into and the creek that will also be affected.

The reason for my letter opposing this permit is two-fold. First, my family and neighbors feel that we have not been treated fairly by the Wise Electric Cooperative in which we are members, because lack of information and input we feel is deserved. Specifically, it is my understanding that the original plat would have been submitted for approximately 100 lots (and presumably homes) which would each be served by independent wells and septic sewer systems. There has been a second proposed plat (although this has not been made public) that would allow for approximately 200 homes served by the sewer plant. Second, and more importantly, the permit request that you received does not provide accurate information. Because of this lack of information submitted on this permit, I do not believe you have been informed of the problems this proposed sewer site will cause.

I strongly opposed the proposal for the following reasons:

1. The permit request states "The discharge route is from the plant site via a pipe to an unnamed tributary/reservoir." This "unnamed" tributary is actually a federally funded lake named Big Sandy Creek Water Shed Project Site #35 which was constructed in 1999. This lake was sponsored by and operates under the Wise Soil and Water Conservation District. It was constructed with over \$1,000,000 of taxpayer money in an effort to control erosion and provide a sanctuary for local and migratory wildlife.
2. It is my understanding that in order for this type of sewer treatment facility to operate correctly, the discharge from the pipe would need to enter into moving water. The alleged tributary mentioned in the permit in which the water would be released does not flow at all. It is simply the back end portion of the lake. I believe the dam does have an overflow pipe; however any overflow would spill on to a pasture used for grazing cattle. At normal levels this overflow pipe would still allow cattle and wildlife to drink this tainted water. I would invite you to discuss this with the Wise County NRCS office for more information concerning

the dam capacity. I would like to note that you could not have been aware of this because the map we believe you were supplied with the permit does not show the lake at all. It concerns me that the requestor would provide a map dated in 1997 when the lake was built in 1999. This is either an indication of a poorly planned project and operation, or the requestor is providing false information to hide facts which would be a detriment to his project.

3. The property directly to the north of this proposed sewer site is part of the LBJ National Grasslands. The proposed sewer site and development would deface the southern portion of this land and make it unattractive for the thousands of Texans who visit the LBJ grasslands each year. In addition, it would displace the many species of wildlife that exist on this land.

I invite you to contact the LBJ National Grasslands office located in Decatur for more information. It is my understanding from them that the developers are already misusing the roads and cutting locks on exterior gates to access this land even before they have the permits to start.

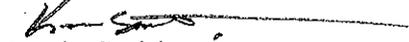
4. The proposed sewer site, if approved, will be built and maintained by the Wise Electric Cooperative. This electric company has no prior experience with this type of system. My fear is they are getting into a project they know nothing about. Once the site is built, responsibility for maintaining and inspecting the site will belong to Wise County. I attended the meeting of the Wise County Water District and they are not experienced with inspecting these facilities, nor do they intend to check the water quality of the water pumped into the lake. They merely believe this is a new and very profitable revenue stream. In fact, an engineer working for the developer spoke at one of the meetings and when ask by an audience person what the facility would smell like, he stated "it smells like money to me". I am certainly not opposed to someone making a profit, however, I believe there is a time, and this is one of them, when our environment is more important than someone hitting a homerun! The bottom line is that no one involved in this project knows anything about building or maintaining a sewer treatment facility. Any problem that occurs as a result of their inexperience would be disastrous to the environment.
5. Many of the surrounding neighbors have participated in government funded cost share programs in an effort to increase the value and quality of our land and the land surrounding us. One of the primary purposes of these projects (including the EQUIP program in which our family participated) is to improve the area for wildlife habitat. All of the wildlife that live in this area uses the Big Sandy Watershed Project #35 as a source of water. This lake is now considered a wildlife sanctuary for native and migratory wildlife. It is inevitable that a water treatment facility would disrupt and displace the many species of wildlife that exist on this land.
6. My family and many of my neighbor's houses are within a ¼ to a ½ mile radius of the proposed water treatment facility site. In fact my house is within 600-800 yards. The air quality for my family and my neighbors will be tainted and unbearable. This will reduce our quality of life as well as reduce the property value of the land we own.

This list is a few of the many reasons I am asking you to deny the permit Proposed Permit WQ0014708001. Our family and community need you to prevent this poorly planned,

potential disaster from being approved. If you would like to discuss this issue with me over the phone or in person, feel free to contact me anytime.

Please understand our frustration is that we believe you have been given either false and/or incomplete information and as such may grant a permit under false pretence for a facility that would greatly harm the environment. We believe the Wise County CO-OP companies mentioned above have already signed a contract in the belief that this permit will be granted carte-blanche. Please do not grant the permit and allow the environment and our community suffering irreparable damage.

Best Regards,



Kevin Smith

920 CR 2175

Decatur, Texas. 76234

Ph. (940) 627-7938

Cell: (940) 389-2867

Also, this lake was built to *stop* water flow and to *stop* further erosion of the surrounding gullied area. There is not an "unnamed tributary" leading from this lake to the Watson Branch and then on to the West Fork Trinity River. That would defeat the purpose of building an approximately \$1,000,000 lake and dam. Taxpayers funded this lake and dam. Dumping 75,000 gallons of water a day into this lake would turn it into a forty-five (45) acre flood plain that would be on private property.

Therefore, I again request a hearing concerning proposed permit number WQ0014708001.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah J. White". The signature is written in a cursive style with a large, looping initial "D".

Deborah J. White

#88

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CHIEF CLERK'S OFFICE

APR 3 2007 PM 1:55

PLEASE PRINT:

Name: Deborah White

Address: 153 PR 2170

City/State: Decatur Zip: 76234

Phone: 817-627-7477

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓/BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.

(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

MW

I feel that the individual(s) and company (ies) involved did not take the time to research the area and truly know that they were going to be doing. There are many untruths in the application.

1. The unnamed reservoir – has a name, the Big Sandy Creek Watershed Project Site #35
 - a. This is an approximately a \$1,000,000 lake and dam paid for with taxpayers money to STOP the flow of water and to prevent any further soil erosion
 - b. The unnamed tributary leading from the Big Sandy reservoir is only ½ false – it is unnamed because it does not exist

OPA RECEIVED
APR 03 2007
AT PUBLIC MEETING

But what really unnerves me about this project is “how can one person be allowed to intentionally dump on another persons property?” The lake and dam is not on federal, or state land. It is on private property. The people applying for this discharge elimination system are asking you to give them the right/ the permission to dump 75,000 gallons minimum of water a day onto another persons property. We are here to fight for our rights as property owners. This project will not only affect those that own the land with the Big Sandy Project, it affects all those living around it. Once the lake is at it’s capacity the water will start backing up and we would be looking at a 45-acre flood plain to begin with. As the creek raises it will affect other property owners.

They did not do their research; they did not look beyond their pocketbook to see who and what would be affected. I haven’t even gotten into the environmental concerns nor the fact that the system needs to be ½ a mile or more away from any water wells – which I will tell you that my well and Rob and Stephanie Fothersgill’s well come pretty close to, if not within the ½ a mile radius. There are other issues, like the water table. With 270 additional homes with wells we may not have to worry about being flooded out because there will not be any water. And that will affect even more people.

So I am asking you tonight to tell the applicants “NO” – go back and do your homework right.

Deborah
White
153PR270 TX
Decatur, 76234

OPERATIONS OFFICE
APR 11 PM 1:55
MCC

Thank you for your interest. Please feel free to contact me for further information on any of the data stated above. We would appreciate any help the TCEQ can offer to save this wonderful area that has been designed to protect so much of Central Wise Counties' land and wildlife.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jana S. Woodruff', written over a horizontal line.

Jana S. Woodruff
1101 S College Ave
Decatur, Texas 76234

ML 3
54149

February 11, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 13 PM 2:27

CHIEF CLERKS OFFICE

To: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Glenn Shankle, Executive Director
LaDonna Castanuela, Chief Clerk
TCEQ, MC-105
P.O. Box 1308
Austin, Texas 78711-3087

H OPA
FEB 14 2008
BY

My name is Jana Woodruff. My address is 1101 S. College Ave., Decatur, Texas 76234; my daytime telephone number is 940-627-2784. I am a partial owner in the lake which your commission plans to permit Wise Service Company – Water to dump sewage into. Because I am a legal owner or “affected person” and do heartily disagree with the executive director’s decision to allow the permit, I believe my family and I are entitled to request a contested case hearing.

I request a contested case hearing in objection to TCEQ’s decision to approve a permit to Wise Service Company – Water TPDES Permit No. WQ0014708001.

It is difficult to understand how a supposedly pro-environmental agency can in good conscience condone the pollution of a conservation lake to any degree. Your claim that the resulting effluvium will be dissipated by some kind of wall or silt fence is not very comforting. Neither is your assurance that the company in question will not begin any “earth disturbing activities” that your agency cannot handle after any such trouble occurs. This is all numerically and scientifically calculated by your in-house experts apparently. Well, suppose things do not turn out exactly as you planned; suppose as rumor has it, that something always goes wrong with such wastewater sewer treatment plants. There is no turning back. The lake will have had wastewater pumped into it and from then on, it is forever polluted. None of our family will be able swim or play in the lake again.

I have carefully read your responses to the comments you have collected from my family, friends and neighbors and I realize that you have been able to approach your decision from a careful distance, so that for you there is no feeling for the land or the water involved. I am also unhappy to know that the letterhead on your stationary doesn’t really mean that your agency is concerned with preserving environmental quality of Texas land and water resources, but that you are more concerned with promoting big business at the expense of the little man. Contamination of a beautiful little lake and land ought to cause your agency some level of distress.

You state that your only business with awarding of the permit in question is seeing that the applicant abides by TCEQ rules, but you seem to have no concern with the fact that the lake was built as a flood control and recreational facility. These facts are apparently completely out of your sphere of interest. I do not understand why, as noted in your response 20, TCEQ does not require the Applicant to get authorization to discharge

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effluent to a flood control lake but it does to a district drainage ditch. That doesn't make any sense.

One would also assume that environmental quality would include such issues as to how the local water table would be impacted by construction of such a wastewater facility but as noted in response 19, your agency "cannot address" such concerns. It ought to. Your agency also ought to be able to address the issue of local water wells located too close for comfort to the wastewater facility as mentioned in comment 14.

As to odor control as referred to in response 13, one of the three options listed cannot be met by the applicant without obtaining extra easement needed for a satisfactory buffer zone from "adjacent property owners" and why would those property owners be put into such a position? And a 150-foot distance from the proposed facility may meet TCEQ requirements for odor control but it is probably not a realistic distance for most noses. Also, any noise from such a facility will be an imposition on the area. The peace and tranquility is a most important issue with country folk and your response overlooked that item entirely.

As to response 12, it is good to note that TCEQ does not authorize the Applicant to "discharge onto another's property without permission".

THIS IS NOT A FLOWING LAKE; water comes in, but does not flow out. TCEQ has not shown a concern to the fact that the lake in question is a stagnant body of water. Any effluent pumped into the lake stays in the lake. Once contaminated, it is contaminated forever.

I am still of the opinion that it is a horrible idea to pump any amount of sewage into our lake. The lake is the natural habitat for flocks of ducks and geese; beaver, deer and wild turkeys. It is stocked with fish and provides water for our cattle. It is peaceful, clean, quiet and beautiful. It has not always been so. It had been abused by cotton farming for many years and was gutted by ravines and gullies and much erosion. My father, James Forbis and mother, Althea Forbis began reclaiming the land some forty years ago, planting native grasses and building brush dams against erosion. The soil conservationist got them interested in the exciting idea of a conservation dam; however, it was several years before the dam was built and unfortunately my father did not live to see his dream become a reality. So you can see how important it is for me to preserve this lake in all its pristine beauty, to always keep it fresh and clean.

Respectfully submitted,

Jana Woodruff, Owner
1101 S. College Ave.
Decatur, Texas 76234

TCEQ Public Participation Form
Wise Service Company
Public Meeting
Proposed New TPDES Permit No. WQ0014708001
Tuesday, April 3, 2007

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CLERK'S OFFICE

2007 APR -4 PM 2:00

PLEASE PRINT:

Name: SANA WOODRUFF
Address: 1101 S College
City/State: Deatur Zip: 76234
Phone: 846 627 2784

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

Jana S. Woodruff
1101 S. College Avenue
Decatur, TX 76234

OPA RECEIVED *H*
APR 03 2007

April 3, 2007

Via Hand Delivery
Office of the Chief Clerk
MC 105
TCEQ Board
PO Box 13087
Austin, TX 78711-3087

AT PUBLIC MEETING

CHIEF CLERKS OFFICE

2007 APR -4 PM 2:00

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Public Meeting
TPDES Permit # WQ0014708001
Canyon Springs Wastewater Facility, SIC Code 4952
Big Sandy Creek Watershed Project Site #35

To Whom It May Concern:

I am requesting that this application be denied because it is fraudulent and the information in the application is fatally flawed and inaccurate. The adjacent land owners were not notified at the time the application was requested, which is required by law, and the effluent will not be dumped into a dry creek bed, rather this distilled sewage will be dumped into the static backwaters of a contained impounded lake. Those two points should be enough to cause the TCEQ to deny this application and request that the Brighton Water System seek other options for their wastewater facility. If not, I am requesting a SOAH hearing to determine the legitimacy of the application and the contamination issues to the reservoir. Also the loose terminology used in describing the land that the effluent would flow through is so vague, that the owners of the property could not determine it was theirs.

On a personal note, I think is important to know that the lake has become the home of wild turkey, deer, coyote, and many different water fowl, fish, turtles, and beaver. When the reservoir was built by the federal government at a price of over \$1, 000, 000.00, we thought that it was a great investment in the land and the adjacent farming community. There is no moving water into the lake, except during a rain, so the water level is constant. The planned sewer facility will increase the water level so that lake will cover much more of our land, and possibly endanger much of the wildlife. I am concerned about the effluent and levels of contamination. I know what is planned, but I also know about errors and mistakes and breakdowns. Why take a chance on "degradation of aquatic life," or other animal life that exists on these waters. We feed and water our cattle herd from this water, our children have row boats and canoes they use here and neighbors and their children camp and swim around this lake.

I do not feel that the information presented in the application is true and correct. I believe that the facility in question would do great harm to the lake and community around it, and I cannot believe that the best interest of anyone except the Brighton Water Systems and the Canyon Springs Ranch entrepreneurs.

Thank you,

Jana S. Woodruff

To: Wise Electric Cooperative
Texas Commission on Environmental Quality
Texas Natural Resources Commission
U.S. Parks & Wildlife
Elected Representatives

From: Joylynn Woodruff
PO Box 443
557 CR 2175
Decatur, Texas 76234
940-627-2671

CID
54149

WQ 0014708001

CHIEF CLERK

OPA

OCT 18 2006

BY JK

Major Concern: Proposed sewer treatment plant 3.75 miles N. of Decatur, Texas, 1.4 miles E. of U.S. 287 (adjacent to U.S. National Grasslands).

October 9, 2006

I have serious concerns regarding a proposed residential community planned near my home. Several years ago a planned community was advertised and an entrance constructed to serve approximately 50 homeowners on large lots each being responsible for their own water well and septic system. The area to be developed was deemed too expensive to access and was "scrubbed" 2-3 years after its inception. It seems the plans have been "resurrected", but with some significant differences that concern me, as they will have a much more negative effect on the environmental and ecological health of the area than the original plans.

In the new plans the lots will be significantly smaller than the original lots meaning that the homeowners will now need a community water and sewage system instead of individual systems. This concerns me. The new plans will allow the wastewater from the sewer plant to be dumped into a creek and conservation lake that were constructed by the U.S. Government to protect the land from erosion. The wastewater disposal site adjoins the U.S. Government National Grasslands, an area protected and controlled by the government. The conservation lake in danger is Big Sandy Creek Water Shed Control Site No. 35 with the treated wastewater projected to flow only about 7/10 of a mile from the proposed dump site before reaching the lake. Water Shed No. 35 is a natural habitat for fish, beaver, ducks, geese, turkey, deer, and many other types of wildlife. After disposing of the wastewater in the water shed the waste water will eventually flow into the Sandy Creek and the Trinity River which are the aquifers used in our area for drinking water for all of us who depend on water wells.

As a wildlife biologist I am very concerned about the protection of the environment (which includes humans). I firmly believe individual septic systems would provide more control and less pollution than the proposed sewage treatment plant. I would like the opportunity for the general public to hear the ramifications I have outlined above and feel the current proposals deserve to be discussed through public hearings and debates. I strongly believe it is our responsibility to leave the Earth in tact for the future generations. I feel strongly that the proposed sewer treatment plant will adversely effect the environment and is counter-productive to the stability of the land protected by the national government (National Grasslands).

Please seriously consider my concerns and contact me regarding your plans. The world is a fragile place and the more we disrupt nature increases the problems for future generations.

Sincerely,



BG