

CARNAHAN THOMAS LLP

ATTORNEYS AT LAW

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

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June 9, 2008

Via Fax (512) 239-3311
Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
12100 Park 35 Circle
Bldg. F
Austin, Texas 78753

CHIEF CLERKS OFFICE
2008 JUN -9 PM 3:42
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: Replies of Wise County Water Control and Improvement District No. 1 and of Nancy F. Carnahan to Response of ED and of Applicant Proposed TPDES Permit No. WQ0014708001 and TCEQ Docket No. 2008-0294-MWD

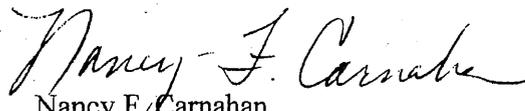
Dear Clerk:

Enclosed for filing are an original and eleven (11) copies of:

- 1) Reply of Requestor Wise County Water Control and Improvement District No. 1 to Responses of Executive Director and of Applicant;
- 2) Reply of Requestor Nancy Carnahan to Responses of Executive Director and of Applicant.

Please file these among the other papers in connection with this matter. A copy of these replies is being forwarded to all parties of interest as stated in the Certificate of Service. Thank you for your assistance in this matter.

Sincerely,


Nancy F. Carnahan
Carnahan Thomas LLP

June 9, 2008

Page 2

NFC/nc
Attachments

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)

TCEQ Docket Number 2008-0294-MWD

2008 JUN -9 PM 3: 42

Application by § Before the
Wise Service Company—Water § TEXAS COMMISSION
For TPDES Permit No. WQ0014708001 § ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

REPLY OF REQUESTOR WISE COUNTY WATER CONTROL IMPROVEMENT DISTRICT NO.1'S TO RESPONSES OF THE EXECUTIVE DIRECTOR AND OF APPLICANT

I. WCID'S Status as "Affected Persons"

Applicant contends that Wise County Water Control and Improvement District No. 1 ("WCID No. 1") does not qualify as an Affected Person pursuant to the statute. However, as demonstrated by the easements which were attached to its February 14, 2007 letter in response, WCID No. 1, holds an easement over both the proposed point of discharge and the 16 acre Big Sandy Creek Watershed Lake No. 35 (the "Watershed No. 35"), and sponsored the creation of such Watershed Lake.

As a basic premise of property law, it cannot be disputed that an easement is an interest in land. Nowhere do the regulations suggest that the property interest of an affected person must be held in fee simple title. Indeed, this easement, gives WCID the exclusive rights with regard to the Watershed No. 35, and to control the levels of water in such Watershed Lake. In some sense, WCID's property interest may be more relevant than that of those who hold fee simple title to the Watershed Lake property.

WCID meets the criteria of affected person, and therefore, WCID's request for a contested case hearing is valid, and should be granted.

In further response, WCID hereby joins in Requestor Nancy Carnahan's Reply to Responses of The Executive Director and of Applicant.

II. Issues that should be reconsidered by the Executive Director or referred to SOAH

Based upon the argument previously made, and materials previously submitted, WCID contends that the following issues should be reconsidered by the Executive Director, or in the alternative, they should be referred to SOAH for a proceeding:

1. Whether the permit application satisfies applicable regulatory requirements.

2. Whether draft permit fails to satisfy regulatory requirements intended to protect water quality, human health, the environment, wildlife, and existing uses of the requestors.
3. Whether the discharge route was appropriately assessed under Texas Surface Water Quality Standards?
4. Whether the draft permit is based on incorrect numerical models.
5. Whether the proposed facility location satisfies applicable regulatory requirements intended to protect private water wells.
6. Whether Applicant will be the owners of the proposed facility.
7. Whether Applicant should be required to reapply due to the change in entity from the original applicant (Brighton Water Systems, a separate, unrelated, entity per Texas Secretary of State Records) to the current applicant which was changed to Wise County Service Water, a different, unrelated corporation per Texas Secretary of State records at some point during the application process.
8. Whether the proposed activity satisfies applicable regulatory requirements intended to provide for abatement of odor.
9. Whether the proposed facility location meets applicable regulatory requirements intended to provide for proper facility location.
10. Whether notice for the proposed activity satisfies applicable regulatory requirements intended to provide notice to the public and to affected landowners.
11. Whether the plant site and discharge route have been clearly and accurately identified.
12. Whether the plant will discharge into a dry creek bed or into a reservoir.
13. Whether the an inspection of the plant site and discharge route is required in order to clarify the true site location, point of discharge, discharge route, and the nature of the receiving waters.
14. Whether the application provides for sufficient safeguards to prevent accidental discharges of untreated effluent.
15. Whether the draft permit provides for sufficient safeguards to prevent accidental discharge of untreated effluent.

16. Whether the application and draft permit have identified and considered issues related to downstream flooding and its effect on public and private water wells should such downstream flooding occur, and complied with the regulations regarding to same.
17. Whether the application and draft permit have sufficiently considered the potential effect on the structural integrity of the dam contained in the reservoir, due to the introduction of up to 75,000 gallons per day of effluent.

II. Request for Hearing and Request for 15 month hearing duration

Requestor WCID reiterates its request for a contested case hearing and hereby requests a fifteen month duration for a contested case hearing on this matter, between preliminary hearing and the presentation of a proposal for decision before the commission.

Respectfully submitted,

CARNAHAN THOMAS
1190 N. Carroll Ave
Southlake, Texas 76092
Tel. 817-424-1001
Fax. 817-424-1003


Nancy F. Carnahan
State Bar. No. 07226150

ATTORNEY FOR WISE COUNTY
WATER IMPROVEMENT DISTRICT
No. 1

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing document has been served this 9th day of June 2008, on Robert Renbarger, Fritz, Byrne, Head & Harrison, PLLC, 98, San Jacinto Blvd., Suite 2000, to Mr. Scott Shoemaker, Ms. June Ella Martinez, Mr. Blas J. Coy, Jr., Ms. Bridget Bohac, Mr. Kyle Lucas, Ms. Lou V. Bridges, Ms. Nancy Carnahan, Ms. Althea Forbis, Dr. Richard & Cathy Fothergill, Ms. Cathy Russell Fothergill, Rob & Stephanie Fothergill, Mrs. Catherine Russel, Mrs. Ann Jolley, Dr. Thomas N. Long, Gordon & Roxie Ploeger, Mr. Kevin Smith, Ms. Deborah White, Ms. Jana Woodruff, Ms. Joylynn Woodruff.

CHIEF CLERKS OFFICE

2008 JUN -9 PM 3:43

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ Docket Number 2008-0294-MWD

2008 JUN -9 PM 3: 44

Application by § Before the
Wise Service Company—Water § TEXAS COMMISSION
For TPDES Permit No. WQ0014708001 § ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

REQUESTOR NANCY CARNAHAN'S REPLY TO RESPONSES OF THE EXECUTIVE DIRECTOR AND OF APPLICANT

I. Requestors' in the Forbis Group and all of the Fothergills meet the "Affected Persons" criteria

As a threshold issue, Applicant Wise Service Company -- Water's Response to Request for Hearing, states that it was "a difficult task to ascertain the true ownership status of the requestors" and objects to the affected person status of Althea Forbis, Nancy Forbis Carnahan, Jana Woodruff, and Thomas N. Long, M.D. (the so-called "Forbis Group"), advising that it could not determine whether these parties had an ownership interest in Forbis Farm, upon which the 16 acre lake, known as the Big Sandy Creek Watershed No. 35 ("Watershed No. 35"), into which Applicant proposes to discharge is effluent is located. Applicant states that, based upon Wise County Appraisal District records, the property instead seems to be deeded to James E. Forbis.

Applicant's objection is disingenuous at best, a waste of his client's legal fees, and borders on bad faith. The undersigned has to wonder whether Applicant's legal counsel consulted with his client at all regarding this objection, and if he did do so, the objection is all the more outrageous.

Applicant's principle place of business, Decatur, Texas is a rather small town, population approximately 5,000. My father, Mr. James E. Forbis, former owner of the Forbis Farm, now deceased, often remarked that the town was "so small that everyone knows whose check is good and whose wife is not." Indeed, for almost twenty years, Mr. Forbis, acted as legal counsel for the Board of Directors that now govern Applicant. The undersigned finds it ludicrous that the Board of Directors would be unaware of the death of their legal counsel, and the likelihood that his estate passed to his wife and children, the Forbis Group. (It did.) Had counsel for Applicant made a reasonable inquiry (including an interview with his client about the matter), he could have prevented wasting TCEQ's time and his client's legal fees with this non-issue.

Attached hereto as Exhibit "A" is the easement relating to the subject property, granting Wise County Water Improvement District No. 1's ("WCID No.1") an easement relating to Watershed No. 35, reservoir into which Applicant proposes to dump its effluent. This document was previously filed as Exhibit "F" to the Formal Comments of Thomas N. Long, M.D., filed April 3, 2007. The easement is signed by Althea Forbis, and each of her children, Dr. Thomas N. Long, Jana Woodruff, Christopher Forbis, and Nancy F. Carnahan,

and grants an easement for the construction of the Watershed No. 35 and control of its water levels. The granting of this easement by these persons clearly demonstrates the ownership interests of the Forbis Group in the reservoir and the Forbis Farm at issue, had their been any question.

With regard to Applicant's objection to the "claimed real estate ownership interest of Rob and Stephanie Fothergill," again, this objection is disingenuous. The undersigned counsel was able to easily and immediately identify the 14 acre tract owned by Rob and Stephanie Fothergill and confirm their ownership interest by making a quick review of online tax records of the Wise County Appraisal District, which were last updated on May 3. If counsel for Applicant had carefully checked the appraisal district's tax records regarding this property, or had undertaken a quick consultation his client (whose related entity undoubtedly provides electric service to the Fothergill's home on the 14 acre tract) he could have saved TCEQ's valuable time, and his client's legal fees relating to this non-issue.

With regard to Joylynn Woodruff, counsel for Applicant is again confused in including her with the Forbis Group. To this Requestor's knowledge, Joylynn has not claimed any ownership interest in the Forbis Farm, nor has she requested a contested case hearing, but she *is* environmentally conscious and she did attend the public meeting on April 3. Joylynn Woodruff is in fact the sister-in-law by marriage to Jana Woodruff (again, it is a small town), but she has no direct relationship to the Forbis Farm or any ownership interest in property directly adjacent to the proposed sewer plant, and no one is contending otherwise.

II. Issues that should be reconsidered by the Executive Director or referred to SOAH

Based upon the argument previously made, and materials previously submitted, and the exhibit attached hereto, Requestor Nancy Carnahan contends that the following issues should be reconsidered by the Executive Director, or in the alternative, they should be referred to SOAH for a proceeding:

1. Whether the permit application satisfies applicable regulatory requirements.
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3. Whether the discharge route was appropriately assessed under Texas Surface Water Quality Standards?
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6. Whether Applicant will be the owners of the proposed facility.
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III. Request for Hearing and Request for 15 month hearing duration

Requestor reiterates its request for a contested case hearing and hereby requests a fifteen month duration for a contested case hearing on this matter, between preliminary hearing and the presentation of a proposal for decision before the commission.

Respectfully submitted,

CARNAHAN THOMAS
1190 N. Carroll Ave
Southlake, Texas 76092
Tel. 817-424-1001
Fax. 817-424-1003

Nancy F. Carnahan
Nancy F. Carnahan
State Bar. No. 07226150

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing document has been served this 9th day of June 2008, on Robert Renbarger, Fritz, Byrne, Head & Harrison, PLLC, 98, San Jacinto Blvd., Suite 2000, to Mr. Scott Shoemaker, Ms. June Ella Martinez, Mr. Blas J. Coy, Jr., Ms. Bridget Bohac, Mr. Kyle Lucas, Ms. Lou V. Bridges, Ms. Nancy Carnahan, Ms. Althea Forbis, Dr. Richard & Cathy Fothergill, Ms. Cathy Russell Fothergill, Rob & Stephanie Fothergill, Mrs. Catherine Russel, Mrs. Ann Jolley, Dr. Thomas N. Long, Gordon & Roxie Ploeger, Mr. Kevin Smith, Ms. Deborah White, Ms. Jana Woodruff, Ms. Joylynn Woodruff.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JUN -9 PM 3:44
CHIEF CLERKS OFFICE

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.T.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:

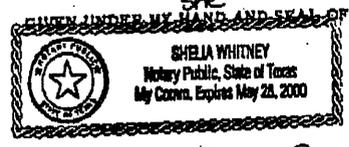
In the event construction of the above described works of improvement is not commenced within two (2) years from the date hereof, the rights and privileges herein granted shall at once return to and become the property of the Grantor, his heirs and assigns.

F... "A" 12 1

6 (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 Jane Sue Long Woodruff and she, 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.

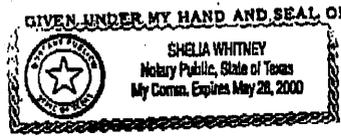


GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 2nd day of April, A. D. 1998.
Shelia Whitney
Notary Public in and for Wise County
State of Texas

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.

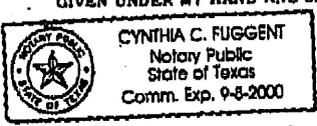


GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS, the 2nd day of April, A. D. 1998.
Shelia Whitney
Notary Public in and for Wise County
State of Texas

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 Caenahan, 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 _____, 19____ at _____ o'clock
M. _____
County Clerk

RECORDED
A. D. 19____
County Rec.

By _____ Deputy
of _____ Book _____
Page _____
County Clerk Deputy

This Instrument should be filed
Immediately with the County
Clerk for Record.

FROM: Jun. 9. 2008 3:28PM

JUN 9 2008 15:04

No. 2024 P. 1/14

CARNAHAN THOMAS LLP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ATTORNEYS AT LAW

2008 JUN -9 PM 3:45

A TEXAS REGISTERED LIMITED LIABILITY PARTNERSHIP

CHIEF CLERKS OFFICE

Fax

To: *La Donna Castañeda* Fax: *512-239-3311*

To: Fax:

Pages: *14* (including fax cover sheet) Date: *6/9/2008*

Re:

From: *Nancy Carnahan*
Michael S. 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.

1190 N. CARROLL AVENUE SOUTH LAKE, TEXAS 76092

TEL. 817.424.1001 FAX 817.424.1003