

LOWERRE, FREDERICK, PERALES & ALLMON

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ACR  
54053

March 14, 2008

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
PO Box 13087  
Austin, Texas 78711

WH OPA  
APR 18 2008  
BY EB

2008 APR 17 PM 2:40  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008-0427-AGL

**Re: Application by Jim and Keith Broumley, dba Broumley Dairy for Permit for Major Amendment, TPDES Permit No. WQ0003395000;**

Dear Ms. Castañuela:

The Lone Star Chapter of the Sierra Club and Mrs. Janet Williford are withdrawing their request for a contested case hearing in the above-referenced application. The original request for a contested case hearing was filed on March 12, 2008.

Please contact me if you have any questions.

Sincerely,

Eric Allmon  
State Bar No. 24031819  
For the Lone Star Chapter of the Sierra Club

cc: Robert Brush, Staff Attorney, TCEQ Environmental Law Division  
Blas Coy, Staff Attorney, TCEQ Office of Public Interest Council  
Jackson Battle, Attorney for the City of Waco  
Rick Webb, Enviro-Ag Engineering, Inc, For the Applicant

MW



LOWERRE, FREDERICK, PERALES,  
ALMON & ROCKWELL

Attorneys at Law  
44 East Avenue, Suite 100  
AUSTIN, TX 78701  
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LaDonna Castañuela  
Texas Commission on Environmental  
Quality  
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PO Bo 13087  
Austin, TX 78711



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March 12, 2008

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Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
P.O. Box 13087  
Austin, Texas 78711

H OPA  
MAR 12 2008  
BY KY

2008 MAR 12 PM 4: 51  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**Re: Application by Jim and Keith Broumley, dba Broumley Dairy  
for Permit for Major Amendment, TPDES Permit No. WQ0003395000  
Public Comment**

Dear Ms. Castañuela:

Please find attached for filing the Sierra Club's request for contested case hearing regarding the above referenced application. An original and eleven copies has also been sent via first class mail.

If you have any questions please call.

Sincerely;

Eric Allmon

Enclosures

- cc: Robert Brush, Staff Attorney, TCEQ Environmental Law Division
- Bias Coy, Staff Attorney, TCEQ Office of Public Interest Council
- Jackson Battle, Attorney for the City of Waco
- Rick Webb, Eviro-Ag Engineering, Inc., For the Applicant

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March 12, 2008

H OPA  
MAR 12 2008  
BY KY

CHIEF CLERKS OFFICE  
2008 MAR 12 PM 4:51

TEXAS  
COMMISSION  
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QUALITY

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Office of the Chief Clerk, MC 105  
P.O. Box 13087  
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**Re: Application by Jim and Keith Broumley, dba Broumley Dairy  
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Public Comment**

Dear Ms. Castañuela:

The Sierra Club (or, the "Club") files this request for contested case hearing request regarding the above-referenced application. The Sierra Club adopts the comments filed by the City of Waco in September of 2007, and seeks a hearing regarding each issue raised in those comments. The Sierra Club also requests a contested case hearing on each of the issues raised by any person during the comment period, including whether the proposed permit complies with the Total Maximum Daily Load for phosphorus in the North Bosque River, and whether the operation of the facility will have an adverse impact on surface water quality. The Club may be contacted through its legal counsel at the mailing address and fax number provided above.

## I. AFFECTED PERSON STATUS

The Sierra Club meets the requirements of associational standing. The Club is a membership organization whose purposes include the protection of the environment in Texas and the preservation of their members' ability to enjoy the environment. Members of the Sierra Club will be adversely impacted by the proposed application. Included among the members affected by the Broumley Dairy is Mrs. Janet Williford. Mrs. Williford is the owner of property located within 500 feet of the dairy, depicted as property H on the adjacent landowners map in the application of Broumley Dairy.<sup>1</sup>

<sup>1</sup> Attachment A to this request.

*Handwritten initials: MW*

## II. ISSUES

The Sierra Club requests a contested case hearing with regard to each of the following issues (including any issues contained in the referenced comments). While the Executive Director's (ED) decision on each of these may have also involved errors of law, the ED's decision on each issue included a flawed factual determination. Reference is provided to the comment number specified by the ED in the Response to Comments:

- **Inadequate protection of Groundwater and Surface Water (Comment 55).** The proposed permit is not adequately protective of groundwater, nor is the proposed permit protective of surface water, including the Bosque River. The Club disagrees with the ED's position that provisions of the permit will significantly reduce pollutants entering receiving waters.
- **The Broumley Dairy is a "New Source," and may not be authorized without proper load allocations pursuant to a proper Total Maximum Daily Load (Comments 1&2).** The Sierra Club disagrees with the ED's response regarding whether or not the Broumley Dairy is considered a "new source". Construction at the site began in 1997, properly making it a "new source." Even if not considered a "new source" before the current expansion, the proposed modifications of the retention control structures at the facility render the dairy a "new source." A "new source" is:

any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

- (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
- (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.<sup>2</sup>

Certainly, the proposed facility is to include structures and installations from which a discharge of pollutants may occur that was not authorized by the prior permit. The ED is in error to find otherwise. According to federal law, the expansion would be considered a "new source" and as such requires the TCEQ to deny any permit for a new discharger unless it is shown that the conditions of the permit ensure compliance with state water quality standards.

- **The Broumley Dairy does not meet the requirements of the Total Maximum Daily Load developed for the North Bosque Watershed. (Comments 3A-F, 4, and 5).** The Club disagrees with the ED's responses to each of these comments. The proposed permit undermines implementation of the total maximum daily load ("TMDL") developed for the North Bosque River Watershed. The Sierra Club requests a contested case hearing on these issues. Issuance of the permit as proposed would violate TMDL requirements related to the number of cows in the watershed, the removal of 50% of solid manure from the watershed, the phosphorus limit in the cows' diet, and proper phosphorus land application limitations.

<sup>2</sup> 40 CFR 122.2.

- **The ED has failed to make any Best Professional Judgment determination that the "BCT" standards for the control of pathogens have been met by the limitations imposed on the Broumley Dairy by the draft permit (Comment 6).** The Club disagrees with the responses of the ED in these comments. The best conventional control technology ("BCT") standards for controlling pathogens have not been satisfied by the limitations imposed as required by the *Waterkeeper* case.
- **Application limits on third party fields is inadequate. (Comment 7).** Receiving waters do not distinguish between phosphorus from on-site fields, and phosphorus on third-party fields. Applicant exercises sufficient control over the third-party fields in this case and those fields should be considered land management units, with the appropriate limitations for LMU's applied. All off-site fields should be identified during the permitting process to allow the TCEQ and the public a sufficient review of the application.
- **The Nutrient Management Plan (NMP) and RCS Management Plan must be available for review during the permitting process (Comments 8 & 23).** As a matter of law, the failure of TCEQ to require submission of the NMP and RCS Management plan during the permitting process is a violation of the federal Clean Water Act. These are enforceable portions of the permit, and thus must be subject to citizen review prior to permit issuance. As a matter of fact, Applicant has not met its burden of proof to demonstrate that the permit is sufficiently protective without providing a copy of these plans.
- **The Application contains numerous other technical errors related to facility design. (Comments 9, 10, 11, 12, 13, 15, 16, and 17) –** The Club disagrees with the ED's responses on comments 9-13 and 15-17. Each of these issues involves a technical deficiency in the application. The Application does not adequately account for management of all phosphorus production, the correct runoff Curve number ("CN") values have not been used to calculate runoff in pen areas and a CN of 85 is not an acceptable and conservative estimate for the area. The ED has not required the minimization of uncontaminated stormwater entering the RCSs. The applicant's use of the adjusted 30-day curb numbers to calculate runoff from the pens and adjacent areas is unacceptable. The ED has not imposed all necessary requirements to ensure that the RCSs at the site meet all legal requirements.
- **Adequate waste application limits are not included in the proposed permit (Comments 18, 19, 21, and 22) -** The Club disagrees with the ED's responses to deficiencies in the application regarding failure to properly calculate agronomic rates, use the most current soil test data, use correctly dated NMP, maintain existing LMU and RCS numbering, and provide certification of equivalent technology for odor control. The Sierra Club requests a contested case hearing on these issues.
- **The proposed permit does not contain adequate protection of the North Bosque River, sufficient protection against phosphorus contamination, or requirements adequate to ensure that state water quality standards will be met. (Comments 24, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45, 47, 49, 52, and 53).** The Club disagrees with the ED's

responses to deficiencies that prevent the permit from attaining phosphorus TMDLs for the North Bosque River, state water quality standards, and the requirements for CAFOs in Subchapter B.

- **The proposed permit does not meet all applicable odor control requirements (Comment 54).** The Club disagrees with the ED's response regarding nuisance odors resulting from an expanded Broumley Dairy. The Sierra Club requests a contested case hearing on this issue.

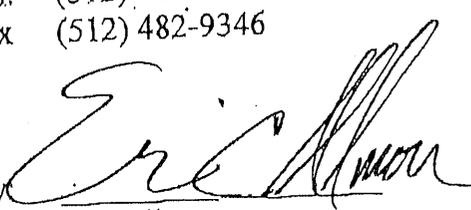
The proposed permit is flawed in multiple respects, including those flaws that the ED has delineated in its response to comments as comments 1, 2, 3a, 3b, 3c, 3d, 3e, 3f, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45, 47, 49, 52, 53, 54, and 55. The Sierra Club requests a contested case hearing on each of the these issues.

### III. CONCLUSION

For these reasons, the Club requests a contested case hearing on the issues set forth above. If the Commission refers an issue of whether the permit is protective of surface water quality and meets all applicable regulatory requirements, many other specific issues raised may be subsumed within that issue. This issue was raised by "Issue 55" in the ED's response to comments. Due to the complexities of the issues presented, the number of technical issues involved, and the fact that this application will be one of the first CAFOs to go through the contested case hearing process under the new rules, the Club requests that the duration of the hearing process be set for no less than 12 months.

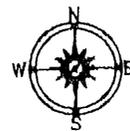
Respectfully Submitted,

**LOWERRE, FREDERICK,  
PERALES, ALLMON &  
ROCKWELL**  
44 East Ave., Ste. 100  
Austin, Texas 78701  
Tel. (512) 469-6000  
Fax (512) 482-9346

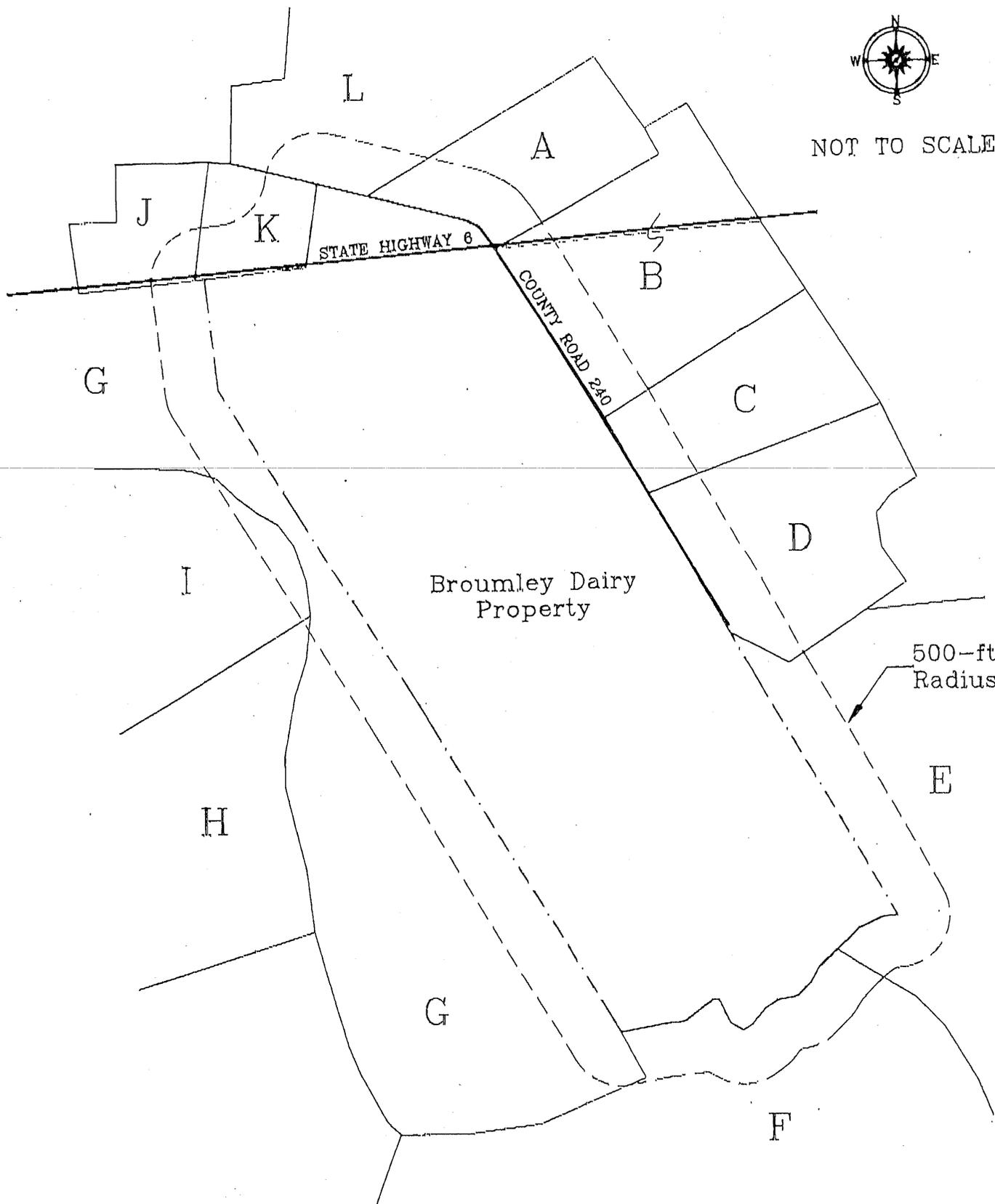
By 

Eric Allmon  
State Bar No. 24031819

# ATTACHMENT A



NOT TO SCALE



Broumley Dairy Property

500-ft Radius

BROUMLEY DAIRY  
HICO, TEXAS  
HAMILTON COUNTY

ADJACENT LANDOWNERS MAP  
FIGURE 2.1  
PAGE 4 1/24/2006

ENVIRO-AG  
**EAE**  
ENGINEERING

Enviro-Ag Engineering, Inc.  
ENGINEERING CONSULTANTS  
702 QUAIL CREEK DRIVE  
AMARILLO, TEXAS 79124  
TEL (806) 353-8123 FAX (806) 353-4132

# LOWERRE & FREDERICK

44 East Avenue, Suite 100  
Austin, TX 78701  
(512) 469-6000 Phone  
(512) 482-9346 FAX

## FAX COVER SHEET

To: LaDonna Castañuela  
Blas Coy, Jr.,  
Robert Brush

Fax: (512) 239-3311  
Fax: (512) 239-6377  
Fax: (512) 239-0606

From: Eric Allmon

Date: March 12, 2008

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 MAR 12 PM 4:50  
CHIEF CLERKS OFFICE

DOCUMENTS	NUMBER OF PAGES (not including cover pg)
Sierra Club Hearing Requests	7

### COMMENTS:

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PLEASE CALL 512.469.6000 AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.

LOWERRE, FREDERICK, PERALES & ALLMON

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Austin, Texas 78701  
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OPA

March 12, 2008

H MAR 12 2008  
BY KJ

AGR  
54053

CHIEF CLERKS OFFICE

2008 MAR 13 AM 11:58

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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AW

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March 12, 2008

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Office of the Chief Clerk, MC 105  
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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 MAR 13 AM 11:59  
CHIEF CLERKS OFFICE

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<sup>1</sup> Attachment A to this request.

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Certainly, the proposed facility is to include structures and installations from which a discharge of pollutants may occur that was not authorized by the prior permit. The ED is in error to find otherwise. According to federal law, the expansion would be considered a "new source" and as such requires the TCEQ to deny any permit for a new discharger unless it is shown that the conditions of the permit ensure compliance with state water quality standards.

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- **The Nutrient Management Plan (NMP) and RCS Management Plan must be available for review during the permitting process (Comments 8 & 23).** As a matter of law, the failure of TCEQ to require submission of the NMP and RCS Management plan during the permitting process is a violation of the federal Clean Water Act. These are enforceable portions of the permit, and thus must be subject to citizen review prior to permit issuance. As a matter of fact, Applicant has not met its burden of proof to demonstrate that the permit is sufficiently protective without providing a copy of these plans.
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responses to deficiencies that prevent the permit from attaining phosphorus TMDLs for the North Bosque River, state water quality standards, and the requirements for CAFOs in Subchapter B.

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The proposed permit is flawed in multiple respects, including those flaws that the ED has delineated in its response to comments as comments 1, 2, 3a, 3b, 3c, 3d, 3e, 3f, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45, 47, 49, 52, 53, 54, and 55. The Sierra Club requests a contested case hearing on each of the these issues.

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Respectfully Submitted,

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PERALES, ALLMON &  
ROCKWELL**

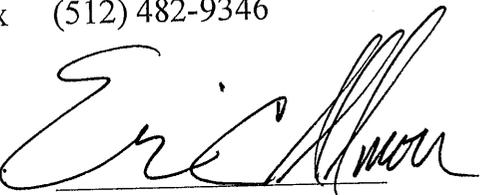
44 East Ave., Ste. 100

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By



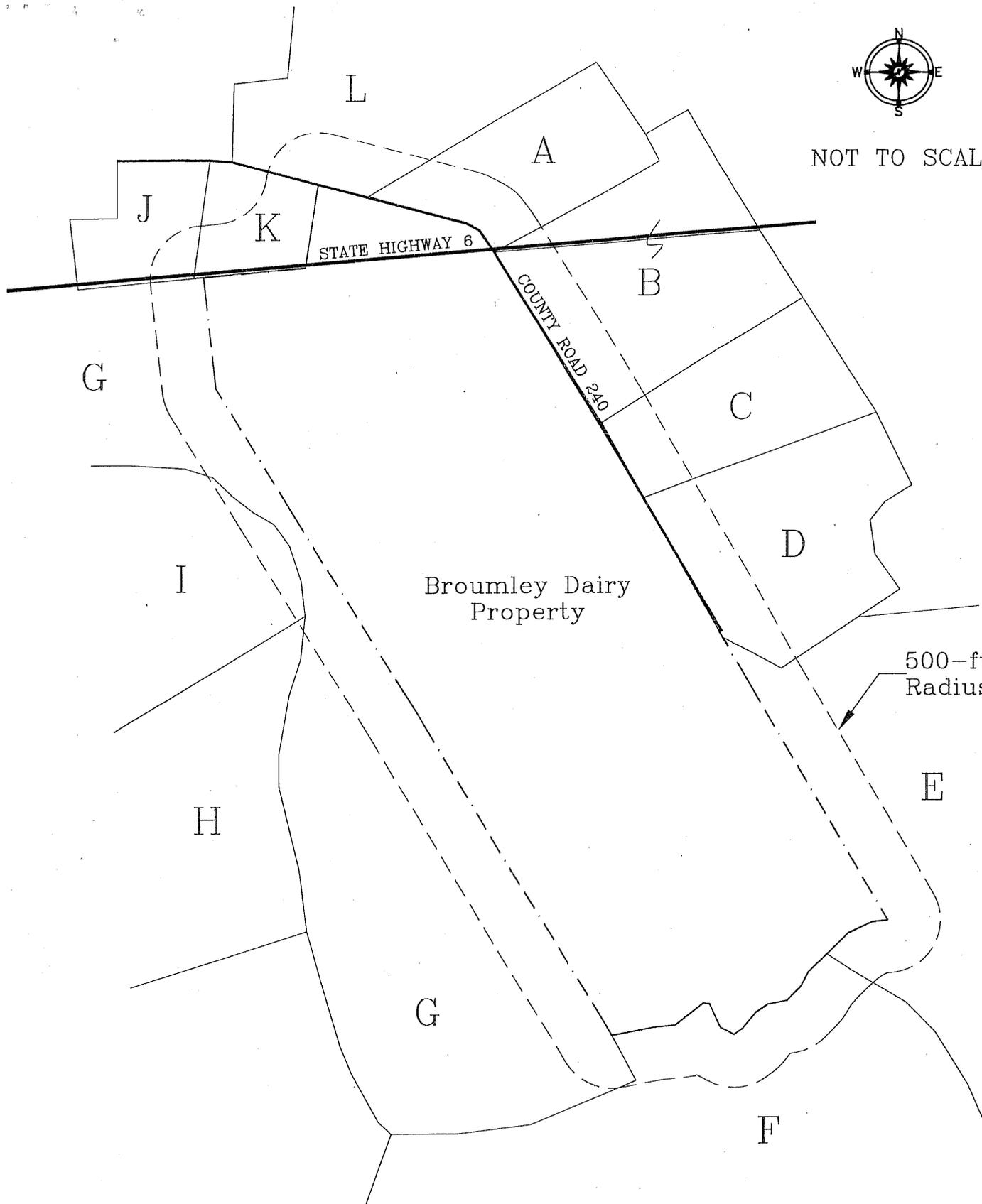
Eric Allmon

State Bar No. 24031819

# ATTACHMENT A



NOT TO SCALE



BROUMLEY DAIRY  
HICO, TEXAS  
HAMILTON COUNTY

ADJACENT LANDOWNERS MAP  
FIGURE 2.1  
PAGE 4 1/24/2006

**ENVIRO-AG**  
**EAE**  
**ENGINEERING**

Enviro-Ag Engineering, Inc.  
ENGINEERING CONSULTANTS  
702 QUAIL CREEK DRIVE  
AMARILLO, TEXAS 79124  
TEL (806) 353-6123 FAX (806) 353-4132