

TCEQ DOCKET NO. 2008-0943-MWD

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 OCT 17 PM 4:00
CHIEF CLERKS OFFICE

IN THE MATTER OF THE §
APPLICATION OF VAL VERDE §
DEVELOPMENT CO. FOR NEW §
TPDES PERMIT NO. WQ0014777001 §
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VAL VERDE DEVELOPMENT CO.
RESPONSE TO REQUEST FOR PUBLIC HEARING

COMES NOW, Val Verde Development Co. ("Val Verde" or the "Applicant") and files this, its Response to Hearing Requests in the above-referenced matter:

I.
SUMMARY

Val Verde respectfully asks that the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") deny the Hearing Request of the only remaining Protester, Ronald C. Burton, for the following reasons:

- A. Mr. Burton did not request a contested case hearing in accordance with Chapter 55 of the TCEQ Rules;
- B. Mr. Burton is not an affected person under the rules of the Commission;
- C. In his hearing requests, Mr. Burton failed to raise issues of fact that are relevant and material to the Commission issuing a water quality permit, which is required before the Commission may grant a hearing request;
- D. Mr. Burton complains about anti-growth/anti-development issues, land value issues, unrelated lawsuits, and other superfluous issues unrelated to water quality issues, all of which are not within the authority or jurisdiction of the Commission;

For these reasons, Val Verde respectfully requests that the Commission deny the hearing request of Mr. Burton and issue TPDES Permit No. WQ0014777001.

II. INTRODUCTION

Val Verde has applied to the TCEQ for a new permit, Proposed Permit No. WQ0014777001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility will be located approximately 1,000 feet northwest of U.S. Highway 277 and approximately 500 feet west of Spur 317 in southwest Val Verde County, Texas. The facility will discharge treated effluent to a dry gully; thence to an unnamed intermittent stream; thence to Zorro Creek, which is in the Rio Grande Basin. In accordance with Section 307.5 of the TCEQ Rules and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, the TCEQ Executive Director (the "Executive Director" or "E.D.") performed an anti-degradation review of the receiving waters and determined that the issuance of this permit will not impair the receiving waters or degrade water quality. The E.D. has determined that the proposed permit maintains and protects the numerical and narrative criteria for the receiving water. Furthermore, the E.D. has determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. The E.D. does not foresee any significant degradation of water quality in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and the proposed permit will maintain and protect existing uses.

The E.D. has completed the technical review of the application and prepared a draft permit. The draft permit establishes the conditions under which the facility must operate. The E.D. has decided that this permit meets all statutory and regulatory requirements.

The Executive Director received the application for a permit on January 25, 2007, and declared the application administratively complete on February 20, 2007. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in the *Del Rio New*

Herald on March 8, 2007. Furthermore, the Applicant published the Notice of Application and Preliminary Decision for a Water Quality Permit in the *Del Rio News Herald* on May 27, 2007. The initial comment period ended on June 26, 2007. The TCEQ Office of Public Assistance conducted a public meeting on March 6, 2008. The period for comments and to request a hearing closed on June 13, 2008. This application is subject to the procedural requirements of House Bill 801, 76th Texas Legislature, 1999.

The Office of the Chief Clerk received timely protests and requests for hearing from the U.S. Air Force Laughlin Air Force Base ("Laughlin AFB") and Mr. Ronald C. Burton. Subsequently, on August 21, 2008, Laughlin AFB withdrew both its protest and request for a contested case hearing. At this time, the only remaining protester is Mr. Burton

The Office of the Chief Clerk also received timely public comments from Mr. W.L. Moody, IV and the Mayor of the City of Del Rio, the Honorable Efrain Valdez. However, these commenters neither filed a protest nor requested a public hearing.

III.

APPLICABLE LAW FOR EVALUATING HEARING REQUESTS

The E.D. declared this application administratively complete after September 1, 1999. Therefore, this application is subject to the requirements of Section 5.556 of the Texas Water Code, added by Act 1999, 76th Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a request for a public hearing must substantially comply with the following requirements:

- 1) be in writing;
- 2) be filed timely;
- 3) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- 4) identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be

- adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- 5) request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and
 - 6) provide any other information specified in the public notice of the application.¹

Under Section 55.203(a) of the TCEQ Rules, an "affected person" is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public.² Relevant factors that the Commission will consider in determining whether a person is affected include the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- 5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.³

The Commission shall grant an affected person's timely filed hearing request if (1) the request is made pursuant to a right to hearing authorized by law and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application.⁴

Accordingly, responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;

¹ 30 TEXAS ADMIN. CODE ("TAC") § 55.201(d).

² *Id.*

³ 30 TAC § 55.203(c).

⁴ 30 TAC § 55.21 l(c).

- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.⁵

The Commission has also set forth specific criteria for evaluating whether the Commission should consider a group or organization to be an "affected person." Section 55.205(a) of the TCEQ Rules states that a group or association may request a hearing if:

- 1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- 2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

IV. RESPONSE TO MR. BURTON'S HEARING REQUEST

A. Mr. Ronald C. Burton did not Request a Public Hearing in Accordance with Chapter 55

In his letter to the Office of the Chief Clerk, Mr. Ronald C. Burton failed to request a public hearing on the Val Verde application in accordance with Chapter 55 of the Commission's rules, because Mr. Burton failed to identify his personal, justiciable interest affected by the application and thus failing to show why Mr. Burton is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public. Instead, Mr. Burton listed his general concerns regarding recent lawsuits and disputes between the City of Del Rio and the Applicant, which are no

⁵ 30 TAC § 55.209(e).

different from the public's general concerns.

First, Mr. Burton complains about the "lack of public information concerning the development plans of Val Verde Development Co. or SE Ranch Holdings, LTD," then he states that his request for a contested case hearing centers on "the adverse effect this development may have upon Laughlin Air Force Base."⁶

His concerns about "lack of public information" is a general concern indifferent from the general public, and thus not a personal, justiciable interest. His concern regarding Laughlin AFB is not a personal, justiciable interest, but rather a concern for a third-party that has already withdrawn its protest and request for hearing. His concern for Laughlin AFB is also a general concern indifferent from that of the general public.

Therefore, for these reasons, the Commission should deny Mr. Burton's hearing request and not require the State Office of Administrative Hearings to conduct a contested case hearing on the application.

B. Mr. Ronald C. Burton is not an Affected Person, as defined by Statute and Commission Rules

Not only did Mr. Ronald C. Burton not request a contested case hearing in accordance with the Commission's rules, simply put, he is not an Affected Person. In his letter, Mr. Burton expressed general "concerns" with Val Verde's proposed TPDES permit, especially regarding issues that the Commission may not consider when evaluating the Val Verde Application. Moreover, Mr. Burton's expressed concerns regarding land development and zoning issues which are not interests protected by the law under that the Commission may consider the Val Verde TPDES permit application.

Mr. Burton lives at 110 Arbor Avenue, Del Rio, Texas, which is nearly five (5) miles

from both the Val Verde plant site and discharge point. The proposed discharge does not flow near Mr. Burton's property. In fact, Mr. Burton's property is located nearly six (6) miles upstream from the confluence of the proposed receiving stream, Zorro Creek, with the Rio Grande. Actually, Mr. Burton's property is closer to the City's wastewater plant and landfill than to the proposed Val Verde site. Mr. Burton's home is substantially farther away from the Val Verde site than the Commission's one-mile standard for determining if a proposed wastewater discharge permit will affect a person.

In his letter, Mr. Burton expresses his concern about the lack of public information on the development plans for the property owned by S.E. Ranch Holding, Ltd., the landowner that the Val Verde facility will serve; however, he does not complain that the Applicant or the Chief Clerk failed to provide all information required by the Commission's rules. Regardless, the record shows that the Applicant and the Chief Clerk provided all of the Commission's required notices, including the Notice of Receipt of Application and Intent to Obtain Water Quality Permit, the Notice of Application and Preliminary Decision for TPDES Permit, and the Notice of Public Meeting. Moreover, S.E. Ranch Holdings, Ltd., is not the applicant for this proposed permit and is not subject to regulation under the proposed permit. Rather, his concern about the "lack of public information on the proposed development plans of S.E. Ranch" is a general concern common to the public about an entity other than the Applicant, namely the development company known as S.E. Ranch Holding, Ltd.

Finally, under State law, the Legislature has reserved the regulation of land development and zoning issues to municipal and, in certain limited situations, county governments. The Legislature has not authorized the Commission to consider land

⁶See Letter from Ronald C. Burton to TCEQ Office of the Chief Clerk (June 22, 2007).

development and zoning issues when considering an application for TPDES wastewater discharge permit. Mr. Burton failed to express how his personal justiciable interest is affected by the TPDES permit application.

For these reasons, the Commission should deny Mr. Burton's hearing request and not require the State Office of Administrative Hearings to conduct a contested case hearing on the application.

C. Mr. Burton Failed to Raise Issues of Fact that are Relevant and Material to the Commission Issuing a Water Quality Permit

Mr. Burton voiced his concerns about the Applicant's previous lawsuits against the City of Del Rio and land development and zoning issues. None of these issues are relevant or material to whether the Commission should issue a permit under the provisions of the Texas Water Code. Not one of these issues addresses how the proposed TPDES permit adversely impacts the environment or the health and safety of Texans. Rather, these non-water quality issues are an example of how Mr. Burton is attempting to delay the development of the property through his contest of the Commission's issuance of a TPDES permit to Val Verde Development Company.

For these reasons, the Commission should deny Mr. Burton's request for contested case hearing and grant the TPDES permit as proposed by the Commission's Executive Director.

D. Interests Claimed by Mr. Burton regarding Land Development are NOT Issues Protected by the Law Under Which the Commission May Consider the Issuance of a TPDES Permit

As previously stated, Mr. Burton's complaints center around anti-growth/anti-development issues, lawsuits unrelated to the application, and other issues that the Commission lacks the jurisdiction to consider. Section 55.203 (c) requires that the interest claimed by a protestor be protected by the law under which the Commission is considering the application.

As stated above, the Texas Legislature has granted the counties and municipalities, not the Commission, with the authority to consider land development issues.⁷ Instead, the Texas Water Code authorizes the Commission "to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the State."⁸ In his request for a contested case hearing, Mr. Burton failed to raise one fact issue that is relevant to water quality or that is an interest protected by the Texas Water Code -- the law under which the Commission may consider issuance of an application. Therefore, Mr. Burton's issues are not those which are within the authority or jurisdiction of the Commission.

For these reasons, the Commission should deny the Mr. Burton's request for contested case hearing and grant the TPDES permit as proposed by the Commission's Executive Director.

V.
RESPONSE TO PUBLIC COMMENTS

As previously stated, the Office of the Chief Clerk also received timely public comments from Mr. W.L. Moody, IV and the Mayor of the City of Del Rio, the Honorable Efrain Valdez (collectively referred to as "Commenters"). However, neither of these Commenters filed a protest nor requested a public hearing. Val Verde respectfully asks that the TCEQ not modify or change the permit in response to these public comments. Moreover, Val Verde respectfully asks that the Commission deny any future requests for a contested case hearing by Commenters, as any hearing request at this time will be both untimely and non-compliant with Chapter 55 of the Commission's rules.

The Commission should neither modify or change the permit nor grant a hearing request to the Commenters for the following reasons:

⁷ See e.g., TEX. LOCAL GOV'T. CODE §§ 211-250.

- A. Neither Commenter requested a public hearing in accordance with Chapter 55 of the Commission's rules;
- B. Mr. W.L. Moody, IV is not an affected person under the rules of the Commission;
- C. In their comments, Commenters failed to raise issues of fact that are relevant and material to the Commission issuing a water quality permit, which is required before the Commission may grant a hearing request;
- D. Commenters complain mainly about anti-growth/anti-development issues, land value issues, unrelated lawsuits, and other superfluous issues unrelated to water quality issues and are not within the authority or jurisdiction of the Commission;
- E. The Mayor's concerns over the Applicant's failure to notify the Texas Department of Transportation ("TXDOT") as an affected property owner of the highway right-of-way adjacent to the discharge tributary is irrelevant. The Mayor lacks standing to raise third-party notice issues. Furthermore, Section 39.13, Title 30 of the Texas Administrative Code (the "TCEQ Rules") does not require the Applicant to notify TXDOT as an adjacent property owner. If the City's argument was correct, then the Applicant and the Commission would be unduly burdened with notifying TXDOT about every application.
- F. The Mayor's concern regarding the disposal of sludge from the proposed facility is disingenuous at best, because the draft permit allows the Applicant to dispose of the sludge at any permitted facility within the State that is willing to accept the sludge. Although Applicant named the Del Rio land fill as a possible disposal site for the sludge, the TPDES Permit does not require the Applicant to name the exact destination of the sludge. As evidence of this fact, the draft permit only requires the Applicant to dispose of the sludge at any of the numerous authorized facilities within the State. Applicant will comply with all disposal requirements set forth in the TPDES Permit. Moreover, the City of Eagle Pass has confirmed its willingness to accept the sludge from the Applicant's facility, and the City of Uvalde's Municipal Solid Waste Disposal facility has also confirmed its willingness to accept sludge from the Applicant's facility.
- G. Mr. W. L. Moody claims that the Applicant failed to provide proper notice to him as a downstream landowner; however, the Applicant provided all necessary notice in accordance with the Commission guidelines and the TCEQ Rules. Mr. Moody is simply unaware or unfamiliar with the TCEQ Rules. Moreover, Mr. Moody received effective notice, as evidenced by his submittal of his letter to the Chief Clerk's Office. Furthermore, Mr. Moody lacks standing to raise third-party notice issues.

⁸ TEX. WATER CODE § 26.027 (a).

H. Mr. Moody also raised issues regarding property valuation, which is unrelated to water quality and not within the authority or jurisdiction of the Commission.

A. Neither the Mayor of Del Rio nor Mr. W.L. Moody IV Requested a Public Hearing in Accordance with Chapter 55

In his letter to the Chief Clerk, Mayor Valdez of the City of Del Rio did not request a hearing. Instead, Mayor Valdez requested a public meeting, which the TCEQ Office of Public Assistance held on March 6, 2008. As neither the City nor the Mayor requested a contested case hearing, the Commission should not grant a contest case public hearing.

Moreover, the Mayor failed to comply with the Commission's rules to request a hearing. As noted above, Section 55.201 (d) lays out specific requirements for a party to request a public hearing. One of those requirements is for the party to state that the party requested a contested case hearing, which the Mayor of Del Rio did not request. Rather, the Mayor requested the public meeting. Furthermore, under Section 55.201 (d) of the TCEQ Rules, the Commission has set forth specific requirements for a party to request a public hearing. The Mayor failed to comply with those specific requirements of the Commission, including the following provisions:

1. providing the daytime telephone number and fax number of the person who filed the request, Mayor Valdez;
2. identifying one person by name, address, daytime telephone number, and, where possible, fax number, who would be responsible for receiving all official communications and documents for the City; and
3. identifying the City's unique, justiciable interest affected by the application.

Instead, the Mayor listed his general concerns about the application, which are not different

from the concerns of the general public. The Mayor failed to describe why he believes the proposed facility will adversely affect the City.

Just as the City of Del Rio did not request a public hearing, Mr. W.L. Moody IV did not request a public hearing in accordance with Chapter 55. Through his attorney, Mr. Moody stated his general objections to the application, but he did not request a contested case hearing. Furthermore, Mr. Moody failed to identify his personal, justiciable interest affected by the application – he failed to show why he is an “affected person” who may be adversely affected by the proposed facility in a manner not common to members of the general public.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mayor Valdez or Mr. Moody.

B. Mr. W.L. Moody IV is not an Affected Person, as defined by Statute and Commission Rules

As noted above, Mr. W.L. Moody IV did not request a contested case hearing. Moreover, Mr. Moody is not an Affected Person, as defined by the Texas Water Code and the Commission's rules. An “affected person” has a personal justiciable interest affected by the application and does not include an interest common to the public. Factors for the Commission to consider in determining whether a person is affected by the permit include 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; and 4) the likely impact of the regulated activity on the health, safety, and use of property of the person.

In her letter, Mr. Moody's attorney, Jan London, expressed Mr. Moody's general "concerns" with Val Verde's proposed TPDES permit. Ms. London notes that Mr. Moody's property, "Rancho Rio Grande," is located south of the Val Verde property. Actually, Mr. Moody's property is across U.S. Highway 277 from the S.E. Ranch property, which is the property that lies between the Applicant's property and Mr. Moody's ranch. As proposed, the discharge from the Val Verde facility will flow across the Applicant's property, then the S.E. Ranch property before it reaches Rancho Rio Grande. Moreover, Rancho Rio Grande is located nearly one and one-half miles downstream of the proposed discharge site. The boundary of Mr. Moody's "substantial piece of property" is more than the Commission's one-mile standard for determining if a proposed permit will affect a person.

Next, Ms. London expresses Mr. Moody's general concern that the discharge will "be of a low water quality." Again, this expression of general concern is no different than the concern of the general public, and Mr. Moody has failed to express how his personal, justiciable interest is affected by the application. Mr. Moody did not state how the proposed discharge would impact his health, safety, or the use of his property.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mr. Moody.

C. Mr. Moody Failed to Raise Issues of Fact that are Relevant and Material to the Commission Issuing a Water Quality Permit

Mr. W. L. Moody IV raised questions regarding the lowering of his property values. However, this issue is not relevant or material to whether the Commission should issue a permit under the provisions of the Texas Water Code. His issue fails to address how the proposed TPDES permit adversely impacts the environment or the health and safety of Texans. Section

55.203 (c) requires that the interest claimed by a protestor be protected by the law under which the Commission is considering the application.

The Texas Legislature has not granted the Commission with the authority to consider potential impacts on property value, and the Commission has never considered property value impacts to determine whether to issue a TPDES permit. The Texas Water Code authorizes the Commission "to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the State."⁹ Mr. Moody fails to raise a fact issue that is relevant to water quality issues, therefore are not within the authority of the TCEQ.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mr. Moody.

D. Mr. Moody's Land Development Issues are Neither Relevant nor Material to the Commission Issuing a Water Quality Permit

Mr. Moody voiced his concerns about land development and zoning issues for the property that Val Verde will provide service. Again, these issues are neither relevant nor material to whether the Commission should issue a permit under the provisions of the Texas Water Code. Not one of these issues addresses how the proposed TPDES permit adversely impacts the environment or the health and safety of Texans.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mr. Moody.

⁹ TEX. WATER CODE § 26.027 (a).

E. Applicant Not Required to Notify TXDOT as Affected Owner of State Right-of-Way

The City of Del Rio is concerned about the flow downstream entering onto or affecting the Texas Department of Transportation ("TXDOT") right-of-way. The City goes on to argue that because it is the City's opinion that the discharge could enter the TXDOT right-of-way, then the Applicant should have notified TXDOT of the application and proposed discharge.

The City of Del Rio lacks standing to raise notice issues for any third-party landowners, even if the third-party landowner is the Texas Department of Transportation. As the Third Court of Appeals noted in *McDaniel v. Tex. Natural Res. Conservation Comm.*, landowners lack standing to assert the interest of a third party landowner, even those third parties who allegedly never received notice.¹⁰ In addition, the Applicant is not required to notify anyone other than by the Commission-required method.¹¹ The Executive Director and the Chief Clerk's Office confirm that the Applicant provided notice by the Commission-required method.

Moreover, the Commission does not require an applicant to notify the "owner" of a public right-of-way. If the City's argument was correct, then this and every other Applicant and the Commission would have to notify TXDOT about every application before the Commission, which is simply not the law.

Furthermore, the City is factually incorrect. After multiple site visits before and after significant rain fall events, Tommy Koch and Kaveh Khorzad, the Applicants Engineer and Hydrologist, concluded that the minimal increase in flow from the Applicant's proposed facility would not affect the TXDOT right-of-way. The streambed was not only dry at the time of inspection, which occurred following significant rainfall, but did not show any signs of increased

¹⁰ *McDaniel v. Tex. Natural Res. Conservation Comm.*, 982 S.W.2d 650, 654 (Tex. App. -- Austin 1998, pet. denied)

¹¹ *Smith v. Houston Chem. Serv., Inc.*, 872 S.W.2d 252, 273 (Tex. App.-- Austin 1994, writ denied).

pooling or water erosion. Please see attached Exhibit "A" for full analysis of streambed, which was previously submitted and is part of the record for this matter.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mayor Valdez.

F. City's Sludge Issue Not Relevant to the Issuance of the TPDES Permit

As previously stated, the City of Del Rio's dispute regarding the disposal of sludge from the proposed facility is a faux issue, at best. The proposed permit authorizes and allows the Applicant to dispose of the sludge at any TCEQ permitted facility within the State that is willing to accept the sludge. Although the Applicant named the Del Rio land fill as a possible disposal site for the sludge in the original application, the TPDES Permit does not require the Applicant to name the exact destination of the sludge. Rather, the proposed permit only requires the Applicant to dispose of the sludge at any of the numerous authorized facilities within the State. The Applicant will comply with all disposal requirements set forth in the TPDES Permit. Furthermore, the City of Eagle Pass Wastewater Treatment Plant, TPDES Permit No. WQ0010406002, has confirmed its willingness to accept the sludge from the Applicant's facility. Moreover, the City of Uvalde Municipal Solid Waste Disposal site, Permit No. 1725, has confirmed its willingness to accept the sludge from the Applicant's facility. By disposing of its sludge at either facility, the Applicant will comply with all disposal requirements set forth in the draft TPDES permit. The City of Del Rio's issue concerning the disposal of semi-solid waste in the City landfill is not an issue of fact or water quality.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mayor Valdez.

G. Applicant Provided Notice as Required by Commission Guidelines and TCEQ Rules

In his letter to the Chief Clerk, Mr. Moody states that the Applicant failed to provide notice to the downstream landowners within 1 mile of the Applicant's discharge point, as required by Commission guidelines and TCEQ rules. Mr. Moody's claim is simply false. The Applicant's discharge point, shown as Outfall 001, is more than 1.4 stream miles from Mr. Moody's property, which is the second property that the discharge enters after leaving the Applicant's property. Please see attached Exhibit "B," which was submitted and is part of the record for this matter.

Mr. Moody lacks standing to raise notice issues for any third-party landowners. Again, as the Third Court of Appeals noted in *McDaniel v. Tex. Natural Res. Conservation Comm.*, landowners lack standing to assert the interest of a third party, even those third parties who allegedly never received notice.¹² The Applicant is not required to notify anyone other than by the Commission-required method.¹³ The Executive Director and the Chief Clerk's Office confirm that the Applicant provided notice properly.

The Applicant did provide notice as required by the Executive Director's Customer Information and Applications Review and Process Section and the Commission's Office of the Chief Clerk. Moreover, Mr. Moody, himself, had actual, effective notice, as he did write in his letter to the Chief Clerk within the allotted comment period.

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to either Commenter based upon the comments of Mr. Moody.

¹² *McDaniel v. Tex. Natural Res. Conservation Comm.*, 982 S.W.2d 650, 654 (Tex. App. -- Austin 1998, pet. denied)

¹³ *Smith v. Houston Chem. Serv., Inc.*, 872 S.W.2d 252, 273 (Tex. App.-- Austin 1994, writ denied).

H. Protestor's Property Value Issues Not Under the Jurisdiction of the Commission

As previously stated, Mr. Moody raised issues regarding the potential impact of the application upon the market value of his property. The Commission's position on this concern has always been that the Commission lacks the jurisdiction, the authority, and the expertise to address this issue. The maintenance of property values is not protected by the law under which the Commission is considering the application

For these reasons, the Commission should not modify or change the permit nor grant a hearing request to the either Commenter based upon the comments of Mr. Moody.

**V.
CONCLUSION**

Val Verde hereby prays that the Commission deny Mr. Burton's hearing request, not modify the permit based upon the comments of Mr. Moody or the City of Del Rio, and issue TPDES Permit No. WQ14658001 as proposed by the Executive Director.

Respectfully submitted,

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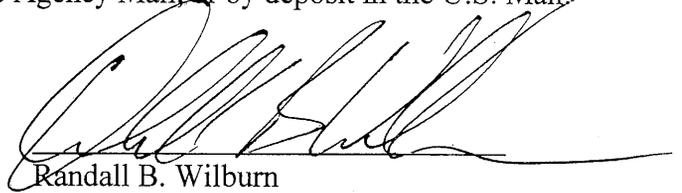

Randall B. Wilburn

**ATTORNEY FOR VAL VERDE
DEVELOPMENT CO.**

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2008, the original and eleven true and correct copies of Val Verde Development Co. Response to Requests for Hearing were filed with the Office of the Chief Clerk of the TCEQ and a copy was served to all persons-listed on the-attached mailing list via hand delivery, facsimile transmission, Intra-Agency Mail, or by deposit in the U.S. Mail.

By:



Randall B. Wilburn

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 OCT 17 PM 4:02
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MAILING LIST

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Laughlin AFB, TX 78843



WET ROCK GROUNDWATER SERVICES, L.L.C.

Groundwater Specialists

P.O. BOX 163144

Austin, Texas 78716

PH: 512-773-3226 FAX: 512-879-6809

July 27, 2007

Val Verde Development Co.
Attention: Ms. Linda Littrell
8620 N. New Braunfels, Suite 400
San Antonio, TX 78217

RE: Val Verde Development Company

Dear Ms. Littrell:

This letter report outlines the procedures and results of a site survey of the Val Verde Development Company's proposed wastewater plant site. This survey of the area has been prompted by protests from four parties to the application of the discharge of wastewater from the Val Verde Development Company. The following table summarizes the protests from the parties:

Protestant	Concerns
W.L. Moody, IV (Jan London)	1. Contends his property is within one mile of discharge point 2. Discharge of effluent travels through his property and will lower its value 3. Concerned about not being notified
Ronald C. Burton	1. Concerned about lawsuits from SE Ranch, and the effects on Laughlin AFB
Laughlin AFB	1. Concerned about water from the discharge increasing wildlife and increasing bird hazards on the base
City of Del Rio (Jane Macon)	1. Concerned about the effluent recharging the Edwards-Trinity Aquifer 2. Val Verde Developmnet Co. has not applied to dispose sludge 3. Concerned about statement in application stating "stream is dry even after significant rainfall events" 4. Concerned that streambed downstream of discharge point is adjacent to highway right of way and a culvert provides pathway onto TXDOT right of way

On July 25, 2007 I traveled to the site of the proposed wastewater treatment plant (WWTP). Figure 1 shows the location of the proposed WWTP, the discharge point location, and the creek that will be receiving the discharge. The creek is labeled as the unnamed tributary to Zorro Creek. Appendix A includes the field notes of the site visit with Appendix B providing the photos taken on that day. Figure 2 shows the location of the photos taken with respect to the proposed WWTP site.

The proposed WWTP site and discharge point is located at the southeast corner of the SE Ranch near the intersection of Spur 317 and US Hwy 277. The site visit occurred after significant precipitation events. During the month of July there had been 3.7 inches of rain (Source: National Oceanic and Atmospheric Administration; NOAA) and the week prior to the site visit there had been 3.07 inches of rain.

Zorro Creek near the intersection with US Hwy 277 was observed first (Figure 2; Appendix A, Appendix B). There was no water within the creek and the creek bed was slightly moist to dry. After that, the creek which is to receive the discharge water from the WWTP was walked (unnamed tributary to Zorro Creek). Photos were taken at the intersection of the creek and US Hwy 277 (See Photos 3 and 4), and the intersection of the creek and Spur 317 (See photo 5). In addition, the creek bed was walked from the downstream point at US Hwy 277 to approximately midway upstream (See Figure 2). During the course of walking the creek bed, there was no water visible within the creek after significant precipitation events. In addition, the creek bed was poorly defined lacking well defined banks. This was due to the flat topography on the ranch. The observation that the creek bed was poorly defined indicates the lack of running water through it over time, and further indicates that even after substantial precipitation events, the creek does not hold water.

Figure 3 provides an aquifer map of the area surrounding the proposed WWTP. The Edwards-Trinity Aquifer is located in the Del Rio area. It is the source of water to the city (via springflow) and surrounding area. The Edwards-Trinity Aquifer boundary provided in Figure 3 shows that the aquifer is not located underneath the site of the WWTP. This is not because the Edwards Formation, of which the Edwards-Trinity Aquifer is comprised of, is not located underneath the WWTP, but rather the groundwater underneath the WWTP site location is not potable, thus the Edwards Formation underneath the WWTP site is not an aquifer as defined by the Texas Water Development Board (TWDB). The location of the WWTP site is approximately 2.3 miles downgradient from the southern boundary of the Edwards-Trinity Aquifer.

Figure 4 provides a geologic map of the area surrounding the proposed WWTP site and Figure 4a is an explanation of the geologic units found in Figure 4. From the geologic map in Figure 4, the WWTP site and the southern half of the unnamed tributary of Zorro Creek are located on the Uvalde Gravel. The Uvalde gravel is described as a caliche-cemented gravel containing boulders up to 1 foot in diameter with well rounded cobbles of chert, some cobbles of quartz, limestone, and igneous rock. It occupies geographically high areas not associated with present drainage; thickness ranges from several feet of gravel lag to thirty plus feet (Texas GAT). The Uvalde Gravel is located stratigraphically above the Edwards Formation (See Figure 4a), and is separated by other formations including the Del Rio Clay which acts as a barrier to the downward migration of water.

The upper half of the unnamed tributary to Zorro Creek and the Discharge Point location are located on top of the Buda Limestone. The Buda Limestone is stratigraphically above the Edwards Formation and the Del Rio Clay (See Figure 4a).

The location of the proposed WWTP, the Discharge Point location, and the unnamed tributary of Zorro Creek are all located above the Edwards Formation and are separated from the Edwards Formation by the Del Rio Clay which acts as a barrier to vertical flow into the Edwards Formation. In addition, the site is located in an area where the Edwards-Trinity Aquifer is not present and is down gradient from the Edwards-Trinity Aquifer.

Based upon the site visit, after substantial precipitation events, the receiving creek from the WWTP did not hold water within its beds. The lack of a defined creek bed also indicates that the creek does not have a substantial amount of water flowing through it. The intersection of the creek with Spur 317 did not show any water within the creek bed and it appears unlikely that after substantial rain events as evidenced, that water would flow onto the right-of-way at Spur 317 or at the intersection of the creek with US Hwy 277. Furthermore, the site visit indicated that after a substantial rain event there wasn't water flowing past the southern boundary of the SE Ranch downstream into other properties. The lack of water after significant precipitation events also indicates that it is highly unlikely to attract anymore wildlife than the area already has due to a ponding of water or formation of a wetland.

The hydrogeology of the area shows that the proposed discharge site and WWTP site is not in an area where the Edwards-Trinity Aquifer is located and does not pose a threat to the Edwards-Trinity Aquifer via recharge. The site is also separated from the Edwards Formation via the Del Rio Clay which acts as a barrier to downward migration of water.

The site visit and hydrogeological information (Aquifer Map, and Geologic Map) indicate that the proposed discharge of wastewater by the Val Verde Development Co. does not pose any significant threat to the groundwater system, or wildlife, and appears highly unlikely based upon observations after substantial precipitation events that the creek bed carries significant amount of water.

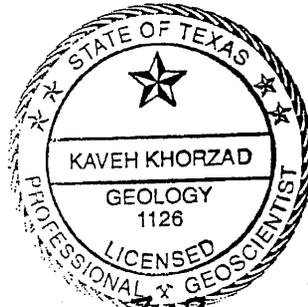
Thank you for the opportunity to provide you with this study.

Respectfully submitted,



Kaveh Khorzad, P.G.

KK/bms
ENCL.



7-30-07

Appendix A

Field Notes



WET ROCK GROUNDWATER SERVICES, L.L.C.

Groundwater Specialists

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Field Notes July 25, 2007

Val Verde Development Company, Del Rio, Texas

Weather: Mostly Cloudy

Time: ~1345 hrs

Arrived at Site.

First Stop is at the intersection of Zorro Creek and US Hwy 277. The creek runs through a box culvert, the creek bed consists of tall grass with a base of fine silty sand. There is no water present on the creek bottom. There is some standing water ~1 in. to 2 in. deep within the box culvert but no water within the creek bed. The creek bed is dry to slightly moist (See Pictures 1 and 2).

Drove to southeast corner of the property near the intersection of Spur 317 and US Hwy 277. Got out of vehicle and walking towards the intersection of the unnamed tributary to Zorro Creek near the Southeast corner of the property and US Hwy 277 where there is a culvert running underneath US Hwy 277. The creek bed consists of tall grasses with a base of fine silty sand. There is no water present on the creek bottom. There is some water standing in the culvert ~3 in. deep. The creek bed leading to the culvert is dry to slightly moist with no water present (See Pictures 3 and 4).

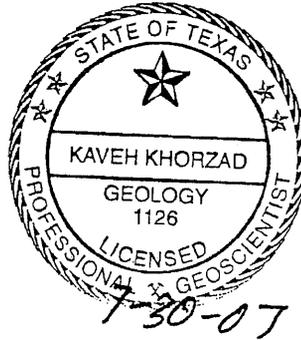
Drove vehicle northbound on Spur 317 from the intersection of Spur 317 and US Hwy 277 towards where the unnamed tributary to Zorro Creek is adjacent to Spur 317. Got out of vehicle and walked towards the culvert at the tributary and Spur 317. The creek bed consists of few limestone rock ~3 in. diameter on the creek bed. The creek bed is dominated by a fine silty sand and is dry. The culvert has some standing water in it ~1 in. deep. There is no water present in the creek bed and the creek bed is dry (See Picture 5).

Walked up-creek within the unnamed tributary. The creek bed is difficult to discern due to the flat topography of the land. The creek itself is not well defined and it is difficult to determine the bank of the creek due to the gentle sloping topography. The creek bed near the southern portion of the property consists of tall grasses, shrubs and sage underlain by a fine silty sand. The bed itself is dry to slightly moist. The northern portion of the creek bed is more rocky consisting of

limestone rock underlain by some fine silty sand increasing in limestone as you move up-creek, and is dry. The creek bed contained no water throughout the course where it was walked from the southern most portion of the creek at US Hwy 277 to approximately midway up-creek (See Pictures 6 to 9).



Kaveh Khorzad, P.G.



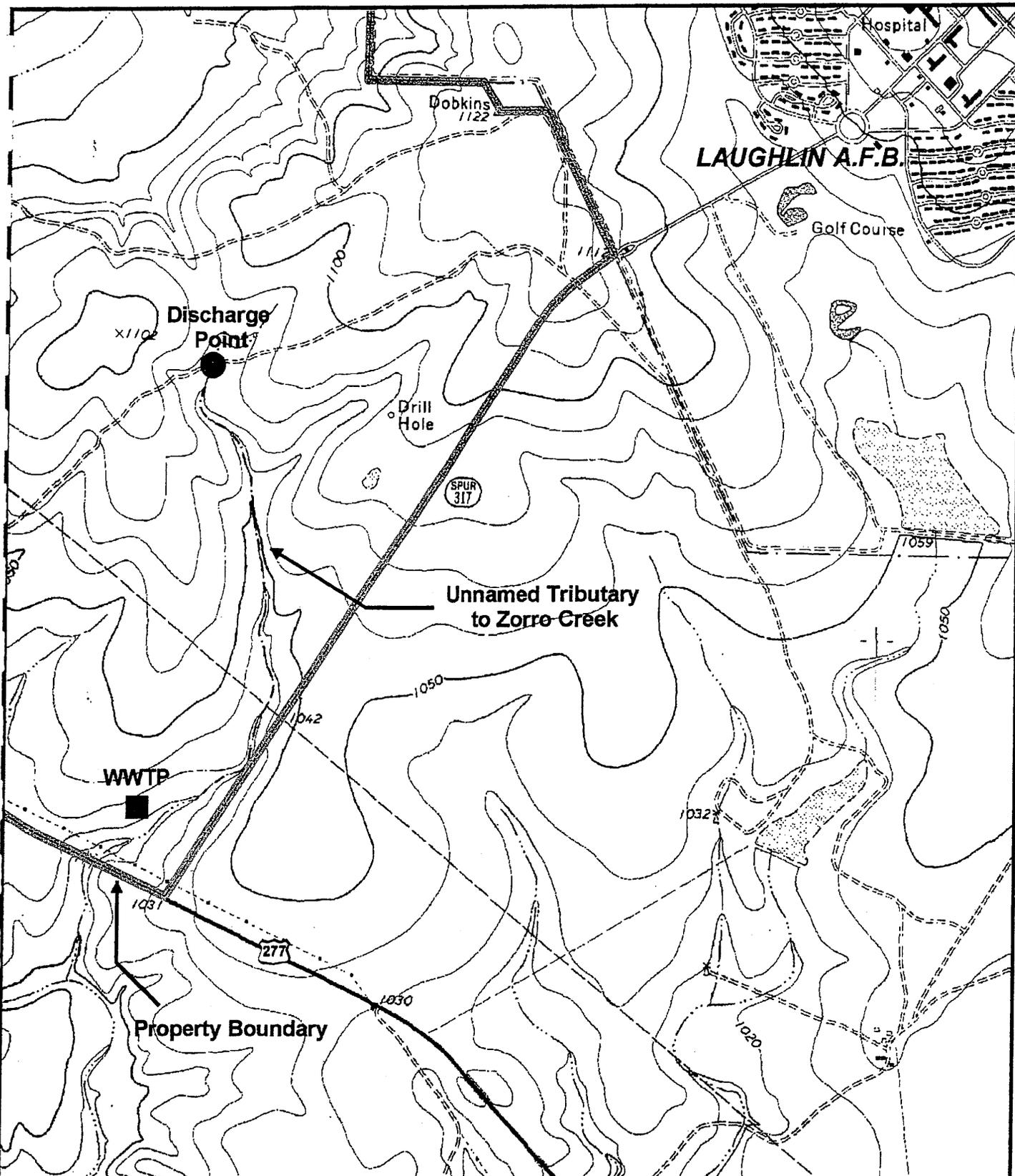


FIG. 1: SITE LOCATION

SCALE: 1 in = 1,500 ft

DRAWN BY: KK DATE: 7-26-07

CHECKED BY: BMS DATE: 7-26-07

PROJECT NO: 023-001-07



**VAL VERDE
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VAL VERDE COUNTY, TEXAS

BASEMAP: USGS TOPOGRAPHIC MAP



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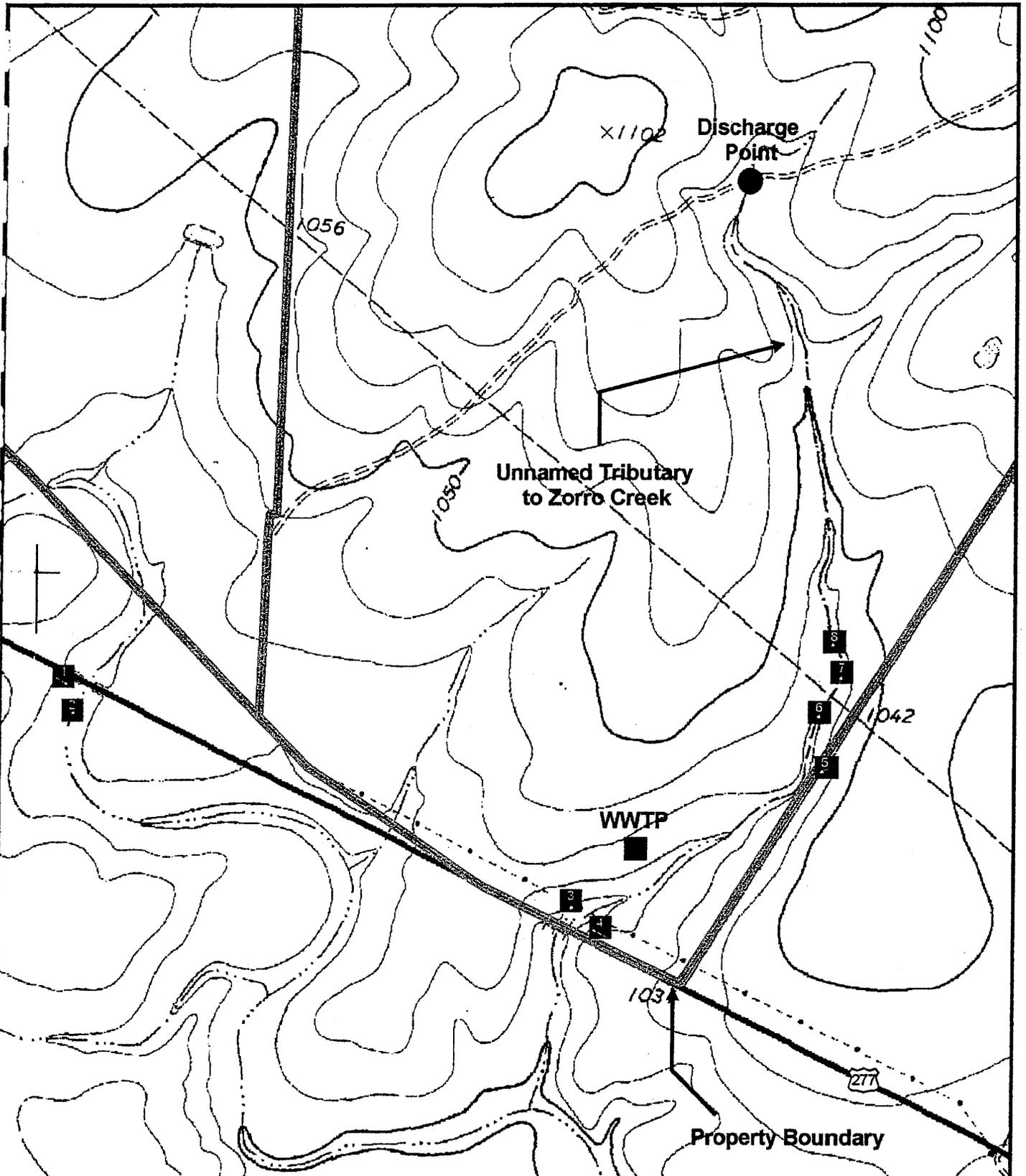


FIG. 2: PHOTO LOCATIONS

SCALE: 1 in = 1,000 ft

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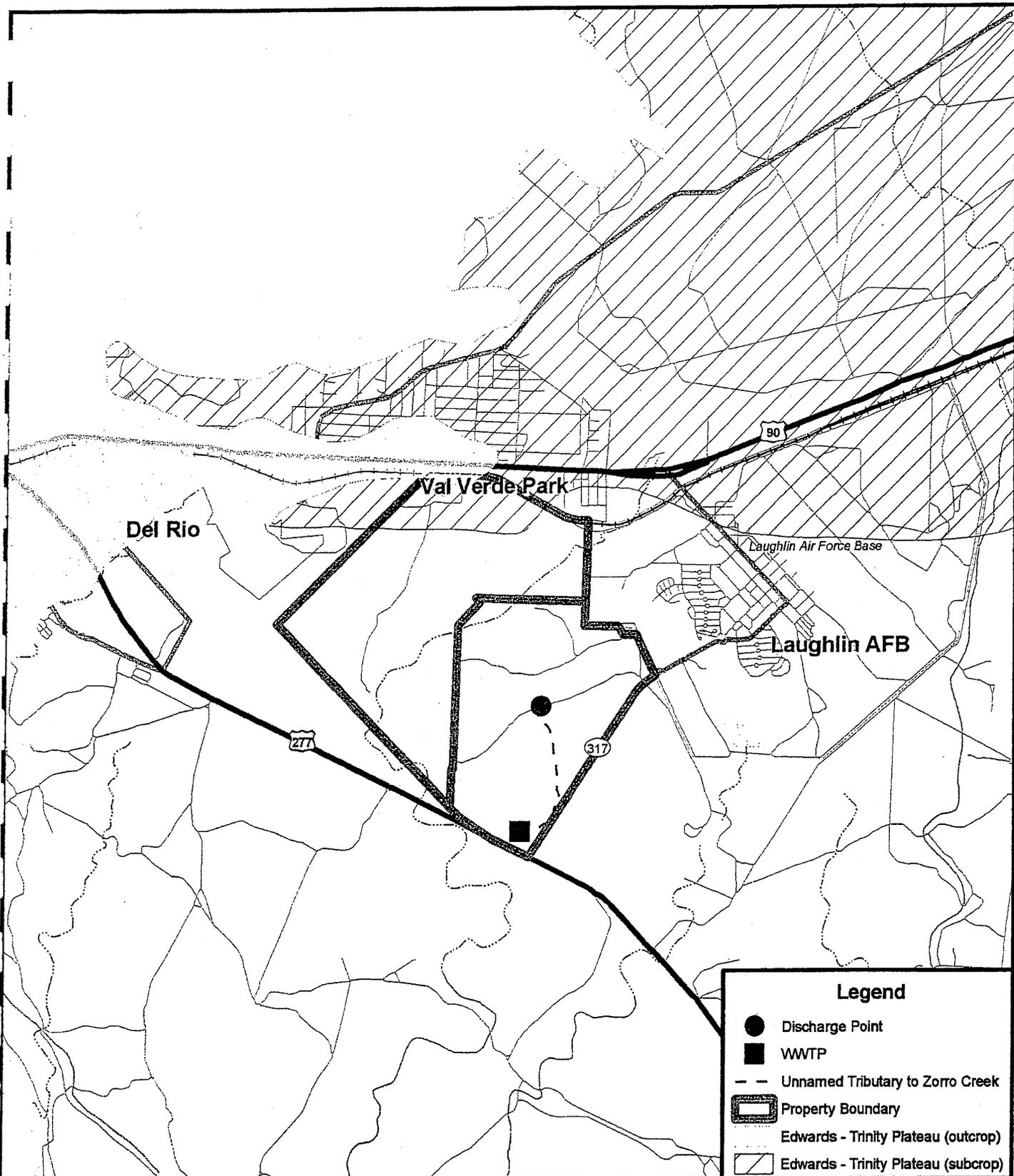
**VAL VERDE
DEVELOPMENT CO.**
VAL VERDE COUNTY, TEXAS

BASEMAP: USGS TOPOGRAPHIC MAP



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Legend

- Discharge Point
- WWTP
- - Unnamed Tributary to Zorro Creek
- ▭ Property Boundary
- ▨ Edwards - Trinity Plateau (outcrop)
- ▧ Edwards - Trinity Plateau (subcrop)

SCALE: 1 in = 1 mile

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FIG. 3: AQUIFER MAP



VAL VERDE DEVELOPMENT CO.
 VAL VERDE COUNTY, TEXAS
BASEMAP: ESRI STREETMAP



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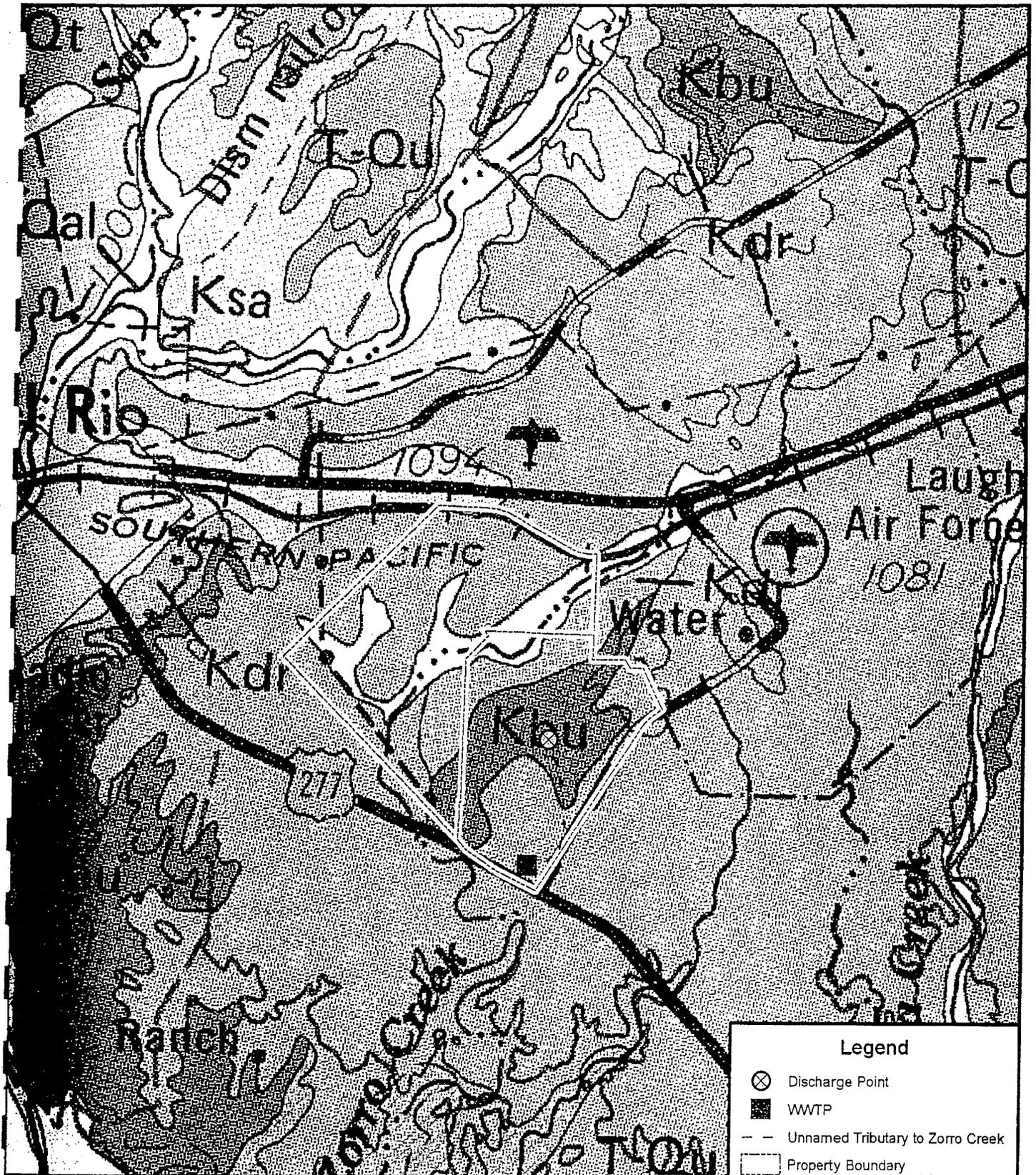


FIG. 4: GEOLOGIC MAP

SCALE: 1 in = 1 mile

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**VAL VERDE
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VAL VERDE COUNTY, TEXAS
BASEMAP: GEOLOGIC ATLAS OF TEXAS



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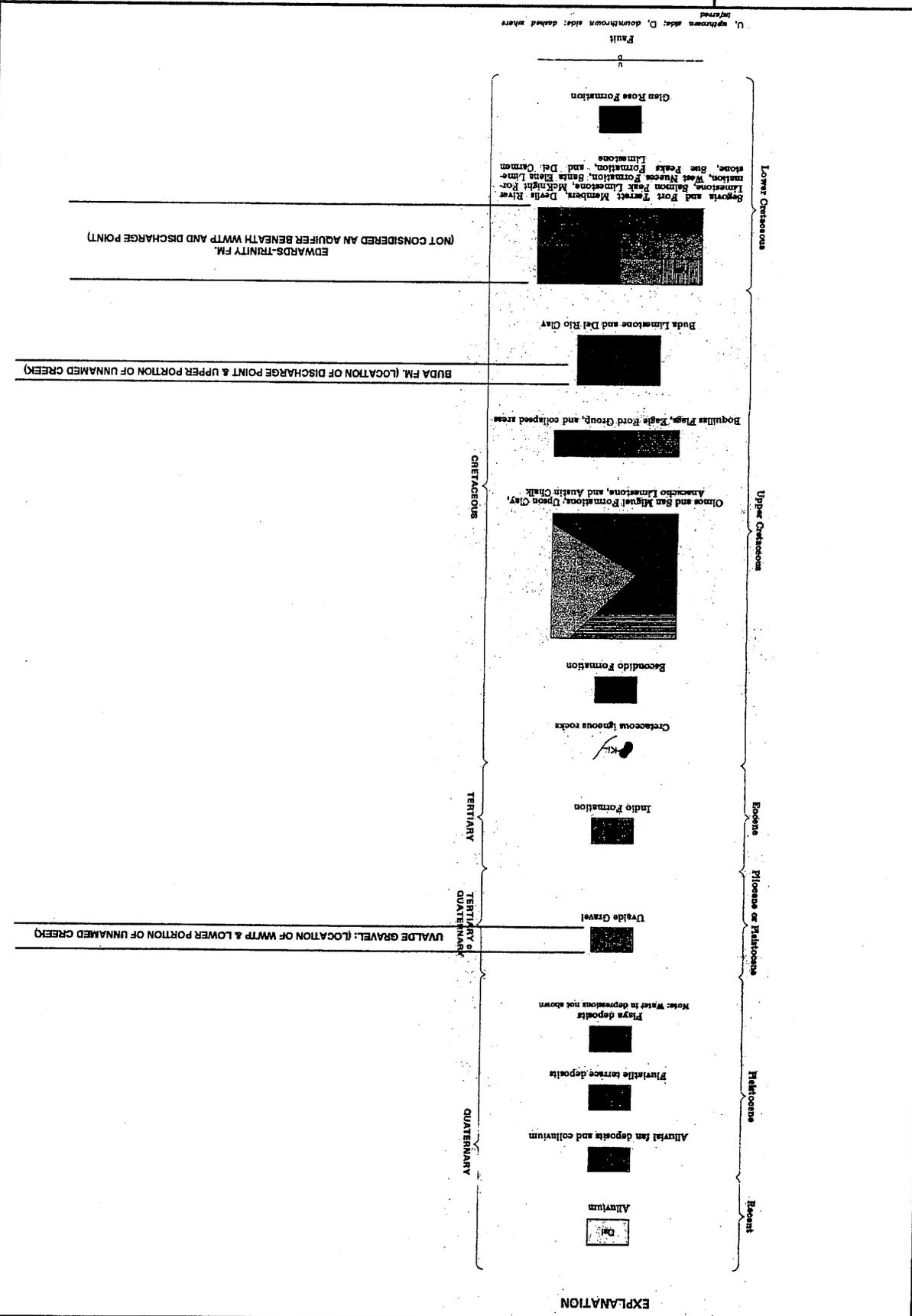
VAL VERDE DEVELOPMENT CO.
 VAL VERDE COUNTY, TEXAS

SOURCE GEOLOGIC ATLAS OF TEXAS

PROJECT NO: 023-001-07
 CHECKED BY: BMS DATE: 7-26-07
 DRAWN BY: KK DATE: 7-26-07

FIG. 4A: EXPLANATION OF GEOLOGIC UNITS BENEATH PROJECT LOCATION

SCALE:



Appendix B

Photos



Photo 1: Zorro Creek. Looking southeast at the intersection of Zorro Creek and Us Hwy277. This photo shows the creek bed of Zorro Creek on the downstream side of Us Hwy 277.



Photo 2: Zorro Creek. Looking northeast at the intersection of Zorro Creek and Us Hwy277. This photo shows the creek bed of Zorro Creek on the downstream side of Us Hwy 277. There is no water in the creek, however there is some standing water only within the box culvert approximately 1 to 2 inches in depth.

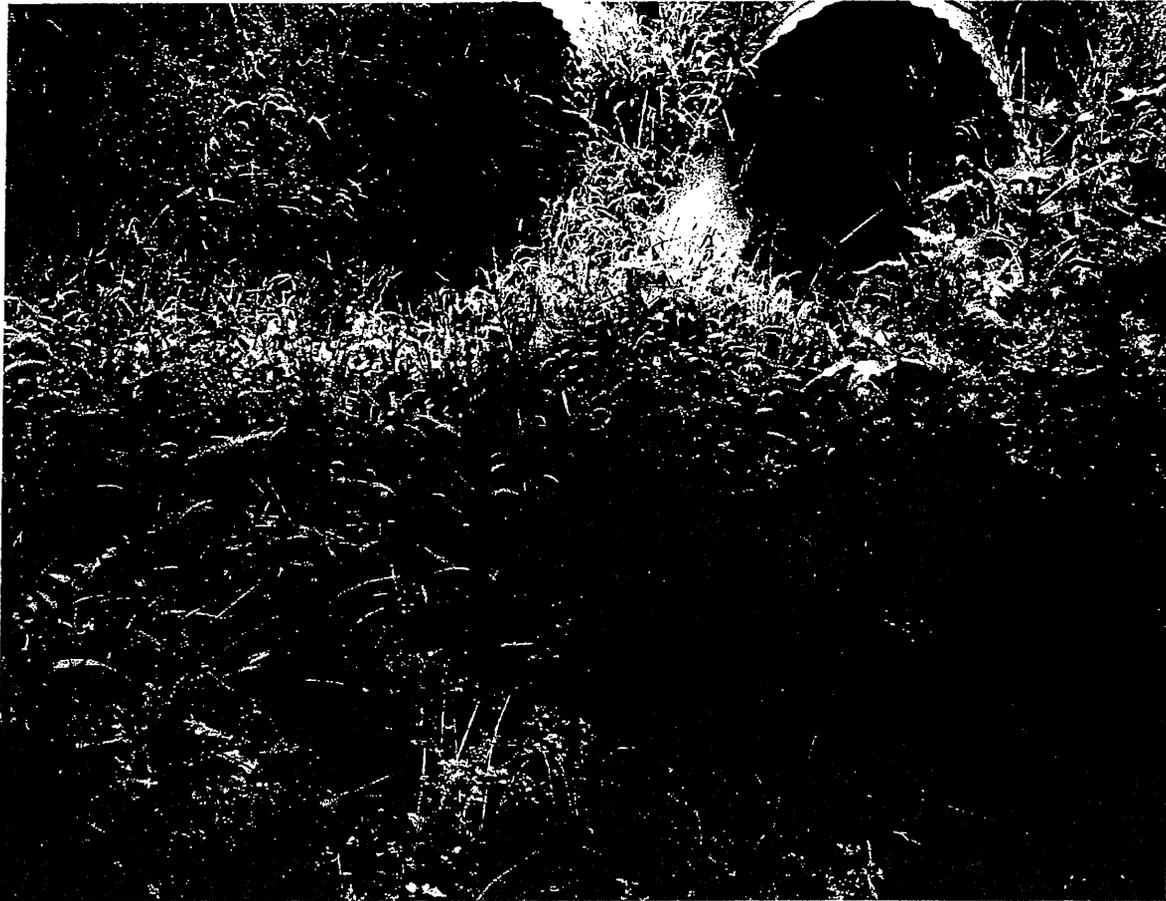


Photo 3: Unnamed Tributary to Zorro Creek. Looking southwest at the intersection of the unnamed tributary and Us Hwy277. This photo shows the creek bed of the unnamed tributary to Zorro Creek. There was no water in the creek bed; however there is some standing water only within the culvert approximately 3 inches in depth.



Photo 4: Unnamed Tributary to Zorro Creek. Looking northwest at the intersection of the unnamed tributary and Us Hwy277. This photo shows the creek bed of the unnamed tributary to Zorro Creek.



Photo 5: Unnamed Tributary to Zorro Creek. Looking southwest at the intersection of the unnamed tributary and Spur 317. This photo shows the creek bed of the unnamed tributary to Zorro Creek. There was no water in the creek bed.



Photo 6: Unnamed Tributary to Zorro Creek. Looking northeast within the creek bed of the unnamed tributary to Zorro Creek.



Photo 7: Unnamed Tributary to Zorro Creek. Looking northeast within the creek bed of the unnamed tributary to Zorro Creek.

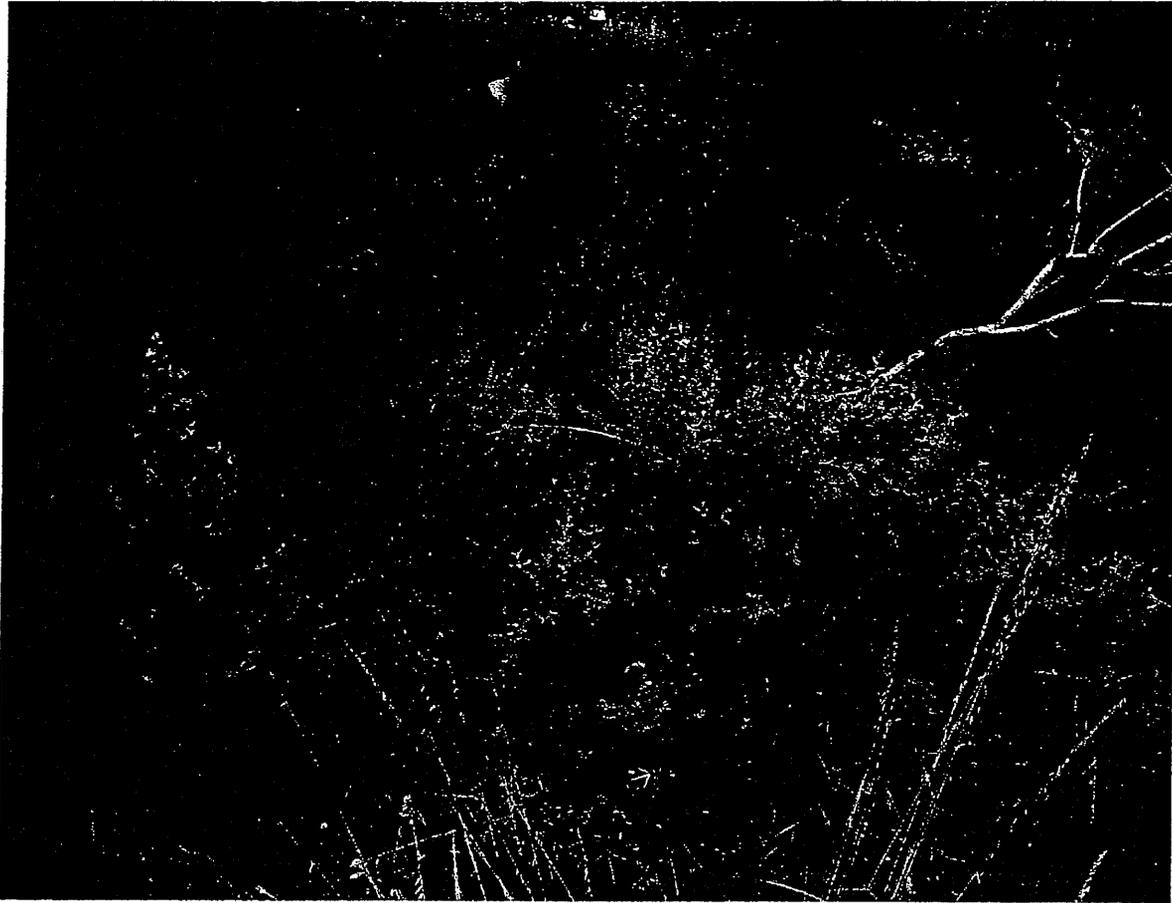


Photo 8: Unnamed Tributary to Zorro Creek. Looking north within the creek bed of the unnamed tributary to Zorro Creek.

1-mile radius map

TOPO! map printed on 11/27/06 from "Texas.tpo" and "Untitled.tpg"
100°50'00" W WGS84 100°49'00" W

