

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 8, 2008

TO: Persons on the attached mailing list.

RE: Val Verde Development Co.  
TPDES Permit No. WQ0014777001

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Val Verde County Library, 300 Spring Street, Del Rio, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/er

Enclosures

MAILING LIST  
for  
Val Verde Development Co.  
TPDES Permit No. WQ0014777001

FOR THE APPLICANT:

Grant Gaines  
Val Verde Development Co.  
111 Soledad Street, Suite 1111  
San Antonio, Texas 78205

C. Thomas Koch  
C. Thomas Koch, Inc.  
187 Madrone Trail  
Blanco, Texas 78606

FOR THE EXECUTIVE DIRECTOR:

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Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

PROTESTANTS/INTERESTED PERSONS

See attached list.

RONALD C BURTON  
110 ARBOR AVE  
DEL RIO TX 78840-7604

CHARLES T MULLINS  
104 MARGARET LN  
DEL RIO TX 78840

DAN LARO CLARK  
STE 505  
525 S GRIFFIN ST  
DALLAS TX 75202-5002

FRANCES F RODRIGUEZ  
CITY OF DEL RIO  
402 ROLLING RIDGE  
DEL RIO TX 78840

THOMAS A CURTIS  
STE 505  
525 S GRIFFIN ST  
DALLAS TX 75202-5002

BILL SONTAG  
210 PARK AVE  
DEL RIO TX 78840

THE HONORABLE PETE P GALLEGRO  
TEXAS HOUSE OF REPRESENTATIVES - DIST 74  
PO BOX 2910  
AUSTIN TX 78768-2910

EFRAIN VALDEZ  
109 W BROADWAY ST  
DEL RIO TX 78840-5502

ROBERT GILL  
STE 505  
525 S GRIFFIN ST  
DALLAS TX 75202-5002

GREG YOUNGS  
1313 WILTSHIRE AVE  
SAN ANTONIO TX 78209-6048

JENNIFER HARRIS  
LAUGHLIN AFB  
BLDG 100  
251 4TH ST  
LAUGHLIN AFB TX 78843-5126

JAN LONDON  
403 W CANTU RD  
DEL RIO TX 78840-3049

JOE & TINA MARTINEZ  
504 RAMON ST  
DEL RIO TX 78840

GENE MORAIN  
720 ALDERETE LN  
DEL RIO TX 78840

JANE MORAIN  
720 ALDERETE LN  
DEL RIO TX 78840

TCEQ PERMIT NO. WQ0014777001

2008 MAY -1 AM 10:31

APPLICATION BY	§	BEFORE	
VAL VERDE	§	THE	
DEVELOPMENT CO.,	§	TEXAS COMMISSION	CHIEF CLERKS OFFICE
for	§	ON	
TPDES Permit No. WQ0014777001	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Val Verde Development Co. application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk (OCC) timely received comment letters and comments at a public meeting from the following persons: **Ronald C. Burton, Colonel Dan Laro Clark, Lt. Colonel Thomas A. Curtis, Robert Gill, Jan London**, on behalf of **W.L. Moody, IV, The Honorable Efrain Valdez (Mayor, City of Del Rio), and Greg Youngs**. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

Val Verde Development Co. (Applicant) has applied to the TCEQ for a new permit that would authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 0.33 million gallons per day in the interim I phase, a daily average flow not to exceed 0.66 million gallons per day in the interim II phase and a daily average flow not to exceed 0.99 million gallons per day in the final phase. The proposed wastewater treatment facility would serve the SE Ranch development.

The treated effluent would be discharged to an unnamed tributary of Zorro Creek, then to Zorro Creek, then to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed tributary of Zorro Creek and Zorro Creek. The designated uses for Segment No. 2304 are high aquatic life use, public water supply and contact recreation. The plant site would be located between the City of Del Rio and Laughlin Air Force Base, approximately 1,000 feet northwest of U.S. Highway 277 and approximately 500 feet west of Spur 317 in Val Verde County, Texas.

## Procedural Background

The permit application for a new permit was received on January 25, 2007 and declared administratively complete on February 20, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published, in English and Spanish, on March 8, 2007 in the *Del Rio News - Herald*. The TCEQ Executive Director completed the technical review of the application on March 15, 2007, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published, in English and Spanish, on May 27, 2007, in the *Del Rio News - Herald*. The Notice of a Public Meeting was published on February 5, 2008, in the *Del Rio News - Herald* and a public meeting was held in the City of Del Rio on March 6, 2008. The public comment period closed at the end of the public meeting on March 6, 2008. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

**Ronald C. Burton** expresses concern upon the lack of public information on the proposed development plans for SE Ranch Holdings, LTD and the proposed TPDES permit.

### **RESPONSE 1:**

All notice requirements for this application have been met. The NORI, NAPD, and notice of the public meeting comply with the publication and mailing requirements.

According to the Applicant, the Applicant made a copy of its application available for review and copying at a public place in the county in which the facility is located or proposed to be located. An administratively complete copy of the application was available for review and copying on the first day the NORI is published, and remained available throughout the comment period. A copy of the complete application (including any subsequent revisions), the ED's preliminary decision, and the draft permit were available for review and copying on the first day the NAPD was published, and will remain available until the Commission either takes action on the application or refers it to the State Office of Administrative Hearings (SOAH). The Applicant indicated that the permit application, ED's preliminary decision, and draft permit is available for viewing and copying at the Val Verde County Library, 300 Spring Street, Del Rio, Texas. Information as to the availability of these documents was also contained in the published newspaper notifications.

### **COMMENT 2:**

**Ronald C. Burton** states that the proposed permit information was not provided to the Joint Land Use Study (JLUS) program. **Jan London**, on behalf of **W.L. Moody, IV**, expresses concern that Mr. Moody did not receive notice of the application, even though the application would clearly affect him. She feels that the statement, in which the Applicant claims to be the only owner of land within one mile downstream of the point of discharge, is untrue. She states that Mr. Moody's property, Rancho Rio Grande is less than a quarter mile downstream from the point of discharge and would be significantly impacted. She also states that the Applicant may not have notified all the interested parties. **Mayor Valdez** states that the City of Del Rio did not receive a mailed NORI or NAPD as required by TCEQ rules. He also feels that all parties were not given notice, such as the Texas Department of Transportation, claiming that the unnamed tributary of Zorro Creek is immediately adjacent to the Texas Department of Transportation right-of-way for State Highway 317 and is less than one-mile downstream from the point of discharge. He expresses that all parties should be given adequate time to review and provide comments.

## **RESPONSE 2:**

The OCC is required to mail notice of the application and draft permit to appropriate persons in order to provide information and an opportunity to submit public comments, request a public meeting, or request a public hearing. The OCC is required to mail notice to those people and agencies listed in 30 TAC §39.413.

For new permit applications, the Applicant must provide a list of adjacent landowners and a map showing their locations. Adjacent landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. The TCEQ mails notice of the application to the adjacent landowners and all other persons contained on the OCC's mailing list for the application.

Based on information in the permit file, the City of Del Rio officials were included in the mailing list compiled by the OCC. The notice was mailed to the following address: 109 Broadway, Del Rio, Texas 78840.

The Texas Department of Transportation was not included on the mailing list. At this time, based on available information, it does not appear that the Texas Department of Transportation is an adjacent landowner.

The JLUS Program was not included on the mailing list. Current rules do not require mailed notice to such a program. However, the JLUS Program always has the right to request to be included on the OCC mailing list, in which case it will receive mailed notice of all actions on this application. Information on how to request inclusion on a OCC mailing list is included in the published newspaper notifications and on the TCEQ website at: [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

The permit application and maps submitted by the Applicant, show that the treated effluent is proposed to be pumped 1.2 miles upstream of the wastewater treatment facility. The land adjacent to all sides of the proposed facility and the land located on both sides of the discharge route for one mile downstream of the discharge point are represented to be owned by SE Ranch Holdings, LTD. SE Ranch Holdings, LTD was provided mailed notice in accordance with TCEQ rules.

The ED accepted public comments on this application from March 8, 2007 to the end of the public meeting on March 6, 2008.

**COMMENT 3:**

**Ronald C. Burton** indicates that the citizens of Del Rio have expressed great concern that the proposed development will encroach on the Laughlin Air Force Base and interfere with current and future missions at Laughlin Air Force Base. He further states that the JLUS, consisting of the SE Ranch Holdings, the City of Del Rio and Laughlin Air Force Base, have sought to create the program in an effort to reduce potential conflicts between the military installation and its host community. **Mayor Valdez** expresses concern that the proposed wastewater treatment facility will have an impact on Laughlin Air Force Base and the city. He states that the base is critical to the economy of Del Rio and any move that would encroach upon the base is opposed by the city. **Robert Gill** states that "adherence to the JLUS is vital to promotion of harmonious growth around the base," and **Colonel Dan Laro Clark** states that "studying the potential development in conjunction with the JLUS will help promote harmonious development."

**RESPONSE 3:**

The permitting process is limited to controlling the discharge of pollutants into water in the state and to protecting the water quality of the state's rivers, lakes, and coastal waters. Agreements or contracts designed to control land use are not considered during the review of an application for a wastewater discharge permit. The draft permit, if approved, does not authorize the invasion of any personal rights or any violation of federal, state, or local laws and regulations.

**COMMENT 4:**

**Colonel Clark** indicates that Laughlin Air Force Base is approximately two miles from the proposed wastewater treatment facility and approximately one mile from the proposed discharge point. **Colonel Clark** and **Robert Gill** both express concern that the discharge into Zorro Creek will increase the wildlife and bird populations within the area, resulting in an increased flight safety hazard from bird strikes. They question whether the Applicant would implement a program to help mitigate the bird strike hazard. **Colonel Clark** states that "the proposed site lies directly beneath the heavily used approach tracks and landing traffic patterns for one of the Base's runways." **Mr. Gill** further states that the issuance of the permit would adversely impact and endanger the undergraduate flight training missions conducted at the base. **Lt. Colonel Curtis**

provided color diagrams denoting the flight patterns in the airspace above Laughlin Air Force Base in relation to the location of the proposed facility.

**RESPONSE 4:**

Wastewater permitting rules do not consider the possibility of bird strikes during the review of an application for a wastewater discharge permit. This permit, if issued, would authorize a discharge of treated domestic wastewater to an unnamed tributary of Zorro Creek. Lagoons or ponds, which would be more attractive to birds and wildlife, are not proposed to be utilized as part of the treatment process.

The draft permit does not contain a provision that requires the Applicant to implement a program to mitigate any possible bird attraction caused by the facility, but outside agreements between the Base, the City, and the Applicant are not prohibited by the draft permit.

The draft permit, if approved, does not authorize the invasion of any personal rights or any violation of federal, state, or local laws and regulations.

**COMMENT 5:**

**Jan London**, on behalf of **Mr. W.L. Moody, IV**, expresses concern that the proposed discharge will lower the value of his property known as Rancho River Grande.

**RESPONSE 5:**

TCEQ is tasked by the Legislature with protecting the quality of water in the state. In the wastewater permitting process, property value, or the possibility of a loss in property value, is not a factor in determining whether an Applicant has met all of the statutory and regulatory criteria applicable to a wastewater discharge permit.

**COMMENT 6:**

**Ronald C. Burton** states that the permit application that he reviewed requested a permitted volume of 990,000 gallons per day as opposed to the 330,000 gallons per day that is stated in the memo.

**RESPONSE 6:**

The 330,000 gallons per day is the interim I phase flow amount for the proposed discharge. The Applicant has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.33 million gallons per day in the interim I phase, a daily average flow not to exceed 0.66 million gallons per day in the interim II phase and a daily average flow not to exceed 0.99 million gallons per day in the final phase. The Applicant has proposed that the facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will

include bar screens, aeration basins, clarifiers, sludge digesters and a chlorine contact chamber sized to meet the design criteria for each phase of operation.

**COMMENT 7:**

**Jan London**, on behalf of **W.L. Moody, IV**, expresses concern that the proposed facility will have an effect on his property and impact the use of his property.

**RESPONSE 7:**

The permitting process is limited to controlling the discharge of pollutants into water in the state and to protecting the water quality of the state's rivers, lakes, and coastal waters. If a permit is issued, the issuance does not affect or limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that result in damage to private property or that interfere with the private use and enjoyment of property.

**COMMENT 8:**

**Jan London**, on behalf of **W.L. Moody, IV**, expresses concern that the discharge of wastewater will be of a low water quality and cause harm to the environment.

**RESPONSE 8:**

The proposed draft permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The provisions in the proposed draft permit were established to be protective of human health and the environment as long as the Applicant operates and maintains the facility according to TCEQ rules and requirements. As part of the permit application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the proposed draft permit are set to maintain and protect the existing instream uses. In this case, the unclassified receiving water uses are no significant aquatic life use for the unnamed tributary of Zorro Creek and Zorro Creek and high aquatic life use, public water supply and contact recreation for Segment 2304.

**COMMENT 9:**

**Mayor Valdez** expresses concern for the impact on groundwater that could result from the discharge of treated wastewater. He states that the area into which the wastewater will be discharged contains sinkholes, which may recharge into the Edwards-Trinity Aquifer. He feels the wastewater could flow through the sinkholes and end up in the aquifer, therefore, threatening the city's water supply.

**RESPONSE 9:**

The treated wastewater discharge point is mapped as overlying Buda Limestone, which overlies Del Rio Clay. The Del Rio Clay can be considered to be a confining layer to the underlying Edwards-Trinity Aquifer, preventing downward migration of potential contaminants to the water bearing units of the aquifer. A site visit was performed by a Water Quality Assessment Geologist on March 6, 2008. No sinkholes were observed in the creek where the treated wastewater is proposed to be discharged. According to maps prepared by the Texas Water Development Board, the proposed discharge point does not overlie the Edwards-Trinity Aquifer. Considering the absence of any sinkholes, and the presence of the Del Rio Clay, it is not anticipated that wastewater effluent released from the discharge point will recharge the Edwards-Trinity Aquifer or threaten the city's water supply.

**COMMENT 10:**

**Mayor Valdez** feels that the waterway, stated in the permit application to be dry even after significant rainfall events, is misleading and possibly false. The observation presented in the application was based on the waterway at the start of October 2006. He indicates that the city's rainfall records for the week prior did not show more than a trace of rain. He feels that the appearance of the waterway presented in the application, can not be determined by looking at the waterway at a time when there had been very little rainfall.

**RESPONSE 10:**

The waterway in question is classified as an intermittent stream. In 30 TAC §307.3(29), the Texas Surface Water Quality Standards define an intermittent stream as "[a] stream which has a period of zero flow for at least one week during most years." While the waterway certainly carries water during rainfall events, in order to be classified as intermittent, it only needs to be dry during one week of an average year. The ED's staff appropriately evaluated the waterway as an intermittent stream during the application review process and when drafting the proposed permit.

**COMMENT 11:**

**Mayor Valdez** states that the permit application implies that sludge from the proposed facility will be disposed of at the City of Del Rio Landfill. He expresses that the City of Del Rio does not accept that type of waste and has no plans to change the policy. Therefore, the proposed facility does not have a sludge disposal plan and he feels that the permit should be denied for that cause alone.

**RESPONSE 11:**

The draft permit does not require that sludge from the proposed facility be disposed of at the City of Del Rio Landfill. The draft permit does not specify a specific disposal site. It only requires that sludge from the proposed facility be disposed of at a TCEQ authorized

land application site or co-disposal landfill. The draft permit, if issued, is the document that describes the legally enforceable provisions that the permittee must follow.

However, the permit application submitted by the Applicant indicated that sludge would be disposed of at the City of Del Rio Landfill. That information was included in the *Statement of Basis/Technical Summary and Executive Director's Preliminary Decision* during technical review. This document is merely a summary of the technical review, giving background information as to the ED's preliminary decision. Based on the comment and discussion at the public meeting, and in order to avoid confusion, the statement concerning disposal at the City of Del Rio's Landfill has been deleted from the *Statement of Basis/Technical Summary and Executive Director's Preliminary Decision*.

**COMMENT 12:**

**Greg Youngs**, with SE Ranch Development, states that the development will rely on the proposed facility to provide service and is in support of the permit.

**RESPONSE 12:**

The ED acknowledges this comment.

**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

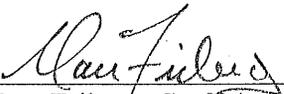
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

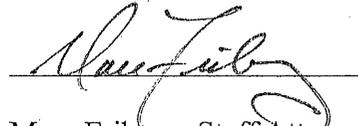
Robert Martinez, Director  
Environmental Law Division

  
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2008 the original of the "Executive Director's Response to Public Comment" on Val Verde Development Co.'s application for proposed TPDES Permit No. WQ WQ0014777001 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.



Marc Friberg, Staff Attorney  
Environmental Law Division  
State Bar No. 24048472

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CHIEF CLERKS OFFICE