



# ZELESKEY LAW FIRM

Timothy Karczewski  
Of Counsel  
2009 NOV 16 PM 2:58  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

- Robert Alderman, Jr.
- Jeff "Marty" Barnhill
- Robert T. Cain, Jr.
- R. Brandon Davis
- Jack D. Hicks
- Todd L. Kassaw
- Joe M. McElroy
- Krystal E. Riley
- Scott C. Skelton
- Aimee C. Slusher
- Brent L. Watkins
- Judi C. Wells

November 16, 2009

**VIA CMRRR NO. 7007 1490 0000 5640 0197**  
**AND TELECOPIER (512)239-3311**

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

In re: Docket No. 2009-0363-MWD  
Fannett Sewer Service and Water Supply Corporation  
Proposed Water Quality Permit No. 0014867001

*Of Counsel*

- Timothy J. Karczewski
- Linda O. Poland
- William R. Ricks
- Steve Roper  
*Emeritus*
- John D. Stover

To the Commissioners of the Texas Commission on Environmental Quality:

The following are the Applicant's responses to various comments and requests for hearing as submitted in the above referenced matter.

Comment 1 - "The proposed construction site for this facility is adjacent to Burrell Gully to discharge treated sewage water and toxic waste. This area is prone to FLOODING and is NOT feasible for this plant."

The Rules of the TCEQ require that a facility that is to be located within the 100 year flood plain and or facilities to be located within a natural wetland must be protected from inundation. None of the comments establish that the facility is to be located within the 100 year flood plain. The reason for this is simple. The facility is not going to be located within the 100 year flood plain. In addition, the subject of natural wetlands is within the jurisdiction of the Army Corps of Engineers (Army Corps). The Army Corps has already given its approval for construction of the facility at the 11.75 acre proposed site. See Exhibit C. To expand the application of a TCEQ Rule to facilities that are not located within the 100 year flood plain and not within a natural wetland is arbitrary, capricious and a violation of equal protection under the law.

ZELESKEY LAW FIRM PLLC

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Also, the effluent discharged from the propose facility will be treated in accordance with TCEQ Rules and consistent with permit parameters. Therefore, the discharge will not impair the existing uses for the receiving stream and no toxic waste will be discharged.

As these comments are based upon faulty assumptions the cannot and do not serve as a basis sufficient to establish that the persons submitting them are "affected persons" or to raise a "justiciable interest".

Comment 2 - "The foul odor emitted from this pollutant plant and quantity of water released could adversely affect the heath and quality of life among citizens living on Burrell Wingate Road and a nearby Subdivision." The Kubiceks have also protested on the basis of odor and water quantity.

The Rules of the TCEQ allow a permitted facility to address odor issues in any one of three different ways. The facility can be located on a tract of land sufficient in size to provide the necessary buffer zone within the property owned by the permit holder (150 foot buffer zone for a facility of this type), the permit holder can obtain easements around the facility from neighboring property owners so as to effectively have in place, the required buffer zone or, the permit holder can implement odor control measure at the facility so as to minimize or eliminate the need for the buffer zone. Fannet has obtain an 11.75 acre tract that will allow for construction of the proposed facility while maintaining a distance of not less that 150 feet between any component of the treatment plant and any property line of that 11.75 acre tract. As to the Kubiceks in particular, the distance from the nearest component of the treatment plant to the west boundary (the boundary nearest the Kubiceks) will be 390 feet. This distance is more than a football field (goal post to goal post not goal line to goal line) from the west boundary of the 11.75 acre tract or, 2.6 times the required 150 foot buffer zone.

As to the issue of water quality and the impact of the plant on the receiving stream, the Applicant has already made a showing that the facility will actually improve the water quality within the receiving stream. This will occur because after the construction of the proposed facility, numerous on-site-sewage systems will be de-commissioned. Many of these systems do not work properly and actually cause the intermittent discharge of untreated waste into Burrell Gully and its tributaries. (See Exhibit B) The technical staff of the TCEQ has already agreed with this conclusion as evidenced by the issuance of the draft permit.

None of the commenting persons, including the Kubiceks, have shown that they make any particular use of Burrell Gully or its flows and therefore their complaints regarding water quality and human health issues are not supported by the facts. We would also point out that the proposed discharge is to be down stream from the Kubiceks.

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For the reasons stated above none, of the persons commenting have demonstrated that they are "affected persons" or have raised a "justiciable interest" sufficient to serve as the basis for a hearing.

Comment 3 – "The people most affected by the proposed pollutant sewage plant have not been adequately notified regarding the details. This project has been handled in a very secretive and underhanded manner. The parties involved in the construction of this plant would benefit by developing land near Green Acres Subdivision."

The Applicant and the TCEQ staff are well aware that if proper notice is not provided, the TCEQ does not have jurisdiction over the application for the permit. To date all notice requirements have been met. In fact, the matter currently before you was to be heard last May but was re-noticed to ensure compliance with TCEQ Rules. Unless the persons commenting can identify a specific notice requirement as contained with the TCEQ Rules or the TCEQ enabling statutes that has not been complied with, they have not shown that notice serves as a basis for granting a hearing. In fact, a failure of notice would only serve to back the process up, as it has already done, it would not serve as an independent basis for granting a hearing.

Comment 4 – One of the comments refers to a "26 foot shallow well" where back up from Burrell Gully has apparently inundated this well four times in the last two years.

The concerns raised by this comment are best addressed by reconstructing the well consistent with the provisions of 16 TAC §76.1000. The comment does not address the hydraulic capacity of Burrell Gulley or whether the discharge will even be perceptible. It also relies on a conclusion that the plant will not be "performing satisfactorily" with no basis for this claim. One of the comments references rice farming in the area. Rice farming poses at least as great a threat to this shallow well as the proposed facility. During the farming of rice various fertilizers and pesticides are used. When the water is drained from the fields no one monitors the contents of that water to ensure there are no residual levels of fertilizers or pesticides being discharged from the field into neighboring streams. One pesticide that is labeled for use in rice is Atrazine. Atrazine is the pesticide most commonly detected in groundwater. In contrast to water being discharged from rice fields, the discharge from the proposed plant will be monitored regularly. Wide spread inundation of the area is also an indication that septic systems and aerobic systems in the area don't work very well. This makes the construction of this facility all the more beneficial and imperative.

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For these reasons, this comment does not establish a "justiciable interest" or that the person commenting is an "affected person" and therefore does not serve as a basis for granting a hearing.

Comment 5 – A number of the comments discuss the use of eminent domain to one extent or another.

The process for eminent domain is determined by the provisions of the Texas Property Code and the Texas and United States Constitution and any controversies regarding its use are to be resolved by the courts. As such any comments regarding eminent domain is outside the jurisdiction of the TCEQ and cannot serve as a basis for a hearing.

Comment 6 – One of the comments asks why the name of the corporation includes the words "Water Supply Corporation" and whether Fannett Water Supply and Sewer Service Corporation will also be providing water service.

West Jefferson Municipal Utility District (West Jefferson) was originally approached about becoming the sewer service provider in the area. It was the decision of the West Jefferson Board of Directors to not engage in the sewer business. As a result of the West Jefferson Board's decision, the Fannett Water Supply and Sewer Service Corporation was formed pursuant to Chapter 67 of the Texas Water Code. One of the provisions of Chapter 67 states that any corporation formed under its provisions must include in the designated name, the words "Water Supply Corporation". We are not sure of the Texas Legislature's logic behind this requirement (assuming there is logic) but the Corporation was obligated to comply.

Comment 7 – One of the comments asks why service will not be provided by connecting to the nearest City of Beaumont facility.

This option was considered. However, it is approximately 8 and ½ miles to that facility. The cost of construction for a force main and lift stations to convey the wastewater that far, would have added significantly to the overall cost of the project. Ultimately, that cost would have to be borne by the rate payers.

We would also point out that the choice to not utilize the City of Beaumont had to be justified to the United States Department of Agriculture Office of Rural Development who is providing the funding for this project. It is also a consideration under the review process for obtaining a Certificate of Public Convenience and Necessity (CCN) We contend that this comment is not a

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basis for establishing the person commenting as an "affected person" or in establishing a "justiciable interest". However, even if it did, this is not the correct forum for presenting such a claim. That forum would be the CCN process.

Sincerely,



Timothy J. Karczewski

TJK/rc  
@PFDesktop\ODMA\PCDOCS\DOCS1\318055\1

cc: Mr. Robert D. Brush, Staff Attorney  
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Mr. Blas J. Coy, Jr., Public Interest Counsel  
TCEQ  
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Attached mailing list

**MAILING LIST**  
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**DOCKET NO. 2009-0363-MWD; PERMIT NO. WQ0014867001**

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Received:  
11/16/2009 15:22 Zeleskey Law Firm

Nov 16 2009 02:51pm  
(FAX)936 632 6545

P.011/031

# EXHIBIT A

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Fannell Sewer Service & Water  
Supply

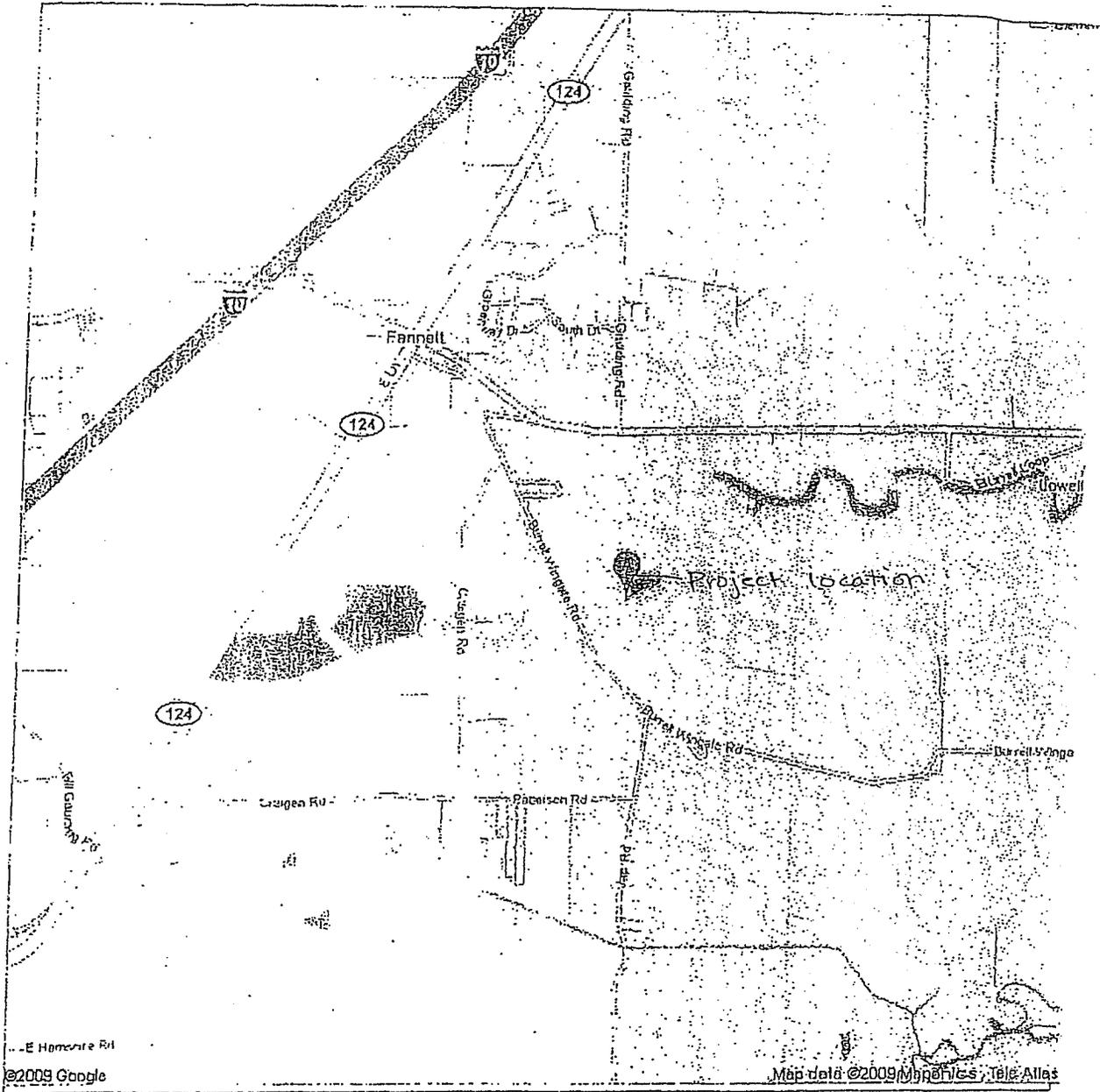
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#SWG-2008-01256  
Date: 25 February 2009  
Page: 1 of 5

Notes SWG-2008-01256

### PERMITTED PLANS



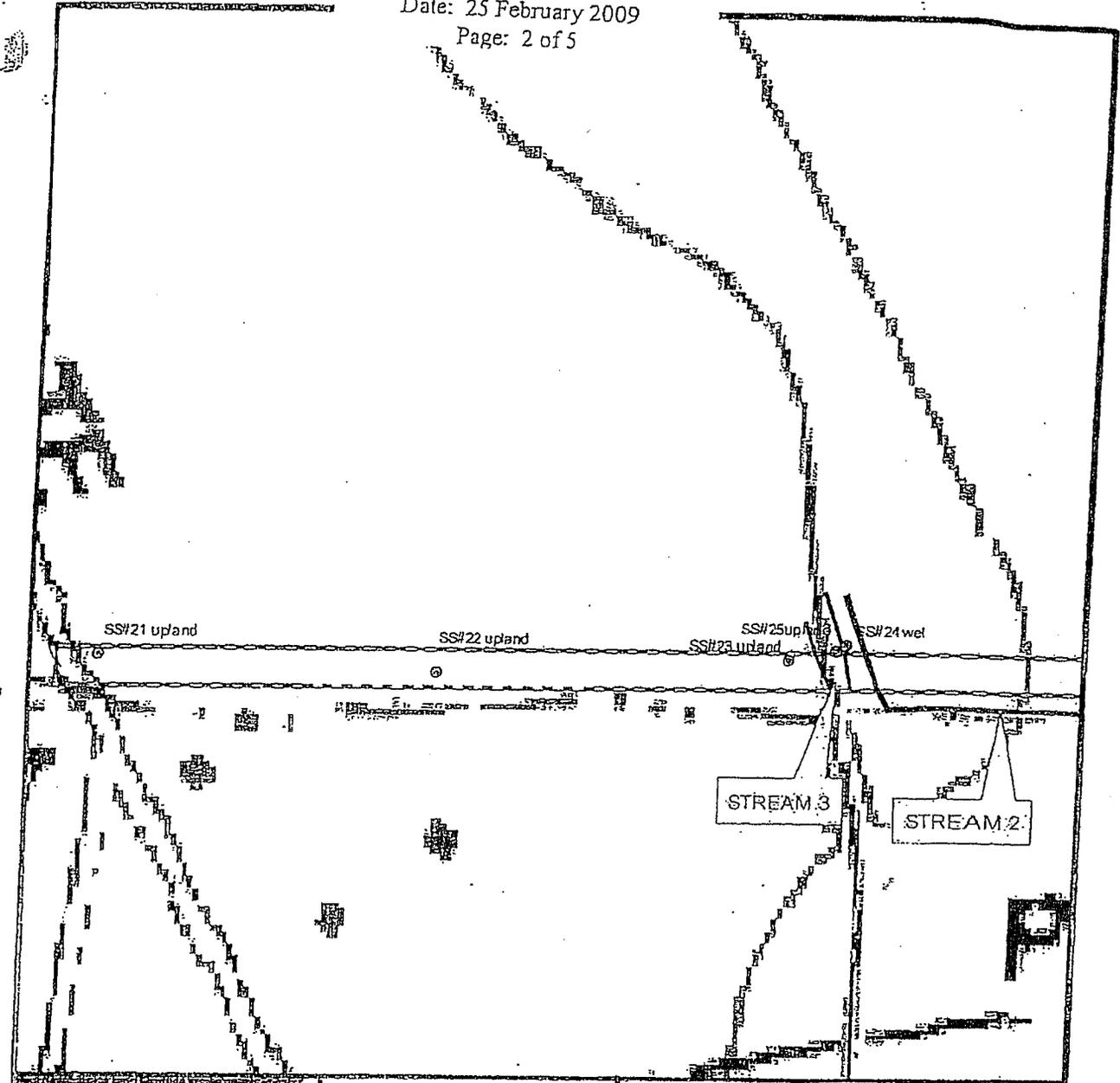
Fannett Sewer Service & Water Supply

#SWG-2008-01256

Date: 25 February 2009

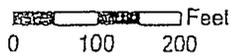
Page: 2 of 5

PERMITTED PLANS



Legend

- ⊙ Soil Stations
- Streams
- ▨ Wetlands
- ▭ Survey Area Boundary



Sheet 1 of 3

Survey Area Topo Map  
 Fannett WWTP  
 Jefferson County, Texas

Job No: 0811008

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Scale: 1"=200'

Date: DEC 2008

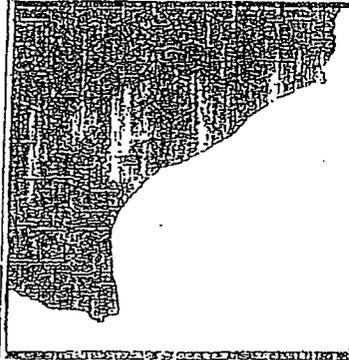
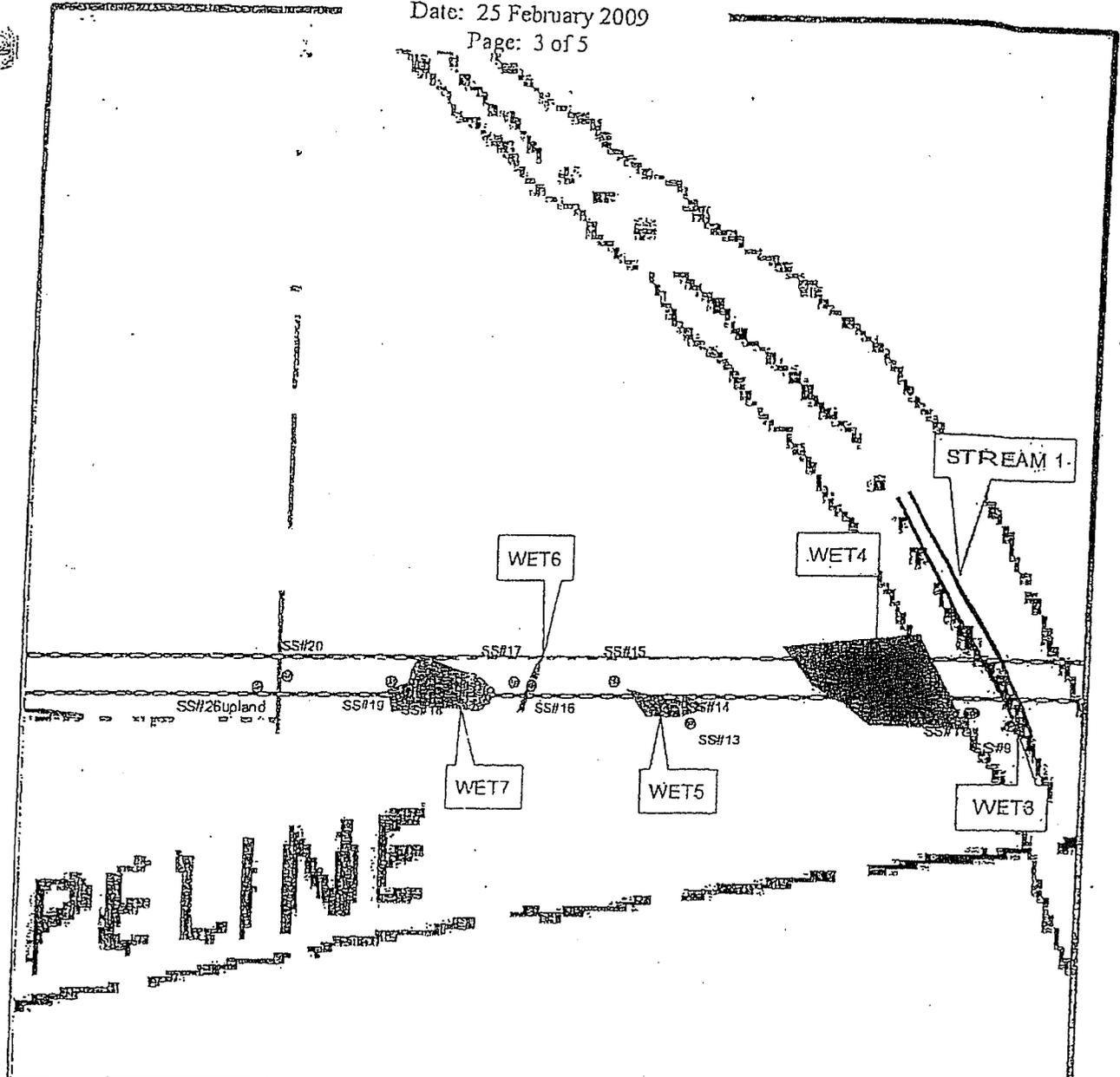
Fannett Sewer Service & Water Supply

#SWG-2008-01256

Date: 25 February 2009

Page: 3 of 5

PERMITTED PLANS



**Legend**

- ⊙ Soil Stations
- Streams
- ▨ Wetlands
- ▭ Survey Area Boundary

0 100 200 Feet

**PERENNIAL**  
 Environmental Services

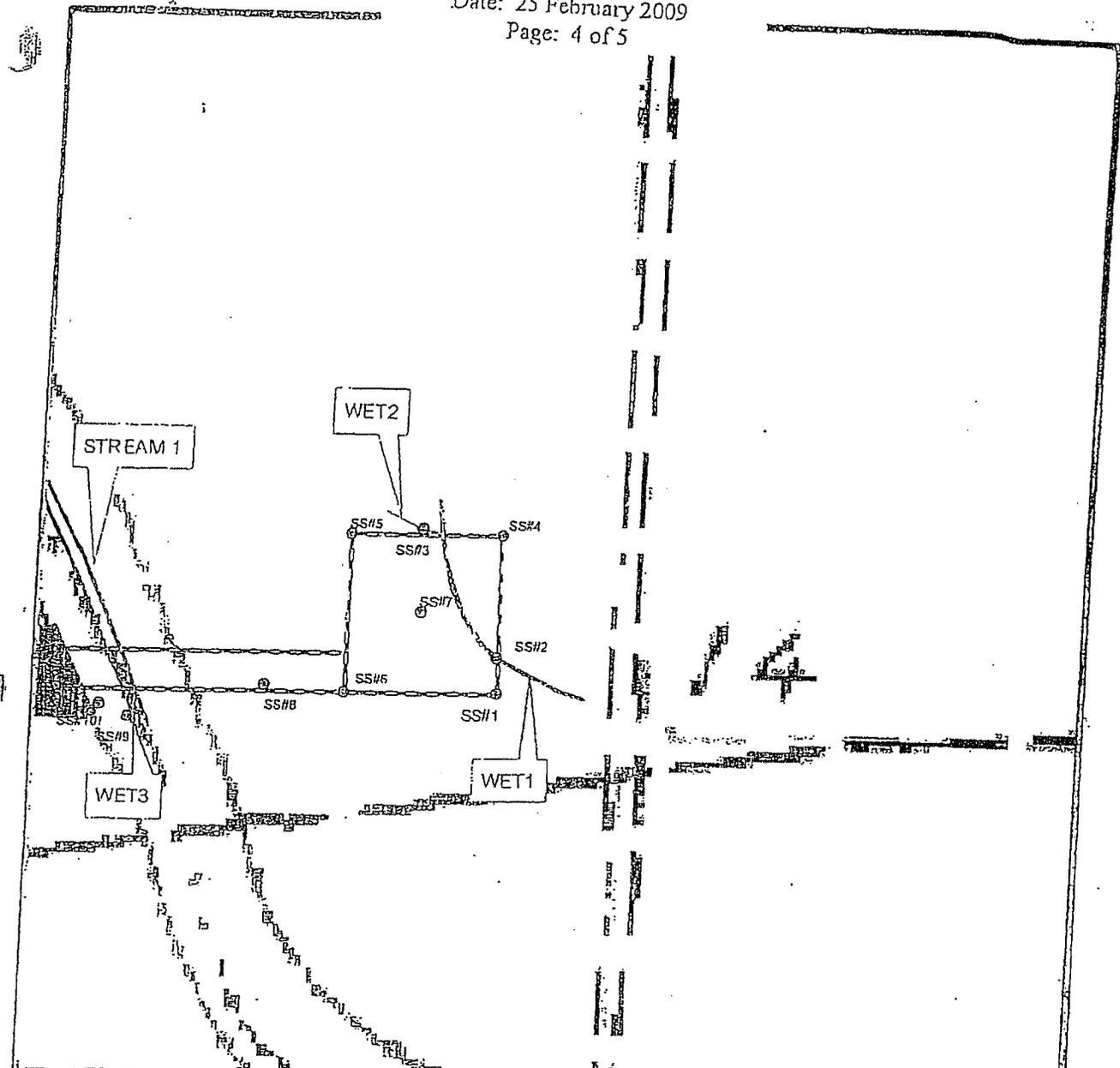
Sheet 2 of 3

**Survey Area Topo Map**  
**Fannett WWTP**  
**Jefferson County, Texas**

Job No: 0811008	Scale: 1"=200'
File: WET_B_FLM.mxd	Date: DEC 2008

Fannett Sewer Service & Water Supply  
#SWG-2008-01256  
Date: 25 February 2009  
Page: 4 of 5

PERMITTED PLANS



Legend

- Soft Stations
- ~ Streams
- ▨ Wetlands
- ▭ Survey Area Boundary

0 100 200 Feet



Sheet 3 of 3

Survey Area Topo Map  
Fannett WWTP  
Jefferson County, Texas

Job No: 0811008

Scale: 1"=200'

File: WET\_B\_FLM.mxd

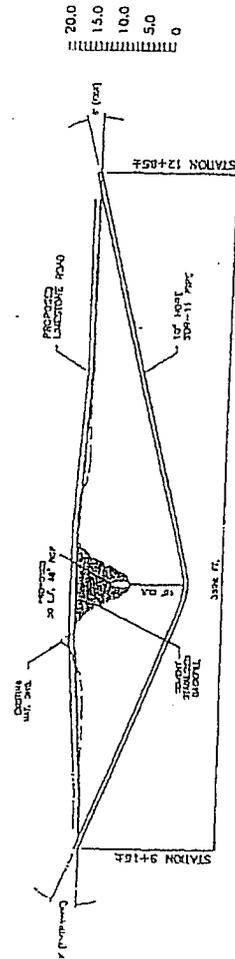
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Fannett Sewer Service & Water  
 Supply  
 #SWG-2008-01256  
 Date: 25 February 2009  
 Page: 5 of 5

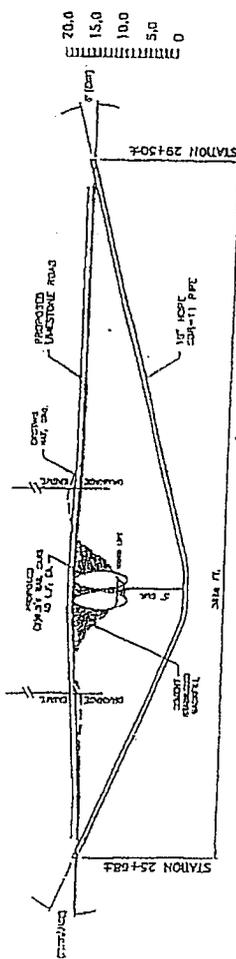
PERMITTED PLANS

DATE	11/16/09
BY	W. J. BURRILL
CHECKED BY	W. J. BURRILL
SCALE	AS SHOWN
PROJECT	PROPOSED SITE GRADING DETAILS ROAD / DITCH CROSS-SECTIONS DRAINAGE DETAILS
CLIENT	FANNETT SEWER SERVICE & WATER SUPPLY CORPORATION
LOCATION	WASTEWATER TREATMENT FACILITY
CONTRACT NO.	CONTRACT II
DESIGNER	SCHAMBERG & POLK, INC.
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PHONE	(936) 632-6545
FAX	(936) 632-6545
EMAIL	schamberg@schamberg-polk.com
PROJECT NO.	SWG-2008-01256
DATE PLOTTED	11/16/09
SCALE	AS SHOWN
PROJECT	PROPOSED SITE GRADING DETAILS ROAD / DITCH CROSS-SECTIONS DRAINAGE DETAILS
CLIENT	FANNETT SEWER SERVICE & WATER SUPPLY CORPORATION
LOCATION	WASTEWATER TREATMENT FACILITY
CONTRACT NO.	CONTRACT II
DESIGNER	SCHAMBERG & POLK, INC.
ADDRESS	1003 County Road 2000, P.O. Box 1003, Fannett, TX 77720
PHONE	(936) 632-6545
FAX	(936) 632-6545
EMAIL	schamberg@schamberg-polk.com
PROJECT NO.	SWG-2008-01256
DATE PLOTTED	11/16/09
SCALE	AS SHOWN

GENERAL NOTES:  
 1. CONTRACTOR SHALL MAINTAIN SERVICE MANHOLES IN PROPOSED ROADWAY. SERVICE MANHOLES SHALL BE 48" DIA. WITH 12" HOLES FOR 12" DIA. PIPES.  
 2. CONTRACTOR SHALL MAINTAIN SERVICE MANHOLES IN PROPOSED ROADWAY. SERVICE MANHOLES SHALL BE 48" DIA. WITH 12" HOLES FOR 12" DIA. PIPES.  
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 10. CONTRACTOR SHALL MAINTAIN SERVICE MANHOLES IN PROPOSED ROADWAY. SERVICE MANHOLES SHALL BE 48" DIA. WITH 12" HOLES FOR 12" DIA. PIPES.



PROPOSED ACCESS ROAD  
 STATION 10+88.4 CROSSING  
 LOWER NECHES VALLEY AUTHORITY CANAL  
 (LOOKING NORTH)



PROPOSED ACCESS ROAD  
 STATION 27+114 CROSSING  
 J. C. D. B. No. 5 BURRELL CANYON  
 (LOOKING NORTH)

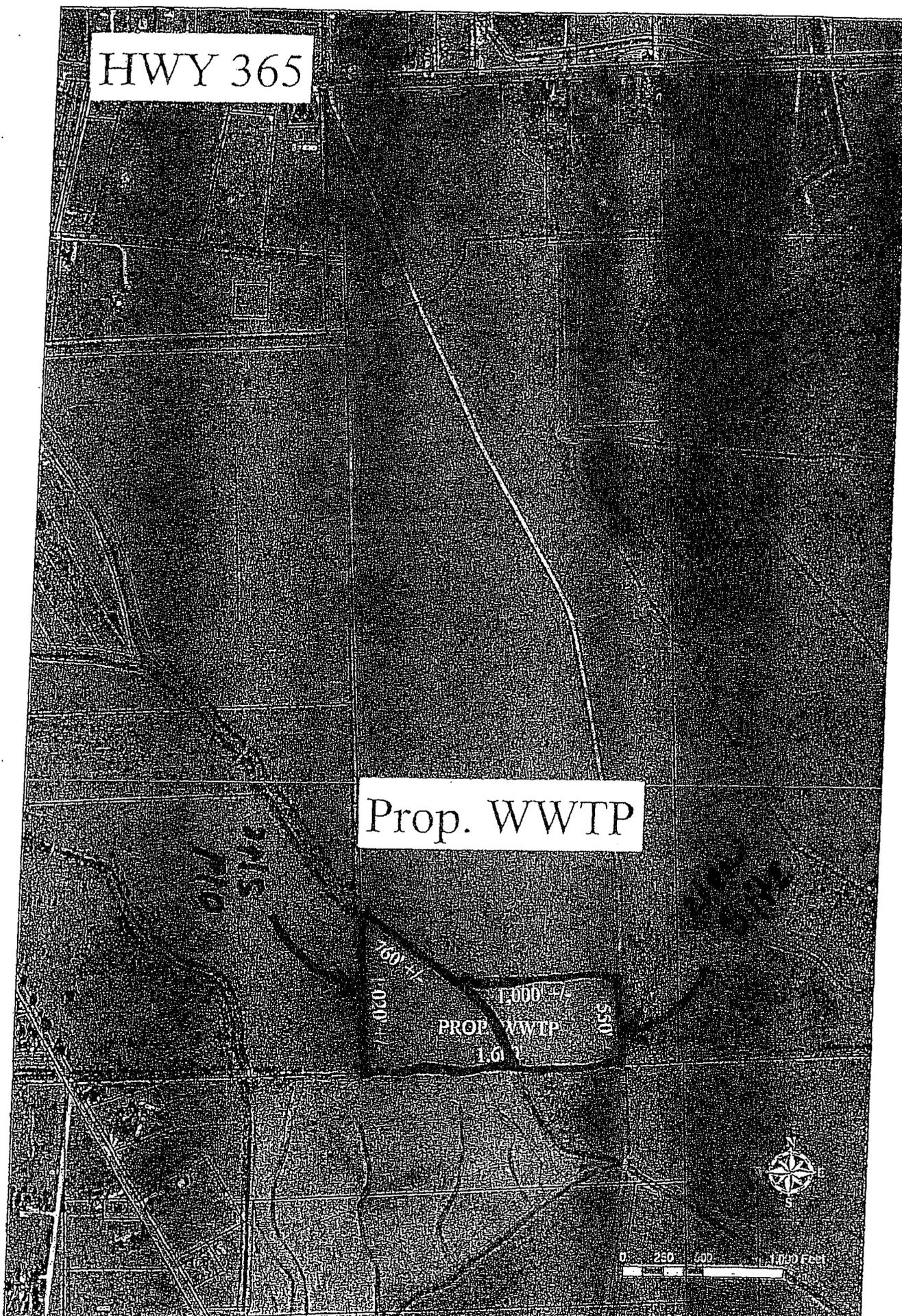
HWY 365

Prop. WWTP

OLD  
SING

OLD  
SING

1000  
PROP. WWTP  
1000



# EXHIBIT B

Travis Williams

---

**From:** Travis Williams [twilliams@spi-eng.com]  
**Sent:** Monday, July 30, 2007 10:38 AM  
**To:** Mark Rudolph  
**Cc:** jbeaver@spi-eng.com  
**Subject:** Fannett SSC- WWTP Permit  
**Attachments:** Stream Loading Calcs 02.xls

Mark,

Following up with our previous discussions regarding preliminary effluent parameters for a WWTP in the Fannett area discharging into the North Fork of Taylor's Bayou, please find attached herewith an excel spreadsheet demonstration the following net reductions in BOD5 and Ammonia loadings:

- BOD5 (Phase 1) - 77.29%
- BOD5 (Buildout) - 78.21%
- Ammonia (Phase 1) - 61.79%
- Ammonia (Buildout) - 63.30%

We are requesting TCEQ provide a Preliminary determination of effluent limits for permitted flows of 0.12 MGD and 0.36 MGD. Note that these flows have been decreased from previous submissions due to use of a conventional WWTP as opposed to a wetlands facility. While the calculations are based on 10/15 mg/l effluent parameters we would also request consideration of 20/20 effluent parameters. The proposed discharge point remains unchanged from previous submissions.

Should you have any questions or comments please do not hesitate to call.

Travis

---

**From:** Mark Rudolph [mailto:MRUDOLPH@tceq.state.tx.us]  
**Sent:** Wednesday, May 02, 2007 3:39 PM  
**To:** twilliams@spi-eng.com  
**Cc:** Michael Compton  
**Subject:** Preliminary modeling results for a potential WWTP near Fannett

Travis,

I reviewed the planning information you sent me regarding a possible new constructed wetlands domestic treatment plant to be located near Fannett. The proposed site of the facility's discharge point puts it in the watershed of Taylor Bayou Above Tidal (TCEQ Segment # 0701).

Segment 0701 is currently on the State's list of impaired and threatened waters (the 2004 303(d) list) for depressed dissolved oxygen (DO). For a detailed description of the listing, see:

5/7/2009

11/16/2009 15:25 Zeleskey Law Firm

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[http://www.tceq.state.tx.us/assets/public/compliance/monops/water/04twqi/04\\_303d.pdf](http://www.tceq.state.tx.us/assets/public/compliance/monops/water/04twqi/04_303d.pdf).

Because of the (DO) impairment, special permitting procedures apply to new or amended discharges into this watershed that could potentially affect DO. These procedures apply until the Segment is either removed from the list or a Total Maximum Daily Load (TMDL) project is completed that sets waste load allocations.

New or increased loadings of oxygen demanding substances can be allowed prior to de-listing or production of a TMDL if it can be demonstrated that the increased loadings will not negatively affect DO in the impaired areas. Two examples of how this can sometimes work include 1.) Complete assimilation of oxygen demanding constituents (CBOD5, Ammonia-N) occurs prior to the wastewater reaching the impaired areas, or 2.) A new treatment plant to serve a currently unsewered community will result in a net decrease in pollutants that affect DO (relative to current conditions).

I performed a preliminary modeling analysis of Burrell Gully to see whether complete assimilation occurs prior to confluence with Taylor Bayou. Modeling results suggest that the concentrations of CBOD5 and Ammonia-N are still elevated at the confluence with Taylor Bayou at the lowest proposed effluent flow (0.17 MGD) and advanced treatment limits. Another approach that has been used successfully in similar circumstances is the installation of polishing pond(s) after the final treatment unit that effectively remove the residual levels of oxygen demanding substances to background levels. Typically, wastewater entering these ponds has to be treated to a fairly high level of treatment for this approach to work.

You mentioned that this facility would serve a community currently using septic tanks for wastewater disposal. This may be your best hope for obtaining a permit for this facility, but it would require an analysis or study to demonstrate its feasibility.

Feel free to call me if you have any further questions regarding my analysis of this proposal.

Mark Rudolph, P.E.  
512-239-4534



June 17, 2008

Mr. Mark Rudolph  
TCEQ (MC 150)  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Fannett Sewer Service and Water Supply Corporation  
Proposed Discharge Permit

Dear Mr. Rudolph,

Pursuant to our recent conversation please find attached herewith calculations demonstrating a net reduction in stream loadings regarding the above referenced project. Additionally, a copy of these will be included with the application on display for public review.

During your review should you have any questions or comments please do not hesitate to call.

Sincerely,  
SCHAUMBURG & POLK, INC.

Travis Williams, P.E.  
Project Engineer

cc: SPI File: Fannett - 5100.20 Corr.

## Phase I

### Existing and Proposed BOD5 Loading Calculations

		<u>Aerobic</u>	<u>Conventional</u>	<u>Total</u>
Existing	Number of households [HH] =	182	218	400
	BOD5 Concentration of effluent wastewater (mg/l)* [RWB] =	20	170	-
	Number of persons per household (persons) **[PPHT] =	2.78	2.78	2.78
	Gallons per day per person (gal/day/person)*** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)**** [FSWT] =	30.0%	75.0%	-
	Existing Flow (gal/day) [EF] = EF = HH x PPHT x GPDPT	33,292	39,877	73,170
	Existing BOD5 Loading (#/day) [BODL] = BODL = EF x RWB x FSWT x 8.345/1,000,000	1.67	42.43	44.10
Proposed	Proposed permitted BOD5 concentration (mg/l) [PBOD] =			10
	Proposed WWTP flow (MGD) [PF] =			0.12
	Proposed BOD5 Loading (#/day) [PBODL] = PBODL = PF x PBOD x 8.345			10.01
	Net Reduction of BOD5 loading into Bayou (#/day) [NRB] = NRB = BODL - PBODL			34.08
	Percent Reduction of BOD5 loading into Bayou (%) [%BODR] = %BODR = NRB x 100/BODL			77.29

\* Aerobic concentration assumes 30TAC5285.32(e) compliance. While no TMDL Study has been prepared for the project area, a draft TMDL has been prepared for Adams and Cow Bayou. The project area is similar to the Adams and Cow Bayou watersheds in that the soils are poorly drained with slow to very slow permeability making them unsuitable for operating a standard trench-bed septic tank. Therefore, the conventional effluent concentrations used herein were taken from the TMDL study prepared for Adams and Cow Bayou.

\*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01

\*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.

\*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 30% respectively. In accordance with these estimates, these figures were utilized in the calculations above.

## Phase I

### Existing and Proposed NH3-N Loading Calculations

		<u>Aerobic</u>	<u>Conventional</u>	<u>Total</u>
Existing	Number of households [HH] =	182	218	400
	NH3-N Concentration of effluent wastewater (mg/l)* [RWN] =	4.5	30	-
	Number of persons per household (persons) **[PPHT] =	2.78	2.78	-
	Gallons per day per person (gal/day/person)*** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)**** [FSWT] =	30.0%	75.0%	-
	Existing Flow (gal/day) [EF] = EF = HH x PPHT x GPDPT	33,292	39,877	73,170
Existing NH3-N Loading (#/day) [NH3L] = NH3L = EF x RWN x FSWT x 8.345/1,000,000	0.38	7.49	7.86	
Proposed	Proposed permitted NH3-N concentration (mg/l) [PNH3] =			3
	Proposed WWTP flow (MGD) [PF] =			0.12
	Proposed NH3-N Loading (#/day) [PNH3L] = PNH3L = PF x PNH3 x 8.345			3.00
	Net Reduction of NH3-N loading into Bayou (#/day) [NRN] = NRN = NH3L - PNH3L			4.86
	Percent Reduction of NH3-N loading into Bayou (%) [%NH3R] = %NH3R = NRN x 100/NH3L			61.79

\* 30 TAC §185.32 (c) does not include a standard for effluent ammonia for on-site systems. Aerobic ammonia quality is taken as 4.5 mg/l based on Final Report for Field Evaluation of PATH Technologies "Nitrogen-Reducing" Aerobic On-Site Wastewater Treatment Anne Arundel County, Maryland; prepared by NAHB Research Center under sponsorship of U.S. Department of Housing and Urban Development, November 2004. For conventional systems, raw ammonia is taken as 30 mg/l from Water Pollution Control Federation Manual of Practice No. 8, 1977, Table 1-111.

\*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01

\*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.

\*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 10% respectively. In accordance with these estimates, these figures were utilized in the calculations above.

## Phase I

### Existing and Proposed BOD5 Loading Calculations

		<u>Aerobic</u>	<u>Conventional</u>	<u>Total</u>
Existing	Number of existing households [HH] =	182	218	400
	BOD5 Concentration of effluent wastewater (mg/l)* [RWB] =	20	170	-
	Number of persons per household (persons) **[PPHT] =	2.78	2.78	2.78
	Gallons per day per person (gal/day/person)*** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)**** [FSWT] =	30.0%	75.0%	-
	Existing Flow (gal/day) [EF] = EF = HH x PPHT x GPDPT	33,292	39,877	73,170
Existing BOD5 Loading (lb/day) [BODL] = BODL = EF x RWB x FSWT x 8.345/1,000,000	1.67	42.43	44.10	
Proposed	Proposed permitted BOD5 concentration (lb/day) [PBOD] =			10
	Proposed WWTP flow (MGD) [PF] =			0.12
	Proposed BOD5 Loading (lb/day) [PBODL] = PBODL = PF x PBOD x 8.345			10.01
	Net Reduction of BOD5 loading into Bayou (lb/day) [NRB] = NRB = BODL - PBODL			34.08
	Percent Reduction of BOD5 loading into Bayou (%) [%BODR] = %BODR = NRB x 100/BODL			77.29

\* Aerobic concentration assumes 30TAC§285.32(e) compliance. While no TMDL Study has been prepared for the project area, a draft TMDL has been prepared for Adams and Cow Bayou. The project area is similar to the Adams and Cow Bayou watersheds in that the soils are poorly drained with slow to very slow permeability making them unsuitable for operating a standard trench-bed septic tank. Therefore, the conventional effluent concentrations used herein were taken from the TMDL study prepared for Adams and Cow Bayou.

\*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01  
 \*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.  
 \*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 30% respectively. In accordance with these estimates, these figures were utilized in the calculations above.

## Buildout

### Existing and Proposed BOD5 Loading Calculations

		Aerobic	Conventional	Total
Existing	Number of existing households [HH] =	516	684	1200
	BOD5 Concentration of effluent wastewater (mg/l)* [RWB] =	20	170	-
	Number of persons per household (persons) [PPHT] =	2.78	2.78	2.78
	Gallons per day per person (gal/day/person)** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)*** [FSWT] =	30.0%	75.0%	-
	Existing Flow (gal/day) [EF] = EF = HH x PPHT x GPDPT	94,389	125,120	219,509
Existing BOD5 Loading (lb/day) [BODL] = BODL = EF x RWB x FWST x 8.345/1,000,000	4.73	133.13	137.85	
Proposed	Proposed permitted BOD5 concentration (lb/day) [PBOD] =			10
	Proposed WWTP flow (MGD) [PF] =			0.360
	Proposed BOD5 Loading (lb/day) [PBODL] = PBODL = PF x PBOD x 8.345			30.04
	Net Reduction of BOD5 loading into Bayou (lb/day) [NRB] = NRB = BODL - PBODL			107.81
	Percent Reduction of BOD5 loading into Bayou (%) [%BODR] = %BODR = NRB x 100/BODL			78.21

\* Aerobic concentration assumes 30TAC§285.32(e) compliance. While no TMDL Study has been prepared for the project area, a draft TMDL has been prepared for Adams and Cow Bayou. The project area is similar to the Adams and Cow Bayou watersheds in that the soils are poorly drained with slow to very slow permeability making them unsuitable for operating a standard trench-bed septic tank. Therefore, the conventional effluent concentrations used herein were taken from the TMDL study prepared for Adams and Cow Bayou.

- \*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01
- \*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.
- \*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 30% respectively. In accordance with these estimates, these figures were utilized in the calculations above.

## Phase I

### Existing and Proposed NH3-N Loading Calculations

		<u>Aerobic</u>	<u>Conventional</u>	<u>Total</u>
Existing	Number of existing households [HH] =	182	218	400
	NH3-N Concentration of effluent wastewater (mg/l)* [RWN] =	4.5	30	-
	Number of persons per household (persons) **[PPHT] =	2.78	2.78	-
	Gallons per day per person (gal/day/person)*** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)**** [FSWT] =	30.0%	75.0%	-
	Existing Flow (gal/day) [EF] = EF = HH x PPHT x GPDPT	33,292	39,877	73,170
Existing NH3-N Loading (lb/day) [NH3L] = NH3L = EF x RWN x FSWT x 8.345/1,000,000	0.38	7.49	7.86	
Proposed	Proposed permitted NH3-N concentration [PNH3] =			3
	Proposed WWTP flow (MGD) [PF] =			0.12
	Proposed NH3-N Loading (lb/day) [PNH3L] = PNH3L = PF x PNH3 x 8.345			3.00
	Net Reduction of NH3-N loading into Bayou (lb/day) [NRN] = NRB = NH3L - PNH3L			4.86
	Percent Reduction of NH3-N loading into Bayou (%) [%NH3R] = %NH3R = NRN x 100/NH3L			61.79

\* 30 TAC §265.32 (c) does not include a standard for effluent ammonia for on-site systems. Aerobic ammonia quality is taken as 4.5 mg/l based on Final Report for Field Evaluation of PATH Technologies "Nitrogen-Reducing" Aerobic On-Site Wastewater Treatment Anne Arundel County, Maryland; prepared by NAIMB Research Center under sponsorship of U.S. Department of Housing and Urban Development, November 2004. For conventional systems, raw ammonia is taken as 30 mg/l from Water Pollution Control Federation Manual of Practice No. 8, 1977, Table 1-III.

\*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01

\*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.

\*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 10% respectively. In accordance with these estimates, these figures were utilized in the calculations above.

## Buildout

### Existing and Proposed NH3N Loading Calculations

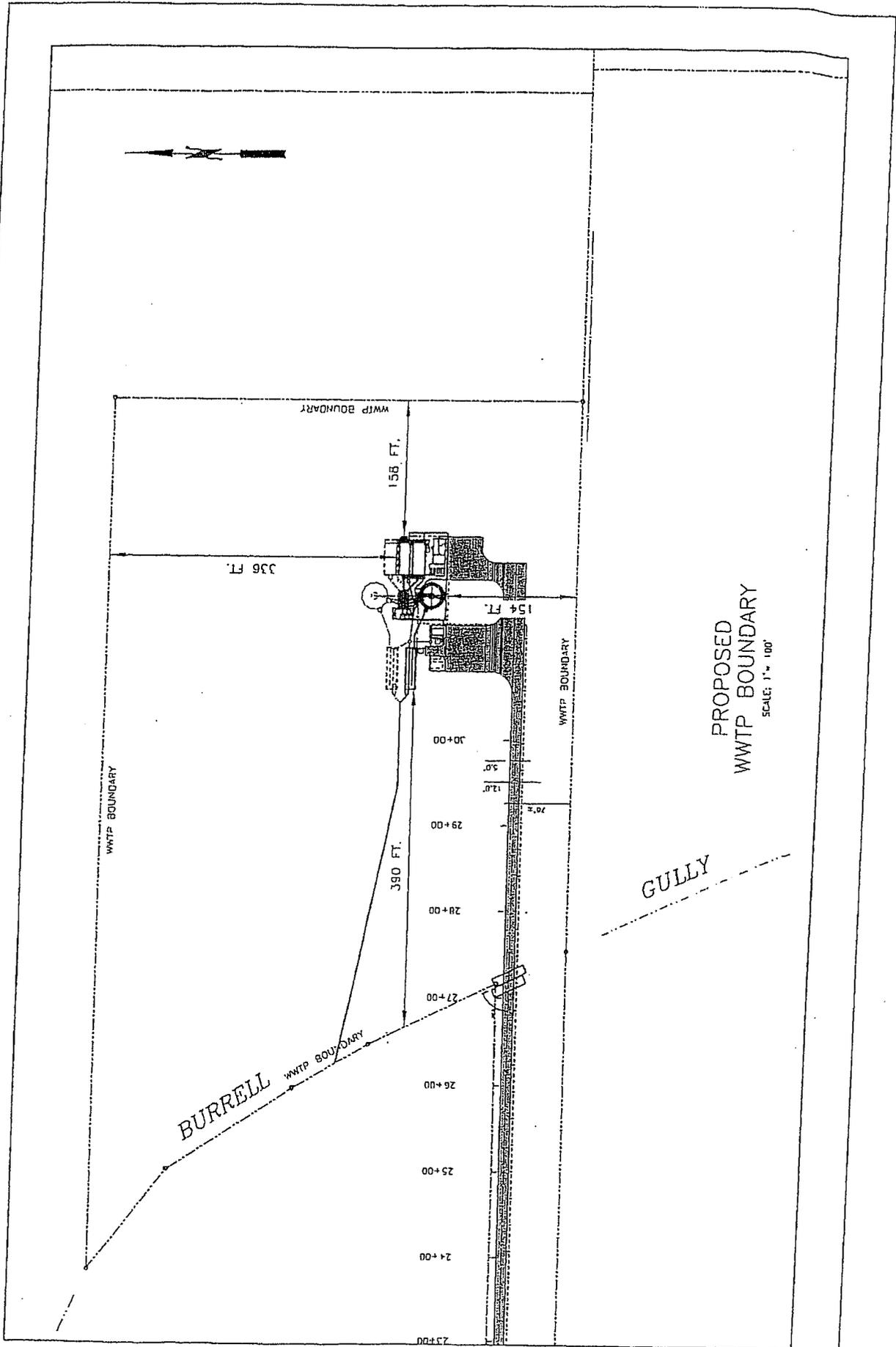
		Aerobic	Conventional	Total
Existing	Number of future households [HH] =	516	684	1200
	NH3N Concentration of effluent wastewater (mg/l)* [RWN] =	4.5	30	-
	Number of persons per household (persons) [PPHT] =	2.78	2.78	2.78
	Gallons per day per person (gal/day/person)** [GPDPT] =	65.8	65.8	65.8
	Fraction of septic wastewater reaching Taylors Bayou (%)*** [FSWT] =	30.0%	75.0%	-
	Future Flow (gal/dny) [EF] = $EF = HH \times PPHT \times GPDPT$	94,389	125,120	219,509
Future NH3N Loading (lb/day) [NH3L] = $NH3L = EF \times RWN \times FWST \times 8.345/1,000,000$	1.06	23.49	24.56	
Proposed	Proposed permitted NH3N concentration (lb/day) [PNH3] =			3
	Proposed WWTP flow (MGD) [PF] =			0.360
	Proposed NH3N Loading (lb/day) [PNH3L] = $PNH3L = PF \times PNH3 \times 8.345$			9.01
	Net Reduction of NH3N loading into Bayou (lb/day) [NRN] = $NRN = NH3L - PNH3L$			15.54
	Percent Reduction of NH3N loading into Bayou (%) [%NH3R] = $\%NH3R = NRN \times 100/NH3L$			63.30

\* 30 TAC §285.32 (c) does not include a standard for effluent ammonia for on-site systems. Aerobic ammonia quality is taken as 4.5 mg/l based on Final Report for Field Evaluation of PATH Technologies "Nitrogen-Reducing" Aerobic On-Site Wastewater Treatment Anne Arundel County, Maryland; prepared by NAJIB Research Center under sponsorship of U.S. Department of Housing and Urban Development, November 2004. For conventional systems, raw ammonia is taken as 30 mg/l from Water Pollution Control Federation Manual of Practice No. 8, 1977, Table 1-III.

\*\* According to U.S. Census Bureau for Jefferson County Census Tract 113.01

\*\*\* Water usage developed from review of water use records of 100 randomly selected customers of the West Jefferson MUD.

\*\*\*\* Project stakeholders with knowledge of the area believe the actual rate of malfunction of conventional septic systems and aerobic systems is 75% and 30% respectively. In accordance with these estimates, these figures were utilized in the calculations above.



# EXHIBIT C



DEPARTMENT OF THE ARMY  
GALVESTON DISTRICT, CORPS OF ENGINEERS  
P. O. BOX 1229  
GALVESTON TX 77553-1229

March 31, 2009

REPLY TO  
ATTENTION OF:  
EMILIE STEVENS

Evaluation Section

SUBJECT: Permit No. SWG-2008-01256; Nationwide Permit Verification

Steve Heironimus  
Fannett Sewer Service and Water Supply Corporation  
P.O. Box 20492  
Beaumont, Texas 77720

Dear Mr. Heironimus:

You may proceed with the construction of a waste water treatment plant, installation of a 10-inch inlet sewer line by horizontal directional drilling and trenching, and construction of a 12-foot by 2,980-foot permanent access road, as shown on the project plans dated December 11, 2008, provided that the activity complies with the enclosed Nationwide Permit General/Regional Conditions. Also, please be aware of the enclosed Texas Commission on Environmental Quality's Best Management Practice Guidelines. The project site is located in the Burrell Gully area, directly east of Burrell Wingate Road, approximately 2.2 miles southeast of Fannett, in Jefferson County, Texas.

Nationwide Permit 12 authorizes discharges of fill material for backfill or bedding of utility lines/pipelines, and associated utility line substations and access roads, provided the site is restored to pre-construction contours. Material resulting from trench excavation may be temporarily sidecast, up to 3 months, into the adjacent areas provided the material is not placed in such a manner that currents or other forces disperse it. The wetland areas disturbed must be limited to the minimum necessary to construct the utility/pipeline. All heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance. Any exposed slopes or banks on river crossings must be stabilized immediately upon completion of the utility/pipeline installation.

This verification expires 2 years from the date of this letter. A copy of your plans in 5 sheets is enclosed. The following special conditions have been added to your authorization:

1. The permittee must notify the Corps of Engineers Galveston District (CE), Chief, Compliance Section, Galveston Regulatory Branch, in writing, at the start of construction within the jurisdictional area.
2. A one-acre conservation easement within the Neches River watershed will be purchased from Mr. Eddie Arnaud for the unavoidable permanent impacts to waters of the United States, which total 0.11-acre of herbaceous wetlands and 0.01-acre of water bodies, associated with the construction of the proposed water treatment plant.

-2-

3. Mitigation funds must be transferred to and accepted by Mr. Eddie Arnaud within 30 calendar days of the start of construction within the jurisdictional area, and Mr. Arnaud must notify the CE, Chief, Compliance Section, Galveston Regulatory Branch in writing, upon receipt of funds.

This verification is based on a preliminary jurisdictional determination (JD) for your subject site. If you wish, you may request an approved JD (which may be appealed), by submitting a written request to us within 30 days from the date of this letter. Please note that if you request an approved JD and then decide to appeal it, the appeal will not be accepted if any work has started in waters of the U.S. or that would alter the hydrology of waters of the United States.

Please let us know when you complete your project by returning the enclosed pre-addressed postcard. If you have any questions concerning this matter, please contact Emilee Stevens at the letterhead address or by telephone at 409-766-3980.

Sincerely,

Bruce H. Bennett  
Leader, North Evaluation Unit

Enclosures

Copy Furnished:

David Beckmeyer  
Perennial Environmental Services, LLC  
5700 Northwest Central Drive, Suite 210  
Houston, Texas 77092



**Z E L E S K E Y**  
L A W F I R M

**FAX COVER SHEET**

2009 NOV 16 PM 2:58  
CHIEF CLERK'S OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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Date: November 16, 2009  
Number of Pages: 31  
(including this page)

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To: LaDonna Castanuela, Office of the Chief Clerk  
(512)239-3311  
  
Robert D. Brush, Staff Attorney  
(512)239-0606  
  
Blas J. Coy, Jr., Public Interest Counsel  
(512)239-6377

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From: Timothy J. Karczewski  
Direct Dial: (936) 633-4208  
Re: Docket No. 2009-0363-MWD  
Fannett Sewer Service and WSC  
  
Document Description:  
Message:  
  
Fax Operator Initials: rc

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Should you have any difficulty in receiving this fax, please call 936-632-3381.

This information is intended only for the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any use, dissemination or copying of this communication other than by the addressee is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the below listed address via the U.S. Postal Service. Thank you.

**Z E L E S K E Y L A W F I R M P L L C**

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