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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2010 MAR 18 PM 2:13

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Board Certified – Administrative Law
Texas Board of Legal Specialization

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MAR 19 2010

BY

March 18, 2010

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

Re: Application of XS Ranch Fund VI, L.P. for TPDES Permit No. WQ0014946001

Dear Ms. Castenuela,

I represent the McCall Ranch, L.P. and Flying M Ranch, L.C., Ms. Jo Goertz and Michael Goertz (hereinafter referred to collectively as "Protestants") in connection with the above referenced Application. McCall Ranch L.P. is the owner of the property immediately adjacent to and downstream of the wastewater treatment facilities proposed by the referenced application. Flying M Ranch L.C. is the general partner of McCall Ranch. Ms. Jo Goertz is the sole manager of the ranch and maintains a residence on site at 710B Sayers Road, Bastrop, Texas 78602. Her son, Michael Goertz is the Ranch foreman and also maintains a separate residence on the property at 710A Sayers Road, Bastrop, Texas 78602. Protestants maintain five (5) drinking water wells and a variety of residential and utility structures on their property in close proximity to the proposed wastewater treatment plant site and proposed point of discharge and utilize the receiving waters for domestic, livestock and recreational use. Protestants' livestock include high value show horses.

Protestants hereby protest the referenced application and request that a public hearing be held thereon. Protestants are in receipt of the Commission's Notice of the Executive Director's Response to Public Comments and Preliminary Decision thereon dated February 16, 2010. Protestants dispute the factual foundation for the Executive Director's determination on several grounds as detailed sequentially below to correspond to the Executive Director's Response.

1. Groundwater Contamination and Proximity of Proposed Facilities to Protestants' Water Wells and Property Line

The Executive Director dismisses Protestants' concerns relating to the adverse impact which the proposed facilities may have upon the water quality of their wells, relying solely upon the minimum buffer zone requirements set forth in 30 TAC §309.13(a)-(e). Such minimum distance requirements do not preclude the imposition of greater spatial distances when warranted by the facts presented. Protestants' water wells are as shallow as 200 feet and neither the Application nor the Executive Director's Response address the transmigration properties of the underlying and intervening soils between the treatment and discharge facilities proposed by the Application and the local groundwater strata associated with Protestants' wells. The alluvial character of these soils will allow the transmission and migration of water borne contaminants from the proposed facilities to adversely impact the water quality of local groundwater resources which are under the direct influence of surface sources. Such impact will negatively affect Protestants' use and enjoyment of their existing wells.

The Executive Director's Response also relies upon the aforesaid rules to state that no wastewater treatment plant unit may be located closer than 150 to the nearest property line. However, on the maps accompanying the Application, Applicant's outfall line and point of discharge appear closer to Protestants' property than allowed. Such outfall line is approximately 1.5 miles in length. While the Application does not suggest how Applicant intends to meet the dissolved oxygen limit at the point of discharge, in order to compensate for the depletion of oxygen occasioned by the decomposition of organic materials within the effluent during the time of travel through the outfall line, the effluent will need to be highly aerated prior to discharge. Hence, the entire outfall line and aeration units within or at the terminus of such line must be considered wastewater treatment plant units.

2. Adequacy of Proposed Effluent Limitations

The Executive Director has preliminarily determined that no significant degradation of the high quality waters within Segment 1434 is anticipated and that the existing exceptional aquatic habitat, public water supply and contact recreation uses will be maintained and protected by the proposed permit. The Executive Director's conclusion is flawed. Generally, the TCEQ has not performed a Waste Load Evaluation Study for Segment 1434 since the 1970s, whereas drought conditions sufficient to alter the hydraulic modeling employed and additional wastewater discharge permits issued below Longhorn Dam call into question the stream constituent, flow, topographical characteristics and assimilative capacity assumed in the TCEQ model. Specifically, the Executive Director's determination is based upon dissolved oxygen modeling which does not take into account either the low flow characteristics actually experienced in recent years or the stream bed configuration of the Colorado River immediately below the proposed point of discharge and

adjacent to Protestants' property. Such configuration consists of elevated sand bars extending west and south of the proposed point of discharge preventing such discharged effluent from reaching the main river channel during low flow conditions, thereby confining and retarding the flow of such discharge to shallow shoreline pools where, under the effluent set limitations proposed by the Application, the dissolved oxygen within such pools will be rapidly depleted to a level below that required by applicable water quality standards.

Protestants maintain that to achieve applicable water quality standards, the proposed facilities should be required to meet an effluent limitation set no less strict than 5mg/l CBOD, 5mg/l TSS, 2mg/l NH3-N, 1mg/l P and 6mg/l DO.

3. Odor Control

The Executive Director's Response to Protestant's concerns regarding the control of odors from the proposed facilities relies nearly exclusively upon the minimum 150 foot buffer zone requirement to mitigate against the concentration of nuisance odors. In essence, with such a buffer zone, it is claimed that odors will be diluted to a level that will no longer be offensive once they cross the property line. Unfortunately, this claim has proven false over time at many facilities across the State which have been required to retrofit their treatment and sludge handling facilities after prolonged sufferance by their neighbors. Hydrogen sulfide is heavier than air and therefore tends to settle in low spots, such as creek beds and river channels and is not as readily dissipated by wind or distance as less weighty air borne contaminants. While Protestants agree that effective treatment can minimize the generation of offensive odors from wastewater treatment units, this generally requires a higher level of treatment and a minimum effluent set of 5mg/l CBOD, 5mg/l TSS, and a DO of 6mg/l. The processing, digestion, storage and removal of bio-solids, however, is an altogether different matter and requires specifically targeted control mechanisms to reduce H2S emissions. Effective odor control can and should be achieved and maintained by this proposed facility as a permit condition such as that applicable to the LCRA's McKinney Rough's facility upstream, which has a 5-5-2-1 effluent set with a 6 DO outfall limit, as Protestants maintain should be applicable in this matter, and an extensive matrix of odor control management planing requirements and H2S removal equipment.

4. Sludge Handling

Sludge processing is one of the most frequent and intense sources of nuisance odors at wastewater treatment plants. The Executive Director's Response states that all sludge generated by the proposed facility will be hauled to the City of Austin's Walnut Creek Wastewater treatment Plant to be digested, de-watered, and disposed of with the bulk of the City's own sludge from that plant. However, the Sludge Management Plan portion of the

Application provides for a 21,276 cubic foot sludge digester, with a 15 day sludge storage detention time, producing approximately 70,000 lbs of sludge per day. While this sludge will ultimately be hauled to the City of Austin's plant for disposal, the Executive Director's Response does not address the on-site issues presented and no provisions are made in the Application for odor control or any other type of control during the time that such solids are partially digested, stored and made ready for transit.

The proposed treatment plant site sits lies adjacent to Sandy Creek, a perennial stream which runs directly through and along the borders of Protestants' property until it reaches the Colorado River. The Application presents no controls addressing rain, spillage, accident or any malfunction and resulting runoff from the sludge being processed, stored, or transported. Absent effective controls, any spillage or runoff from the proposed site will reach and contaminate the creek and thus the river, damage the Protestants' property and the livestock that drink directly from the stream. Protestants' concerns are simply not addressed by the Executive Director's Response.

5. Proposed Plant Capacity

Protestants' concerns are two-fold. Applicant's development plans call for nearly 7000 single family residential living units or their equivalents, 300,000 square feet of commercial development and schools. While limiting its Application to a 0.99 MGD facility to avoid application of stricter standards and rules applicable to a 1.0+ MGD plant, the proposed facility is not nearly large enough to accommodate Applicant's actual development plan. At the same time, however, it is unrealistic to expect that Applicant's development will achieve the build-out necessary during the proposed 5 year permit term to support even a 0.5 MGD plant. This Commission has historically rejected unrealistic growth projections beyond the term of the initial permit in its authorization of plant capacity because such permitted capacities must be taken into account when conducting waste load evaluations and allocations for future permits. Authorizations of plant capacity should be conservative, not speculative, in order to ensure that the assimilative capacity of the riverine system may be utilized, not reserved from allocation to other applicants as a form of speculative entitlement. Hence, Applicant should be limited to that capacity which it can demonstrate will actually be needed and put to use during the 5 year term of the permit. Alternatively, if the Commission is to allow a facility based upon anticipated development beyond the five year term of the permit, the more stringent requirements applicable to a 1MGD plus facility should be required, since full build out of Applicant's development will require such treatment capacity.

The McCall Ranch Protestants clearly maintain a justiciable interest in this proceeding and merit a contested case hearing within which to protect their neighboring property interests and the quality of the air and water threatened by the subject Application.

Respectfully submitted,

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 MAR 18 PM 2:13
CHIEF CLERK'S OFFICE

SKIP NEWSOM
ATTORNEY AT LAW

P.O. Box 712
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FACSIMILE TRANSMITTAL

TO	TELEPHONE NUMBER	FAX NUMBER
TCEQ Chief Clerk		512-239-3311

FROM: Skip Newsom
skipnewsom@fnlawtx.com

DATE: March 18, 2010

SUBJECT: Application of XS Ranch Fund VI, L.P. for TPDES Permit No. WQ0014946001

Number of pages, including this cover sheet: 6

IF PROBLEMS ARE ENCOUNTERED IN RECEIVING THIS TRANSMISSION, PLEASE CALL (512) 477-4121 AS SOON AS POSSIBLE.

Comments/Special Instructions: Please see attached Protest and Request for Contested Case Hearing.

Skip Newsom

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 MAR 18 PM 2:13
CHIEF CLERKS OFFICE

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 OCT 14 PM 3:04
CHIEF CLERKS OFFICE

October 14, 2009

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

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OCT 15 2009
BY

Re: Application of XS Ranch Fund VI, L.P. for TPDES Permit No. WQ0014946001

Dear Ms. Castenuela,

I represent the McCall Ranch, L.P. and Flying M Ranch, L.C., Ms. Jo Goertz and Michael Goertz (hereinafter referred to collectively as "Protestants") in connection with the above referenced Application. McCall Ranch L.P. is the owner of the property immediately adjacent to and downstream of the wastewater treatment site proposed by the referenced application. Flying M Ranch L.C. is the managing partner of McCall Ranch. Ms. Jo Goertz is the sole manager of the ranch and maintains a residence on site at 710B Sayers Road, Bastrop, Texas 78602. Her son, Michael Goertz is the Ranch foreman and also maintains a separate residence on the property at 710A Sayers Road, Bastrop, Texas 78602. Protestants maintain five (5) drinking water wells and a variety of residential and utility structures on their property in close proximity to the proposed wastewater treatment plant site and utilize the receiving waters for domestic, livestock and recreational use.

Protestants hereby protest the referenced application and request that a public hearing be held thereon. The proposed wastewater discharge site maintains an insufficient buffer separation from Protestants' property and residential units. The wastewater treatment plant application and plant design proposes inadequate odor control for treatment processes, sludge handling and storage and disposal. The proposed wastewater treatment plant discharge limits are inadequate to protect the receiving waters used for domestic and livestock use, public drinking water, recreation, and aquatic habitat. The wastewater volume proposed for discharge is substantially greater than will be required during the term of the requested permit. The proposed discharge and treatment plant processes and site location also poses a genuine risk of contamination of Protestants' water wells. The referenced application, if granted, will aggravate the already polluted condition of the Colorado River and cause the deposition of water

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borne waste contaminants and sediments upon Protestants' property, will adversely affect benthic organisms within the receiving waters, degrade the aquatic habitat of the River, impact shoreline vegetation along the River, impair Protestants' current and future use and enjoyment of their property, and likely deter the future development of the acreage to its highest and best purpose. Due to the downstream, downwind and lower elevation location of my property from the proposed wastewater treatment facilities, odors emitted from the facilities and discharge therefrom will inevitably further reduce Protestants' current use and enjoyment of their property and undermine the development potential of one of the most scenic locations on the Colorado River.

The degree to which Protestants' concerns may be mollified by modifications to the proposed permit cannot be ascertained until additional operational and modeling information is developed and/or obtained from the Applicant.

Please provide me and the Goertz family with a copy of all future notices and correspondence respecting this application and direct all such communications to my attention. Thank you for your courteous attention to this request.

Sincerely,

Skip Newsom

cc: Ms. Jo Goertz
Mr. Michael Goertz
Mr. Dennis Reese
Mr. David Morrison