

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 16, 2010

TO: Persons on the attached mailing list.

RE: XS Ranch Fund VI, L.P.
TPDES Permit No. WQ0014946001

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 Bastrop Public Library, 1100 Church Street, Bastrop, 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 **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail 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/ka

Enclosures

MAILING LIST
for
XS Ranch Fund VI, L.P.
TPDES Permit No. WQ0014946001

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TCEQ PERMIT NO. WQ0014946001

CHIEF CLERKS OFFICE

APPLICATION BY § BEFORE THE
§ TEXAS COMMISSION ON
XS RANCH FUND VI, LP. § 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 XS Ranch Fund VI, LP.'s (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014946001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received a timely filed comment letter from Skip Newsom, an attorney representing McCall Ranch, L.P., Flying M Ranch, L.C., Ms. Jo Goertz, and Michael Goertz, . 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.

ACCESS TO RULES, LAWS, AND RECORDS

The following websites may be useful:

Secretary of State website for all administrative rules: www.sos.state.tx.us

TCEQ rules in Title 30 of the Texas Administrative Code:

www.sos.state.tx.us/tac/(select "TAC Viewer" on the right, then "Title 30 Environmental Quality")

Texas statutes: www.capitol.state.tx.us/statutes/statutes.html

TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules")

Federal rules in Title 40 of the Code of Federal Regulations:

www.epa.gov/epahome/cfr40.htm

Federal environmental laws: www.epa.gov/epahome/laws.htm

Commission records for this facility are available for viewing and copying at the TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken), and at TCEQ's Region 11 Office, 2800 S. IH 35, Suite 100, Austin, Texas. The application for this facility has been available for viewing and copying at the Bastrop Public Library, 1100 Church

Street, Bastrop, Texas since publication of the Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI). The draft permit, statement of basis/technical summary and Executive Director's preliminary decision have been available for viewing and copying at the same location since publication of the Notice of Application and Preliminary Decision (NAPD).

BACKGROUND

Description of Facility

The applicant has applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day (gpd) in the interim phase, a daily average flow not to exceed 500,000 gpd in the interim II phase and a daily average flow not to exceed 990,000 gpd in the final phase. The proposed wastewater treatment facility will serve the proposed single family development XS Ranch.

The XS Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode in the interim I phase. Treatment units will include a lift station, bar screen, aeration basin, clarifier, aerobic sludge digester and chlorine contact chamber. The interim II and final phases will be an activated sludge process plant operated in the complete mix mode with nitrification. Treatment units will include a lift station, a bar screen, two clarifiers, two aerobic sludge digesters, two aeration basins and two chlorine contact chambers in the interim II phase. Treatment units will include a lift station, a bar screen, three clarifiers, three aerobic sludge digesters, three aeration basins and three chlorine contact chambers in the final phase.

Sludge generated from the treatment facility will be hauled by a registered transporter to City of Austin Walnut Creek Wastewater Treatment Facility, Permit No. WQ0010543011 to be digested, dewatered and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or a co-disposal landfill.

The plant site will be located at 802 Sayers Road, approximately 2.3 miles northwest of the intersection of Phelan Road and Sayers Road in Bastrop County, Texas 78706.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l CBOD₅ (five-day carbonaceous biochemical oxygen demand), 15 mg/l TSS (total suspended solids), 2 mg/l NH₃-N (ammonia-nitrogen) and 5.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. The treated effluent will be discharged directly to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The designated uses for Segment No. 1434 are exceptional aquatic life uses, public water

supply and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

In accordance with 30 TAC § 307.5 of the Texas Surface Water Quality Standards (TSWQS) and the TCEQ's Procedures to Implementation the Texas Surface Water Quality Standards (IPs) (January 2003), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Colorado River Above La Grange, which has been identified as having exceptional aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Procedural Background

The application was received on June 11, 2009, and declared administratively complete on July 7, 2009. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in the *Austin American Statesman* newspaper on August 3, 2009. The alternative language Notice (Spanish), was published in the *El Mundo* newspaper on August 6, 2009. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) was published in the *Austin American Statesman* newspaper on October 1, 2009. The alternative language Notice (Spanish), was published in the *El Mundo* newspaper on October 1, 2009. 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:

The commenters are concerned about the proximity of the proposed wastewater treatment facility to five (5) drinking water wells and residential units and utility structures located on their property. Commenters are concerned that the water wells could become contaminated.

RESPONSE 1:

According to 30 TAC § 309.13(c), a wastewater treatment plant unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. A wastewater treatment plant unit may not be located closer than 150 feet to the nearest property line. See 30 TAC § 309.13(e). The Applicant is required to:

[S]ubmit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

Other Requirement No. 4 in the draft permit requires the Applicant to comply with the buffer zone requirements in 30 TAC § 309.13(a) through (e). This Applicant proposes to meet the buffer zone requirements by ownership, which means no wastewater treatment unit will be located closer than 250 feet from a private water well or 500 feet from a public water well. Additionally, no wastewater treatment unit will be located closer than 150 feet to the nearest property line.

COMMENT 2:

Commenters are concerned that the discharge of treated domestic wastewater from the proposed wastewater treatment facility would adversely impact the domestic water uses, public drinking water, livestock, recreational uses of the receiving waters, and the aquatic habitat. Commenters express concern that the proposed discharge will aggravate the already polluted condition of the Colorado River. Commenters are also concerned that the proposed discharge will adversely affect benthic organisms within the receiving waters. Finally, the commenters are concerned about the deposition of water borne contaminants and sediment on commenters' property, and the impact on shoreline vegetation.

RESPONSE 2:

The draft permit was developed to protect aquatic life and human health in accordance with the TSWQS and was established to be protective of human health and the environment provided the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the draft permit.

In Texas Water Code (TWC) § 26.027, the Texas Legislature has authorized the TCEQ to issue permits for discharges into or adjacent to water in the state. The permitting process protects the quality of the state's rivers, lakes and coastal waters. If a proposed discharge would result in a violation of a water quality standard, the TCEQ cannot issue the permit. Based on the water quality standards review, the designated uses and dissolved oxygen criterion as stated in Appendix A of the TSWQS (30 TAC § 307.10) for Segment 1434 are exceptional aquatic life uses, public water supply and contact recreation.

Effluent discharged into water in the state from facilities regulated under the TPDES is required to meet TSWQS. Pursuant to 30 TAC § 307.6(b)(3), water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. Water in the state with sustainable fisheries and/or public drinking water supply uses may not exceed applicable human health toxic criteria. 30 TAC § 307.6(b)(4) requires water in the state to be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. Since the proposed discharge is less than one million gallons per day (MGD) and the Applicant is not conducting manufacturing, commercial, mining, or silvicultural activities, the ED does not anticipate the discharge of toxic effluent from the proposed facility.

The XS Ranch Wastewater Treatment Facility's DO modeling analysis was performed using the proposed flow of 990,000 gpd, and the proposed effluent limits of 10 mg/L CBOD₅, 15 mg/L TSS, 2 mg/L NH₃-N, and 5.0 mg/L DO to ensure that the dissolved oxygen levels will be maintained above their assigned criteria established by the TCEQ Standards Implementations Team for the Colorado River Above La Grange.

As previously stated, after conducting the antidegradation review, the ED has preliminarily determined that existing water quality uses will not be impaired by the proposed discharge and that no significant degradation of the water quality is expected in Colorado River Above La Grange, which has been identified as having exceptional aquatic life uses. Existing uses will be maintained and protected, and the proposed discharge is not likely to adversely impact aquatic life habitat. This preliminary determination can be reexamined and may be modified if new information is received.

The Commission does not have specific water-quality based effluent limitations for livestock. However, the TCEQ Water Quality Assessment Section has determined that the proposed draft permit for the facility meets the requirements of the TSWQS, which are established to protect human health and terrestrial and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. In accordance with 30 TAC § 307.5 and the IPs, an antidegradation review of the receiving waters was performed. This review has preliminarily determined that no significant degradation of high quality waters is expected and that existing uses will be maintained and protected.

Per 30 TAC § 307.7(b)(1), recreational use consists of two categories--contact recreation waters and noncontact recreation waters. Classified segments are designated for contact recreation unless elevated concentrations of indicator bacteria frequently occur due to sources of pollution which cannot be reasonably controlled by existing regulations or contact recreation is considered unsafe for other reasons such as ship or barge traffic. In a classified segment where contact recreation is considered unsafe for reasons unrelated to water quality, a designated use of noncontact recreation may be assigned criteria normally associated with contact recreation. A designation of contact

recreation is not a guarantee that the water so designated is completely free of disease-causing organisms. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm blooded animals. The criteria for contact recreation are based on these indicator bacteria, rather than direct measurements of pathogens. Criteria are expressed as the number of "colony forming units" of bacteria per 100 milliliters (ml) of water. Even where the concentration of indicator bacteria is less than the criteria for contact recreation, there is still some risk of contracting waterborne diseases.

Segment 1434 is not currently impaired for bacteria and does not have an approved Total Maximum Daily Load for bacteria. Since the permitted flow will be less than 5 MGD, it is not necessary to require monitoring for bacteria in the draft permit at this time. However, Other Requirement No. 9 in the draft permit placed the Applicant on "notice that the Executive Director of the TCEQ will be initiating rulemaking and/or changes to procedural documents that may result in bacteria effluent limits and monitoring requirements for this facility."

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ. Also, please note that Operational Requirement 8 of the proposed draft permit states that when the flow reaches 75 percent of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. Finally, the Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

Acceptance of the permit by the applicant to whom it is issued constitutes acknowledgement and agreement that the applicant will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission including the buffer zone and easement requirements identified by the commenter. In accordance with 30 TAC § 305.125(9), any noncompliance that may endanger human health or safety, or the environment must be reported by the permittee to the TCEQ. This information must be reported orally or by facsimile transmission to the appropriate Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information must also be provided by the permittee to the appropriate Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance.

The TCEQ conducts periodic inspections of wastewater treatment facilities and also conducts investigations based on complaints received from the public. If a permit is issued and the facility is constructed, to report complaints about the facility please contact the TCEQ at 1-888-777-3186 to reach the appropriate TCEQ Regional Office or by e-mail at complaint@TCEQ.state.tx.us. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints>. Noncompliance with TCEQ rules or the permit may result in an enforcement action.

COMMENT 3:

The commenters state that the proposed wastewater discharge site does not provide sufficient buffer zone separation from their property and that the application and proposed design provide inadequate odor control. The commenters also state that due to the downstream, downwind, and lower elevation location of their property from the proposed wastewater treatment facility, odors emitted from the facility and discharge therefrom will inevitably reduce commenters current and future use and enjoyment of their property and undermine its development potential.

RESPONSE 3:

The TSWQS at 30 TAC § 307.4(b)(1) state that “[c]oncentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors rising from the waters, or otherwise interfere with the reasonable use of the water in the state.”

Buffer zone requirements were implemented as a means of minimizing the impact of nuisance odor on surrounding property. In addition, the draft permit requires the treated effluent to be disinfected by chlorination in accordance with the TCEQ rules. The major benefit of chlorine in wastewater treatment is disinfecting the wastewater, but it is also helpful in controlling odor. Nuisance odors may be associated with organic matter and the biochemical oxygen demand exerted on the receiving stream. This permit requires advanced secondary treatment, which removes the vast majority of the oxygen demanding constituents and decreases the likelihood of nuisance odor.

This Applicant proposes to meet the buffer zone requirements by ownership, which requires that all treatment units including the lift station must be located no closer than 150 feet to the nearest property line. *See* 30 TAC § 309.13(e)(1).

Minimizing the generation of nuisance odors from a treatment plant also depends on the design of the plant and the operation and maintenance of the plant. Maintaining an adequate dissolved oxygen concentration in the early stages of treatment helps to minimize nuisance odor generation. This proposed wastewater treatment plant will be an aerobic biological process. Aerobic biological processes use oxygen to reduce the organic content of the wastewater through biological action. Oxygen turns sulfide compounds (the most common odor-causing compounds) into odorless sulfates.

Wastewater without dissolved oxygen can also produce offensive odors. The draft permit requires that the effluent contain a minimum of 5.0 mg/l of dissolved oxygen. In addition, the draft permit contains operational requirements to ensure the facility is properly operated and maintained.

In addition, the draft permit requires the treated effluent to be disinfected by chlorination in accordance with the TCEQ rules. The major benefit of chlorine in wastewater treatment is disinfecting the wastewater, but it is also helpful in controlling odor. Nuisance odors may be associated with organic matter and the biochemical oxygen demand exerted on the receiving stream. This permit requires advanced secondary treatment, which removes the vast majority of the oxygen demanding constituents and decreases the likelihood of nuisance odor.

Finally, TWC § 26.027 authorizes discharges into waters of the state, provided the discharger obtains a permit from the Commission. TCEQ does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. TCEQ evaluates applications for wastewater treatment plants, based on the information provided in the application. Further, a proposed project's potential impact on surrounding property values or development is outside the scope of the normal evaluations of a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and costal waters, including aquatic organisms and their habitats. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider effects on property values when determining whether to approve or deny a permit application. However, the issuance of this permit would not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property.

COMMENT 4:

The commenters state that the application and proposed design do not provide for adequate sludge handling, storage, and disposal.

RESPONSE 4:

Sludge generated from the XS Ranch Wastewater Treatment Facility would be hauled by a registered transporter to the City of Austin's Walnut Creek Wastewater Treatment Facility, Permit No. WQ0010543011, to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant that accepts the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

COMMENT 5:

The commenters are concerned that the Applicant's application to authorize the discharge of treated domestic wastewater at a daily average flow of 990,000 gallons per day is substantially greater than the volume of discharge needed during the term of the proposed permit.

RESPONSE 5:

Should the proposed permit application be authorized, the permitted volume of 990,000 gpd will be implemented in three phases. The interim I phase would be permitted to discharge treated domestic wastewater at a daily average flow not to exceed 100,000 gpd. The interim II phase would be permitted to discharge treated domestic wastewater at a daily average flow not to exceed 500,000 gpd. The final phase would be permitted to discharge treated domestic wastewater at a daily average flow not to exceed 990,000 gpd. The incremental increase in discharge would occur over a long period of time, and be based on projected population estimates within the service area.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

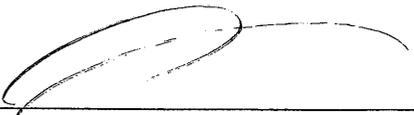
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
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