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July 19, 2010

Via Hand Delivery

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor
Austin, TX 78759

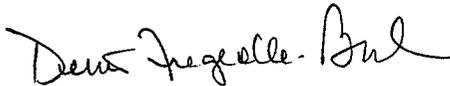
Re: TCEQ Docket No. 2010-0895-MWD; *Application by City of Rockport for Permit No WQ0010054001*

Dear Ms. Castañuela:

Enclosed for filing in connection with the above-referenced matter is an original and eight copies of the City of Rockport's (Applicant) Response to Hearing Requests. Please file-stamp the extra copy and return to me via our runner. A copy is being served on each party of record.

Should you have questions, please do not hesitate to contact me at (512) 472-8021.

Sincerely,



Denise Fregeolle-Burk
Assistant to Emily W. Rogers

/dfb
Enclosures

cc: Mailing List

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JUL 19 PM 4:33
CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2010-0895-MWD

2010 JUL 19 PM 4:34

APPLICATION BY §
CITY OF ROCKPORT §
FOR PERMIT NO. WQ0010054001 §

BEFORE THE
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

The City of Rockport ("Applicant"), pursuant to 30 Texas Administrative Code ("TAC") § 55.209(d), files this Response to Hearing Requests made to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for a contested case hearing on the above-referenced renewal permit application, and would respectfully show the Commissioners the following:

I.
Introduction

On July 13, 2009, Applicant applied to the TCEQ for a renewal of its existing Texas Pollutant Discharge Elimination System permit application, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The wastewater treatment plant, which serves customers in the City of Rockport, the Town of Fulton, and many areas of unincorporated Aransas County, is located on the west side of Farm-to-Market Road 2165, approximately 1,200 feet south of the intersection of Farm-to-Market Road 2165 and Enterprise Boulevard in the City of Rockport, Aransas County, Texas. The treated effluent is discharged to Tule Ditch; then to an unnamed ditch (non-tidal); then to an unnamed ditch (tidal); then to Little Bay; then to Aransas Bay in Segment No. 2471 of the Bays

and Estuaries. The treated effluent from the wastewater treatment facility travels 2.1 miles along freshwater drainages before reaching Little Bay. The facility has been in operation since 1994; however, a wastewater treatment plant has been at the current facility's present location for over fifty (50) years. The renewal application requests *no changes* to the existing permit that would increase the quantity of the discharge, reduce the quality of the discharge, or alter the point of the discharge.

Of primary concern to the hearing requestors and the interested persons is the water quality of Little Bay and the decline in the seagrass in the bay. Recognizing the importance of Little Bay to the Applicant and to its citizens, Applicant, along with Aransas County, the Aransas County Navigation District, and the Town of Fulton, commissioned, in 2007, a \$31,000 study¹ to assess Little Bay's water and sediment quality in relation to seagrass. The study, conducted by Dr. Kenneth Dunton and Christopher Wilson with the University of Texas Marine Science Institute's Mission Aransas National Estuarine Research Reserve, was completed and an executive summary of the study's findings was presented to the participating governmental entities on July 6, 2010. A copy of the executive summary of the study and the presentation presented to the Applicant and the other governmental entities is attached at Exhibit 1.

According to the study, there is "a lack of a clear wastewater signal in Tule Creek water" and the scientific evidence "failed to reflect a significant source of wastewater nitrogen." In short, the Applicant's wastewater treatment plant does not appear to be the cause of the decline in seagrass in Little Bay. The study also found that the likely sources of nitrogen are non-point sources and, while there are no obvious biological or chemical mechanisms solely responsible

¹ It is the Applicant's understanding that the Coastal Bend Bays and Estuaries Foundation contributed an additional \$45,000 to the UT Marine Science Center for the purchase of scientific instruments needed for the study.

for the decline in seagrass in Little Bay, other factors, such as low salinity caused by flooding and little water circulation, may be contributing causes.

While the Applicant does not believe its wastewater treatment plant is the cause of or a contributing factor to the decline of seagrass in Little Bay, the Applicant is sensitive to the citizens' concerns. The wastewater treatment plant collects and treats the waste from the homes and businesses of many of the hearing requestors and is committed to providing that service at an economical and environmentally protective manner. Because of the concerns raised by the Applicant's customers and its citizens, the Rockport City Council has authorized the design of facilities to add a de-nitrification step in the wastewater treatment process to reduce the total nitrogen levels discharged from the wastewater treatment plant to at or below 12 mg/L.

Nevertheless, this case is not one for which any hearing requests should be granted. The Applicant is merely seeking a renewal of its permit, without change to the proposed quantity or quality of the discharge, or the location of the discharge. Under TCEQ rules, there is no right to a contested case hearing for this type of permit application. Moreover, none of the hearing requestors have demonstrated that they have a justiciable interest that will be adversely affected by the application.

II.

There is No Right to a Contested Case Hearing on this Renewal Permit Application

The TCEQ rules state that there is no right to a contested case hearing on applications filed under Chapter 26 of the Texas Water Code to renew a permit if:

- (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or requesting to materially change the pattern or place of discharge;
- (2) the activity will maintain or improve quality of waste authorized to be discharged;
- (3) any required opportunity for public meeting has been given;

- (4) the Executive Director has responded to all timely received and significant public comments; and
- (5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TAC § 55.201(i).

The Applicant's application meets all five of these requirements. The Applicant has not requested any change in the quantity of waste to be disposed or its disposal location. The Applicant is not requesting and *no changes* have been made to the discharge limits and, thus, the quality of the discharge will be maintained. TCEQ provided an opportunity for and held a public meeting on February 25, 2010. The TCEQ's Executive Director prepared, filed, and mailed his response to comments on April 26, 2010. Finally, the Applicant's compliance history for the past five years raises no issues regarding the Applicant's ability to comply with the permit. For these reasons, there is no right to a contested case hearing on this Application and the Protestants' requests should be denied.

III.

The Commission Should Deny All Hearing Requests

A. Legal Authority

To be granted a contested case hearing, a person or entity must be an "affected person," meaning it has "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application" that is not "common to members of the general public."² The person must describe, briefly but specifically, how and why he or she will be affected by the change proposed in the application.³ An interest common to members of the

² 30 TAC § 55.203(a).

³ *Id.*

general public does not qualify as a personal justiciable interest.⁴ The Commission is instructed to consider a list of non-exclusive factors in determining whether a person is an affected person, including:

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

When a hearing request is made by a group or association, the group or association must show the following:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁶

Whether the hearing request is asserted by an individual or a group or association, a requestor must show a concrete and particularized, legally protected interest that is actual or

⁴ 30 TAC § 55.203(a).

⁵ *Id.* § 55.203(c).

⁶ *Id.* § 55.205(a); *see also Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 878 (Tex. App.- Austin, 2010 pet. filed) (citing *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993)).

imminent rather than conjectural or hypothetical, or an “injury in fact.”⁷ Only legally protected interests that are sufficiently particularized and that will be actually or imminently affected by the application are sufficient to confer standing.⁸ A general concern or allegation about the negative effects on a requestor’s environmental, scientific, or recreational interests alone is not sufficient to confer standing in the absence of allegations that the individual or group has an interest in property affected by the application.⁹

B. Evaluation of Protestants’ Hearing Requests

1. Aransas County Navigation District (Ronald B. Outen & Tommy Moore)

The Aransas County Navigation District’s (“District”) request fails to satisfy 30 TAC § 55.201(d) because it has not identified a justiciable interest affected by the application. The District alleges that it owns submerged lands and shoreline properties in Aransas County, the submerged lands in Little Bay, the submerged lands in Aransas Bay that are contiguous with the two channels by which the waters of Little Bay connect with the waters of Aransas Bay, and land bordering Little Bay that is devoted to use as a public park. The District’s properties (submerged lands in Little Bay and a public park along Little Bay) are over two miles downstream from the facility’s discharge point.

In determining whether a requestor is an affected entity, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the entity and on the use of the entity’s property, and the likely impact of the activity on the use of the impacted natural resources.¹⁰ The District alleges a decline in Little Bay’s water quality and the quality of fish and wildlife resources. The District contends Aransas County’s economy depends on

⁷ *Save Our Springs*, 304 S.W.3d at 878 (citing *Lujan v. Defenders of Wildlife*, U.S. 555, 560-61 (1992)).

⁸ *Id.* at 882.

⁹ *See Save Our Springs*, 304 S.W.3d at 882.

¹⁰ 30 TAC § 55.203(c).

tourism and Little Bay is a prime tourist destination. According to the District, a decline in recreational activities leads to a decline in property values in Aransas County and a reduction in the tax base. These general economic, environmental, and recreational concerns are interests that are common to the general public and are insufficient to confer standing.¹¹ Additionally, the District's use of its property will not be affected by the activity because the property is too distant from the point of discharge and the nature of the alleged injury is too removed and too speculative (i.e. this discharge allegedly may cause a decline in the water quality, which then may allegedly cause a decline in tourism, which in turn may allegedly cause a decline in property values) to constitute a justiciable interest. For a requestor to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.¹² The District has not demonstrated how it, or any legal right it may have, will be affected by the application.¹³

2. Elayne Arne

Elayne Arne's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Arne's request lists a post office box as her address with no other description of her location or distance relative to the

¹¹ See *Save Our Springs*, 304 S.W.3d at 882.

¹² See *Save Our Springs*, 304 S.W.3d at 882.

¹³ 30 TAC § 55.203(c).

facility or activity. Ms. Arne does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.¹⁴ Ms. Arne alleges that the Applicant's wastewater treatment plant's release of nitrogen harms Little Bay. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.¹⁵ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.¹⁶ Ms. Arne has not demonstrated how she, or any legal right she may have, will be affected by the application.¹⁷

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Arne's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Arne's request should be denied.

3. Charles Belaire

Charles Belaire's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her

¹⁴ 30 TAC § 55.203(c).

¹⁵ See *Save Our Springs*, 304 S.W.3d at 882.

¹⁶ See *Save Our Springs*, 304 S.W.3d at 882.

¹⁷ 30 TAC § 55.203(c).

personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Belaire's request lists the address of his environmental consulting firm in Rockport but does not identify the location or distance relative to the facility or activity. Furthermore, Mr. Belaire does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.¹⁸ Mr. Belaire alleges that the Applicant's wastewater treatment plant's discharge of treated municipal waste into Little Bay has "likely" led to the deterioration of the seagrass ecosystem in Little Bay. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.¹⁹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.²⁰ Mr. Bellaire has not demonstrated how he, or any legal right he may have, will be affected by the application.²¹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Belaire's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Belaire's request should be denied.

¹⁸ 30 TAC § 55.203(c).

¹⁹ *See Save Our Springs*, 304 S.W.3d at 882.

²⁰ *See Save Our Springs*, 304 S.W.3d at 882.

²¹ 30 TAC § 55.203(c).

4. Coastal Conservation Association (Robin A. Melvin, Ed Rainwater)

The Coast Conservation Association's ("CCA") request for a contested case hearing fails to satisfy 30 TAC § 55.205 and should be denied. Only four of the members of CCA are listed in the request, and none of them have standing to request a hearing in their own right.

In determining whether a person is an affected person, the TCEQ evaluates whether a requestor is a person with a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. In making that evaluation, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.²² The CCA has not provided any information that demonstrates that the members identified are affected persons under this criteria.

CCA describes member Ed Rainwater as a property owner who lives in the Key Allegro Subdivision, on the Key Allegro Island, allegedly within approximately 1.5 miles from the Applicant's wastewater treatment plant.²³ Mr. Rainwater uses his property for recreational activities including fishing in Little Bay and Aransas Bay. Members Garry and Karen Godwin Wiatrek live approximately 2.5 miles from the Applicant's wastewater treatment plant. The Wiatreks have fished in Aransas Bay for years. Member Robby Byers owns a house less than two miles from the Applicant's wastewater treatment plant, three blocks from Aransas Bay, and approximately 1.5 miles south of Little Bay. Mr. Byers says he has fished in Aransas Bay and Little Bay for years. It is unclear where the Wiatreks and Mr. Byers are in relationship to the point of the discharge.

²² 30 TAC § 55.203(c).

²³ A review of the discharge route shows that Mr. Rainwater's property on Key Allegro is more than two stream miles from the discharge point.

CCA alleges that the Applicant's permitted discharges "may" contribute to the degradation of Little Bay, the decline of seagrass beds, and the increase in algae. In *Save Our Springs Alliance v. City of Dripping Springs*, the Austin Court of Appeals analyzed whether environmental plaintiffs adequately allege a particularized injury in fact when they assert that they use the affected area and they are the persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.²⁴ The court held that an alleged injury to environmental, scientific, and recreational interests generally, and without any interest in or connection to the real property involved, does not allege a legally protected interest or injury that confers standing as a matter of law.²⁵ A requestor must show a particularized, legally protected interest that is actually or imminently affected by the alleged harm.²⁶ Absent such an interest, there is nothing to distinguish the environmental, scientific, or recreational concerns of the requestor from the same concerns experienced by the public in general.²⁷

CCA merely states that the permit "may" negatively affect these bays, which in turn "may" affect Mr. Rainwater's, the Wiatreks', and Mr. Byers' economic, recreational, and aesthetic interests in Little Bay and Aransas Bay. The injuries alleged are not immediate or direct. Moreover, Mr. Rainwater's property is located more than two miles from the discharge point and across Little Bay from the confluence of Tule Creek and Little Bay. The properties of the Wiatreks and Mr. Byers does not appear to be adjacent to the discharge route or even Little Bay. With no property adjacent to the discharge point and over two miles away from the point of discharge, there will be no impact to their properties by the discharge. CCA has failed to show that these members are affected persons and, thus, CCA has failed to identify members that

²⁴ *Save Our Springs*, 304 S.W.3d at 880.

²⁵ *See Save Our Springs*, 304 S.W.3d at 882.

²⁶ *Id.*

²⁷ *Id.*

can show a particular, legally protected interest that is actually or imminently affected by the permit renewal application. The CCA's request should be denied.

5. Monica Hudgins

Monica Hudgins's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Hudgin's request lists an address with no other description of her location or distance relative to the facility or activity. Furthermore, Ms. Hudgins does not claim to own any property, or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.²⁸ Her request merely states that she is concerned about the renewal of the permit. This general concern is an interest that is common to the general public and is insufficient to confer standing.²⁹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the

²⁸ 30 TAC § 55.203(c).

²⁹ See *Save Our Springs*, 304 S.W.3d at 882.

application.³⁰ Ms. Hudgins has not demonstrated how she, or any legal right she may have, will be affected by the application.³¹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Hudgins's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Hudgins's request should be denied.

6. Don Jackson

Don Jackson's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Jackson's request lists an address with no other description of his location or distance relative to the facility or activity. Furthermore, Mr. Jackson does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.³² Mr. Jackson states his belief that the changes in Little Bay are

³⁰ See *Save Our Springs*, 304 S.W.3d at 882.

³¹ 30 TAC § 55.203(c).

³² 30 TAC § 55.203(c).

due to the discharge levels by the Applicant and that further studies need to be conducted. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.³³ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.³⁴ Mr. Jackson has not demonstrated how he, or any legal right he may have, will be affected by the application.³⁵

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Jackson's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Jackson's request should be denied.

7. Raymond Kirkwood

Raymond Kirkwood's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Kirkwood's request lists an address with no other description of his location or distance relative to the facility or activity. Furthermore, Mr. Kirkwood does not claim to own any property or have other legal interests that will be impacted by the application.

³³ See *Save Our Springs*, 304 S.W.3d at 882.

³⁴ See *Save Our Springs*, 304 S.W.3d at 882.

³⁵ 30 TAC § 55.203(c).

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.³⁶ Mr. Kirkwood is concerned about the nitrogen being released into Little Bay, the decline of the scenic visibility of Little Bay, the increase in algae, and the reduced fishing. Mr. Kirkwood states his belief that the decline in water quality in Little Bay is due to the pollution caused by the wastewater treatment plant. These general environmental and recreational concerns are interests that are common to the general public and are insufficient to confer standing.³⁷ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.³⁸ Mr. Kirkwood has not demonstrated how he, or any legal right he may have, will be affected by the application.³⁹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Kirkwood's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Kirkwood's request should be denied.

8. Fred Lanoue

Fred Lanoue's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the

³⁶ 30 TAC § 55.203(c).

³⁷ See *Save Our Springs*, 304 S.W.3d at 882.

³⁸ See *Save Our Springs*, 304 S.W.3d at 882.

³⁹ 30 TAC § 55.203(c).

requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Lanoue's request lists an address with no other description of his location or distance relative to the facility or activity. Furthermore, Mr. Lanoue does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁴⁰ Mr. Lanoue is concerned about the nitrogen being released into Little Bay. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁴¹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁴² Mr. Lanoue has not demonstrated how he, or any legal right he may have, will be affected by the application.⁴³

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Lanoue's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Lanoue's request should be denied.

⁴⁰ 30 TAC § 55.203(c).

⁴¹ *See Save Our Springs*, 304 S.W.3d at 882.

⁴² *See Save Our Springs*, 304 S.W.3d at 882.

⁴³ 30 TAC § 55.203(c).

9. Linda Lanoue

Linda Lanoue's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Lanoue's request lists an address with no other description of her location or distance relative to the facility or activity. Furthermore, Ms. Lanoue does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁴⁴ Ms. Lanoue is concerned about Little Bay and what is being discharged into it. She believes Little Bay is a valuable asset that should not be allowed to continue to deteriorate. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁴⁵ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁴⁶ Ms. Lanoue has not demonstrated how she, or any legal right she may have, will be affected by the application.⁴⁷

⁴⁴ 30 TAC § 55.203(c).

⁴⁵ *See Save Our Springs*, 304 S.W.3d at 882.

⁴⁶ *See Save Our Springs*, 304 S.W.3d at 882.

⁴⁷ 30 TAC § 55.203(c).

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Lanoue's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Lanoue's request should be denied.

10. Lynn Lee

Lynn Lee's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Lee's request lists an address with no other description of her location or distance relative to the facility or activity. Furthermore, Mr. Lee does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁴⁸ Mr. Lee is concerned that Little Bay will be damaged by the discharge of treated wastewater. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁴⁹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is

⁴⁸ 30 TAC § 55.203(c).

⁴⁹ *See Save Our Springs*, 304 S.W.3d at 882.

actually or imminently affected by the application.⁵⁰ Mr. Lee has not demonstrated how she, or any legal right she may have, will be affected by the application.⁵¹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Lee's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Lee's request should be denied.

11. Little Bay Foundation (James B. Blackburn, Jr.)

The Little Bay Foundation's ("LBF") request for a contested case hearing fails to satisfy 30 TAC § 55.205 and should be denied. Only two of the members of LBF are listed in the request, and neither of them has standing to request a hearing in their own right.

LBF describes member Ed Rainwater as a property owner who lives on Little Bay, which is approximately 200 yards from the point where the effluent from the Applicant's Wastewater Treatment Plant enters Little Bay. However, as noted in the Applicant's response to the CCA request for hearing, Mr. Rainwater's property is located on Key Allegro Island, which is over two miles from the discharge point and across Little Bay from the confluence of Little Bay and Tule Creek. LBF also alleges that member Thomas Pazera owns property that backs up to and has frontage on Tule Ditch within one mile of the Applicant's wastewater treatment plant. However, Mr. Pazera makes no claims as to how his property will be adversely affected by the discharge.

LBF alleges that the impact of wastewater discharge has cut back on Mr. Rainwater's enjoyment of recreational use activities. LBF did not describe the impact alleged. According to

⁵⁰ See *Save Our Springs*, 304 S.W.3d at 882.

⁵¹ 30 TAC § 55.203(c).

LBF, Mr. Pazera's enjoyment of the natural beauty of Little Bay has been harmed by the decline in the bay. There are no allegations about how Mr. Pazera's property will be adversely affected. LBF's concerns are about the current state of Little Bay and LBF alleges that the granting of the application will diminish recreational opportunities, or otherwise adversely affect Little Bay's ecosystem. In *Save Our Springs Alliance v. City of Dripping Springs*, the Austin Court of Appeals analyzed whether environmental plaintiffs adequately allege a particularized injury in fact when they assert that they use the affected area and they are the persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.⁵² The court held that an alleged injury to environmental, scientific, and recreational interests generally, and without any interest in or connection to the real property involved, does not allege a legally protected interest or injury that confers standing as a matter of law.⁵³ A requestor must show a particularized, legally protected interest that is actually or imminently affected by the alleged harm.⁵⁴ Absent such an interest, there is nothing to distinguish the environmental, scientific, or recreational concerns of the requestor from the same concerns experienced by the public in general.⁵⁵ General concerns about the negative effects on a requestor's environmental, scientific, or recreational interests are not sufficient to confer standing in the absence of allegations of interests in property that will actually be impacted by the application. The injuries alleged are not immediate or direct. LBF has failed to identify members that can show a particular, legally protected interest that is actually or imminently affected by the permit renewal application. The LBF's request should be denied.

⁵² *Save Our Springs*, 304 S.W.3d at 880.

⁵³ *See Save Our Springs*, 304 S.W.3d at 882.

⁵⁴ *Id.*

⁵⁵ *Id.*

12. Leslie Moor, Jr.

Leslie Moor, Jr.'s request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Moor's request lists his address and he claims that he lives immediately adjacent to the bay. However, he does not provide a description of his location or distance relative to the facility or activity. Nevertheless, any point along Little Bay is more than two miles from the discharge point.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁵⁶ Mr. Moor states that he personally uses the bay for boating, fishing, and for the enjoyment of the wildlife. He would like TCEQ to explore options for restoring the health of the bay. These general environmental and recreational concerns are interests that are common to the general public and are insufficient to confer standing.⁵⁷ Moreover, Mr. Moor's use of his property will not be affected by the activity because of the distance Mr. Moor's property is from the discharge point. For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or

⁵⁶ 30 TAC § 55.203(c).

⁵⁷ *See Save Our Springs*, 304 S.W.3d at 882.

imminently affected by the application.⁵⁸ Mr. Moor has not demonstrated how he, or any legal right he may have, will be affected by the application.⁵⁹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Moor's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Moor's request should be denied.

13. Diane Moore

Diane Moore's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Moore's request lists Peculiar, Missouri as her address. Ms. Moore does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁶⁰ Ms. Moore kayaks on Little Bay and is concerned about Little Bay. These general environmental and recreational concerns are interests that are common to the

⁵⁸ See *Save Our Springs*, 304 S.W.3d at 882.

⁵⁹ 30 TAC § 55.203(c).

⁶⁰ 30 TAC § 55.203(c).

general public and are insufficient to confer standing.⁶¹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁶² Ms. Moore has not demonstrated how she, or any legal right she may have, will be affected by the application.⁶³

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Moore's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Moore's request should be denied.

14. Ronald Moore

Ronald Moore's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Moore's request lists his address with no other description of his location or distance relative to the facility or activity. Furthermore, Mr. Moore does not claim to own any property or have other legal interests that will be impacted by the application

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the

⁶¹ See *Save Our Springs*, 304 S.W.3d at 882.

⁶² See *Save Our Springs*, 304 S.W.3d at 882.

⁶³ 30 TAC § 55.203(c).

person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁶⁴ Mr. Moore merely states that TCEQ should accept his email as his comment and request for public hearing. This general statement is insufficient to confer standing.⁶⁵ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁶⁶ Mr. Moore has not demonstrated how he, or any legal right he may have, will be affected by the application.⁶⁷

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Moore's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Moore's request should be denied.

15. Tommy Moore

Tommy Moore's request fails to satisfy 30 TAC § 55.201(d) because he has not identified a justiciable interest affected by the application. Mr. Moore alleges that he owns Rockport Birding and Kayak Adventures and conducts sight-seeing tours. He alleges that his business has been impacted by the degradation of Little Bay and will continue to be impacted by the proposed renewal. In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the

⁶⁴ 30 TAC § 55.203(c).

⁶⁵ See *Save Our Springs*, 304 S.W.3d at 882.

⁶⁶ See *Save Our Springs*, 304 S.W.3d at 882.

⁶⁷ 30 TAC § 55.203(c).

use of the impacted natural resources.⁶⁸ These general environmental and recreational concerns are interests that are common to the general public and are insufficient to confer standing.⁶⁹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁷⁰

Mr. Moore's alleged injury to his interest is too remote, speculative, and tenuous. Mr. Moore conducts his business in Little Bay, which is more than two miles from the discharge point. Mr. Moore's alleged injury (decline in the birding and kayaking business) and the alleged cause (the Applicant's wastewater discharge) is too remote and too tenuous. Mr. Moore has not demonstrated how he, or any legal right he may have, will be affected by the application.⁷¹ The injuries alleged are not immediate or direct. There are no allegations of personal justiciable interests that will be affected by the application. For these reasons, Mr. Moore's request should be denied.

16. John M. Nelson

John M. Nelson's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Mr. Nelson's request lists his address with no other description of his location or distance relative to the facility or activity.

⁶⁸ 30 TAC § 55.203(c).

⁶⁹ See *Save Our Springs*, 304 S.W.3d at 882.

⁷⁰ See *Save Our Springs*, 304 S.W.3d at 882.

⁷¹ 30 TAC § 55.203(c).

Mr. Nelson does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁷² Mr. Nelson states that the water quality in Little Bay has declined as evidenced by the increase in algae, reduction in seagrass, increased water turbidity and reduction in wildlife activity. He states that it is well known that effluents that contain nitrogen are the cause of these conditions. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁷³ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁷⁴ Mr. Nelson has not demonstrated how he, or any legal right he may have, will be affected by the application.⁷⁵

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Mr. Nelson's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Mr. Nelson's request should be denied.

17. Ronald B. Outen

Ronald B. Outen's request fails to satisfy 30 TAC § 55.201(d) because he has not identified a justiciable interest affected by the application. Mr. Outen owns property in the Key

⁷² 30 TAC § 55.203(c).

⁷³ See *Save Our Springs*, 304 S.W.3d at 882.

⁷⁴ See *Save Our Springs*, 304 S.W.3d at 882.

⁷⁵ 30 TAC § 55.203(c).

Allegro Subdivision, on the Key Allegro Island within approximately 1.6 miles of the existing facility. He claims his property is within one mile of the discharge point where the effluent flowing down Tule Creek encounters and mixes with the tidal waters of Little Bay. In reality, his property is more than two miles from this discharge point and is located across Little Bay from the confluence of Tule Creek and Little Bay.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁷⁶ General environmental and recreational concerns are interests that are common to the general public and are insufficient to confer standing.⁷⁷ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁷⁸ Mr. Outen claims that he uses his property for recreational activities and claims that these activities have been impacted by the degradation of Little Bay and will continue to be impacted by the proposed renewal. However, Little Bay and Mr. Outen's property will not be affected by the Applicant's discharge because of the distance Little Bay and Mr. Outen's property is from the discharge point. Mr. Outen has not demonstrated how he, or any legal right he may have, will be affected by the application.⁷⁹ For these reasons, Mr. Outen's request should be denied.

18. Donna Pazera

Donna Pazera's request fails to satisfy 30 TAC § 55.201(d) and should be denied.

Section 55.201(d) requires hearing requests to contain a minimum amount of information so that

⁷⁶ 30 TAC § 55.203(c).

⁷⁷ See *Save Our Springs*, 304 S.W.3d at 882.

⁷⁸ See *Save Our Springs*, 304 S.W.3d at 882.

⁷⁹ 30 TAC § 55.203(c).

the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Pazera's request lists her address with no other description of her location or distance relative to the facility or activity. Ms. Pazera does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁸⁰ Ms. Pazera believes the amount of nitrogen released into Aransas Bay if the permit is issued is unacceptable for the future of the bay. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁸¹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁸² Ms. Pazera has not demonstrated how she, or any legal right she may have, will be affected by the application.⁸³

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Pazera's request does not specifically identify relevant and material disputed

⁸⁰ 30 TAC § 55.203(c).

⁸¹ *See Save Our Springs*, 304 S.W.3d at 882.

⁸² *See Save Our Springs*, 304 S.W.3d at 882.

⁸³ 30 TAC § 55.203(c).

issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Pazera's request should be denied.

19. Diana Rushing

Diana Rushing's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Rushing's request lists a post office box as her address with no other description of her location or distance relative to the facility or activity. Ms. Rushing does not claim to own any property or have other legal interests that will be impacted by the application, but only claims to be a taxpayer and resident of Aransas County.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁸⁴ Ms. Rushing claims to have personally witnessed the decline of water quality of Little Bay and that such decline is due to the wastewater runoff from the Applicant. She also claims that there is a decline in seagrass and wildlife. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁸⁵ For a person to have standing in this case, the requestor must show a

⁸⁴ 30 TAC § 55.203(c).

⁸⁵ See *Save Our Springs*, 304 S.W.3d at 882.

particular, legally protected interest that is actually or imminently affected by the application.⁸⁶

Ms. Rushing has not demonstrated how she, or any legal right she may have, will be affected by the application.⁸⁷

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Rushing's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Rushing's request should be denied.

20. Sandy Swanson

Sandy Swanson's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Swanson's request lists her address with no other description of her location or distance relative to the facility or activity. Ms. Swanson does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of

⁸⁶ See *Save Our Springs*, 304 S.W.3d at 882.

⁸⁷ 30 TAC § 55.203(c).

the impacted natural resources.⁸⁸ Ms. Swanson is concerned about the water quality of Little Bay and thinks there should be limitations on nitrogen and phosphorus in wastewater effluent discharge. This general environmental concern is an interest that is common to the general public and is insufficient to confer standing.⁸⁹ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁹⁰ Ms. Swanson has not demonstrated how she, or any legal right she may have, will be affected by the application.⁹¹

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Swanson's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Swanson's request should be denied.

21. Frances Symank

Frances Symank's request fails to satisfy 30 TAC § 55.201(d) and should be denied. Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility or activity. Ms. Symank's request lists her address with no other description of her location or distance relative to the facility or

⁸⁸ 30 TAC § 55.203(c).

⁸⁹ *See Save Our Springs*, 304 S.W.3d at 882.

⁹⁰ *See Save Our Springs*, 304 S.W.3d at 882.

⁹¹ 30 TAC § 55.203(c).

activity. Ms. Symank does not claim to own any property or have other legal interests that will be impacted by the application.

In determining whether a requestor is an affected person, the TCEQ must consider, among other things, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources.⁹² Ms. Symank alleges that the Applicant has a history of taking shortcuts regarding drainage. This general concern is an interest that is common to the general public and is insufficient to confer standing.⁹³ For a person to have standing in this case, the requestor must show a particular, legally protected interest that is actually or imminently affected by the application.⁹⁴ Ms. Symank has not demonstrated how she, or any legal right she may have, will be affected by the application.⁹⁵

Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC § 201(d)(4). Ms. Symank's request does not specifically identify relevant and material disputed issues of fact raised during the comment period that should be addressed in a contested case hearing. For these reasons, Ms. Symank's request should be denied.

IV. **Relevant Issue of Fact and Law**

While the Applicant contends that (1) there is no opportunity for a contested case hearing on a renewal application, and (2) all of the hearing requests should be denied because none of the requestors have demonstrated that they are affected, if a hearing request is granted, the Applicant

⁹² 30 TAC § 55.203(c).

⁹³ *See Save Our Springs*, 304 S.W.3d at 882.

⁹⁴ *See Save Our Springs*, 304 S.W.3d at 882.

⁹⁵ 30 TAC § 55.203(c).

proposes the issues be limited to whether the nutrients from the Applicant's wastewater treatment plant will cause excessive growth of aquatic vegetation which impairs the aquatic life uses of Little Bay (30 TAC § 307.4(e)). This singular issue addresses most of the issues identified as disputed issues of fact and law. With respect to the claim that the TCEQ should require the Applicant to implement an alternative method of treatment, this issue is not one that can be addressed in this hearing and, thus, should not be referred as an issue of fact or law. With respect to the claim that the TCEQ should require the Applicant to meet the same discharge limits as two facilities in Aransas County, each discharge is considered based on the specific facts related to the facility. The discharge limits for the Applicant's facility should be and are based on the specific facts related to that facility. This issue should not be referred as an issue of fact or law.

V. Conclusion

The Applicant agrees with the hearing requestors that Little Bay is important to the Applicant and its citizens and understands the desire to find "*the cause*" for Little Bay's decline. However, the study performed by Dr. Kenneth Dunton and Christopher Wilson with University of Texas at Austin Marine Science Institute – Mission Aransas National Estuarine Research Reserve demonstrates that there are likely many factors contributing to decline in Little Bay, and the Applicant's wastewater treatment plant is unlikely to be one of them.

As previously noted, this case is not one for which any hearing request should be granted. The Applicant is merely seeking a renewal of its permit, without change to the proposed quantity or quality of the discharge, or the location of the discharge. Under TCEQ's rules, there is no right to a contested case hearing for this application. Moreover, none of the hearing requestors have demonstrated that they have a justiciable interest that will be adversely affected by the

application. For these reasons, the Applicant respectfully requests that the all of the hearing requests be denied and the Commission renew the Applicant's Permit No. WQ0010054-001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above and foregoing was forwarded via First Class Mail, hand delivery or facsimile on July 19, 2010 to the parties on the attached Mailing List.

Emily W. Rogers
EMILY W. ROGERS

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An Assessment of Little Bay Water and Sediment Quality in Relation to Indices of Seagrass Condition

6 July 2010

Kenneth Dunton and Christopher Wilson
Mission Aransas National Estuarine Research Reserve
University of Texas at Austin Marine Science Institute

Introduction

We measured a variety of water column and sediment parameters in Little Bay and its major tributary, Tule Creek, over the period from May 2008 to June 2010 in relation to seagrass (*Halodule wrightii*) condition indices. These measurements were collected in an attempt to better understand the Little Bay system and the factors that have contributed to the decline of seagrass distribution in the Bay. Although the contracted period of study was for one year (ending March 2010), we present data and additional analyses collected over a 2-year period at no additional cost to the sponsors. A final written report is scheduled for submission in mid-July 2010.

Total Nitrogen Loading

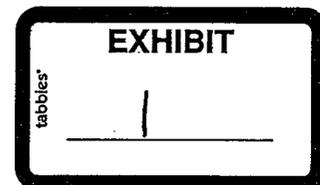
We placed special emphasis on the measurement of dissolved inorganic nitrogen (DIN) levels in Little Bay and Tule Creek. Although concentrations of DIN (both nitrate and ammonium) in Tule Creek were very high (50-400 mg L⁻¹), levels of DIN in Little Bay averaged two orders of magnitude lower (0.5 to 4 mg L⁻¹). The lower concentrations of DIN in Little Bay are similar to the reference site in Aransas Bay (and other sites in the Mission-Aransas Estuary) and likely reflect the low stream input from Tule Creek relative to the volume of the receiving waters of Little Bay. The dominance of nitrate inputs to Tule Creek is indicative of anthropogenic inputs associated with non-point sources. The levels of DIN increase dramatically in the vicinity of the Rockport Country Club golf course, perhaps from run-off or groundwater inputs. Stable nitrogen isotopic ratios ($\delta^{15}\text{N}$) are often used to identify wastewater sources of DIN. Although the $\delta^{15}\text{N}$ values of Tule Creek algae and sediments were high and suggest some level of enrichment from wastewater derived nitrogen, the lack of a clear wastewater signal in Tule Creek waters likely reflect an input of nitrogen from non-point sources. The $\delta^{15}\text{N}$ values of seagrass leaf tissues and algal epiphytes in Little Bay also fail to reflect a significant source of wastewater nitrogen.

Chlorophyll *a*, Algal Blooms and Sediment Porewater Ammonium

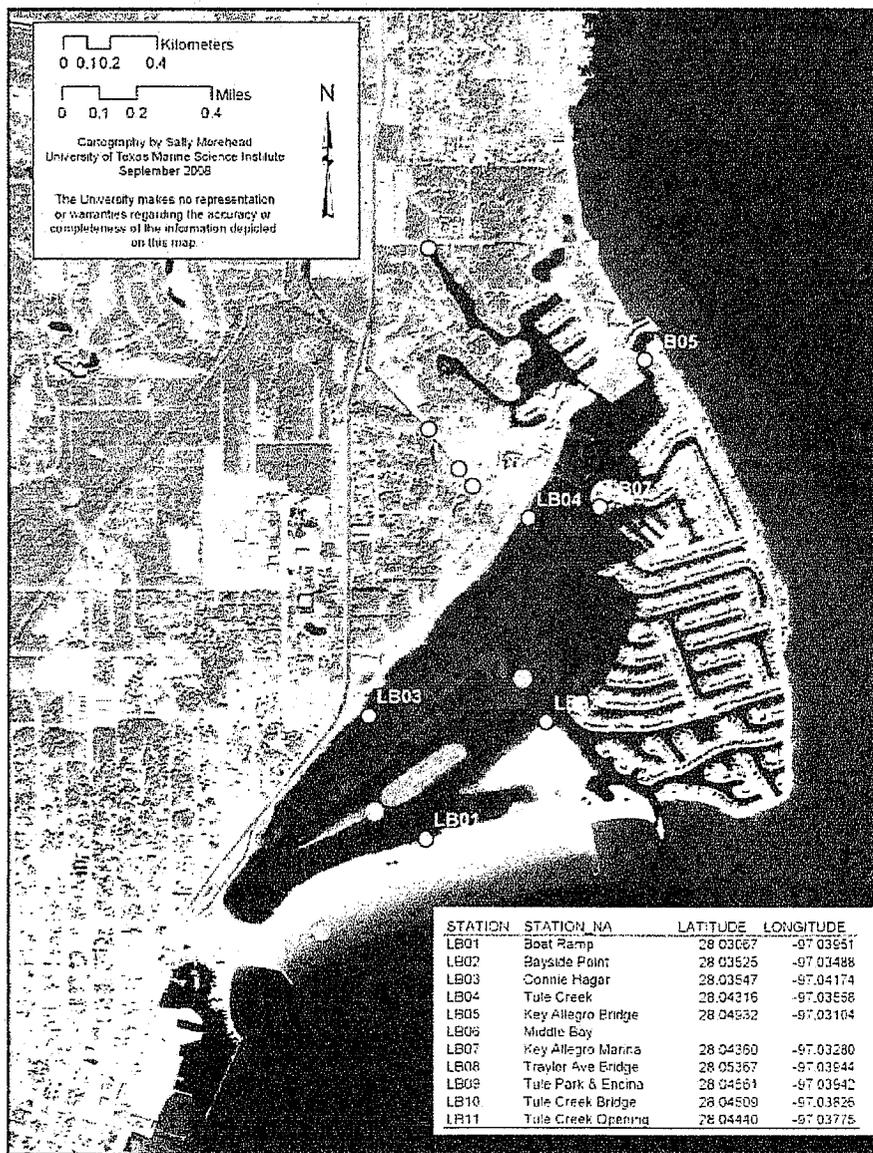
Chlorophyll *a* concentrations are used to quantify the amount of phytoplankton present in seawater. Sustained phytoplankton blooms can potentially block light from reaching the bottom of Little Bay. During the course of this study, chlorophyll *a* concentrations were measured every other week. Concentrations ranged from 1-40 μgL^{-1} , but generally fell between 5-20 μgL^{-1} , a reflection of low to moderate levels of phytoplankton abundance. These chlorophyll levels alone are not sufficiently high to block the light needed on the bottom for photosynthesis. Light values on the seabed at all sites always exceeded the minimum 18% surface irradiance required by *Halodule wrightii*. Although we observed blooms of macroalgae in Little Bay, these blooms were relatively short-lived during our period of study and did not appear to pose a significant threat to the existing seagrasses. However, it is likely that benthic macroalgal blooms are fueled by elevated concentrations of ammonium in sediment porewaters (average 250 μM) that are significantly higher than reported elsewhere in seagrass beds along the Texas coast.

Causes of Seagrass Decline in Little Bay

Data collected over the past two years indicate that there are no obvious biological or chemical mechanisms solely responsible for the decline of seagrasses in Little Bay. Despite inputs of



anthropogenic nitrogen to Little Bay, DIN values in the Bay are not high relative to adjacent systems, and other indices of water quality (chlorophyll, TSS, percent surface irradiance) are within the ranges seen elsewhere on the Texas coast. The biomass and density of seagrasses in Little Bay are lower than at the reference site, but epiphytic biomass was also relatively low, and unlikely a cause of extensive seagrass mortality. The high concentrations of ammonium in sediment porewaters can potentially support benthic algal blooms, and drift macroalgae are known to suffocate grasses and produce bare patches in otherwise healthy beds. One interesting phenomenon observed during this study was the large drop in the salinity of Little Bay after extended periods of precipitation. The high salinities (>40 ppt) measured in summer 2009 dropped significantly to less than 20 ppt by December 2009 and have continued to remain less than 20 ppt through spring 2010. Although there is little data on salinity tolerance of *Halodule wrightii*, this species is rarely observed in low salinity waters. The freshening of Little Bay during periodic flood events may have contributed to the long-term decline in seagrass extent. The effect of these flooding events is exacerbated by the changes in water circulation and residence time that resulted from extensive shoreline alterations over the past few decades. It is very apparent from aerial imagery that Little Bay bears little hydrological resemblance to the natural system that existed prior to recent urban development.

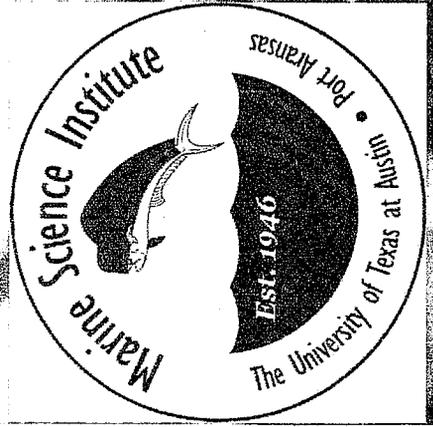
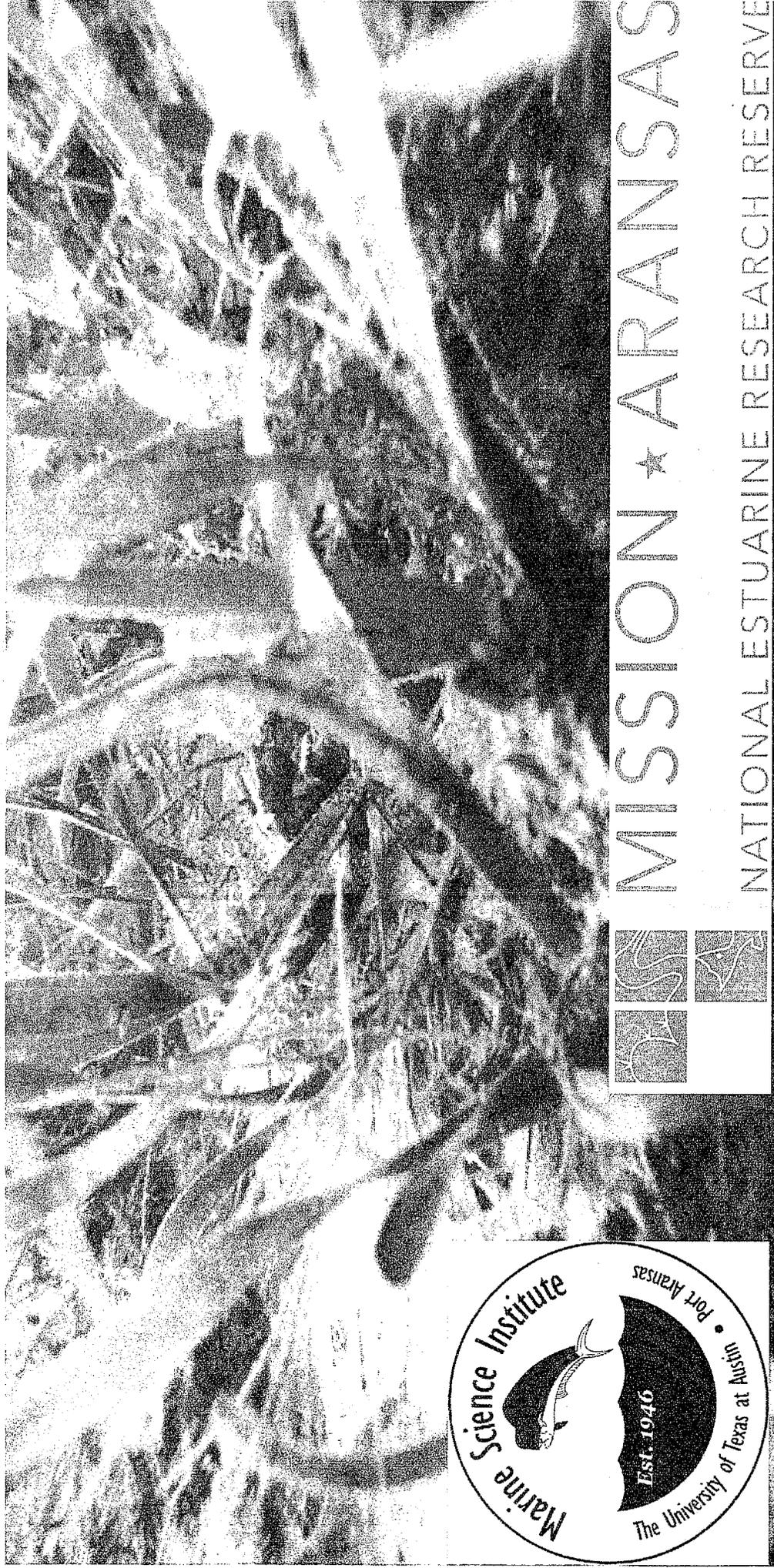


- LB06
- Sensor
- Control

STATION	STATION NA	LATITUDE	LONGITUDE
LB01	Boat Ramp	28.03667	-97.03951
LB02	Bayside Point	28.03525	-97.03488
LB03	Connie Hagar	28.03547	-97.04174
LB04	Tule Creek	28.04316	-97.03658
LB05	Key Allegro Bridge	28.04632	-97.03104
LB06	Middle Bay		
LB07	Key Allegro Marina	28.04360	-97.03280
LB08	Traylor Ave Bridge	28.05367	-97.03844
LB09	Tule Park & Encina	28.04561	-97.03642
LB10	Tule Creek Bridge	28.04509	-97.03826
LB11	Tule Creek Opening	28.04440	-97.03775

An Assessment of Little Bay Water and Sediment Quality in Relation to Indices of Seagrass Condition

Kenneth Dunton and Christopher Wilson



MISSION ★ ARANSAS

NATIONAL ESTUARINE RESEARCH RESERVE

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UTMSI/MANERR Colleagues

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Brit Dean

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Travis Bartholomew

Dana Sjostrom

Duane Scheumack

Funding Sponsors

City of Rockport

Aransas County Navigation District

Town of Fulton

Aransas County

Mayor CJ Wax

Former Mayor Todd Pearson

Chairman (ACND) Ron Outen

Timeline

Development of Little Bay

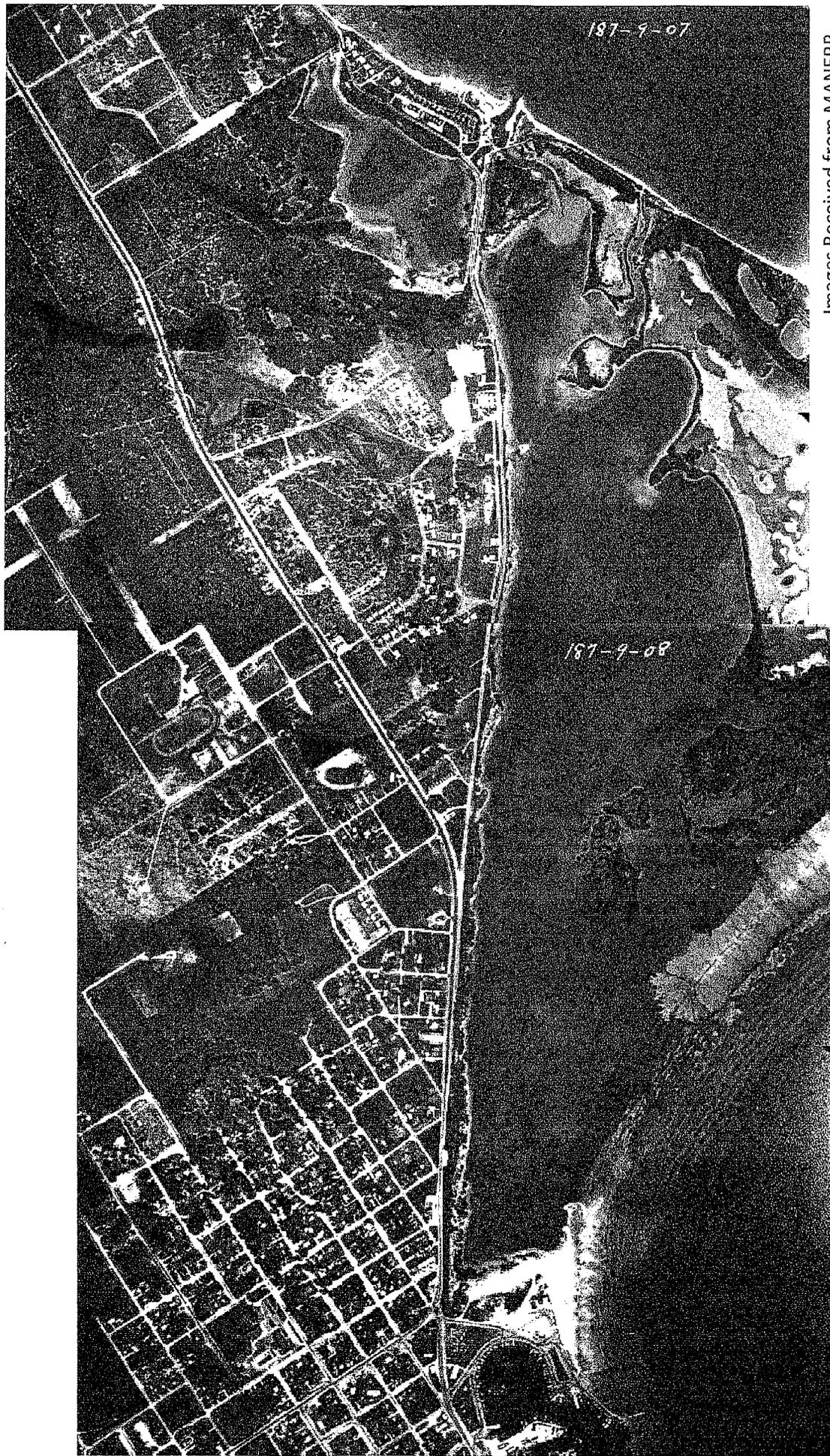
- 
- 1953 Aransas County Navigation District purchases 604 acres of land from the state (\$1 per acre)
 - 1962 Construction of Key Allegro begins
 - 1971 Construction of Harbor Oaks begins (subdivision abutting Little Bay along Tule Creek)
 - 1972 Sewage treatment plant doubles capacity (0.5 MGD to 1 MGD)
 - 1988 Rockport Beach Park constructed
 - 2010 Sewage treatment capacity currently 2.5 MGD

A changing landscape...



Images Received from MANERR

Little Bay in 1959



Images Received from MANERR



Image Received from MANERR



Google Maps 2010



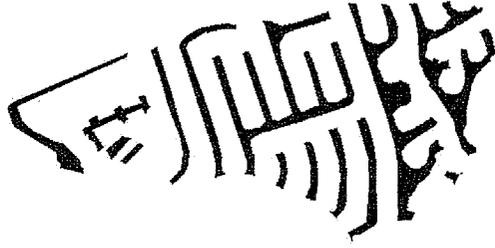
Google Maps 2010

30.606 Kilometers of Shoreline

Surface Area = 1.56 km²



Key Allegro accounts for 0.21km² of Little Bay's area(13%) and
16.88km of the total shore line (55%)

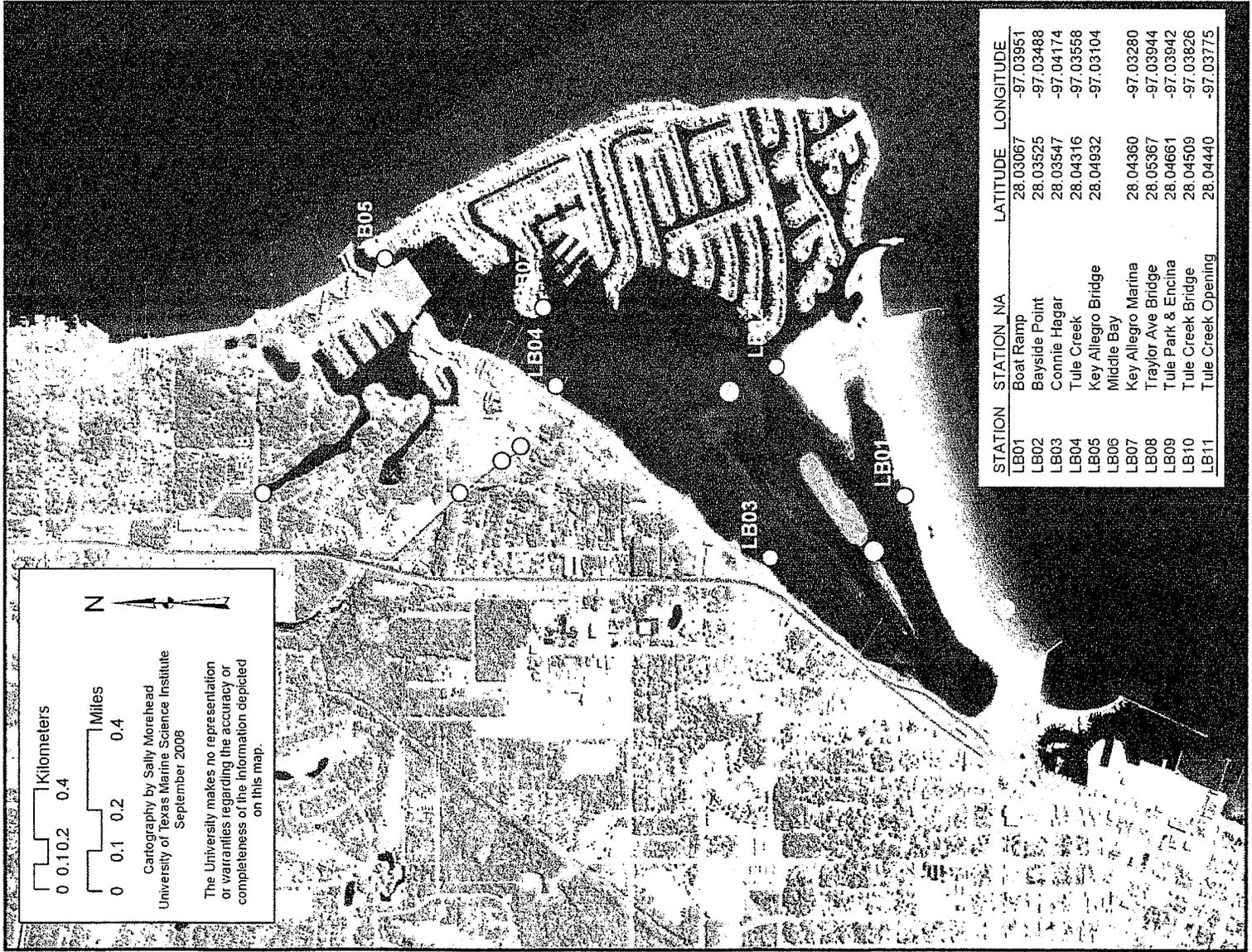


Since 1962, when Key Allegro was inhabited entirely by migratory birds, more than \$80,000,000 in physical improvements have been made. (<http://www.keyallegrosales.com>)

○ LB06

○ Sensor

○ Control

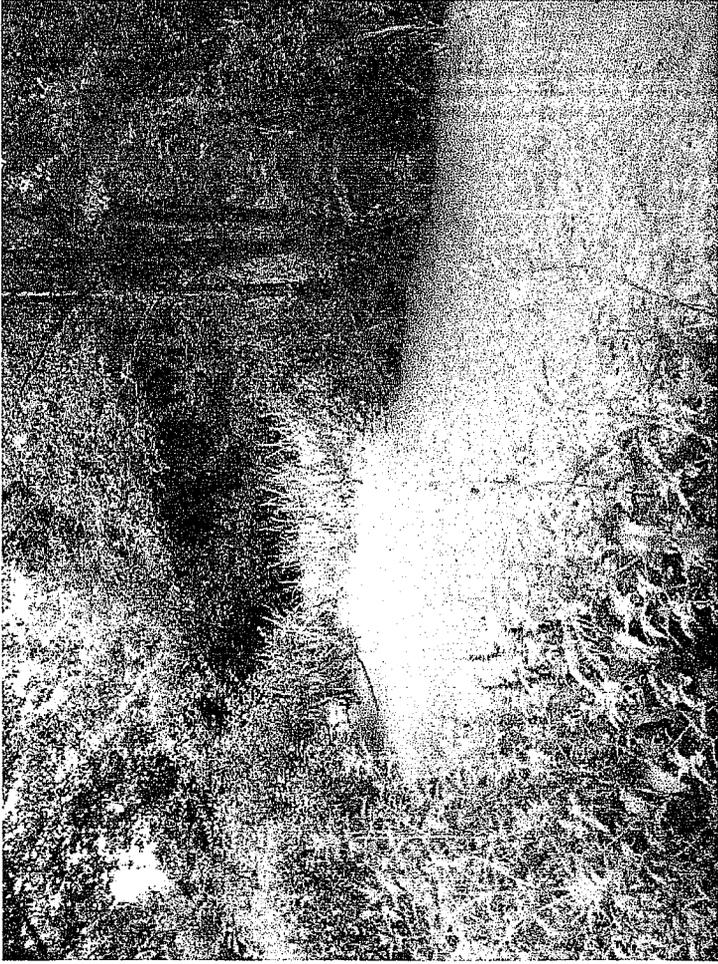


Kilometers
 0 0.1 0.2 0.4
 Miles
 0 0.1 0.2 0.4

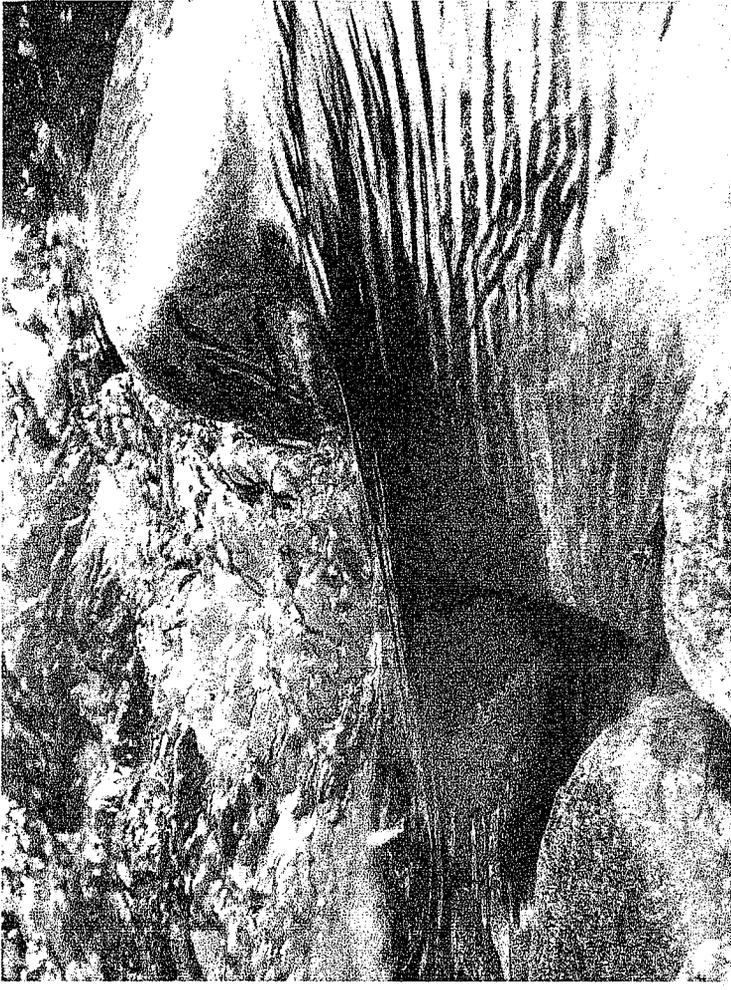
Cartography by Sally Morehead
 University of Texas Marine Science Institute
 September 2008

The University makes no representation
 or warranties regarding the accuracy or
 completeness of the information depicted
 on this map.

Residence Time and Circulation (important, but not measured in this study)



geograph.org.uk



blogs.warwick.ac.uk

Residence time has been shown to be inversely related to seagrass coverage. High RT's have a higher affect on bottom water parcels causing an accumulation of organic particles and nutrients (Orfila et. al 2005)

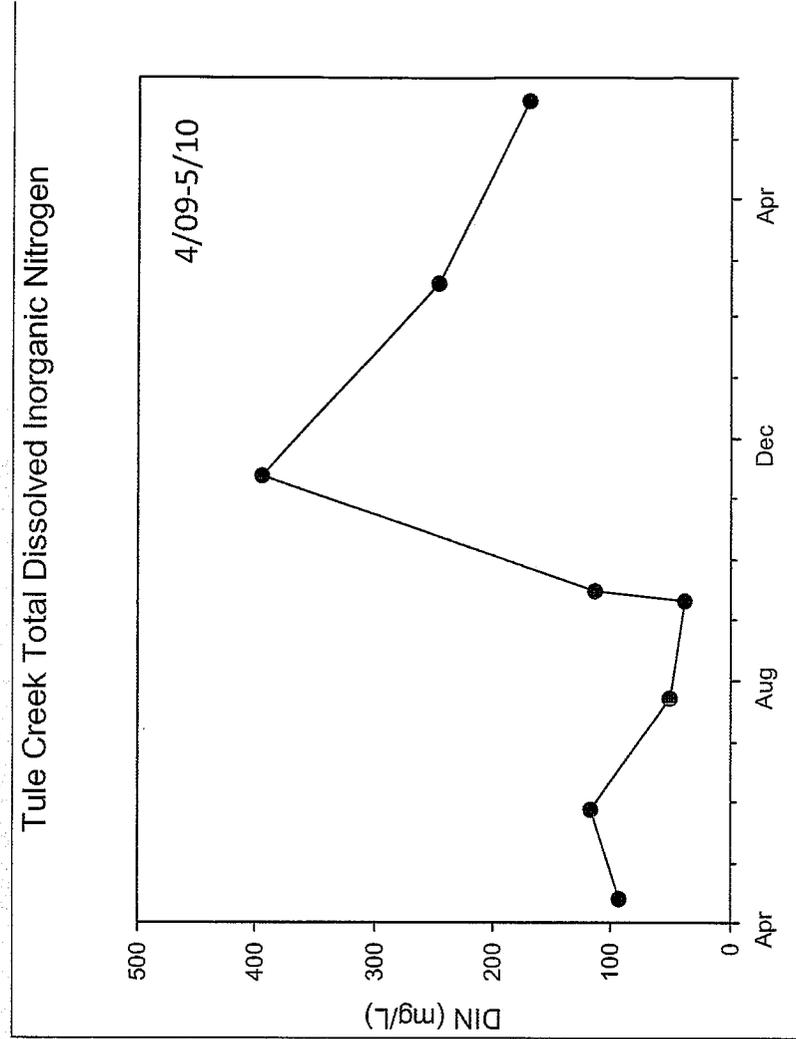
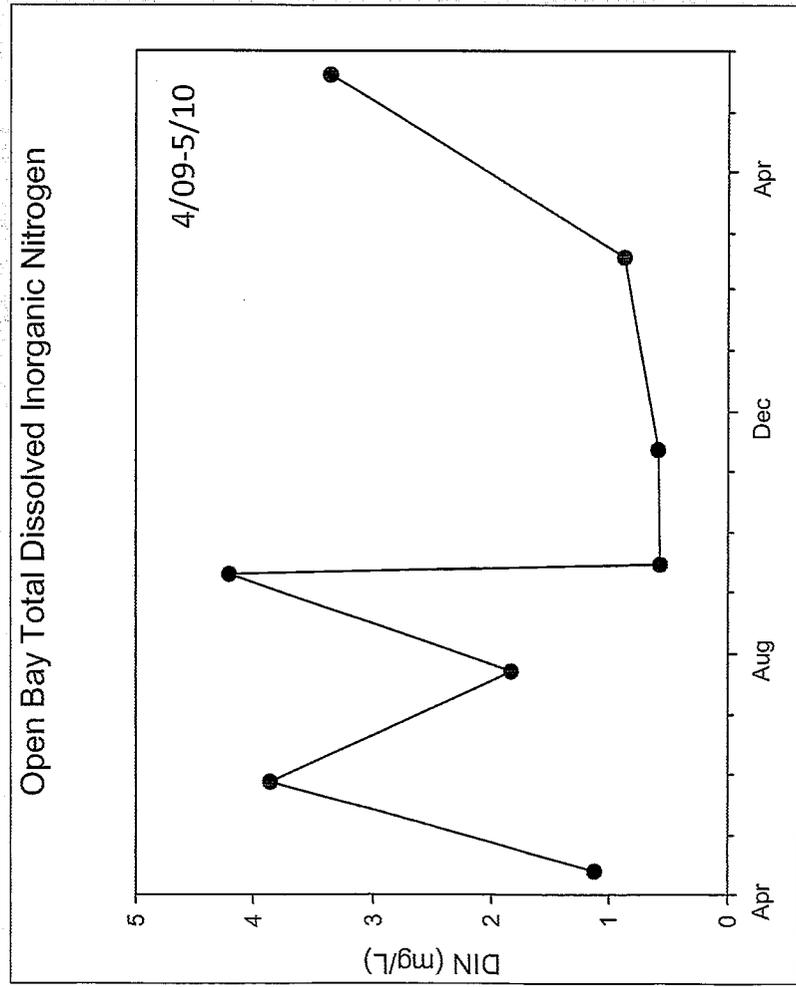
Residence time of water in the Upper Laguna Madre is greater than 1 year (Shormann 1992)

Results: Measurements and Observations

(not all parameter results presented here)

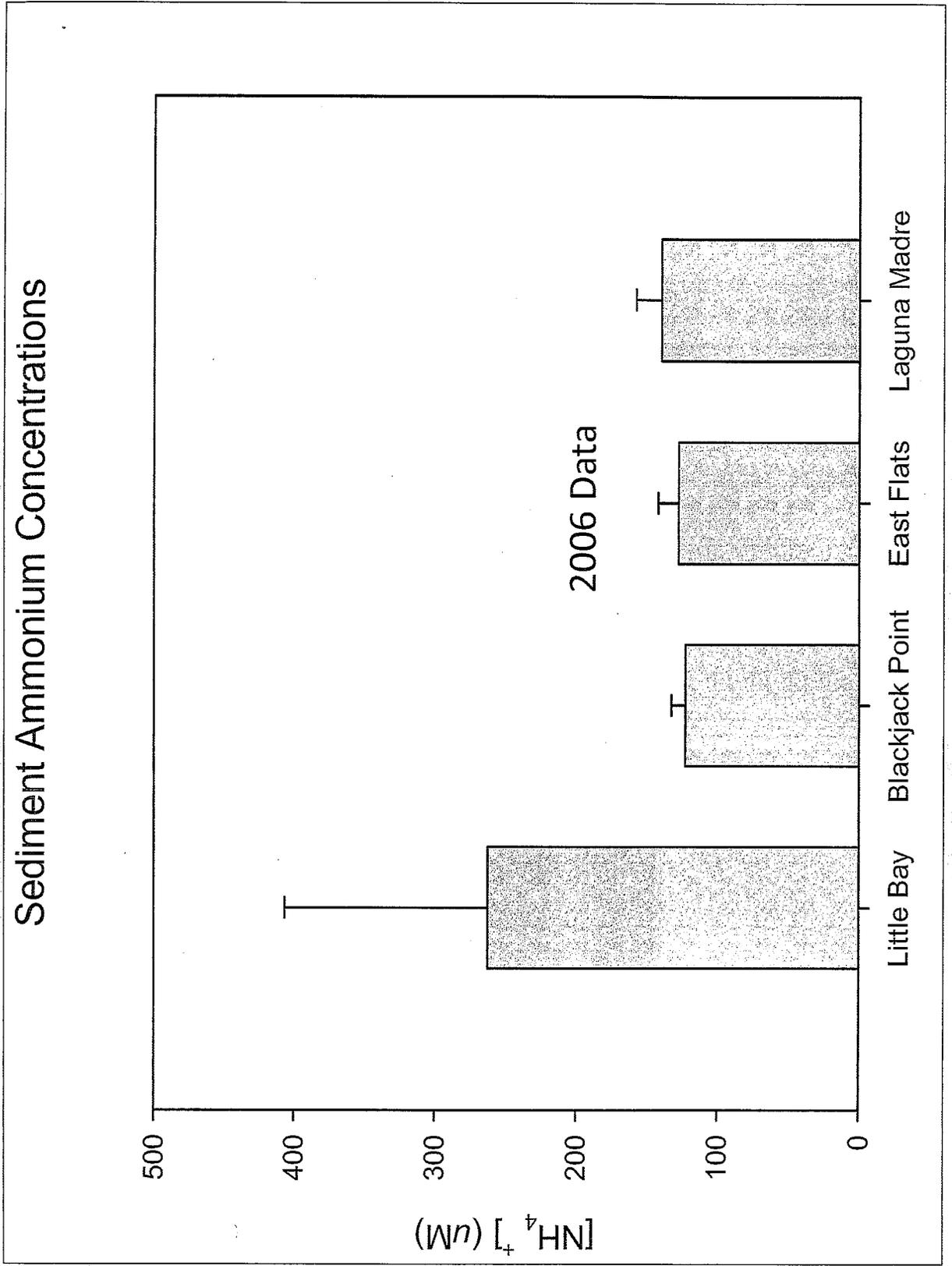
- **Nutrients**
 - *Concentrations and Source Identification*
- **Isotopic Analysis**
 - *Tule Creek Algae/Sediments, Seagrasses, Epiphytes*
- **Characterizing the UW Light Environment**
 - *Irradiance, Chlorophyll *a*, Total Suspended Solids (TSS)*
- **Water Column Parameters**
 - *Temp, Salinity, Dissolved Oxygen*
- **Existing Seagrass Characterization**
 - *Biomass, Abundance, Epiphytic Biomass*

Nutrient Loading From Tule Creek



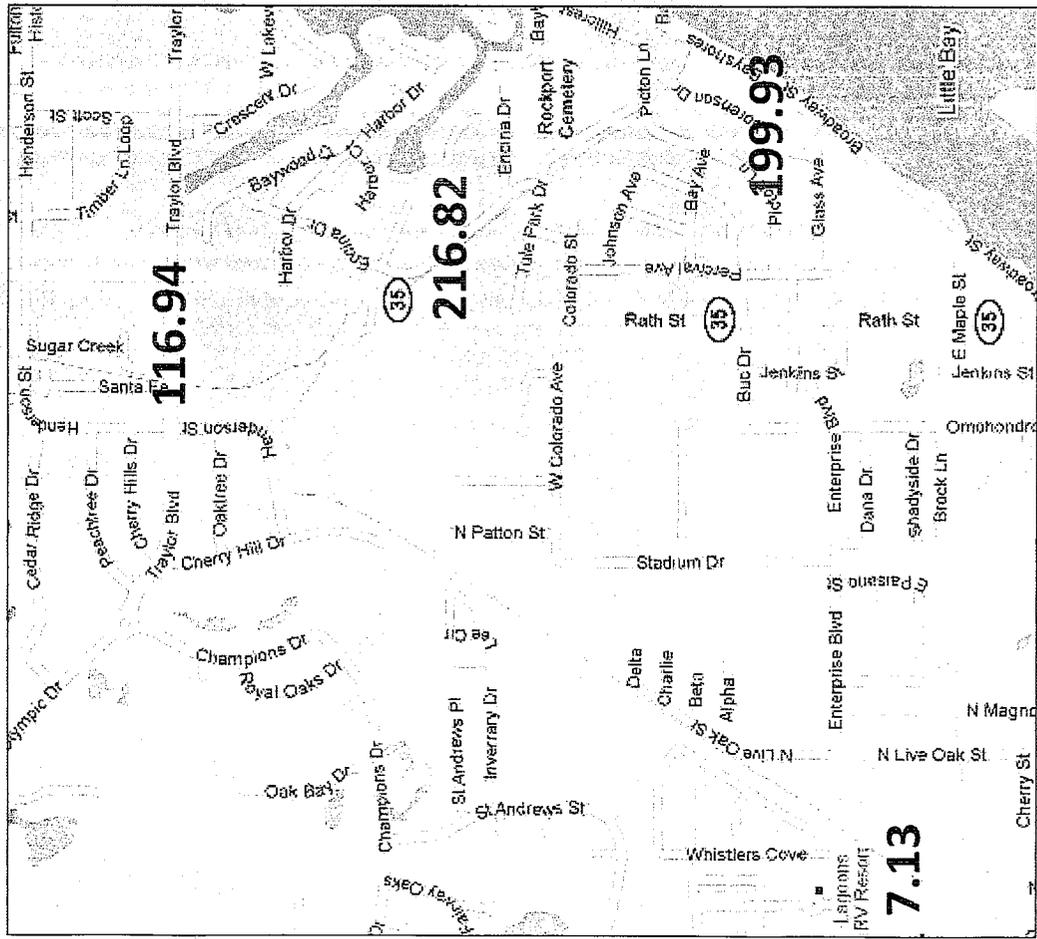
Note: Anything over 1 mg/L is considered high for an estuary (Bricker et al. 2003).

High Ammonium in Sediment Porewaters

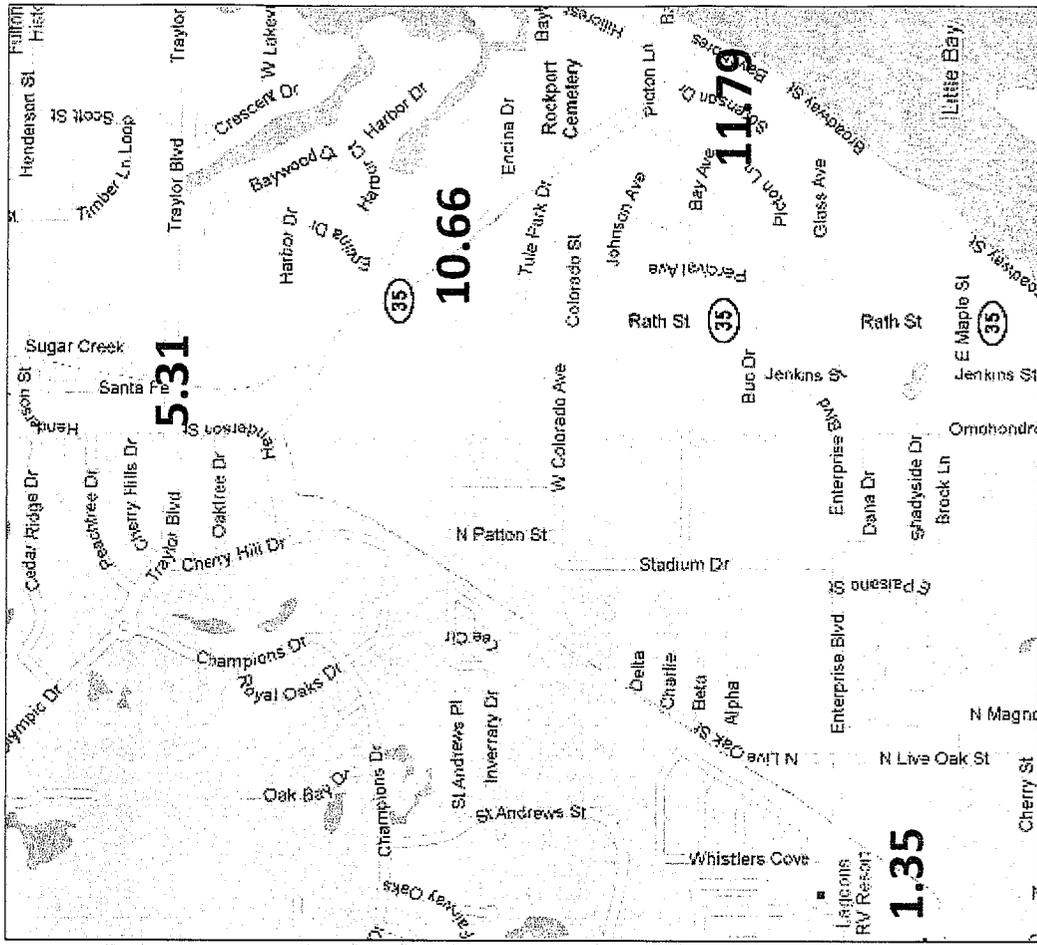


Inputs of Inorganic-N to Tule Creek:

February 2010



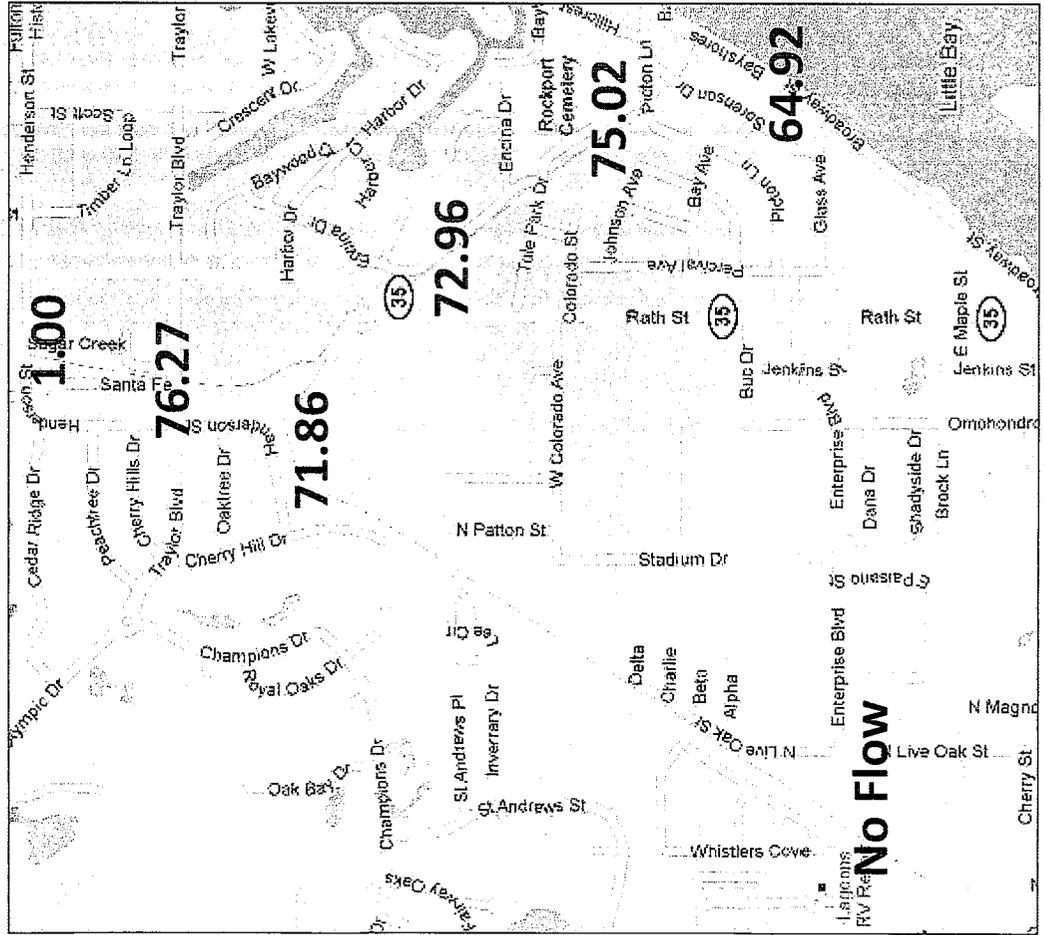
Water Column [$\text{NO}_3^- + \text{NO}_2^-$] (μM)



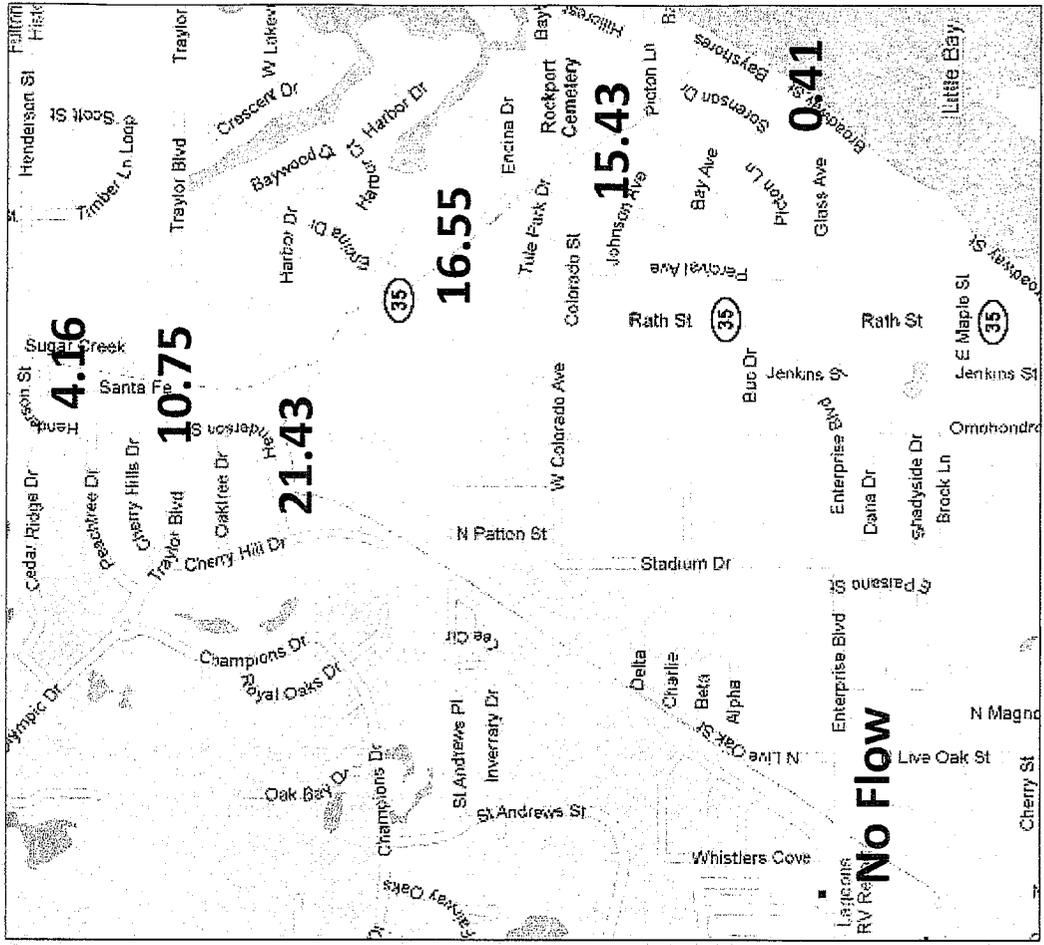
Water Column [NH_4^+] (μM)

Inputs of Inorganic-N to Tule Creek:

May 2010



Water Column $[NO_3^- + NO_2^-]$ (μM)



Water Column $[NH_4^+]$ (μM)

Little Bay Isotope Data

1986). The elevated $\delta^{15}\text{N}$ signature of treated sewage ($\sim 10\text{‰}$) therefore distinguishes it from other nitrogen sources entering marine ecosystems (cf. fertilizer nitrogen $\sim 0\text{‰}$) (Heaton, 1986).

Our isotope sampling essentially resembled the methods used by Costanzo et al. 2001.

1. Identify Source in Tule Creek
2. Compare Isotopic Values in Nearby Seagrass Habitats
3. Document the Change in Isotopic Composition of Seagrass and Epiphytes Over Time

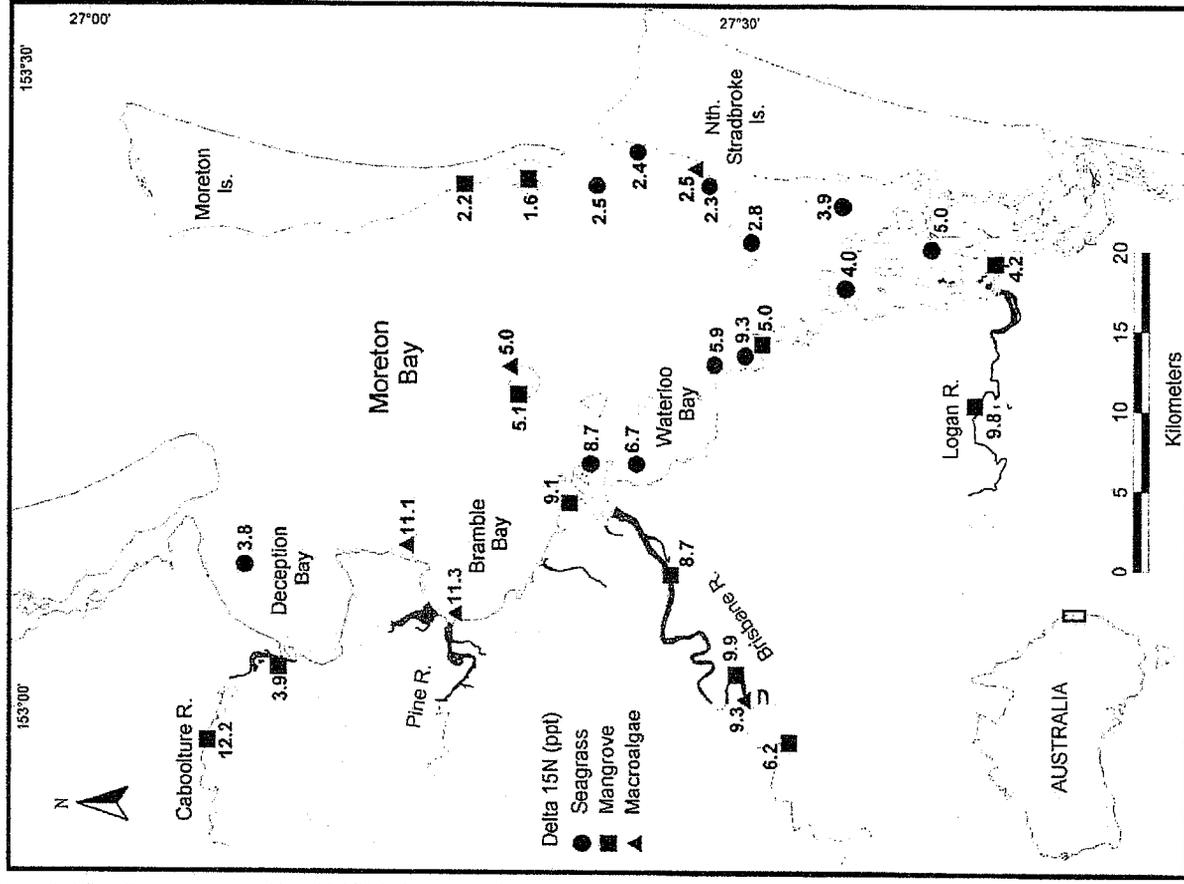
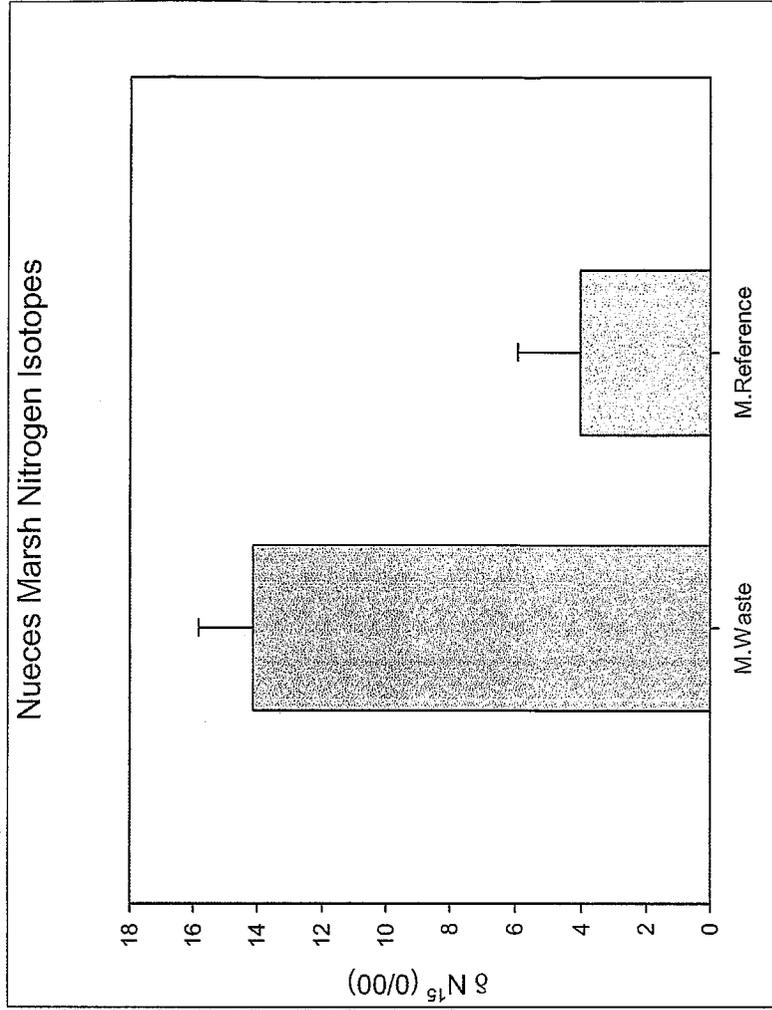
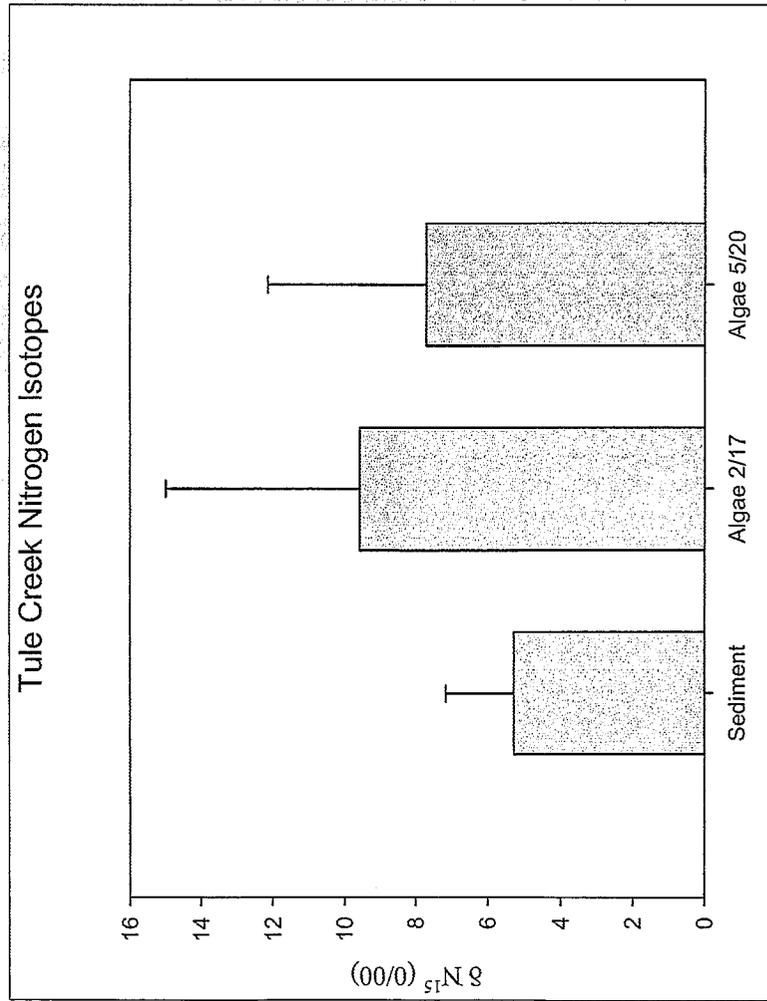
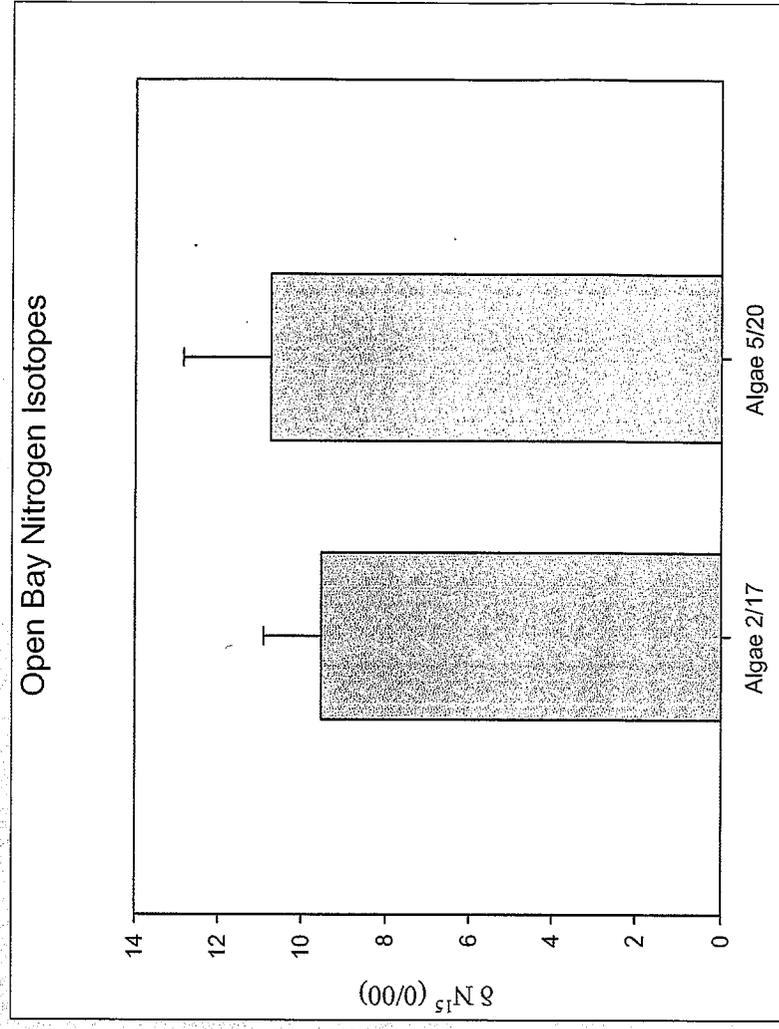
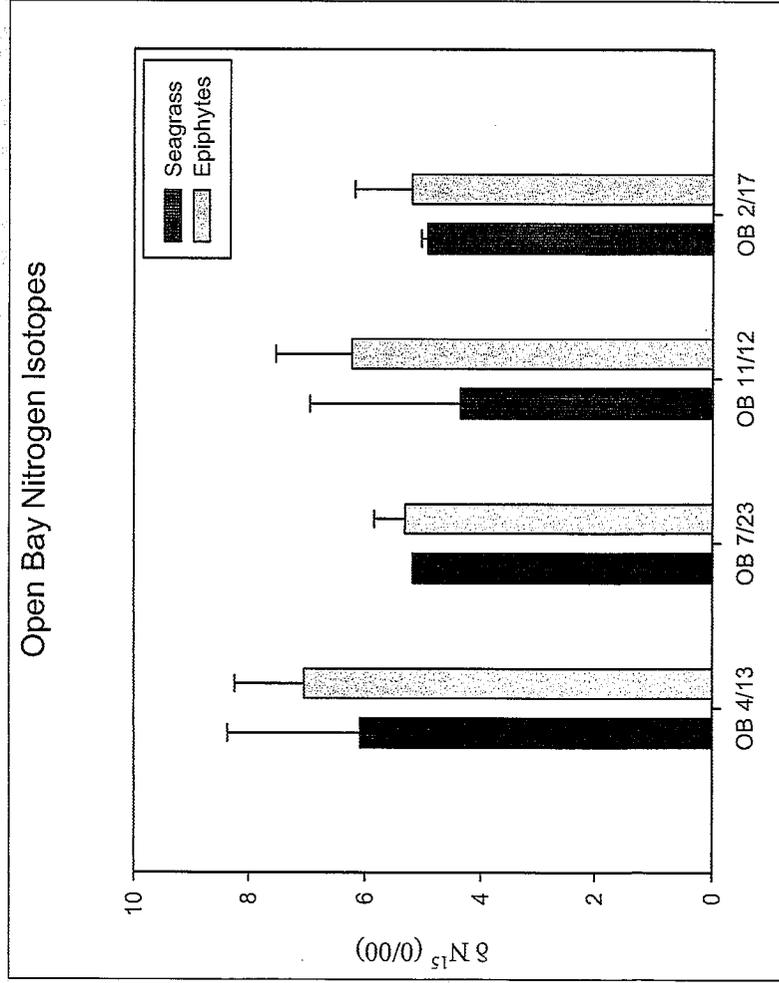


Fig. 2 $\delta^{15}\text{N}$ values of naturally occurring marine plants (mangroves, seagrass and macroalgae) throughout Moreton Bay and tidal estuaries.

$\delta^{15}\text{N}$ Values as Indicators of Wastewater Inputs: Tales from Two Estuaries

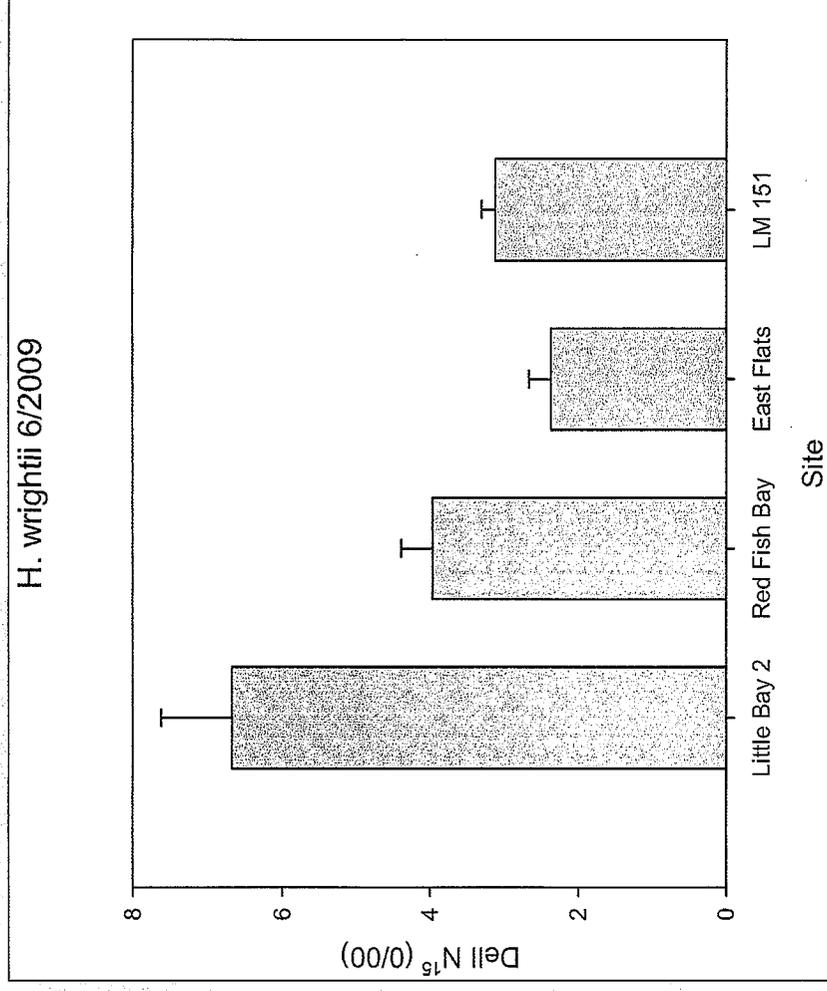


$\delta^{15}\text{N}$ Values of Primary Producers in Little Bay: No Clear Wastewater Signal



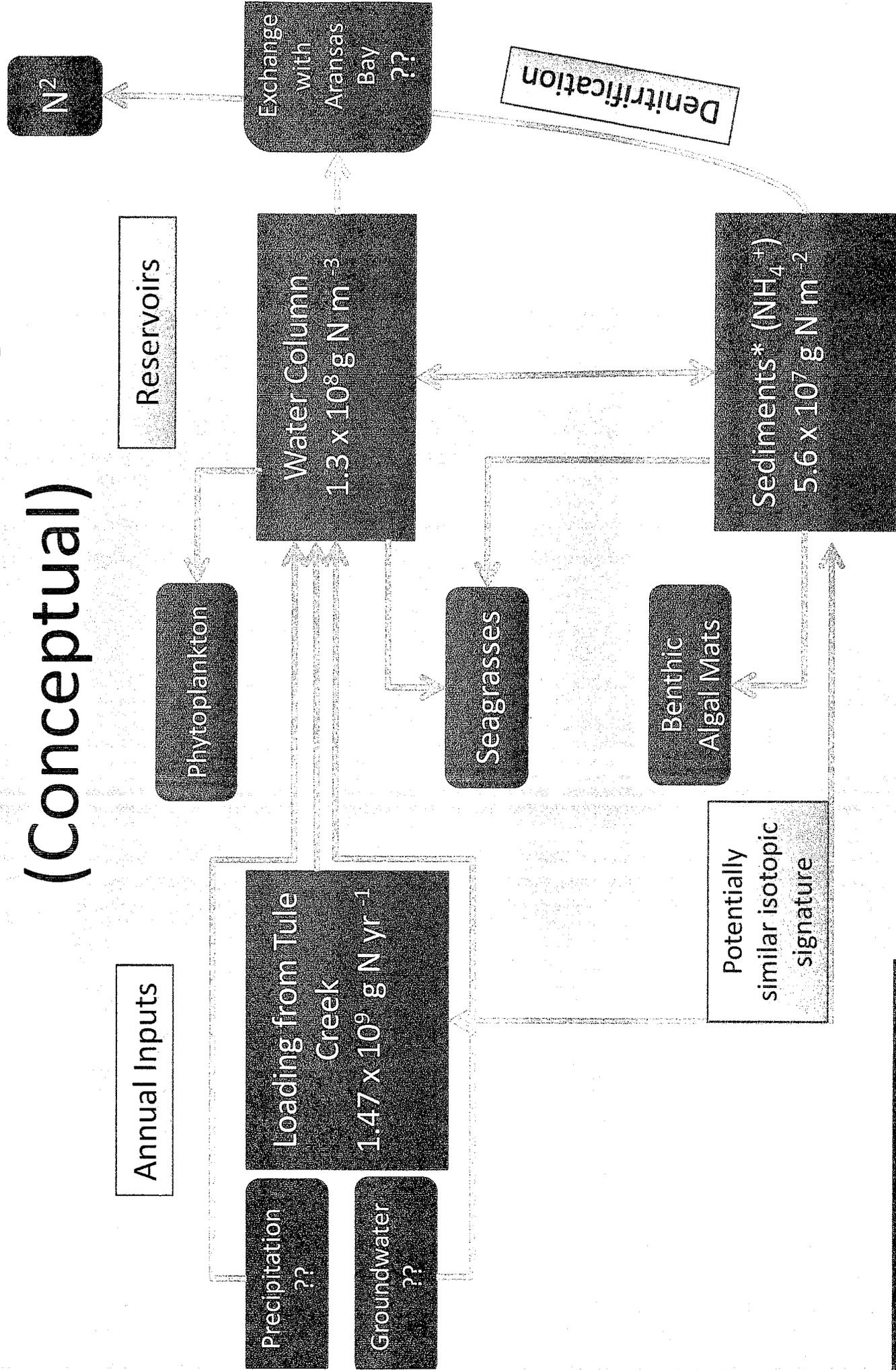
4/09 – 5/10

Comparison of Seagrass $\delta^{15}\text{N}$ Values in Local Texas Bays



Constanzo et al. (2001) identified a value of < 3 ppt for their control plants. However, Fourqurean et al. in 1997 documented pristine seagrass values of 12 ppt, which were attributed to high levels of natural denitrification, not wastewater!

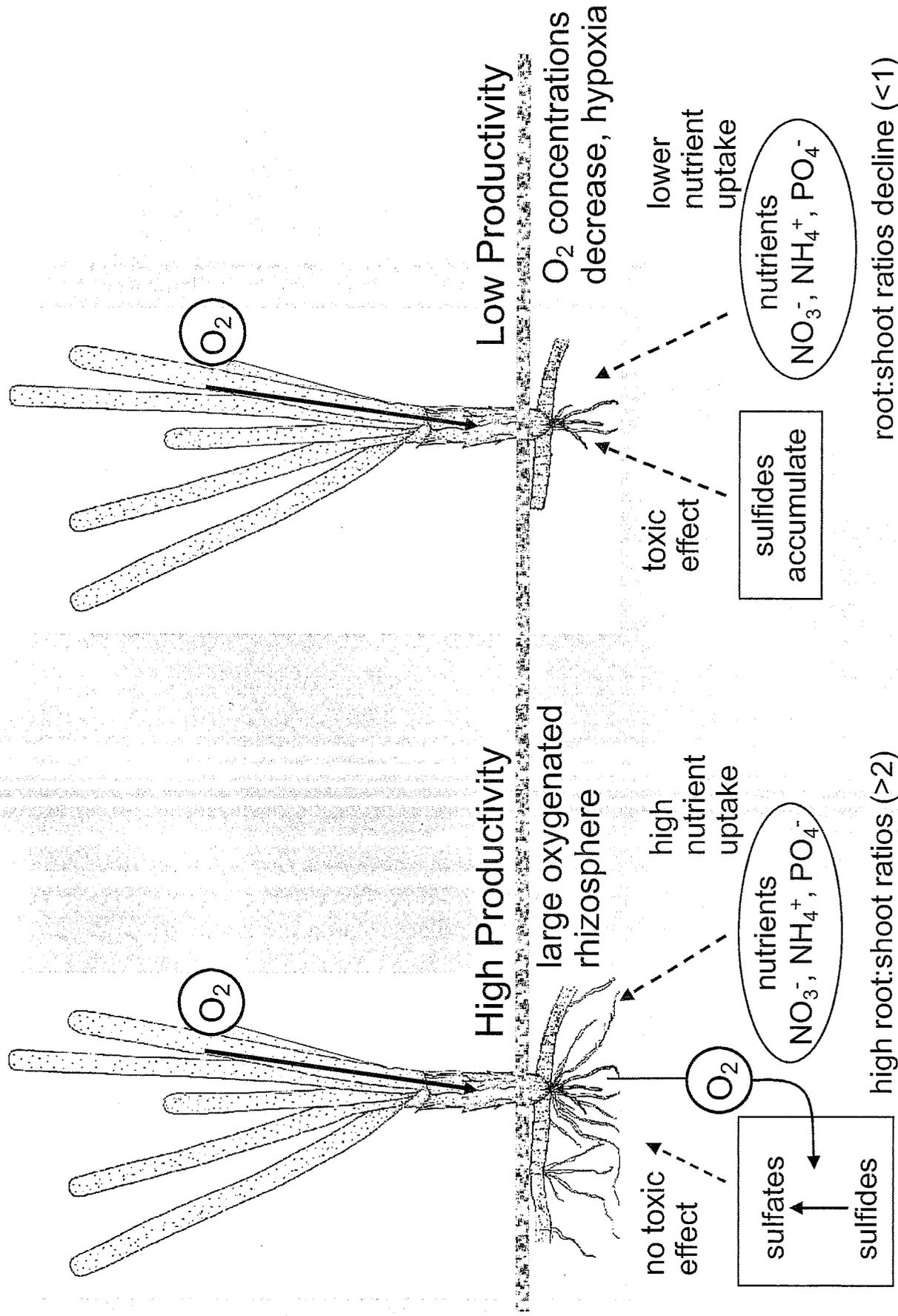
Little Bay Nitrogen Budget (Conceptual)



* Does not include NO_3^- or DON

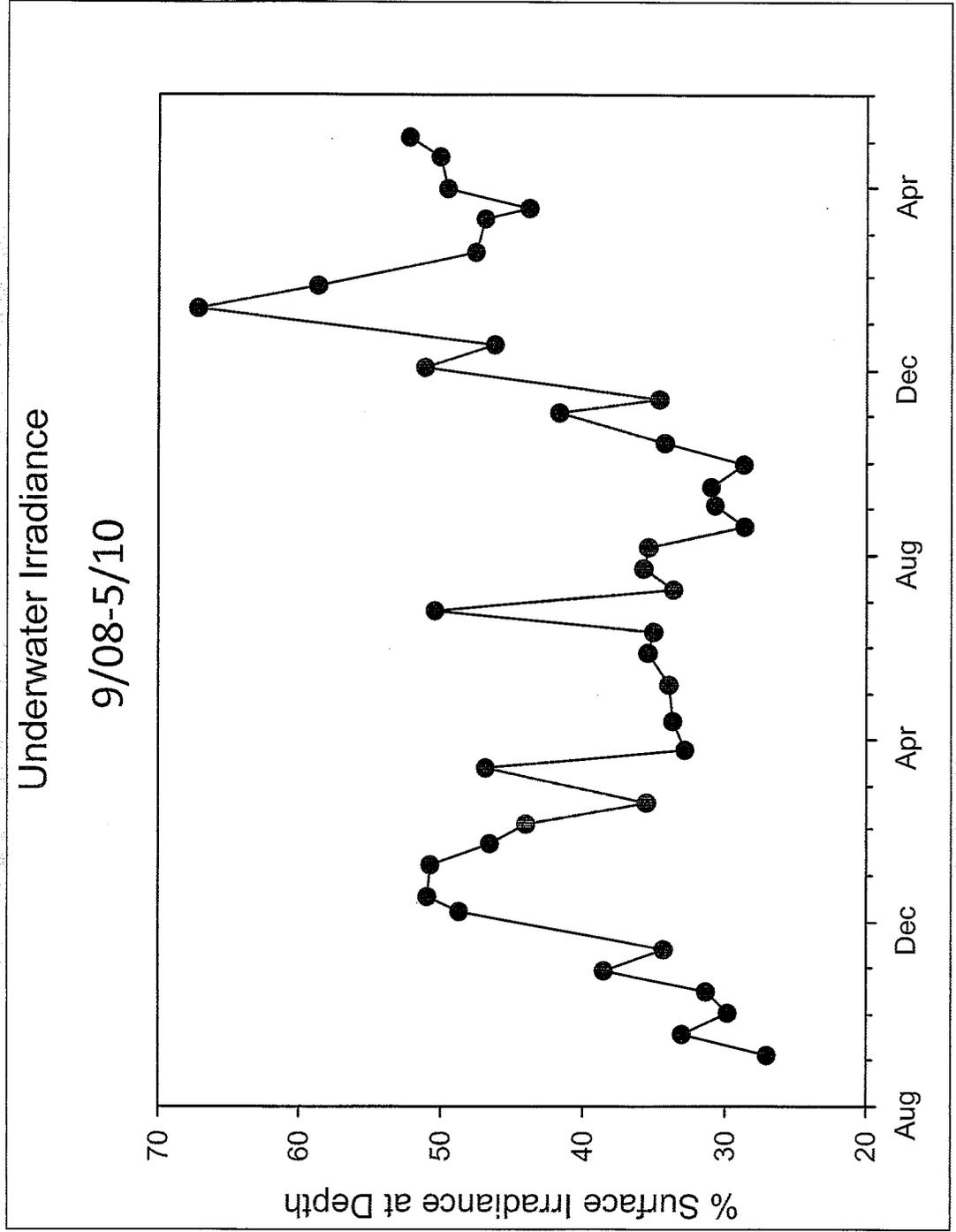
High Light
> 18% SI

Low Light
< 18% SI

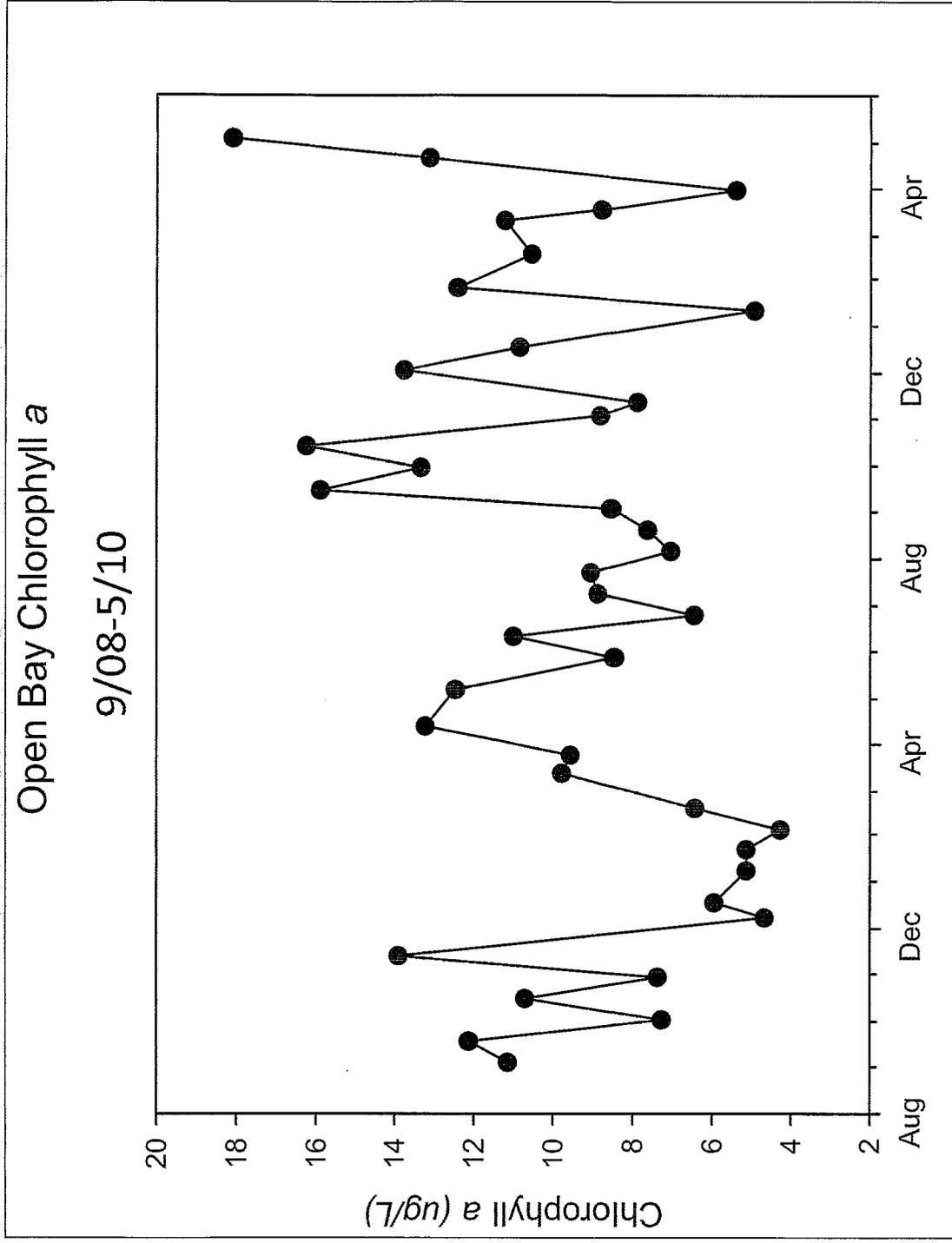


Seagrass Production: Whole Plant Model

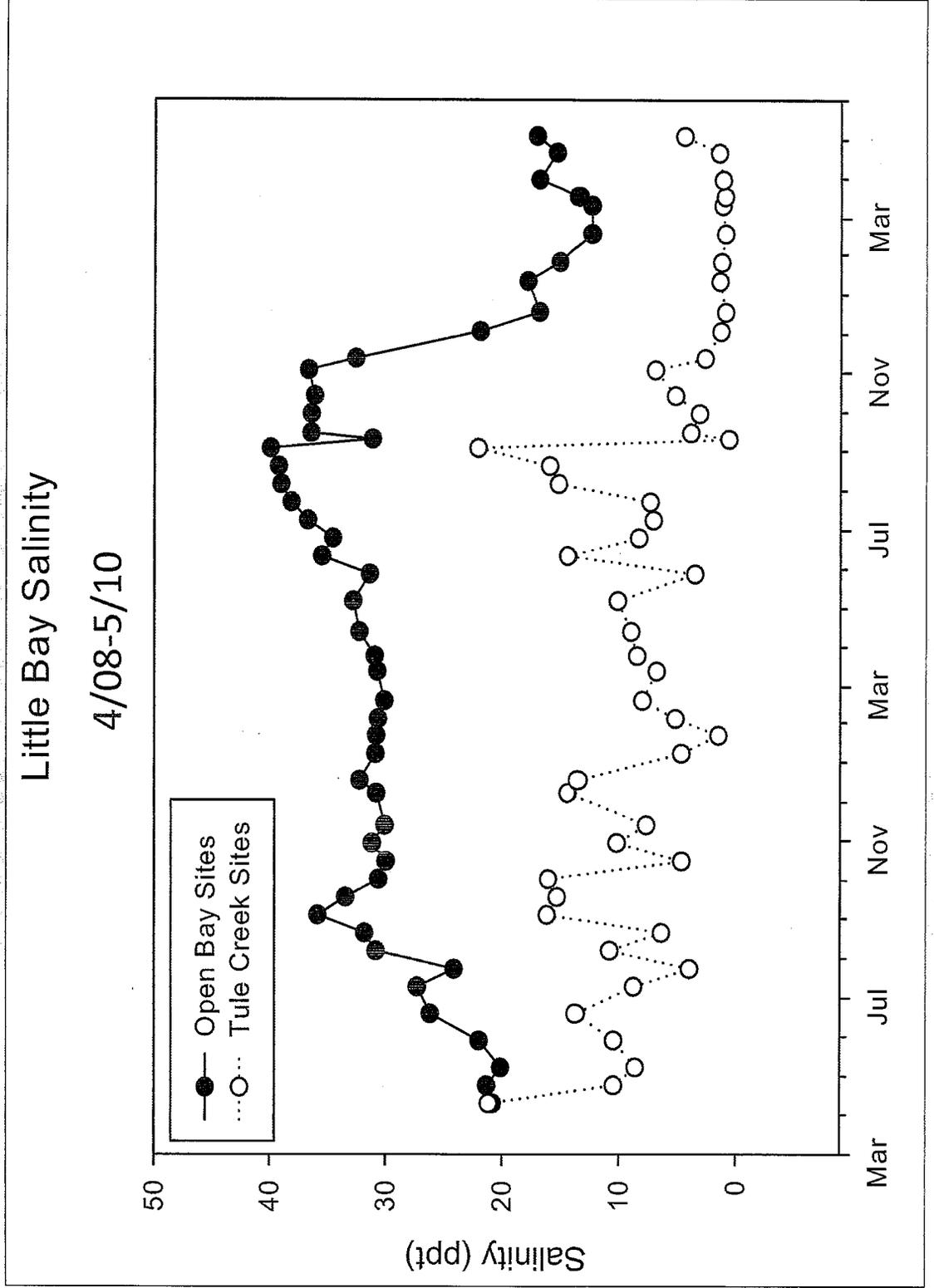
Water Transparency in Little Bay is Sufficient to Sustain Seagrasses



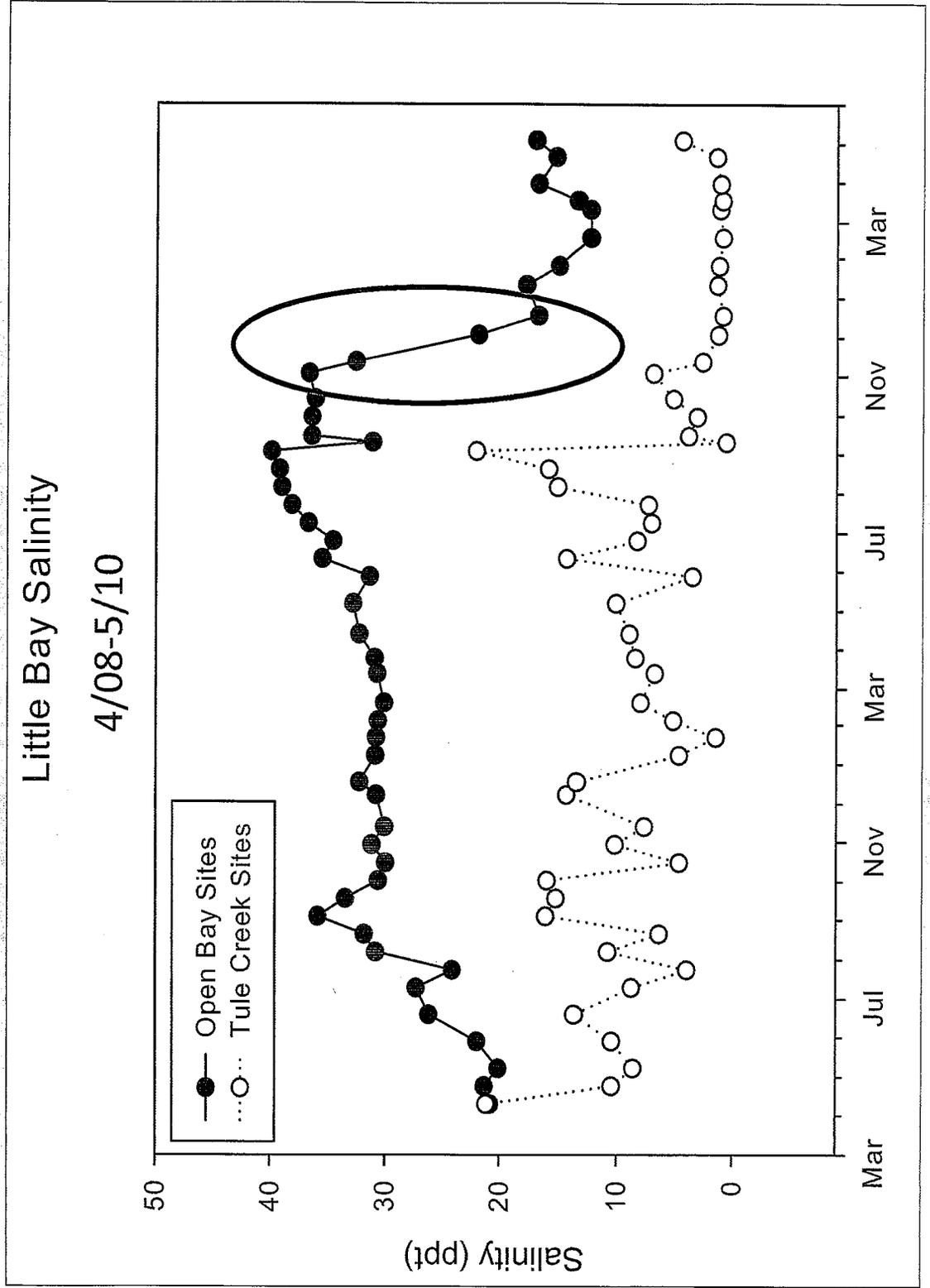
Chlorophyll *a* (a measure of phytoplankton abundance): Variable and slightly above average for Texas estuarine waters



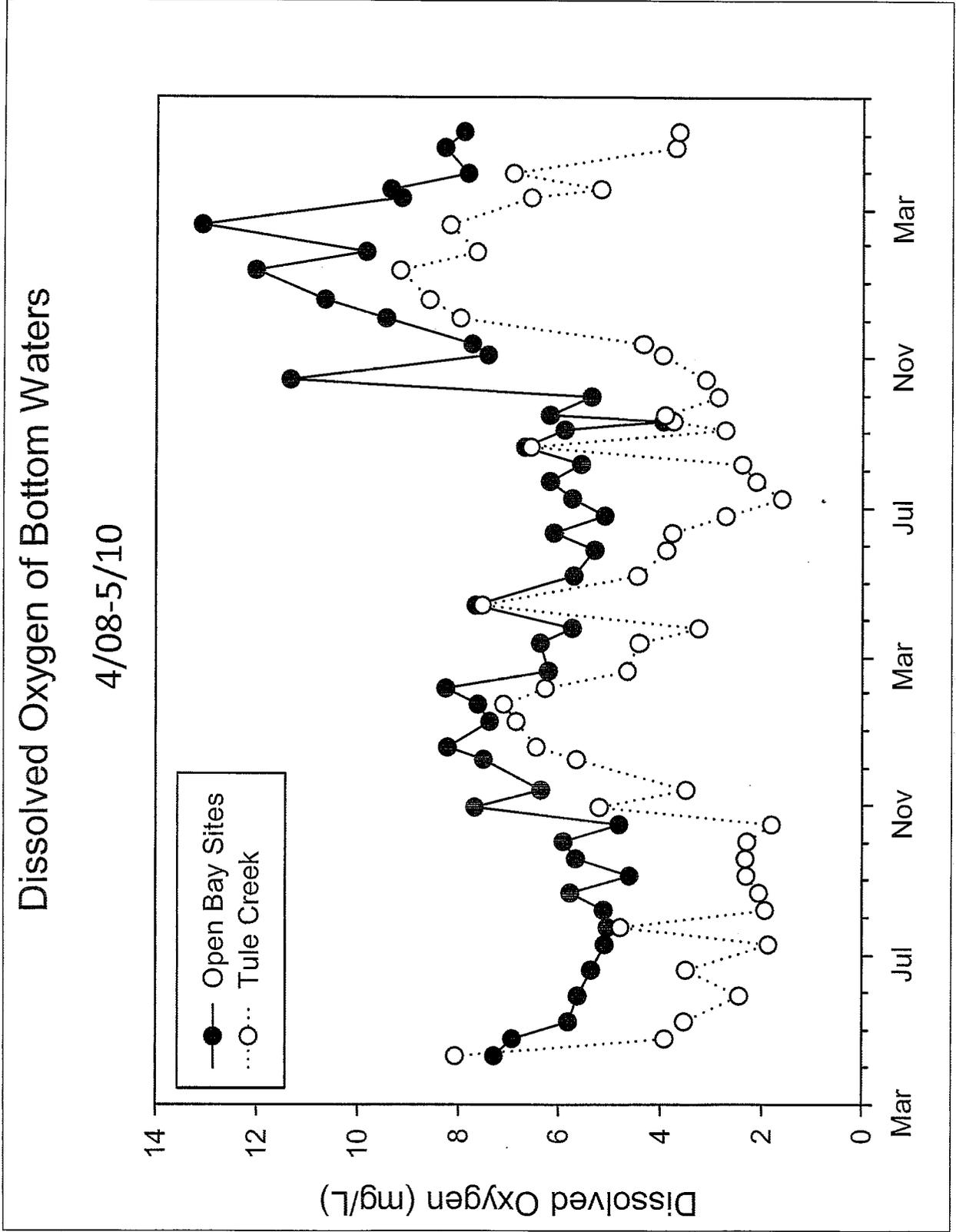
Water Column Salinity: Large Sustained Decrease Unfavorable for Seagrasses



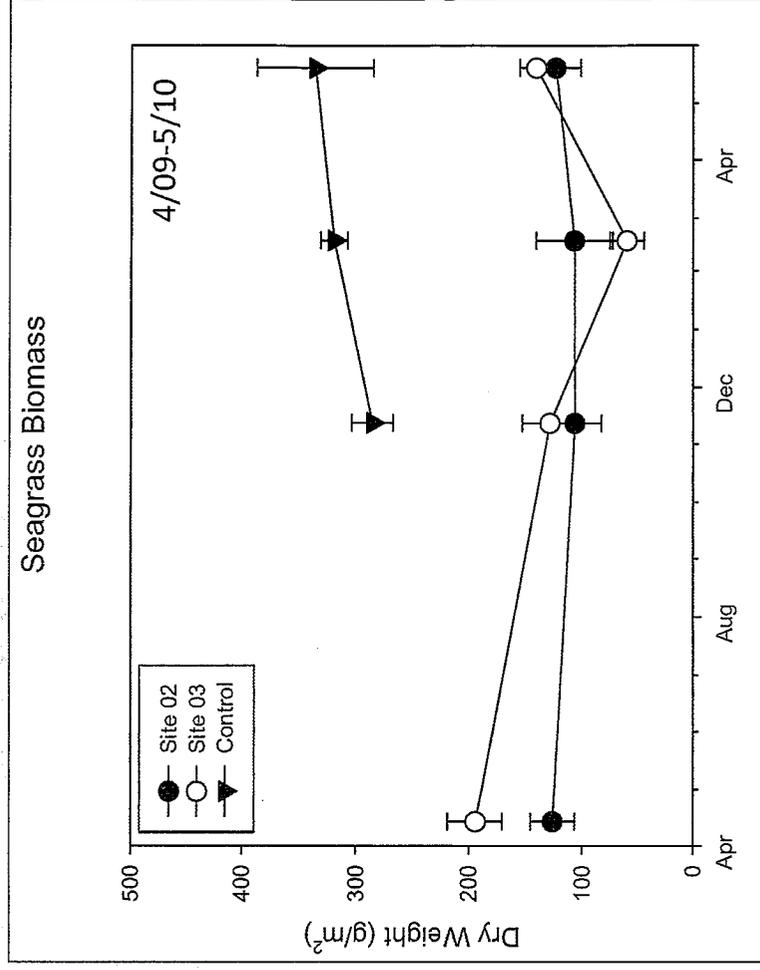
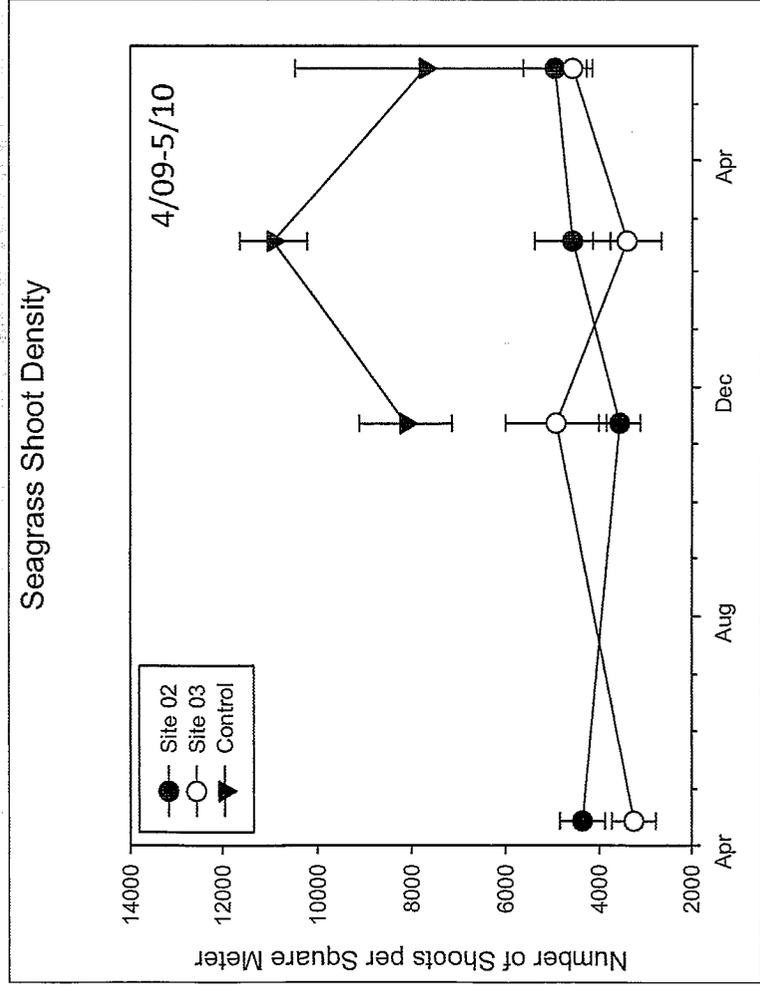
Water Column Salinity: Large Sustained Decrease Unfavorable for Seagrasses



Dissolved Oxygen: No Evidence for Hypoxia



Does the Lower Seagrass Biomass and Density in Little Bay Reflect an Unsuitable Habitat?



Summary

Little Bay has undergone extreme physical changes that has permanently altered its hydrological connections to Aransas Bay.

Concentrations of DIN in Tule Creek generally exceed 100 mg L^{-1} , but are two orders of magnitude less in Little Bay. The DIN appears to originate from non-point sources (e.g. groundwater and run-off).

The water quality criteria in Little Bay appears acceptable for seagrass growth, but other factors, such as sustained period of low salinity, could be limiting bed expansion/proliferation.

The complete absence of a seagrass seed reserve in the LB sediments is noteworthy.



Drift macroalgae advancing over a *Thalassia* bed, Lower Laguna Madre (Dunton 2005)