

TCEQ DOCKET NO. 2011-0739-MWD

APPLICATION BY KAUFMAN	§	BEFORE THE
COUNTY FRESH WATER	§	
SUPPLY DISTRICT NO. 1A	§	TEXAS COMMISSION ON
FOR RENEWAL OF	§	
PERMIT NO. WQ0013910001	§	ENVIRONMENTAL QUALITY

**APPLICANT’S RESPONSE TO THE CITY OF FORNEY’S
REQUEST FOR A CONTESTED CASE HEARING**

Kaufman County Fresh Water Supply District No. 1A (the “District”) files this Response to the City of Forney’s request for a contested case hearing on the District’s application to renew TPDES Permit No. WQ0013910001. Forney’s request should be denied for two reasons.

First, under the Water Code and Commission rules, there is no right to a contested case hearing on this renewal application. The application does not request any change in the amount of wastewater authorized to be discharged or the discharge location, the renewal permit contains more stringent effluent limitations than the existing permit, and the District’s compliance history for the last five years shows its ability to comply with the material terms of the Permit. Second, the Commission may not grant Forney’s request for a contested case hearing unless it determines that the requestor is an “affected person,” and Forney has failed to show that it is an “affected person” under the Water Code and Commission rules.

I. There is no right to a contested case hearing on this renewal application.

Under Commission rules, there “is no right to a contested case hearing” on an application to renew a wastewater discharge permit if:

- (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;
- (2) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (3) any required opportunity for public meeting has been given;
- (4) consultation and response to all timely received and significant public comment has been given; 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 TEX. ADMIN. CODE § 55.201(i)(5).

The District's application meets all five of those requirements. The District is not seeking any change in the quantity of wastewater authorized to be discharged or the location of the discharge point. The renewal permit will *improve* the quality of the wastewater discharged. The renewal permit includes more stringent effluent than the existing permit for CBOD₅, NH₃-N, and DO, and adds bacteria (E. coli) effluent limitations that are not in the existing permit. There was an opportunity for a public hearing, and the Executive Director has responded to comments received.

Forney claims that the District's compliance history for the past five years raises issues about the District's ability to comply with the permit terms. Forney points to the District's failure to connect to a regional system before April 2010, as required by an Agreed Order issued by the Commission in October 2006. But, as Forney concedes, the District requested an extension of that deadline, explaining that: growth in the District's

service area had dropped dramatically; the current plant will serve capacity for several years; and the districts participating in the wastewater treatment plant do not have, and for the next several years will not have, the revenue from taxes or any other source to pay the estimated \$8-9 million needed to construct the interconnection. The Commission granted the request and extended the deadline to September 2014, while requiring annual reports on progress. Thus, the District is in compliance with the Agreed Order.

Forney also claims there were “a number of violations and exceedances in the last five years.” But Forney only identifies some scattered violations following entry of the Agreed Order in 2006 – not consistent non-compliance. As the Executive Director pointed out in his Response to Public Comment, the quality of effluent discharged from the plant has improved over the last five years and TCEQ Region 4 indicates that the facility is operating very well. This compliance history does not raise issues regarding the District’s ability to meet the material terms of the renewed Permit.

Because the application meets all five requirements of Commission Rule 55.201(i)(5), there is no right to a contested case hearing on the application. Forney’s request for a hearing should be denied.

II. Forney is not an “affected person.”

The Water Code prohibits the Commission from granting a request for a contested case hearing “unless the commission determines that the request was filed by an affected person as defined by Section 5.115” of the Water Code. TEX. WATER CODE § 5.556(c). Section 5.115 defines “affected person” as “a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by

the administrative hearing”—an interest not “common to members of the general public.”
Id. § 5.115(a).

As Section 5.155(a) of the Water Code requires, the Commission has adopted a rule “specifying factors which must be considered in determining whether a person is an affected person.” 30 TEX. ADMIN. CODE § 55.203(c). The six non-exclusive factors are:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) 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) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on 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.

Forney claims that it is an “affected person” because issuance of the draft Permit will harm its legal rights under a contract between the District and Forney that provides the terms under which the District will connect with and make use of Forney’s wastewater collection system and under the Agreed Order.

Forney has no legal rights under the Agreed Order. The only parties to the Agreed Order are the Commission and the District. As previously discussed, the Agreed Order’s deadline for connecting to regional facilities has been extended to September 2014.

Forney does have contract rights, but that “interest claimed” is not “one protected by the law under which the application will be considered.” The law protects water quality – not utility contracts.

In addition, no “reasonable relationship exists between the interest claimed and the activity regulated.” Forney’s legal rights under the contract are defined by the contract – not the Permit or the Agreed Order. The parties’ contract, attached as Exhibit “A”, does not tie the timing of connection to the Forney system to the Permit or the Agreed Order. It does not even mention the Permit or the Agreed Order.

The other factors in the Commission rule also demonstrate that Forney’s contract rights will not be “affected by the administrative hearing,” as section 5.115 requires. Forney asserts economic damage to its contract rights – not environmental damage.

Forney also claims that it is an affected person because the District’s wastewater treatment plant is located within its extraterritorial jurisdiction (“ETJ”) and Forney is “concerned” about water quality in its ETJ. “An interest common to members of the general public does not qualify as a personal justiciable interest.” Tex. Water Code § 5.115(a). To qualify as an “affected person,” Forney “must demonstrate a particularized interest in a conflict distinct from that sustained by the public at large.” *Stop the Ordinances Please v. City of New Braunfels*, 306 S.W.3d 919, 926 (Tex. App.—Austin 2010, no pet.). It must show an injury to a legally protected interest that is “concrete and particularized”, not “conjectural or hypothetical.” *Id.*

Forney has not shown that it has a particularized interest in water quality in its ETJ that is different than the interest of the general public. It has not alleged any concrete

injury to its particular interest. Forney's "concern" over water quality in its ETJ does not make it an "affected person" for purposes of the Water Code and Commission rules.

III. Conclusion

Kaufman County Fresh Water Supply District No. 1A respectfully requests that the Commission deny the City of Forney's request for a contested case hearing.

Respectfully submitted,

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**ATTORNEYS FOR KAUFMAN
COUNTY FRESH WATER SUPPLY
DISTRICT NO. 1A**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served by first class mail and electronic mail on this the 11th day of July, 2011, to:

FOR THE APPLICANT:

Kaufmann County FWSD 1A
3100 McKinnon Street, Suite 950
Dallas, Texas 75201-7011

Stephanie Landsman
Source Environmental Sciences, Inc.
4100 Westheimer Road, Suite 106
Houston, Texas 77027-4427
713-621-4474
713-621-4588 Fax

FOR THE EXECUTIVE DIRECTOR Via electronic mail:

Alicia Ramirez, Staff Attorney
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Environmental Law Division, MC-173
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FOR PUBLIC INTEREST COUNSEL Via electronic mail:

Mr. Blas J. Coy, Jr., Attorney
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FOR OFFICE OF PUBLIC ASSISTANCE Via electronic mail:

Mr. Bridget Bohac, Director
Texas Commission on Environmental
Quality
Office of Public Assistance, MC-108
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FOR ALTERNATIVE DISPUTE RESOLUTION Via electronic mail:

Mr. Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
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512-239-4010
512-239-4015 Fax

FOR THE CHIEF CLERK:

Ms. Melissa Chao, Acting Chief Clerk
Texas Commission on Environmental
Quality
Office of the Chief Clerk, MC-105
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Austin, Texas 78711-3087
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512-239-3311 Fax

REQUESTER:

Emily Rogers
Bickerstaff, Heath, Delgado, Acosta, LLP
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Austin, Texas 78746-8013

WITHDRAWAL OF REQUEST:

Brad Castleberry
Lloyd Gosselink Rochelle & Townsend, PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2442


Robin A. Melvin *by SBC*
with permission

WASTEWATER SERVICE CONTRACT

WHEREAS, Kaufman County Fresh Water Supply District No. 1 A ("District") has requested that the City of Forney ("City") provide the District with wastewater transportation and treatment service for a 3,852 acre tract of land known as the Windmill Farms Development, generally located near the intersection of U.S. Highway 80 and Windmill Farms Boulevard in Kaufman County, Texas; and

WHEREAS, the City maintains the wastewater transmission system known as the Forney Wastewater Interceptor System ("FIS"), which collects wastewater and conveys it to the South Mesquite Regional Wastewater Treatment Plant operated by the North Texas Municipal Water District ("North Texas").

WHEREAS, the District provides wastewater collection and treatment services for its service area known as the Windmill Farms Development, described in Exhibit "A" attached, and District is planning to construct facilities necessary to transfer the wastewater from the Windmill Farms Development to the FIS; and

WHEREAS, the City and North Texas will review the technical proposal to be submitted by USA Engineers, serving as District's consulting engineer and are of the opinion that the information and data will provide the necessary information for the review and approval of this contract.

NOW, THEREFORE, for the purposes and consideration set forth herein, the sufficiency of which is acknowledged by the parties, the District and the City mutually agree to the following terms and conditions:

I. PURPOSE

1. The City shall provide wastewater transportation and treatment service in order for the District to serve the limited geographic area known as the Windmill Farms Development, as described in Exhibit "A", with the District having the total responsibility to construct a wastewater conveyance system ("system"), meeting all state and federal regulations and laws, necessary to transport and discharge District's wastewater from the Windmill Farms Development into the FIS at a Point of Entry to be located at the Forney Wastewater Interceptor System ("FIS") Lift Station site, for conveyance of such wastewater to the South Mesquite Regional Wastewater Treatment Plant, where North Texas shall be responsible for treating the wastewater in accordance with state and federal regulations and laws.
2. The Line (defined below) will be sized to serve the Windmill Farms Development, and the properties now known as Meadow Ridge Farms, SPG International, Taylor Armstrong, and others. The sizing will be established in accordance with a study and final engineering plans being conducted by USA Professional Services Group, Inc., to determine the area of service and size of the sanitary sewer line and appurtenances necessary to serve all of the properties, with input and approval of the engineering plans by the City and North Texas.

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Exhibit "A"

II. RESPONSIBILITIES

DISTRICT: The District will, at its sole cost and expense, acquire all the necessary easements and construct the sanitary sewer lines, lift stations, pumps and related improvements (the "Line") necessary to collect wastewater from its system in the Windmill Farms Development and convey it to the Point of Entry in the FIS, and in connection with that will:

1. Provide a set of plans and specifications prepared by a registered professional engineer for the construction of the wastewater collection system in the Windmill Farms Development and the Line, including meter, to the Point of Entry. These plans must be submitted to the City for review and approval prior to the start of any construction. The City shall review and make comments on the plans within thirty days after receipt. Construction of facilities for the meter and meter vault must meet State of Texas standards and must have the written approval of the City and North Texas prior to construction.
2. Pay all costs necessary to transport wastewater from the Windmill Farms Development to the Point of Entry, including sewer lines, trunk lines, lift station, metering vault station, meter and operations and maintenance and contract for power. Ownership of the meter shall be vested with the City.
3. Pay charges for service, which shall be calculated based on the greater of (1) an agreed minimum annual flow of 149,650,000 gallons or (2) District's actual annual flow times the current unit treatment cost of service per one thousand gallons to the City. The City will determine the cost of service to be charged to the District for the transmission and treatment of the wastewater through the FIS. Such cost of service will include \$1.50 per 1,000 gallons for debt service, \$.20 per 1,000 gallons for operations and maintenance, and actual cost plus 20% for the wastewater treatment service, provided that the combined charge will be a minimum of \$2.85 per 1,000 gallons, plus \$.15 per 1,000 gallons surcharge.
4. When improvements are necessary to take the interceptor system capacity to greater than 5.4 million gallons per day (mgd), all of the District's flow will be diverted to that improvement. When District flow is diverted, the charge for service will be calculated based on District's actual annual flow times the new current unit cost per thousand gallons for debt service, operations and maintenance, and treatment plus 20 %. Liability for making payments shall commence on the date of the first delivery of wastewater into the City wastewater system.
5. Make monthly payments based on 1/12 of the annual charges for service for District. The first monthly payment due each fiscal year shall be twice the calculated monthly payment, with no payment due during the last month of the fiscal year except that caused by adjustment based on actual flow or system expense. At the end of each fiscal year, any deficit shall be

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billed to District and any credit shall be applied to the billing for the next fiscal year.

6. Bills submitted to District will be due and owing on the 20th day after receipt. If the bill has not been paid by the 30th day after the due date, then it shall be considered delinquent and a 10% additional charge will be added to the bill.
7. It is the intention of the parties that upon completion of the Line, including the sanitary sewer lines, lift stations, pumps and related improvements, the same will be dedicated to and owned by the City, which will thereafter be responsible for its operation and maintenance. The cost of operation and maintenance will be prorated among and charged to the users of the Line. Until the Line is dedicated to and owned by the City, the District will be responsible for its operation and maintenance. When the Line is tied in and flow commences to the FIS, the District's TCEQ wastewater discharge permit will be transferred to North Texas.
8. District shall provide the City access to meter and controls on the meter station site.
9. District shall be responsible for all permits and certificates required by the regulatory agencies for facilities built by District up to the City's meter vault.

III. FORNEY

1. The City shall bill District monthly in accordance with the provisions hereof.
2. The meter shall be maintained in accordance with the City's standard maintenance policy for meters, with the District having the right to request verification of the accuracy of the meter by witnessing the City's calibrations. Should disagreement arise regarding the accuracy of the meter, District has the right to have an outside meter company evaluate the meter with City personnel once in any six (6) months period. Any meter adjustment shall not be for a time period greater than six (6) months.
3. The City shall operate the FIS and treatment service in accordance with the Forney Wastewater Interceptor System Contract and the North Texas Municipal Water District Trinity East Fork Regional Wastewater System Contract dated February 22, 1990.
4. The District will recover all its cost of over sizing the Line and related improvements through a pro-rata charge to be made by the City against such other owners as they tie on to the Line. The City will enact a pro-rata ordinance and the parties will enter into a development or pro rata agreement for such purpose.

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5. The City and North Texas will add improvements to the existing FIS line and capacity will be expected to reach 5.4 MGD. When 75% of the current capacity of FIS is reached, planning for expanded capacity and/or a new line will begin. The costs for planning/preliminary engineering will be pro-rated among the users. When 90% of the current capacity of the FIS is reached, construction will be underway. When construction is complete, all flow from the District will go into the new or improved line.

IV. LIMITATIONS.

The following limitations shall apply to District:

1. The land area being served by the District shall be only the area called the Windmill Farms Development as established in Exhibit "A".
2. District agrees that the wastewater discharged into North Texas's wastewater system shall not exceed an average day flow of 3.2 mgd or a peak flow of 9.7 mgd.
3. The wastewater discharged into the City's wastewater system shall never exceed the following Normal Wastewater Concentrations:
 - (a) 275 milligrams per liter BOD (Biological Oxygen Demand);
 - (b) 300 milligrams per liter TSS (Total Suspended Solids);
 - (c) pH, not less than six (6) or greater than nine (9); or
 - (d) 0.1 milligrams per liter Hydrogen Sulfide.
4. The City of Forney and the other member cities of the North Texas Municipal Water District Regional Wastewater System shall have prior rights to the service of the system.

V. OTHER

1. Title to all wastewater shall be in District until discharged into the City's wastewater system, at which point title to such wastewater shall pass to the City. The City reserves the right of re-use of wastewater treated effluent to the extent authorized by the State of Texas.
2. District acknowledges that from time to time it will be necessary to provide additional facilities to receive, transport, treat, and dispose of wastewater from District. The City will advise District of its planning and proposed improvements. The City will be advised at all times of District's planning and proposed development.
3. The City will coordinate the approval process necessary for this contract as it relates to North Texas.
4. It is the intent of the District to finance the improvements with bond proceeds and the City will support the District in obtaining bond financing

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for the repayment of any and all costs associated with the construction of the improvements.

VI. TERM

The effective date of this agreement shall be May 1, 2005 2005, and shall run for a term of thirty (30) years from that date.

Executed in duplicate originals by the duly authorized representatives of the parties this 3 day of May 2005.

CITY OF FORNEY, TEXAS

Danell Groom
MAYOR

**KAUFMAN COUNTY FRESH WATER
SUPPLY DISTRICT 1A**

[Signature]
**PRESIDENT/CHAIRMAN OF THE
BOARD**

ATTEST:

Odessa Moore
CITY SECRETARY

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Field Notes

(Overall)

BEING a tract or parcel of land in the S. Smith Survey, Abstract No. 450, the J. Heath Survey, Abstract No. 227, Kaufman County, Texas and being that tract of land conveyed from Albite of Texas, Inc. to Lemman Development, Ltd. by deed recorded in Volume 1323, Page 0281, Deed Records of Kaufman County, Texas and being those tracts of land conveyed from Kaufman Land Partners, Ltd. to Lemman Development, Ltd. by Special Warranty Deed recorded in Volume 2034, Page 419, Official Public Records of Kaufman County, Texas and being those tracts of land conveyed to Kaufman Land Partners, Ltd. by deeds recorded in Volume 1973, Pages 552 and 568, Deed Records of Kaufman County, Texas and being more particularly described as follows:

BEGINNING at the Westerly South corner of said Albite of Texas to Lemman Dev. Tract;

THENCE North 45 degrees 27 minutes 06 seconds West for a distance of 5,905.57 feet to a 10-inch fence corner post, said point being in the South line of County Road 218;

THENCE North 44 degrees 59 minutes 14 seconds East with the Southeast line of said C.R. 218 for a distance of 1185.43 feet to a point for corner;

THENCE North 45 degrees 28 minutes 42 seconds West for a distance of 1,232.69 feet to a 1 inch iron pipe found at a fence corner;

THENCE North 45 degrees 41 minutes 04 seconds East, with the Southeast line of a tract of land conveyed to Jackie McAnally by deed recorded in Volume 617, Page 458, Deed Records of Kaufman County, Texas for a distance of 830.65 feet to a 1/2 inch iron pipe found for corner;

THENCE North 44 degrees 52 seconds 51 minutes West, with the Northeast line of said McAnally tract for a distance of 237.65 feet to a point for corner, said point being the Southernmost corner of a tract of land conveyed to W.R. Evans by deed recorded in Volume 731, Page 355, Deed Records of Kaufman County, Texas;

THENCE North 45 degrees 44 minutes 45 seconds East, with the Southeast line of said Evans tract for a distance of 3928.98 feet to a fence post found for the North corner of said 150.00 acre tract;

THENCE South 45 degrees 28 minutes 08 seconds East for a distance of 1380.56 feet to a point for corner;

THENCE North 44 degrees 55 minutes 55 seconds East for a distance of 804.76 feet to a point for corner;

THENCE South 45 degrees 18 minutes 46 seconds East for a distance of 582.12 feet to a point for corner;

THENCE North 46 degrees 35 minutes 00 seconds East for a distance of 541.53 feet to a point for corner;

THENCE North 45 degrees 12 minutes 27 seconds West for a distance of 24.01 feet to a point for corner;

THENCE North 44 degrees 46 minutes 45 seconds East for a distance of 2152.40 feet to a point for corner;

THENCE South 84 degrees 33 minutes 21 seconds West for a distance of 268.86 feet to a point for corner;

THENCE North 76 degrees 43 minutes 32 seconds West for a distance of 1272.41 feet to a point for corner;

THENCE North 63 degrees 02 minutes 58 seconds West for a distance of 1409.20 feet to a point for corner;

THENCE North 77 degrees 40 minutes 13 seconds West for a distance of 234.06 feet to a point for corner;

Exhibit "A"

THENCE North 55 degrees 09 minutes 22 seconds West for a distance of 716.78 feet to a point for corner;

THENCE North 35 degrees 49 minutes 45 seconds East for a distance of 249.57 feet to a point for corner;

THENCE North 58 degrees 24 minutes 29 seconds West for a distance of 1151.41 feet to a point for corner;

THENCE North 45 degrees 15 minutes 47 seconds East for a distance of 269.56 feet to the point of curvature of a non-tangent curve to the right having a radius of 1860.08 feet, a central angle of 30 degrees 37 minutes 08 seconds, a chord of 982.24 feet, along a bearing of North 60 degrees 33 minutes 48 seconds East;

THENCE along said curve a distance of 994.03 feet to a point for corner;

THENCE North 75 degrees 51 minutes 48 seconds East for a distance of 650.48 feet to a point for corner;

THENCE South 44 degrees 54 minutes 24 seconds East for a distance of 521.63 feet to a point for corner;

THENCE North 44 degrees 37 minutes 01 seconds East for a distance of 1042.24 to a point of curvature of a non-tangent curve to the right having a radius of 1960.08 feet, a central angle of 12 degrees 58 minutes 04 seconds, a chord of 442.68 feet, along a bearing of North 51 degrees 42 minutes 50 seconds East;

THENCE along said curve a distance of 443.63 feet to a point for corner;

THENCE North 45 degrees 13 minutes 47 seconds East for a distance of 3040.41 feet to a point for corner;

THENCE South 45 degrees 10 minutes 32 seconds East for a distance of 10382.84 feet to a point for corner;

THENCE South 39 degrees 46 minutes 07 seconds East for a distance of 1481.15 feet to a point for corner;

THENCE North 54 degrees 43 minutes 45 seconds East for a distance of 10.77 feet to a point for corner;

THENCE South 43 degrees 30 minutes 26 seconds East for a distance of 2657.07 feet to a point for corner;

THENCE South 44 degrees 48 minutes 34 seconds West for a distance of 3450.01 feet to a point for corner;

THENCE North 45 degrees 51 minutes 12 seconds West for a distance of 969.31 feet to a point for corner;

THENCE South 45 degrees 31 minutes 14 seconds West for a distance of 3750.40 feet to a point for corner;

THENCE South 44 degrees 55 minutes 19 seconds East for a distance of 779.61 feet to a point for corner;

THENCE North 44 degrees 41 minutes 56 seconds East for a distance of 1350.55 feet to a point for corner;

THENCE South 01 degrees 49 minutes 47 seconds East for a distance of 265.37 feet to a point for corner;

THENCE South 18 degrees 03 minutes 17 seconds East for a distance of 156.55 feet to a point for corner;

THENCE South 16 degrees 10 minutes 06 seconds East for a distance of 315.52 feet to a point for corner;

THENCE South 44 degrees 30 minutes 01 seconds West for a distance of 2107.10 feet to a point for corner;

THENCE North 88 degrees 32 minutes 39 seconds West for a distance of 662.28 feet to a point for corner;

THENCE North 88 degrees 32 minutes 39 seconds West for a distance of 69.73 feet to a point for corner;

THENCE North 43 degrees 30 minutes 09 seconds West for a distance of 141.40 feet to a point for corner;

THENCE North 43 degrees 30 minutes 09 seconds West for a distance of 40.00 feet to a point for corner;

THENCE South 46 degrees 29 minutes 51 seconds West for a distance of 70.71 feet to a point for corner;

THENCE North 88 degrees 30 minutes 50 seconds West for a distance of 5188.99 feet to a point for corner;

THENCE North 45 dg 08 minutes 31 seconds West for a distance of 1738.08 feet to a point for corner;

THENCE South 44 degrees 49 minutes 04 seconds West for a distance of 1442.65 feet to the **POINT OF BEGINNING** and containing 3888.588 acres of land, less 17.3 acres within the right-of-way of County Road No. 218; **SAVE AND ACCEPT (1)** a tract of land situated in the J. Heath Survey, Abstract No. 227, Kaufman County, Texas and being all of those tracts of land conveyed Raymond Hegefeld by deeds recorded in Volume 521, Page 35; Volume 852, Page 96 and Volume 1234, Page 774 Deed Records of Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1½ inch iron pipe found at the intersection of the West line of County Road No. 218 (variable width right-of-way, hereinafter called C.R. 218) with the North line of U.S. Highway 80 (300' right-of-way);

THENCE North 08 degrees 11 minutes 45 seconds East, with the Southeast line of a called 1,449.801 acre tract conveyed to Albite of Texas, Inc. by deed recorded in Volume 1310, Page 0439, Deed Records of Kaufman County, Texas and the Northwest line of said C.R. 218 for a distance of 2,067.94 feet to a point for corner;

THENCE North 44 degrees 33 minutes 13 seconds West, with the Northeast line of said Albite tract and the Southwest line of said C.R. 218 for a distance of 1,720.83 feet to a ½ inch iron rod with red plastic cap stamped "USA INC PROP COR" set (hereinafter called ½ inch iron rod set) for the **POINT OF BEGINNING** and being the Easternmost corner of said 20.6122 acre tract;

THENCE South 44 degrees 44 minutes 47 seconds West, with the Southeast line of said 20.6122 acre tract and along an existing fence for a distance of 2,017.59 feet to a point for corner;

THENCE North 45 degrees 16 minutes 08 seconds West, along an existing fence for a distance of 448.67 feet to a fence post found for corner;

THENCE North 44 degrees 58 minutes 51 seconds East for a distance of 2,021.99 feet to a 10 inch fence post found for corner from which a 1½ inch iron pipe found bears North 44 degrees 58 minutes 51 seconds East a distance of 1.46 feet and being in the Southwest line of said C.R. 218;

THENCE South 44 degrees 41 minutes 57 seconds East for a distance of 440.42 feet to the **POINT OF BEGINNING** and containing 20.61 acres of land, and **SAVE AND EXCEPT (2)** 0.5 acres which was not conveyed with the Third tract of said Volume 680, Page 705, Deed Records of Kaufman County, Texas and 10 acres conveyed to L.J. Taggart, et ux to John S Griffith on November 13, 1900, which was not included in said Volume 680, Page 705, Deed Records of Kaufman County, Texas.