

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

July 19, 2011

TO: Persons on the attached mailing list.

RE: Rio Grande Mining Company
Permit No. WQ0004297000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Presidio County Courthouse, 301 North Highland Avenue, Marfa, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

- (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

Melissa Chao, Acting Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

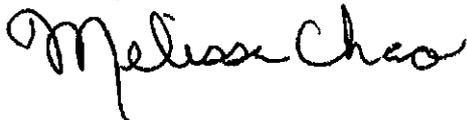
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



Melissa Chao
Acting Chief Clerk

MC/er

Enclosure

MAILING LIST
for
Rio Grande Mining Company
Permit No. WQ0004297000

FOR THE APPLICANT:

Sandy McVey
Rio Grande Mining Company
1750-1188 West Georgia Street
Vancouver, B.C., Canada V6E 4A2

Michael Quinlan
Gault Group LLC
36 West Main Street
Cortez, Colorado 81321

PROTESTANTS/INTERESTED
PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Christiaan Siano, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Tres Koenings, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental
Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

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

ELMS , MONROE
RETIRED PRESIDIO COUNTY JUDGE
PO BOX 43
MARFA TX 79843-0043

FAUST , SARAH B
KEMP SMITH LLP
STE 1150
816 CONGRESS AVE
AUSTIN TX 78701-2442

HUNT , PAUL
PRESIDIO COUNTY JUDGE
PO BOX 606
MARFA TX 79843-0606

LAWRENCE , RANDY
4289 FM 1664
QUEMADO TX 78877-7815

WILLIAMS , MARY LANE
HC 67 BOX 29
MARFA TX 79843-9802

PROPOSED TPDES Permit No. WQ0004297000

2011 JUL 15 PM 4:50

**Application by
RIO GRANDE MINING COMPANY,
for TPDES Permit No.
WQ0004297000**

§ **Before the**
§ **TEXAS COMMISSION ON**
§ **ENVIRONMENTAL QUALITY**
§

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Rio Grande Mining Company, for a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004297000 and on the Executive Director's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code, Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant, comments. The Office of Chief Clerk received timely comment letters from **Ms. Mary Jane Williams, The Honorable Judge Paul Hunt, Mr. Randy Laurence, and Mr. Monroe Elms**. With an email to the TCEQ dated July 3, 2011 Mr. Monroe Elms withdrew his comments. This Response addresses all comments received, whether withdrawn or not.

BACKGROUND

Rio Grande Mining Company's Application:

Rio Grande Mining Company (Permittee), which operates the Shafter Mine, has applied for a major amendment without renewal to amend its Texas Land Application Permit (TLAP), which authorizes the disposal of wastewater via surface and sub-surface irrigation, to a Texas Pollutant Discharge Elimination System (TPDES) discharge permit which would authorize the discharge of mine dewatering water into water in the state at a daily average flow of 360,000 gallons per day. The current TLAP permit authorizes the disposal of mine dewatering water via surface and subsurface irrigation at a daily average flow not to exceed 360,000 gallons per day. If the draft permit is issued, the Permittee will not be authorized to dispose of mine dewatering water via surface or

subsurface irrigation.

The facility is located west of U.S. Highway 67, approximately one mile west of the Shafter townsite, Presidio County, Texas 79843. The effluent is proposed to be discharged to an unnamed drainage, then to Arroyo del Muerto, then to Wilson Arroyo, then to Rio Grande Below Riverside Diversion Dam, in Segment No. 2307 of the Rio Grande Basin.

Procedural Background

TCEQ received the major amendment application on July 13, 2010, and declared it administratively complete on October 15, 2010. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on October 28, 2010, in English in *The Big Bend Sentinel* and in Spanish in *The Presidio International*. The Executive Director completed the technical review of the application on February 12, 2011, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on April 14, 2011, in English in *The Big Bend Sentinel* and in Spanish in *The Presidio International*. The comment period closed May 16, 2011. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).

Access to Rules, Laws and Records

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. Other information can be obtained on the web at the following addresses:

- Secretary of State website for all administrative rules: www.sos.state.tx.us
- TCEQ rules in Title 30 of the Texas Administrative Code:
www.sos.state.tx.us/tac/
(select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.capitol.state.tx.us/statutes/statutes.html
- TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or

Adobe PDF formats, select Rules, Policy, & Legislation, then Rules and Rulemaking, then Download TCEQ Rules)

- Federal rules in Title 40 of the Code of Federal Regulations (CFR):
www.epa.gov/epahome/cfr40.htm
- Federal environmental laws: www.epa.gov/epahome/laws.htm

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken); the permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Presidio County Courthouse, 301 North Highland Avenue, Marfa, Texas.

COMMENTS and RESPONSES

COMMENT 1:

The Honorable Judge Paul Hunt expressed concern about the effects of the discharge on the health of the residents of Shafter, and the regional wildlife. Mary Lane Williams is concerned about possible contamination of the Rio Grande River and Big Bend National Park by the discharge proposed by this facility. Monroe Elms commented that if allowed to dump this polluted water into the water shed, it will have a long and negative effect on the people, the environment, and tourism, in the Big Bend area and in Mexico. Similarly, Randy Lawrence is concerned about the impact the proposed discharge will have on people and the environment.

RESPONSE 1:

The legislature has mandated that "[it] is the policy of this state . . . to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state. . ." ¹ The

¹ Tex. Water Code § 26.003.

TCEQ implements this mandate by drafting permits with effluent limits that will protect water quality.

The Executive Director determined that the designated uses for Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande Basin are high aquatic life use, contact recreation, and public water supply; therefore, the effluent limits in the draft permit were drafted to maintain and protect the high aquatic life uses, contact recreation and public water supply.

If the draft permit is issued and the Permittee starts discharging effluent, the ED will screen the wastewater for compliance with the Texas Surface Water Quality Standards to ensure protection of aquatic life in the receiving stream.. The Texas Surface Water Quality Standards require that "Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." 30 TAC § 307.4(d). The TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (IPs) are designed to ensure compliance with that requirement. As stated within the IPs, intermittent streams with no significant aquatic life uses, such as the unnamed drainage and the arroyo involved in this permit, have no human health criteria for discharges.

Because the Shafter Mine is not currently discharging effluent, there are no effluent data from the facility. Therefore, the draft permit requires the Permittee to sample the initial discharges from the facility and analyze them for a series of pollutants. The TCEQ will screen the results of the analyses against the concentrations necessary to protect the designated uses of the receiving water. See Draft Permit, page 5 and Other Requirement 1. If the draft permit is issued, the effluent data will be compared against the permit limits derived in Appendix A of the Statement of Basis and Executive Director's Preliminary Decision, which were developed based on the Texas Surface Water Quality Standards found at 30 TAC § 307.10, to ensure protection of aquatic life in the receiving stream and to protect the designated uses of the unnamed drainage and Arroyo del Muerto. If the effluent data show pollutants that have the potential to exceed the calculated water quality-based limitations necessary to protect aquatic life, a permit

amendment will be initiated by TCEQ staff and additional monitoring, effluent limits, or other controls may be added to the permit.

The point of discharge is called an “outfall.” This permit has only one outfall, referred to as Outfall 001. Outfall 001 has technology-based effluent limitations that were developed using the federal regulations guidelines relating to this type of mining operation,² in addition to effluent limits established based on the best professional judgment of the permit writer. Combining these, the effluent limitations and monitoring requirements established in the draft permit for Outfall 001 are:

<u>Outfall</u>	<u>Parameter</u>	<u>Daily Avg</u>	<u>Daily Max</u>	<u>Monitoring Frequency</u>
001	Flow (MGD)	(0.360)	(1.08)	2/week
	Total Suspended Solids	20 mg/L	30 mg/L	1/week
	Copper, Total	0.15 mg/L	0.30 mg/L	1/week
	Zinc, Total	0.75 mg/L	1.5 mg/L	1/week
	Lead, Total	0.3 mg/L	0.6 mg/L	1/week
	Silver, Total	0.02 mg/L	0.049 mg/L	1/week
	Mercury, Total	0.001 mg/L	0.002 mg/L	1/week
	Cadmium, Total	0.05 mg/L	0.10 mg/L	1/week
	Oil and Grease	15 mg/L	20 mg/L	1/week
	pH (standard units)	(6.0 – 9.0)		1/day

These criteria are designed to ensure that the surface waters will “not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” See 30 TAC § 307.4(d).

The Executive Director has determined that if the Permittee operates and maintains the facility as required by the draft permit and all applicable regulations, it will be protective of the environment, water quality, human health and wildlife. If you have any concerns or complaints about the WWTP, please contact the TCEQ at 512-339-

² See Title 40 Code of Federal Regulations (40 CFR) §440, Ore Mining and Dressing Point Source Category, Subpart J, Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory.

2929 or 888-777-3186. Noncompliance with any permit provision may result in enforcement action against the Cactus.

COMMENT 2:

Mary Lane Williams and Randy Lawrence question why such a large flow volume of wastewater is necessary.

RESPONSE 2:

The flow volume for this facility was established based on the type of operation involved and the information provided by the Permittee regarding the operation. According to the Permittee, ground water inflows to the underground mining area have historically ranged from 360,000 to 550,000 gpd (gpd). The Permittee intends to route a portion of this ground water inflow (approximately 144,000 gpd) to the Mineral Processing Plant on-site for use at that plant. (The discharge of wastewater from the Mineral Processing Plant is not the subject of this permit.) Therefore, the Permittee determined that a daily average effluent flow of 360,000 gpd would be necessary to ensure the proper operation of the mine.

COMMENT 3:

Mary Lane Williams questions how the TCEQ or other government agencies will monitor the water quality from the facility.

RESPONSE 3:

TCEQ requires the Permittee to submit monthly self-reporting requirements. The TCEQ also performs routine wastewater treatment plant inspections. TPDES permits are required to comply with the Clean Water Act and all applicable regulations promulgated by the U.S. Environmental Protection Agency (EPA). Since the EPA delegated the administration of the National Pollutant Discharge Elimination System to

the TCEQ, EPA has oversight authority over TPDES permits issued by the TCEQ. In certain instances, EPA may enforce TPDES water quality violations.

There are monitoring and reporting requirements on page 2 of the draft permit to ensure that the Permittee is complying with the effluent limits established for discharges from the facility. The Permittee is required to monitor and report the daily average and daily maximum for total suspended solids, copper, zinc, lead, silver, mercury, cadmium and oil and grease as reflected in the following table:

Effluent Characteristics	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Average mg/L	Daily Maximum mg/L	Single Grab mg/L	Report Daily Average and Daily Maximum Measurement Frequency	Sample Type
Flow (MGD)	(0.360)	(1.08)	N/A	Continuous	Totalizer
Total Suspended Solids	20	30	30	2/week	Composite
Copper, Total	0.15	0.30	0.30	1/week	Composite
Zinc, Total	0.75	1.5	1.5	1/week	Composite
Lead, Total	0.3	0.6	0.6	1/week	Composite
Silver, Total	0.02	0.049	0.049	1/week	Composite
Mercury, Total	0.001	0.002	0.002	1/week	Composite
Cadmium, Total	0.05	0.10	0.10	1/week	Composite
Oil and Grease	15	20	20	1/week	Grab

Other Requirement 1 in the draft permit requires the Permittee to report any violation of the effluent limits for copper, zinc, lead, silver, mercury, and cadmium to the TCEQ within 24 hours. Pages 3-7 of the draft permit contain additional monitoring and reporting requirements which the Permittee must comply with. Failure to comply with these permit requirements could subject to the Permittee to an enforcement action with severe consequences.

Additionally, TCEQ relies on citizen complaints to help ensure compliance with its rules and permits. Citizens may contact the TCEQ at 1-888-777-3186, the regional

office in the El Paso area at 915-834-4949, or by e-mail at complaint@TCEQ.state.tx.us to report suspected violations or to file a complaint.

COMMENT 4:

Randy Lawrence is concerned about the lack of information that was made available to the public regarding the nature of the waste.

RESPONSE 4:

The information available to the public for review includes (1) the complete application received from the Permittee including all reports and attachments describing the nature and types of wastes involved in the operation, (2) the NORI which provides notice to the public about the application and the location where it will be available for review, (3) the water quality assessment and modeler's memoranda, (4) statement of basis and technical summary, (5) the draft permit containing information on the nature and type of waste permitted to be discharged, the flow and effluent limitations, and (6) the ED's preliminary decision on the application and NAPD. The ED provides mailed and published notice of the application to the public to give them an opportunity to review the application material, provide comment on the application and request a contested case hearing. For major amendments such as this, a Permittee must provide a list and map of affected landowners. Affected landowners are those landowners located adjacent to the proposed mine's property boundaries and landowners with property on either side of the receiving stream for one mile downstream from the proposed point of discharge. The TCEQ mails notice of the application to the affected landowners and others on the mailing list for the application and for the county.

In addition to the mailed notice, the Permittee must publish two notices prepared by the TCEQ in a local newspaper: the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). The Permittee must also provide a copy of the

application, proposed draft permit, and NAPD in a public place for viewing and copying. For this application, the documents are available for viewing and copying at the Presidio County Courthouse, 301 North Highland Avenue, Marfa, Texas.

For this permit, persons living further than one mile downstream of the discharge were notified through publication of the NORI and the NAPD, both published in *The Big Bend Sentinel* and *The Presidio International* newspapers. Additional notification would have occurred by letter if an individual downstream of the discharge was on either the county-wide mailing list or the mailing list maintained for this application.

COMMENT 5:

Randy Lawrence asks if wastewater is stored in open ponds or lagoons, what effect will it have on migratory birds that may come in contact with it?

RESPONSE 5:

According to the application, the Permittee does not use any open ponds or lagoons for storage of mine dewatering water. The mine dewatering water will be treated in a series of underground sumps and then transported via an eight inch pipe to be discharged via Outfall 001. Therefore, the facility should not have an impact on migratory birds due the storage of wastewater at the facility.

COMMENT 6:

Randy Lawrence is concerned about the impact the proposed discharge will have on downstream water supplies.

RESPONSE 6:

The ED does not anticipate that the discharge will have any negative impact on downstream water supplies. The proposed discharge route is to an unnamed drainage, then to Arroyo del Muerto, then to Wilson Arroyo, then to Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande River Basin. The unclassified

receiving waters, the unnamed drainage and the Arroyo del Muerto were determined to be intermittent (dry for at least one week during most years) in the stream reach assessed which was three miles downstream of the outfall location. Intermittent waterbodies are assigned “no significant aquatic life uses” in accordance with the Texas Surface Water Quality Standards (TSWQS) at 30 TAC §307.4(h)(4). The classified perennial water body, Rio Grande Below Riverside Diversion Dam is assigned contact recreation, public water supply, and high aquatic life uses in accordance with Appendix A of the TSWQS. The dissolved oxygen criterion for the unnamed drainage and Arroyo del Muerto is 2.0 mg/l. The dissolved oxygen criterion for Rio Grande Below Riverside Diversion Dam is 5.0 mg/l.

The Permittee is proposing to discharge groundwater seepage that collects in the mine over time. The Permittee supplied an analysis of groundwater from the mine. Results of the analysis did not indicate any contaminants or dissolved solids (salts) above the EPA minimum concentration levels for chemicals in drinking water. As discussed in Response 1, human health criteria are not applied to intermittent streams.

In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. TCEQ’s antidegradation policy applies to any increase in pollution authorized by a TPDES wastewater discharge permit. Increases in pollution are determined by information on effluent characteristics that are provided in the permit application, the draft permit, and other available sources. The Standards Implementation Team conducts Tier 1 and Tier 2 review in accordance with 30 TAC § 307.5. Antidegradation reviews under Tier 1 ensure that existing water quality uses are not impaired by increases in pollution loading. TPDES permit amendments or new permits that allow increased pollution loading are subject to review under Tier 1 of the antidegradation policy, and all pollution that could cause an impairment of existing uses is included in the evaluation.

A Tier I antidegradation review for this facility has preliminarily determined that existing water quality uses will not be impaired by this permit action. No significant

degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life use downstream, and the existing uses will be maintained and protected. The review also preliminary determined that no water bodies with exceptional, high, or intermediate uses are present within the stream reach assessed. Therefore, no Tier 2 degradation determination is required. The preliminary determination can be reexamined and may be modified if new information is received. Additionally, please see Response No. 1.

COMMENT 7:

The Honorable Judge Paul Hunt is concerned about the effect this dewatering operation will have on the fragile desert mountain aquifer system in the area.

RESPONSE 7:

The Permittee requested a major amendment to discharge wastewater to water in the state. The discharge from the dewatering operation is not expected to negatively impact ground or surface water in the aquifer system within the reach of the operation. Aquifer levels and controls are typically in the jurisdiction of local ground water conservation districts.

COMMENT 8:

The Honorable Judge Paul Hunt is concerned about possible ground water contamination by arsenic from the ore processing operations at the site.

RESPONSE 8:

This permit only authorizes the discharge of mine dewatering water associated with the mining operations. This permit does not authorize the discharge of wastewaters produced as a result of the ore processing operation. The Permittee has indicated that wastes from the processing of ore at the site will be authorized by a separate TCEQ authorization.

COMMENT 9:

Randy Lawrence comments that the discharge from this facility will create a permanent flow of water in a naturally intermittent stream creating unnatural conditions in which non-native flora and fauna may intrude upon native species since the natural environment has been changed by the discharge.

RESPONSE 9:

The scope of the ED's review of a TPDES permit application is limited to water quality issues. TCEQ does not have jurisdiction to address non-native species invasion concerns in the wastewater permitting process. The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and monitoring requirements to ensure that the proposed discharge meets water quality standards.

The issuance of a TPDES permit does not authorize the invasion of any personal property rights, nor limit a landowner's ability to seek judicial relief for interference with the use or enjoyment of his or her property.

The unclassified immediate receiving water bodies, the unnamed drainage and the Arroyo del Muerto, are designated as intermittent streams. Unclassified waters are those smaller water bodies that are not designated as segments with specific uses and criteria in Appendix A or D of 30 TAC §307.10 of the TSWQS. The designation of these unclassified receiving water bodies as intermittent streams will not be changed as a result of the water being discharged from the facility. The designations are based on native water only.

COMMENT 10:

The Honorable Judge Paul Hunt expressed concern over the impact of the discharge on the commercial operations that serve the Presidio County economy.

RESPONSE 10:

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address the commercial operations that serve the Presidio County economy.

No changes to the draft permit have been made.

Respectfully submitted,

Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Christian Siano, Staff Attorney
Environmental Law Division

State Bar No. 24051335
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
512-239-6743
Representing the Executive Director of
the Texas Commission on
Environmental Quality

CERTIFICATE OF SERVICE

I certify that on July 15, 2011, the "Executive Director's Response to Public Comment" for Permit No. WQ0004297000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

By 
Christian Siano, Staff Attorney
Environmental Law Division