

March 31, 2014

FROM: Patricia Lux Graham and
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RE: TCEQ DOCKET NO. 2013-2228-MWD
Major Amendment to TCEQ Permit # WQ0014975001

VIA Electronic Filing

TO: Ms. Bridget C. Bohac
Office of the Chief Clerk
Texas Commission on Environmental Quality
MC 105
Post Office Box 13087
Austin, Texas 78711-3087

**REQUESTER'S REPLY TO TCEQ RESPONSES - REQUEST FOR CONTESTED CASE
HEARING AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

We are affected landowners adjacent to the wastewater treatment plant property that is the subject of the major amendment of the above permit.

I. BACKGROUND

On August 26, 2010 the TCEQ issued water quality permit WQ0014975001 to DH/JB Partnership, Ltd. This permit allowed for 75,000 gallons per day of wastewater treatment plant effluent to be discharged via subsurface drip irrigation in the final phase. We were never contacted about this, never received any notice or information, and therefore were not allowed to comment on this. On November 1, 2012 ownership of this water quality permit was transferred to DHJB Development, LLC (Applicant). Sometime after November 12, 2012 we received notice in the mail that the Applicant had filed for a major amendment to their permit allowing them in the final phase to discharge 350,000 gallons a day into the dry creek that crosses from their property to ours. We were shocked to say the least. The ownership, use and control of the dry creek on our property had not been contested in the 110 years it has been in our family. It is important to point out that dry creek is a label. It is the label we have always used. It was not intended to convey any legal description before or now. We are not Attorneys.

The Applicant's development was the first proposed instance of high density development in the area that we are aware of. It was never allowed before due to impact on the Edwards Aquifer Recharge and Contributing zones and the shortage of water. The Guadalupe Blanco River Authority (GBRA) stepped in and agreed to supply water to the developer from Canyon Lake or possibly other public resources. The last step in this process to allow high density development is a wastewater treatment plant. Lots size is restricted to a minimum of 1.0 acre and 5 acres, by both City of Bulverde and Comal County rules and laws, without the wastewater treatment plant and public water supply respectively. At a minimum two State groups, the City of Bulverde, Comal County and Comal County ISD are assisting the Applicant with their development. We could use such assistance.

As an initial part of the development plan, roadways to a new elementary school were either enlarged or added. A large elementary school with parking lots, basketball courts, etc has been built. This places large impermeable barriers over the Edwards Aquifer Recharge Zone. Recently, a lot of utility work, road work and site work have been completed. Four homes are in some phase of construction. If the amended permit for this wastewater treatment plant is approved, not only will the effluent allowed by this permit be diverted to us, but most of the stormwater from the development will also be diverted to us.

From our prospective the burden seems to be on us just because someone bought the property next to ours and wants to develop it for homes and mixed uses. We have already spent thousands on an attorney and do not wish to spend anymore. What follows is the best of our ability.

II. REPLY TO TCEQ RESPONSES

For clarity, in the following discussion we will refer to Executive Director (ED) issues as ED 1, ED 2, etc. Likewise for Office of Public Information Council (OPIC) issues, we will refer to them as OPIC 1, OPIC 2, etc. For issues that we respectfully restate we will refer to them as R1, R2, etc. We hope this will in some way adds clarity. This is a very complicated process of replying to multiple issues from two different sources. Liberal use of foot noting will also be used. All of this is intended for the sake of clarity, not confusion of the issues. All of our Exhibits included at the end of this document will use letters and be labeled Exhibit A, Exhibit B, etc. This is to make a distinction from ED Attachments in their response and TPDES Permit Application Exhibit numbers.

REPLY TO THE EXECUTIVE DIRECTOR'S RESPONSE

We somewhat agree with the statement of the issue and the analysis of ED 1, ED 2, ED 3 and ED 7. For this reason, a reply has not been provided for these issues. We respectfully disagree with either the statement or the analysis of the remaining issues.

ED 4: Whether DHJB must obtain permission from adjacent downstream landowners to use the discharge route.¹

We respectfully submit this is a truncation of the issue. The issues raised by us were:

R1: Whether this is in fact a dry land application.

R2: Whether a long term lease is necessary for a permit with dry land application to land that Applicant does not own.

The ED's assumption is the effluent will be deposited into waters of the State, when in fact this is a dry creek, dry land application. In the final phase 350,000 gallons per day of wastewater treatment plant effluent, treated to EPA and TCEQ standards, could be discharged. Discharging 350,000 gallons per day into a body of water containing millions of gallons and thoroughly diluted with water does little harm. 350,000 gallons per day of the same highly chemically treated effluent applied directly on a small patch of dry land can and will do great harm.

The Applicant's letter to us, regarding questions raised by us to local government, clearly suggests that this is a dry land application, not discharge to waters of the State, and a waste of public resources (Exhibit A). The Applicant notes, "Because of evaporation and infiltration, those flows will be even lower downstream where the creek crosses onto your property."² The applicant states, "In fact, our Engineers have also calculated that the volume of highly treated effluent to be discharged into the creek in the first phase of the plant will be the effective equivalent flow of three garden hoses per day (not under pressure) at the discharge point on our property, and that little if any, of the volume discharged will ever make it to the creek channel into your property."³ The Applicant's own statements define this as a dry land application, not a discharge into waters of the State. If little or any of the effluent in the first phase will make it to our dry creek, then none of it will make it to the Cibolo Creek. This is contrary to the TPDES Permit Application item 8.a. where Applicant or their engineers state, "From the plant site to an unnamed tributary of Upper Cibolo Creek; thence to Upper Cibolo Creek (segment 1908) of the San Antonio River Basin."⁴ Not only are these contradictory statements, but this describes a waste of public resources in the Applicant's own words. "Evaporation" of water is not a public purpose or a conservation practice for the public's natural resources. Disposing of "highly treated" wastewater treatment plant effluent via "infiltration" directly into the Recharge Zone before treatment chemicals have had a chance to disperse or dilute is not a public purpose or conservation of the public's natural resources.

¹ ED Response, Page 10

² Exhibit A, Page 3 of 5, near bottom of page

³ Exhibit A, Page 4 of 5, near top of page

⁴ TPDES Permit Application, TCEQ-10053, Page 11 of 18

The first phase of this permit is discharge of 37,500 gallons per day of effluent. Since there are no waters of the State in this dry creek, the effluent becomes a land application, with the accumulation of salts, toxic chemicals, and undesirable bacteria.

R2 is self evident if R1 is affirmative. Clear evidence is present for R1. This issue regards a material and relevant fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, respectfully request the Commission refer this issue to SOAH for hearing.

ED 5: Whether the discharge route has been properly characterized.⁵

This is the ED spinning a case for the Applicant, rather than evaluating the application. The Applicant or their engineers clearly note in the TPDES Permit Application, "Discharge site not influenced by upstream. Dry Creek."⁶ They further note in their TPDES Permit Application, "No usage, water body is dry creek."⁷ This is an honest assessment of the facts by the Applicant or their engineers before any facts were disputed. In almost every other instance, facts asserted by a Registered Professional Engineer are accepted by the ED. When Applicant and affected parties agree on the facts, the ED need not make a determination. The facts are not in dispute. Further, from topographic maps and aerial imagery, how could the ED know the characteristics of the discharge route better than the Applicant, Applicant's engineers and us? Dashed lines on topographic maps were never meant to convey a legal meaning. Aerial imagery is a two dimensional representation of a three dimensional world. The use of these media to determine fine detail of a landscape is, at best, guess work.

Further, Chief Justice Aboussie notes in the dissenting opinion for *Domel v. City of Georgetown*, "Mrs. Domel stated that she and her husband have owned the property since 1948 and she was familiar with the appearance of the property and the area at issue. She characterized the disputed property as a "low place" or a "drainage area."⁸ In other words, the Chief Justice would have accepted Mrs. Domel's characterization at face value due to her familiarity with her property. In *Domel* the facts were in dispute. Here the Applicant and we agree this is a dry creek without perennial pools.

The ED in their RTC notes, "The unnamed tributary, after the confluence with a downstream tributary, **seems** (emphasis added) to have water within the banks in several areas; therefore, the unnamed tributary is intermittent with pools and is designated as supporting limited aquatic life."⁹ This is not a dispute of facts, but a definite maybe.

The facts are not in dispute. The Applicant and we agree it is a dry creek. The discharge route has not been properly characterized by the ED. Clear evidence is present. We respectfully

⁵ ED Response, Page 10

⁶ TPDES Permit Application, TECQ-10054, Page 15 of 44

⁷ TPDES Permit Application, TECQ-10054, Page 16 of 44

⁸ *Domel v. City of Georgetown*, 6 S.W. 362

⁹ ED RTC, Page 7

request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to the SOAH for hearing.

ED 6: Whether DHJB can change the discharge route after the permit is issued.¹⁰

We respectfully submit this issue is stated entirely wrong. We asserted that our understanding of the Applicant's plans was that the discharge route was to be altered. We neither had, nor gave any indication whether the changes would occur before or after the permitting process. Exhibits B, C and D clearly show major changes to the discharge route. Exhibit B is standing in the dry creek on our property looking across to the Applicant's property. Exhibit C is standing on our property and looking west to the Applicant's property in the general direction of what once was a dry creek. Exhibit D is the same perspective as Exhibit B a couple months earlier. We respectfully submit the question before the Commission should properly be;

R3: Whether the Applicant can make significant alterations to a discharge route without a major amendment to the permit.

We respectfully submit that they should not without a major amendment to the permit per 40 CFR §122.63, whether the alteration of the discharge route is done before or after the permit is issued. Change of the discharge route is not listed as a minor modification, and therefore it is a major amendment requiring public comment.

An additional concern is that altering a discharge route during the permitting process makes it impossible to ascertain relevant facts that are in dispute during the permitting process. What we contend was a grassy covered swale in the area has been altered well beyond recognition of its former characteristics.

Site work for the development's wastewater treatment plant has begun. We assert this area was a grassy swale, a depression.¹¹ Rerouting of the dry creek has already begun. The creek has been graded level and dirt has been mounded on the north side of the plant site. Is this a violation of 30 TAC § 217.11 (a) & (b)? Exhibit 4B is included in the TPDES Permit Application and rerouting is a portion of the plans for this wastewater treatment plant. Clearly, the Applicant should have marked Item 4a, DESCRIPTION OF THE IMMEDIATE RECEIVING WATERS, Man-made Channel or Ditch rather than Stream.¹²

Office of Public Interest Council (OPIC) recommends as a question for referral to SOAH, "2. Do the functional characteristics of the proposed discharge route, **as it currently exists without modification** (emphasis added), render the facility unsuitable for the proposed location?"¹³ Clearly, OPIC does not expect the discharge route to be altered during the permitting process.

¹⁰ ED Response, Page 11

¹¹ TPDES Permit Application, Exhibit 7, Photos 1-8

¹² TPDES Permit Application, TCEQ 10054, Page 14 of 44

¹³ OPIC Response, Page 12 of 14

Clear evidence is present. The Applicant has significantly altered the discharge route. We respectfully request that the Commission reconsider the ED's decision. It is a verifiable, relevant fact, not law, that significant portions of the discharge route on the Applicant's property have been altered. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to SOAH for hearing.

ED 8: Whether the discharges route is a State controlled watercourse.¹⁴

We respectfully disagree that this issue was not raised in comments. We probably did not do it well, but this issue was raised. Further our former Attorney's comment on June 26, 2012, notes, "In reality the Applicant is seeking to discharge the effluent to a pasture surface area that receives only nominal rainfall runoff."¹⁵ This is a question of whether this is a watercourse at all and by implication, not State controlled. We have raised the same issue. Even though Mr. Bradbury subsequently withdrew from the case, his comment is ours. It was produced on our behalf under contract to us, and Mr. Bradbury was paid in full.

Further, the Applicant's actions clearly indicate that they do not believe this a State controlled watercourse. We received Exhibit E just a few days ago. In summary, it is a threat to assert eminent domain over the dry creek on our property. We are having trouble wrapping our minds around the questions that this raises. What is eminent domain over waters of the State? Is this the EPA? Is this the President?

This is a relevant and material issue of fact, not law. We respectfully request that the Commission refer this issue to SOAH for hearing.

RELATED ISSUE

While on the topic of Johnson Ranch MUD, we have tried for many months now to determine the location of meetings, place where notices of meetings are posted, contact information, etc. The TCEQ Water Utilities Database indicates that Johnson Ranch MUD is inactive and does not contain any of the normal contact information. We first contacted the TCEQ regarding this matter on January 13, 2014. We have expected something like the assertion of eminent domain. We respectfully request that the Commission look into this matter. MUDs are subject to the Open Meetings and Open Records. We have not been allowed to attend meetings and become informed on activities of this MUD that are of concern to us. What resolutions have been passed by this MUD? Where is funding for this MUD coming from? Is the MUD simply an alter ego for the Applicant?

ED 9: Whether the bed and banks of the discharge route will be damaged.¹⁶

¹⁴ ED Response, Page 11

¹⁵ Public Comment, James Bradbury, June 26, 2013

¹⁶ ED Response, Page 12

We respectfully submit ED's statement of this issue is incorrect. We have reviewed our comments and cannot find anywhere where we mention õbed and banksõ. Further, ED has not used foot noting or any other way to help us determine where they believe we used the words õbed and banksõ. We did raise concerns about the erosion and property damage along the discharge route and adequacy of the discharge route to handle effluent and stormwater flows for the development that is associated with the application. The issue is more fairly stated:

R4: Whether the dry creek in question is adequate for the proposed effluent and storm water flows.

This issue was raised during the comment period in our letter dated January 7, 2013, item 5 and letter dated May 13, 2013. This is an issue of material and relevant fact, not law. We respectfully request that the Commission refer this issue to SOAH for hearing.

ED 10: Whether the northerly fork of the tributary will be destroyed by the Applicant during construction of the development.¹⁷

The only place this issue was discussed was in our HR/RFR¹⁸. The words used were õdry creekõ. This issue was raised because it goes directly to the ED's and Applicant's intents, good faith representation and/or understanding of the discharge route. Who, in good conscience, would build homes, roads, etc. over a significant watercourse in the Hill Country, an area prone to substantial flooding events? Figure 4 of our HR/RFR depicts this issue. Who, in good conscience, would build a wastewater treatment plant directly over a significant watercourse in the Hill Country? Why wouldn't the ED be checking the design for flood water inundation protection? Attachment D of the ED Response to HR/RFR clearly depicts the plant sited directly over the dry creek in question. The issue is more clearly stated:

R5: Whether the Applicant's plans and actions regarding the dry creek in question clearly demonstrate that this is not a significant dry creek.

There is a question in the application regarding whether the plant is above the 100 year flood plain.¹⁹ The Applicant answered truthfully, YES. But the fact is plant siting directly on a significant watercourse in an area prone to flooding like the Hill Country is much worse than siting in a 100 year flood plain. In a significant watercourse in the Bulverde area, where this development is located, swift moving, high waters are collected from the surrounding hills. Once channeled, these waters move with a great deal of destructive force and cause significant damage. In a 100 year flood plain, away from significant watercourses, the water typically moves more slowly. Most of the damage is inundation (water logged). The applicant by their own plans and actions has demonstrated this is, at best, an insignificant watercourse.

¹⁷ ED response, Page 12

¹⁸ Requester's HR/RFR letter dated December 6, 2013

¹⁹ TPDES Permit Application, TCEQ-10054, item 5, Page 12 of 14

OPIC notes, "The purposes of 30 TAC Chapter 309, Subchapter B, Domestic Wastewater Effluent Limitation and Plant Siting requirements, include goals "to minimize the possibility of exposing the public to nuisance conditions" and "to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable or inappropriate, unless the design, construction, and operational features of the facility will mitigate the unsuitable site characteristics."²⁰ If this is a significant watercourse the site for the plant is unsuitable or inappropriate. Rerouting the dry creek is depicted in the TPDES Permit Application, Exhibit 4B.

In all discussions with the TECQ regarding this matter, they have indicated that almost any change to the discharge route would require a major amendment, and the permitting process would need to return to public comments. The changes that have been made by the Applicant are significant. The evidence is clear. This issue is a material and relevant fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to SOAH for hearing.

ED 11: Whether an adjacent landowner can fill a portion of the discharge route to prevent the discharge.²¹

We respectfully submit this is a misstatement of this issue. Nothing was mentioned about preventing discharge. The issue that was raised is:

R6: Whether an adjacent landowner should fill a portion of the dry creek on their property to put an end to this.

Just as the Applicant has legal control of the dry creek on their property. We have legal control of the creek on our property. The Applicant has done whatever they wanted with the dry creek on their property; fill, reroute, grade, etc. Since the ED and OPIC have clearly determined that this is not an issue of a navigable waterway, we can fill portions of the dry creek or the entire dry creek on our property. There are limits to this, but as long as we do not damage someone else's property, we own the bed and banks. Since the RFR was submitted, we have constructed a domestic, livestock and wildlife exempt pond on the upper reaches of the dry creek on our property. The subject pond is not lined in any way. Issuance of this permit will cause wastewater treatment plant effluent to be impounded over the Edward Aquifer Recharge Zone.

Further, in a statement to a news agency the applicant stated that we were in violation of Texas Water Code §11.086 (a) by building a dam on the dry creek on our property (Exhibit I, page 32 of 32). In doing so, the Applicant judicially admitted that the waters in question are surface waters, not waters of the State.²²

²⁰ OPIC Response Page 11 Of 14

²¹ ED Response, Page 12

²² Elher v. LVDVD, 319 S.W.3d 817, 825 (2010)

Clear evidence has been presented. This is material and relevant fact. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to the SOAH for hearing.

ED 12: Whether the Domel v. City of Georgetown case is a valid legal precedent.²³

We respectfully submit this is misstatement of the issue. We raised the issue that the precedent was not being properly applied. That the first sentence of the opinion is "This case presents the question of whether a governmental entity returning treated wastewater into a watercourse under permit from a state agency needs additional permission from downstream landowners."²⁴ The Applicant is not a governmental entity. They are a corporate entity. The powers of eminent domain and many other powers are different for governmental entities and corporate entities. Governmental entities can make law and regulations. Corporate entities cannot. The facts of this permit are not remotely similar to Domel. Mrs. Domel agreed with the City of Georgetown with the characterization that it was an intermittent stream with perennial pools. In this, the only one that has found perennial pools is the ED. Mrs. Domel stated that the low spot flowed about half the year. In this case no one has asserted any regularity of flow. Mrs. Domel stated that the water in the low spot had been used for irrigation. In this case, no one has asserted that water from the dry creek has served any purpose. The TPDES Permit Application asks, "Uses of water body observed or evidences of (check as appropriate)."²⁵ There are several choices such as "livestock watering", "irrigation withdrawal", etc. The Applicant and their engineers selected, "others, specify below" and then specified, "No usage, water body is dry creek." We likewise have never found any use for the water in the dry creek. Flow of water in the dry creek is too infrequent and of short duration.

Further, we raised the issue of whether the ED had crossed the line by inserting the issue of perennial pools in the ED's Response to Comments (RTC), and was now advocating for the Applicant. The Applicant had every opportunity to indicate the existence of perennial pools in their TPDES Permit Application. There is a place in the application to do so.²⁶ Additionally, the Applicant could have corrected the application if they felt that there was a need. Instead ED and technical staff corrected it for them. It would be really nice if we could get free Attorneys and technical staff to assist us with this. We did not seek being involved in this process. We are private citizens. We do not stand to make any profit from this whole process, quite the opposite.

In OPIC's Response they note, "the State has the right to authorize use of watercourses for a **public purpose** (emphasis added) without seeking permission from any riparian landowners." What clearly is in dispute here is public purpose. The Applicant is a for profit entity. The main if not only purpose of the wastewater treatment plant is to sell more lots, as outlined above in BACKGROUND, regardless of other stated purposes. Further, what public

²³ ED Response, Page 12

²⁴ Domel v. City of Georgetown, 6 S.W.

²⁵ TPDES Permit Application, TCEQ-10054, Page 16 of 44, Item 5.b

²⁶ TPDES Permit Application, TCEQ-10054, Page 15 of 44, Item 4.b

purpose is served by building homes, roads, sewage lift station, etc. over a critical section of the Edwards Aquifer Recharge Zone? Has the ED approved the sewage lift station over the Recharge Zone?

The Applicant has been cited by the TCEQ for allowing their silt and construction debris to enter the dry creek on our property. The whole dry creek on our property is over the Recharge Zone. The South Texas Watermaster is investigating whether the Applicant has impounded the State's waters without permit. The Army Corps of Engineers is investigating whether the applicant has altered what they have indicated is a regulatory stream without permit. All of this goes to Applicant's intent and ability to protect public natural resources and have a public purpose. Most for profit entities will not sacrifice any more of their profits than absolutely required. This is to be expected. It is the nature of a business to maximize its profits. This is the reason why the TCEQ and successor agencies were established in the first place. A lot of TCEQ's authority today is derived from Goldsmith & Powell v. State. Because citations, fines, etc. were not working to stop polluters, the Court held the State needed broad ability to be able to sue polluters (private entities) and protect the waters of the State. Fines, citations, etc. had not worked and the pollution of the Neches River was turning it into a lifeless water body.

The issue we raised is more properly stated:

R7: Whether the legal precedent of Domel v. City of Georgetown is being applied correctly.

Clear evidence has been presented. This issue is a material and relevant fact, not law. We respectfully request that the Commission reconsider the ED's decision. If this decision is not reconsidered, we respectfully request that this issue is referred to SOAH for hearing.

ED 13: Whether the public should be allowed to comment on the Executive Director's responses in his response to comments.²⁷

The ED states that this issue was not raised in public comments. Of course it was not raised during the public comment period. It could not have been. ED did not raise the issue of perennial pools until after the public comment period in their RTC. This is a complete misstatement of the issue. This issue is more properly stated:

R8: Whether the ED should add facts supporting the Applicant's permit after the public comment period and exclude affected parties and the public from commenting on the facts of the TPDES Permit Application.

Clear evidence is present. This is a relevant and material issue of fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the Commission does not reconsider the ED's decision, we respectfully request that the Commission refer this issue to the SOAH for hearing.

²⁷ ED Response, Page 13

REPLY TO OFFICE OF PUBLIC INTEREST COUNCIL RESPONSE

We somewhat agree with the statement of the issue and the analysis of OPIC 1, OPIC 3, OPIC 4 and OPIC 5. For this reason, a reply has not been provided for these issues. We respectfully disagree with either the statement or the analysis of the remaining issues.

OPIC 2: Whether the proposed discharge route running through Ms. Graham's property fall under TCEQ or State jurisdiction.²⁸

As in OPIC 1, this is an issue regarding the entire discharge route, not just the discharge route on our property. This issue is integral with "Whether this is a watercourse" and other issues and will be determined by those issues.

OPIC 6: Whether TCEQ interpreted the relevant case law too broadly.²⁹

This is an issue of fact. Respectfully disagree that this is an issue of law or policy. This issue is covered thoroughly above and further coverage is not needed.

OPIC 7: Whether TCEQ should allow for public comments on the "perennial pool" issue.³⁰

OPIC notes that Issue 6 and 7 are, "issues of law and policy."³¹ We respectfully disagree. Whether or not perennial pools exist is an issue of fact, not law or policy. This issue has been thoroughly covered above.

OPIC 8: Whether the dry creek or perennial pools have aquatic life and if these should be naturally occurring bodies of water.

We respectfully disagree with OPIC's analysis of this issue. OPIC notes, "Likewise, the issues of whether the perennial pools are naturally occurring bodies of water is not relevant or material."³² The ED in their RTC notes, "The unnamed tributary, after the confluence with a downstream tributary, **seems** (emphasis added) to have water within the banks in several areas; therefore, the unnamed tributary is intermittent with pools and is designated as supporting limited aquatic life."³³ With this statement, the ED is asserting that the water bodies are natural. An intermittent stream is a natural water body. A perennial pool is a natural water body. The ED raised the issue of the existence of aquatic life. Neither the applicant nor we have indicated there are perennial pools or aquatic life. We raised the issue of whether the TPDES Permit Application had been properly annotated? Had the discharge route be properly characterized by the ED? There are several questions on the TPDES Permit Application differentiating natural

²⁸ OPIC Response, Page 8 of 14

²⁹ Id.

³⁰ Id.

³¹ Id.

³² OPIC Response, Page 10 of 14

³³ ED RTC, Page 7

verses manmade. All of this goes to the proper characterization of the discharge route and are relevant and material facts. The first portion of the characterization of the discharge route should be, From the plant site to a manmade ditch or channel; thence rather than the characterization that is used in the TPDES Permit Application, "From the plant site to an unnamed tributary of the Upper Cibolo; thence í ö.

The discussion under ED 5 above fits here as well. The word "seems" is not an affirmative dispute of fact, therefore the facts are not in dispute. This issue is a material and relevant fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request that the Commission refer the issue to SOAH for hearing.

OPIC 9: Whether re-routing and substantial modification of the currently proposed discharge route would be needed to render the route operational and suitable for receiving discharged effluent.³⁴

Re-routing and substantial modification of the discharge route has occurred as shown in Exhibits B, C and D. In addition, plant site work has begun and re-routing and substantial modification of the discharge route has occurred there as well. It can only be assumed that this work was necessary to make the route operational and suitable, or the Applicant would not have done it.

These facts cannot be disputed. This issue is a material and relevant fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request that the Commission refer this is to SOAH for hearing.

Clarification

OPIC notes, "Ms. Graham also states that the purported unnamed tributary is a dry creek with intermittent pools and not a stream."³⁵ Respectfully suggest this should read, Ms. Graham stated that the purported unnamed tributary is a dry creek not a stream.

III. ISSUES OVERLOOKED OR NEGLECTED BY TCEQ

R9: Whether Applicant properly completed the TPDES Permit Application on page 13 item n, by marking it NO.

This issue was raised during public comments.³⁶ In RTC response 4, the ED responded, "According to DHJB's application, the effluent will be discharged "from the plant site to an unnamed tributary of Upper Cibolo Creek thence to Upper Cibolo Creek (segment 1908) of the San Antonio River Basin." Due to our lack of familiarity with this process, we thought that was the end of it and did not raise this issue in our HR or HR/RFR. In looking back at this, we

³⁴ OPIC Response, Page 8 of 14

³⁵ OPIC Response, Page 11 of 14

³⁶ Comments from Patricia Lux Graham, dated January 7, 2013

realized the ED's response to the issue was nonresponsive. We contacted TXDOT and received the email in Exhibit H. TXDOT owns the right of way on both sides of FM 1863 and was not notified. In discussions with the TXDOT representative, she indicated that only public utilities could use TXDOT right of ways without a permit.

TPDES Permit Application was not completed properly. This is a material and relevant issue of fact, not law. We respectfully request that the Commission reconsider the ED's decision.

R10: Whether TXDOT is an affected land owner and should have been notified.

The right of way for FM 1863 has not been included in our survey for many years. Our family used to own both sides of FM 1863. This land belongs to TXDOT, and TXDOT should have been notified as an affected landowner. This is also an issue of safety. There is a low water crossing that floods during heavy rains. TXDOT has not been afforded the chance to check culvert sizing or make necessary improvements to handle effluent flows and stormwater flows from the subdivision.

This is a material and relevant issue of fact, not law. We respectfully request that the Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to the SOAH for hearing.

R11: Whether regionalization was considered in the permitting process.

We did not understand regionalization was a TCEQ policy until doing research for this reply. A permit has been issued for discharge of 500,000 gallons discharge per day of wastewater treatment plant effluent just upstream of the Cibolo Creek of the Applicant's development. The City of Bulverde has approved Master Plans for a development just north of our family's property and another just east of that. One of these developments is in the permitting process for land application. Both of these developments are high density and will need a wastewater treatment plant or access to one. This brings to total homes in the immediate vicinity of our family's ranch to over 3,000 single family homes and mixed use areas, multifamily, business, school and church sites. Clearly, some State, County and City reconsideration is necessary regarding the development in our area. Coordination between local government and State Agencies has not been very efficient regarding development in our area.

This is a material and relevant issue of fact, not law. We respectfully request that Commission reconsider the ED's decision.

R12: Whether ED can delete subsurface drip irrigation from draft permits without cause.

In all discussions with City and County government, the Applicant has indicated that the wastewater treatment plant effluent from their project would be by subsurface drip irrigation. In fact our discussions of this issue with members of Bulverde City Council, some still thought that the effluent from this wastewater treatment plant was being disposed of via subsurface drip

irrigation. The TPDES Permit Application for major amendment included disposal of 37,500 gallons per day via subsurface irrigation. The Applicant themselves have stated that they intend to reuse as much of the wastewater treatment plant effluent on their own property as possible.³⁷ None of the public comments addressed subsurface irrigation. Why did the ED remove subsurface irrigation from the draft permit? Is this an end run to get around costly subsurface drip irrigation that Applicant agreed to in discussions with local government and citizens? The TCEQ did it not the Applicant.

Clear evidence has been presented. This issue is a material and relevant fact, not law. We respectfully request that Commission reconsider the ED's decision. If the ED's decision is not reconsidered, we respectfully request the Commission refer this issue to the SOAH for hearing.

R13: Whether Request for Reconsideration from public officials and private citizens should have received responses.

Exhibit F is a letter from Comal County Commissioner Scott Haag. It is dated 12-12-13 before the 12-23-13 deadline for Requests for Reconsideration. The words "in considering this request" are used. Exhibit G is a letter from State Senator Donna Campbell, M.D. It is dated 12-19-13. This letter includes the words "request", "option" and "encourage". Neither letter contains the exact phrase Request for Reconsideration, an administrative error. Any reasonable person would conclude that both letters are in fact Requests for Reconsideration. This is what we requested of both on our behalf. Neither letter was added to the Commissioners Integrated Database. Neither letter has been added to the agenda for this matter, as is usually the case with letters from public officials.

Many other Requests for Reconsideration were received from the public before the 12-23-13 deadline. These as well contained the administrative error of not including the words Request for Reconsideration. All this means is that public officials and the general public do not understand a very complicated system put in place by attorneys, for attorneys.

Addressing the subject of administrative errors, the ED's first decision letter referred to the San Jacinto River Basin rather than San Antonio River Basin. This was corrected about a month later. The ED's Response contains more administrative errors. In attachment C, Compliance History Report, under Site and Owner/Operator History, item 1 should have be NO, plant is not in existence or in operation. Item 2 should have been marked YES rather than NO, ownership has changed. Item 3 should have been DHJB Development, LLC., rather than N/A. Item 4 should have been DH/JP Partnership, Ltd. rather than N/A. Item 5 should have been November 1, 2012 rather than N/A. In ED's Response attachment D the outfall is located on the wrong side of the plant. It is on the northwest corner of the plant per the TPDES Permit Application, Exhibit 4B. The point of this is that this is a very complicated system. Everyone

³⁷ Exhibit A, Page 3 of 5, near bottom of page

makes mistakes, and the ED should not seek to hold public officials and private citizens to a higher standard than they hold themselves.

This is a material and relevant issue of fact, not law. We respectfully request that Commission reconsider the ED's decision.

IV. ISSUES FOR COMMISSION RECONSIDERATION

Combining ED and OPIC responses with restated issues, we respectfully request that the Commission reconsider the ED's decision based on the following issues:

R1: Whether this is in fact a dry land application.

ED 5: Whether the discharge route has been properly characterized.

R3: Whether the Applicant can make significant alterations to a discharge route without a major amendment to the permit.

R5: Whether the Applicant's plans and actions regarding the dry creek in question clearly demonstrate that this is not a significant dry creek.

R6: Whether an adjacent landowner should fill a portion of the dry creek on their property to put an end to this.

R7: Whether the legal precedent of *Domel v. City of Georgetown* is being applied correctly.

R8: Whether the ED should add facts supporting the Applicant's permit after the public comment period and exclude affected parties and the public from commenting on the facts of the TPDES Permit Application.

OPIC 8: Whether the dry creek or perennial pools have aquatic life and if these should be naturally occurring bodies of water.

OPIC 9: Whether re-routing and substantial modification of the currently proposed discharge route would be needed to render the route operational and suitable for receiving discharged effluent.

R9: Whether Applicant properly completed the Permit Application on page 13 item n, by marking it NO.

R10: Whether TXDOT is an affected land owner and should have been notified.

R11: Whether regionalization was considered in the permitting process.

R12: Whether ED can delete subsurface drip irrigation from draft permits without cause.

R13: Whether Request for Reconsideration from public officials and private citizens should have received responses.

V. ISSUES FOR COMMISSION REFERAL TO SOAH

If the EDs decision is not reconsidered, we respectfully request that the Commission refer the following issues to SOAH for hearing.

R1: Whether this is in fact a dry land application.

ED 5: Whether the discharge route has been properly characterized.

R3: Whether the Applicant can make significant alterations to a discharge route without a major amendment to the permit.

ED 8: Whether the discharges route is a State controlled watercourse.

R4: Whether the dry creek in question is adequate for the proposed effluent and storm water flows.

R5: Whether the Applicant's plans and actions regarding the dry creek in question clearly demonstrate that this is not a significant dry creek.

R6: Whether an adjacent landowner should fill a portion of the dry creek on their property to put an end to this.

R7: Whether the legal precedent of Domel v. City of Georgetown is being applied correctly.

R8: Whether the ED should add facts supporting the Applicant's permit after the public comment period and exclude affected parties and the public from commenting on the facts of the TPDES Permit Application.

OPIC 8: Whether the dry creek or perennial pools have aquatic life and if these should be naturally occurring bodies of water.

OPIC 9: Whether re-routing and substantial modification of the currently proposed discharge route would be needed to render the route operational and suitable for receiving discharged effluent.

R10: Whether TXDOT is an affected land owner and should have been notified.

R12: Whether ED can delete subsurface drip irrigation from draft permits without cause.

ED Issue 7 for Referral: Whether the treated effluent will negatively impact cattle that currently graze the area.

OPIC Issue 3 for Referral: Would the proposed facility's operations including the functioning and operations of the discharge route, create nuisance conditions or

contamination that would interfere with Ms. Grahams use and enjoyment of her property, including her cattle operations?

VI. MAXIMUM EXPECTED DURATION OF HEARING

We respectfully request the Commission set the expected duration for one year due to the complexity and number of issues. The extended drought is taking a great deal of our time. Hay must be located, procured, hauled stored, etc. and cattle must be fed. In addition, recent legal matters surrounding this development will require time and attention.

VII. CONCLUSION

We fully understand that the State must have the power to protect and utilize public resources for the good of the public. That is not the issue here. This is an issue of the State taking from a private Citizen for the enrichment of a corporate entity. The evidence is clear, and we respectfully request that the Commission reconsider the ED's decision. It is a flawed decision that the ED is apparently unwilling to reconsider. The Commission has clear authority to prevent any further hardship and harm to our family from this. We respectfully request that the Commission reconsider the ED's decision and deny this permit. Almost all pieces of property of any size in Texas have some type of drainage for rain waters. The effects of the decisions regarding issues in this Permit will be wide ranging. If this is allowed to go forward something very similar could happen to many other families in the future. Only by then it will be too late to stop things like this from happening. This is a precedent setting case that will make it very hard for anyone to protect their private property rights under any circumstances should the Applicant and the ED prevail in this matter.

Respectfully submitted,

Patricia Lux Graham

EXHIBITS

Exhibit A



December 27, 2013

Mr. Terrell Graham
102 Alma Lane
Rockport, Texas 78382

Re: Johnson Ranch Development Questions

Dear Mr. Graham:

It has come to our attention you still have questions about our property and the Johnson Ranch development, despite our efforts over the course of the last 9 months to meet with you to discuss your concerns and answer your questions. Rather than meet with us to try to gain an understanding about the particular issues you are concerned about or to try to resolve those concerns with us, which we have expressed a willingness to do, you attempted to appeal to the public and third parties suggesting without any basis in truth that our project will cause harm to school children or cause unprecedented flooding on your property. The purposes of this letter are to respond to the misinformation, false allegations and distorted claims you have been knowingly publishing, and to demand that you cease and desist the continued dissemination of false and damaging claims about our project and Company.

First, to clarify, the Johnson Ranch development already has a wastewater treatment permit (approved more than three years ago by TCEQ). This permit is currently being amended to facilitate the full development of our project and to convert the permit into a discharge permit from drip disposal in accordance with Texas law (Chapter 26, Texas Water Code) and the regulations of the TCEQ. As requested, the amended permit would require a higher level of treatment than our current permit before we would be allowed to discharge the treated effluent directly into a state watercourse.

The Texas Commission on Environmental Quality ("TCEQ"), the State agency that reviews and authorizes these permits, has a rigorous and lengthy review and approval process by their staff engineers, scientists and attorneys (going on over 14 months for this amendment alone) that also requires various public and direct notifications to downstream property owners, including publication of notice in a newspaper of general circulation within the County and direct mailed notice to persons identified in the regulations. We have met all of these notice requirements.

The TCEQ has thoroughly reviewed the treatment parameters and processes proposed under this amendment as well as all of the comments and objections from the public and downstream property owners, including the six (6) different letters of protest and objection sent over the past twelve months by your wife, Patricia Graham, her sister Margie Hastings and your former attorney James Bradbury and, as the first sentence of the TCEQ's "Decision of the Executive Director" letter dated November 21, 2013 (which you should have received) states:

“The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law.”

Your email asks if parents were ‘properly and fully notified’ and the answer is yes, all proper notifications prescribed by state law, including multiple public ads posted in newspapers and at city hall, have been issued. State law is pretty clear about its notification requirements, and we have complied with them all.

The fact is that pursuant to our amended permit, the Johnson Ranch plant will not only treat wastewater to a much higher quality than the septic systems in the area it will also treat the effluent to higher standards than currently imposed on some area municipal wastewater plants, including the city of Boerne’s 1.2 million gallon per day plant that discharges upstream into the Cibolo Creek and has for many years. That volume of discharge, which has not caused any flooding downstream of the discharge point, is over 3 times the daily flow rate to be authorized by the amended discharge permit for Johnson.

Ironically, the Cibolo Nature Center is located on the banks of the Cibolo Creek just about the same distance downstream from the Boerne plant as Ms. Hastings’ property (your sister-in-law) is from the Johnson plant’s planned discharge location. The Cibolo Nature center considers this stretch of the Cibolo Creek as an amenity and a picture of Cibolo Creek (with 1.2M gals/day of clear, treated effluent flowing by) is prominently displayed on the main page of their website www.cibolo.org . The flow in the creek at that point is odorless, crystal clear water that flows along the trails built by the nature center.

Families (including my own) regularly go to that stretch of Cibolo Creek to explore and play along and in the creek (see photo below from this stretch of the Cibolo). Wildlife and fish are abundant in that area and the Creek has a thriving ecosystem. The reason for this high quality flow is, in part, because of the high-quality effluent discharged from the City’s upstream wastewater treatment plant that is required to meet the State’s stringent standards which result in discharges cleaner than most storm water runoff into creeks like the Cibolo.



Your email poses a myriad of other questions about city/county approvals of our development project and the monitoring of its construction. There is a very thorough multi-jurisdictional oversight of a development like this wherein various entities including the city, county and state handle various aspects of approvals and oversight. In a nutshell, the approved Johnson Ranch Master Plan, various plats and other permits for this development have incurred countless public hearings at both the County and City levels over the past eight years. All of these meetings and hearings were publicly noticed and posted as prescribed by law. The citizens, city and county offered many questions and feedback, which were answered by us in those public meetings. The Johnson Ranch development is governed by a Development Agreement with the City of Bulverde and is subject to Bulverde's jurisdiction with respect to the administration of platting and certain construction plans within Johnson Ranch to insure compliance with the terms of the Development Agreement during construction and implementation of our development. Regarding your question about FEMA map updates, it is my understanding that the Comal County flood plain maps were updated (with significant opportunity for public input and comment) in the last five years.

The City of Bulverde also reviews, approves and monitors street, drainage and utility line construction plans and construction. The State, through TCEQ, approves wastewater plant permitting and construction; it is not the City of Bulverde's jurisdiction to do so.

Contrary to the suggestion from your questions that the plans, plats, permits and construction activities at Johnson Ranch have not been thoroughly scrutinized and vetted in an open and very public approval process by multiple governmental entities, nothing could be further from the truth. The development at Johnson Ranch, including the amendment of our wastewater treatment permit, has been subject to, and is in full compliance with the multiple layers of governmental reviews and approvals over the past eight (8) years as required under Texas law for developments like ours.

Finally, you have knowingly made numerous untruthful and damaging comments publicly to third parties and social media and broadcast news that the Johnson Ranch wastewater plant will flood your property, and described that our proposed lawful discharge of high quality treated effluent is a government/developer "land heist." These unfounded accusations of theft or unlawful taking of your property are categorically false, not to mention damaging to our business and professional reputation. They should cease immediately.

Two simple facts:

(1) The average flow of the discharge from the Johnson Ranch wastewater plant pursuant to the amended permit at full-build out at the outfall point on our property approximately 1/3rd of a mile (~1700 feet) upstream before the creek enters your property) is estimated to be only 0.09 percent of the volume contained in a 25-year flood and only 0.06 percent of the volume contained in a 100-year flood event that might occur in the channel upstream of and running through your property. Because of evaporation and infiltration, those flows will be even lower downstream where the creek crosses onto your property. Furthermore, we intend to pursue authorization from TCEQ to re-use as much of our effluent as possible for irrigation of landscaping and common areas within the Johnson Ranch development. This re-use will further reduce the volume of effluent to

be discharged into the creek on our property and the resultant flow making it downstream to your property. According to our engineer's hydraulic models the discharge into the creek will have an immeasurable impact to the 25 and 100 year flood plain levels on your property. In fact, our Engineers have also calculated that that the volume of highly treated effluent to be discharged into the creek in the first phase of the plant will be the effective equivalent flow of a three garden hoses (not under pressure) at the discharge point on our property, and that little, if any, of the volume discharged will ever make it to the creek channel where it crosses into your property. Accordingly, your allegation that the discharge will flood a clearly well-defined creek channel on your property that ranges from 10-20 feet wide with depths averaging at least 5+ feet deep or more is inaccurate to say the least.

2) No one is taking anyone's property. State law is clear, unequivocal, and well settled by more than a century of Texas legislative acts and court decisions confirming the State's ownership of both (1) the watercourse or intermittent stream running through your property and (2) the water that flows in the watercourse, whether it is spring flow, stormwater or manmade such as treated effluent. We previously sent you a copy of the Third Court of Appeals decision in the *Domel v. City of Georgetown* case which unequivocally confirms the status of the law on the matter but, you are re-attaching with this letter.

Like you, we believe strongly in property rights and that all property owners must abide by the applicable laws that govern property rights. We also believe that property owners should be good neighbors and respect the property rights of others. Your numerous and continuous factual misstatements and accusations intended to embarrass and disparage our development project at Johnson Ranch and our Company reflect a disrespect and disregard of our property rights and our efforts to exercise the same in full compliance with Texas law.

Even your email claim that you are "having trouble getting answers to what should be some fairly easy questions" is inaccurate. We have been contacted by numerous governmental entities with regulatory jurisdiction over various aspects of our development at Johnson Ranch as well as multiple elected officials at the local, county and state level all of whom have indicated that you have contacted them and they have provided information about the project to you. Some of those governmental entities have reached out to us to request that we be open to work with you to address your questions and concerns. As you know, beginning back when you and your family first filed comments on the amendment to our TCEQ wastewater treatment permit, we reached out to you and offered to meet with you to discuss your concerns which you refused to do. We have since offered to meet with you personally on numerous occasions, including a recent attempted meeting last week coordinated through your former attorney. You have rejected all of our invitations and efforts at out-reach to you, choosing instead to continue to spread untrue and damaging misinformation about our Johnson Ranch development project and Company.

We historically work to engage in positive relationships with neighbors, however, and continue to desire that end result with you and your family. Accordingly, we remain ready and willing to meet with you to discuss your concerns and attempt to reach a mutually acceptable

resolution of your concerns, if possible, even where such effort on our part is neither factually nor legally required. To have a fruitful dialogue, however, you need to talk to us and discontinue broadcasting lies and untruths which damage our professional and business reputation to large groups of third parties. We take your continued misrepresentations, false allegations and baseless attacks very seriously, as we do the resultant damages that continue to accrue to both our Johnson Ranch development and our professional reputations.

We remain open to meeting with you to discuss your concerns and answer your questions should you change your mind and choose to meet. You would probably find that our development company's track record reflects high quality, successful developments which enhance the community. It might even be helpful for you to know that the most recent wastewater plant we built, in Cordillera Ranch near Boerne, won the 2012 state-wide award for the "Municipal Wastewater Treatment Plant of the Year, Category 1 (less than 1 million gallons per day)" given by the Water Environment Association of Texas for the facility that has "consistently exhibited outstanding performance of daily activities beyond the normal call of duty." We have developed many quality communities and many high quality wastewater systems across the State. Our plan is to do the same at Johnson Ranch.

Sincerely,
DHJB Development, LLC



Charlie Hill
Vice President, DHJB Development, LLC

Exhibit B



Exhibit C



Exhibit D



Exhibit E

BARKHURST HINOJOSA P.C.

March 18, 2014

Ms. Patricia Lux Graham
102 Alma Lane
Rockport, Texas 78382

**Via Certified Mail
Return Receipt Requested**

Ms. Margie Hastings
P.O. Box 34601
San Antonio, Texas 78265

**Via Certified Mail
Return Receipt Requested**

RE: Request for Right of Entry for Surveys for Acquisition of Drainage/Flowage Easement out of 52.454-Acres out of the A. Gayton Survey No. 194, Abstract No. 174, Comal County, Texas; and out of 49.464-Acres out of the A. Gayton Survey No. 194, Abstract No. 174, Comal County, Texas (hereinafter "the Property") for the Johnson Ranch Municipal Utility District Stormwater Drainage Project (hereinafter "the Project").

Ladies:

This law firm has been retained by the Johnson Ranch Municipal Utility District ("JRMUD") to represent it in the acquisition of the above referenced Property for the referenced Project. At this time, the surveyors retained by JRMUD need to access the Property to determine the precise boundaries of the drainage/flowage easement across the Property. As an entity with eminent domain authority, JRMUD has the absolute right to access the Property for such surveys. I have attached a Right of Entry for your respective signatures.

Once the surveys are completed, JRMUD will commission an appraisal, and an offer will be made for the acquisition of the said easement. Because JRMUD is an entity possessing the power of eminent domain, we are also attaching the Texas Landowner's Bill of Rights.

Please let us hear from you within ten (10) days of the date hereof whether you will sign the attached; otherwise, JRMUD may need to seek judicial relief to gain access to the Property.

Your attention to this matter is appreciated. I can be reached at (210) 226-7800.

Very truly yours,

BARKHURST & HINOJOSA, P.C.

By: 
PAUL D. BARKHURST

CC: Phil Haag, General Counsel for JRMUD
110 Broadway, Suite 350
San Antonio, Texas 78205
Phone (210) 226-7800
Fax (210) 226-7802



Exhibit F



Comal County

Scott Haag
Commissioner Precinct #2

12-12-13

Dear TCEQ Executive Director,

I am writing in reference to the amendment to TCEQ permit # WQ00149750001 dealing with DHJB Development ,LLC.

I am asking that TCEQ go strictly by its rules and regulations in considering this request. I also have some concerns about the treated water being released into what is normally a small dry creek bed and question why the treated water is not released into a pipe which would then go directly to the Cibolo Creek discharge area. If this was done I think you could solve many of the issues raised by the adjacent land owners. I feel that another person's property may be adversely affected by the treated water running in a small dry creek bed that is on their property.

Respectfully submitted,



Scott Haag
Comal County Commissioner Pct #2
150 N. Seguin Ave
New Braunfels, Tx 78130

830-221-1102
haagsc@co.comal.tx.us

150 N. Seguin Avenue • New Braunfels, TX 78130 • 830-221-1102 • Fax 830-620-5380
Email: haagsc@co.comal.tx.us

Exhibit G



DONNA CAMPBELL, M.D.
TEXAS STATE SENATOR
DISTRICT 25

December 19, 2013

Mr. Zack Covar
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Re: DHJB Development, LLC TPDES Permit No. WQ0014975001

Dear Mr. Covar:

I am writing to ask that you request that the treated water from the Johnson Ranch development in eastern Comal County near Bulverde be routed via 16 inch pipe under the neighboring property belonging to Terrell and Patricia Graham. This option supports the private property rights of each party and remedies a conflict between neighbors. While other choices may be legal, we encourage you to suggest the choice that best accommodates all property owners.

Sincerely,

Senator Donna Campbell
DC/kf

CC: Mr. & Mrs. Terrell Graham
Comal County Commissioner Scott Haag

CAPITOL OFFICE:
ROOM 3E.8
P.O. BOX 12068
AUSTIN, TEXAS 78711
(512) 463-0125
FAX: (512) 463-7794
DIAL 711 FOR RELAY CALLS

Exhibit H

Terrell Graham

From: Melanie McBride [Melanie.McBride@txdot.gov]
Sent: Friday, March 14, 2014 11:02 AM
To: tgraham192@gmail.com
Cc: Larry Sjelin; Anne Strick
Subject: Rules 21.36 Rights of Utilities

Good Morning,

All work within TxDOT ROW shall have an approved permit application. At this time cannot advise whether this work will be approved or denied until an permit application has been submitted and reviewed by TxDOT. Under state law, public utilities have a right to operate, construct, and maintain their facilities over, under, across, on, or along highways, subject to highway purposes. This includes entities authorized by law to transport or distribute natural gas, water, electric power, telephone, cable television, or salt water and those that are authorized to construct and operate common carrier petroleum and petroleum product lines. **A private utility may place a utility facility over, under, or across a highway, subject to highway purposes, but it is not permitted to place a utility facility longitudinally on a highway right of way.** If an entity requests the installation of a new utility facility or the adjustment or relocation of an existing utility facility longitudinally within a highway right of way and the entity's legal authority to install, adjust, or relocate its facility longitudinally within the highway right of way is not readily evident, the department may require that the entity provide: (1) a written certification that it is an entity authorized by state law to operate, construct, and maintain its utility facilities over, under, across, on, or along state highways; and (2) documentation that substantiates that the entity filed its status with the applicable state regulatory commission or agency and its facilities are subject to public safety regulation.

If you have any questions please feel free to contact me at my office.



Melanie L. McBride
Utility, Oversized/Overweight &
Adopt-a-Highway Permit Coordinator
District Operation Office
SAT-District

4615 N.W. Loop 410
San Antonio, Tx 78229
(210)615-6430

HUMBLE YOURSELVES THEREFORE UNDER THE MIGHTY HAND OF GOD, THAT HE MAY EXALT YOU IN DUE TIME.

Don't mess with Texas® means don't litter.

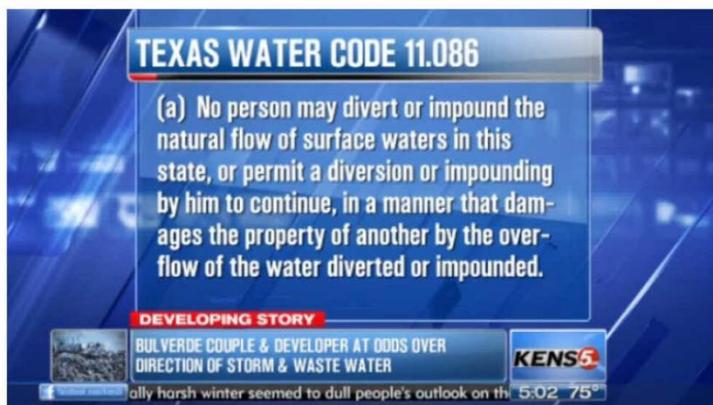


Exhibit I

-
-
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Bulverde couple continues battle against proposed wastewater treatment plant



by Jeremy Baker / KENS 5

[Bio](#) | [Email](#)

kens5.com

Posted on March 14, 2014 at 5:43 PM

Updated Friday, Mar 14 at 5:46 PM

Pat and Terrell Graham have been fighting a permit that allows a developer to build a waterway that could direct wastewater onto their property.

The Grahams say the creek bed is their property, but the developer says it belongs to the state, which has already given them the right to alter it.

But while they are waiting to find out whether they'll get a contested case hearing to revoke the permit, the couple is taking matters into their own hands.

There's no doubt that construction is moving forward on the Johnson Ranch subdivision and a wastewater treatment plant right next to the Grahams' property, but trash from that construction has made it onto the Grahams' property.

"There's trash, construction trash strewn completely along this creek, and we filed a complaint with TCEQ," Terrell Graham said.

TCEQ investigated and responded with a notice of violation of compliance to DHJB, the developer, stating, "Sediments were found exiting the property through the dry creek," and instructing the developer to "install the additional rock berm" and "install the additional silt fencing along the eastern property border."

Graham says the complaint worked. "There is significantly more silt defense here as when I initially complained, like almost maybe 90 or 100 percent more, significantly more," he said.

But the big question now is, what will happen to storm and wastewater runoff that the developer is redirecting? The Grahams are concerned it could affect their property, so they're building a dam. They hope excess rainwater and wastewater coming down the dry creek would be stopped at the dam, avoiding their property.

By doing this, Charlie Hill of DHJB claims they are violating part of the Texas Water Code, which states: "No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water."

Graham says they're wrong. "The developer is mistaken. I've talked to the Army Corps of Engineers and I do not believe that I'm in violation of the Clean Water Act," he said.

On April 9, TCEQ is holding a public meeting, and this issue is expected to be one of the items up for discussion.

Three things could happen at the meeting: The commissioners could decide to keep the developer's permit in place; they could allow for a contested case hearing, which could result in revocation of the permit; or it could get kicked back to the executive director of the commission, which would draw the case out even longer.