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May 21, 2015

Via Hand Delivery

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

Re: TCEQ Docket No. 2015-0406-IWD
TRBP, Ltd.'s Reply to the Response of FPLE Forney, LLC and the Executive
Director

Dear Ms. Bohac:

Please find enclosed eight copies of TRBP, Ltd.'s Reply to FPLE Forney, LLC's and the Executive Director's Response to TRBP, Ltd.'s Request for Hearing. Please return one file stamped copy to the courier. If you have any questions regarding this filing, please contact my secretary Christine Baleshta at 512-469-6159.

Very truly yours,



Christopher Smith

CDS/cb

Enclosure

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2015 MAY 21 AM 10:17
CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2015-0406-IWD

**IN THE MATTER OF THE
APPLICATION BY FPLE FORNEY,
LLC FOR TPDES PERMIT
NO. WQ0004359000**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

CHIEF CLERK'S OFFICE

2015 MAY 21 AM 10:17

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

**TRBP, LTD.'S REPLY TO FPLE FORNEY, LLC'S AND THE EXECUTIVE
DIRECTOR'S RESPONSE TO TRBP, LTD.'S REQUEST FOR HEARING**

To the Honorable Commissioners:

TRBP, Ltd. ("TRBP") replies to the Responses of FPLE Forney, LLC ("Applicant") and the Executive Director and asks the Commissioners to grant TRBP's hearing request.

I. TRBP is an Affected Person

As the Executive Director and Office of Public Interest Counsel correctly conclude, TRBP is an affected person because it owns property immediately downstream from both Outfall 001 and Outfall 002. See Attachment F to the Executive Director's Response and Exhibit A to this Reply (showing the approximate location of TRBP's property with respect to Outfalls 001 and 002). As the proximity of TRBP's property to Outfalls 001 and 002 is undeniable, the Applicant resorts to arguing that its requested permit amendment, which will authorize increased discharges of pollutants into receiving waters, will actually improve water quality. That argument relies on flawed logic and impermissibly asks the Commissioners to consider facts beyond the scope of the Application.

With respect to Outfall 001, Applicant's main argument is that there will be no negative impact on natural resources because the water Applicant will discharge would be otherwise discharged by the City of Garland Duck Creek Wastewater Treatment Plant (the "WWTP"). Issues related to the WWTP's discharges are not at issue in this docket. The increased discharges requested by the Applicant are not contingent on offsetting reductions by the WWTP.

There is no basis for the Commission to decide whether to grant or deny Applicant's requested amendment based upon speculated actions of another TPDES permit holder.

Even if the Commission were to consider the WWTP discharges, which it should not, the Applicant's own statements belie the premise that granting the Application will improve water quality. The Applicant's Response states that its process "reduces the ammonia in the water [it receives from the WWTP] by 85%". If this claim is accurate, then there is no need for Applicant's permit to be amended to allow an ammonia-nitrogen discharge limit equal to the limit in the WWTP's permit because Applicant's discharged water should have an ammonia concentration that is only 15% of the ammonia concentration in the WWTP's discharged water.

Applicant's argument also fails to take into account how the relative locations of the WWTP and Outfall 001 may impact TRBP's property. Outfall 001 is significantly closer to TRBP's property than is the WWTP and therefore may have greater adverse impacts on water quality. Certainly, if the WWTP was seeking an amendment of its permit to move its discharge point downstream, and closer to TRBP's property, TRBP would be entitled to affected person status to challenge the physical impacts of the changed outfall point on water quality.

With respect to Outfall 002, Applicant simply asserts that TRBP will not be adversely affected "by a stormwater discharge event during a significant rain event." This is a conclusion, not supported by facts. TRBP is a landowner located less than one mile downstream from Outfall 002. As such, there is a reasonable relationship between TRBP's interest in the water quality of the creek that flows across its property and the increased discharge of pollutants into that creek. See 30 TAC § 55.203(c)(3). Therefore, TRBP is an affected person with respect to the proposed discharges from Outfall 002.

II. Issues Raised in Comment Period

The concerns raised in TRBP's hearing request letter are related to potential degradation of water quality of the receiving waters and impacts to plant and animal life from the proposed increase in Applicant's discharge limitations. These issues are the same general concerns raised by Mrs. Nancy Pierce in her comment letter. The Executive Director's interpretation of Mrs. Pierce's comments inappropriately focuses solely on algae growth. Excessive algae growth is but a symptom of an unhealthy aquatic ecosystem ultimately caused by water quality degradation. The factual issues that must be resolved to assess the potential impacts of the permit amendment on algae growth necessarily include an analysis of water quality and the ecosystems of the receiving waters.

TRBP asks that the Commission refer to the State Office of Administrative Hearings ("SOAH") the specific issues of disputed fact identified by the Office of Public Interest Counsel:

1. Will operations under the ammonia-nitrogen limitations of the proposed permit adequately protect water quality?
2. Will operations under the proposed permit adversely affect plant or animal life?

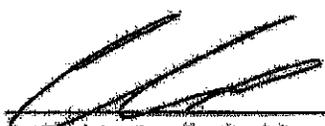
These issues address the primary concerns raised in Mrs. Pierce's comment letter and in TRBP's hearing request. Finally, while TRBP is concerned about the possible effects of increased discharges on property values, TRBP understands that the Commission has no jurisdiction over this issue. TRBP is not requesting that the issue of diminution in property value be referred to SOAH.

III. Conclusion

TRBP asks the Commissioners to grant its request for a contested case hearing and that this matter be referred to SOAH for a determination of the disputed issues of fact described above.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: 

Christopher D. Smith

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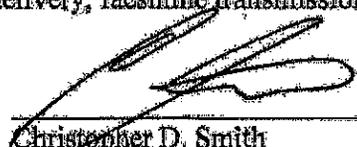
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ATTORNEYS FOR TRBP, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2015, the original and seven true and correct copies of this document were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, electronic mail, or by deposit in the U.S. Mail.


Christopher D. Smith

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FOR THE CHIEF CLERK:

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INTERESTED PERSONS:

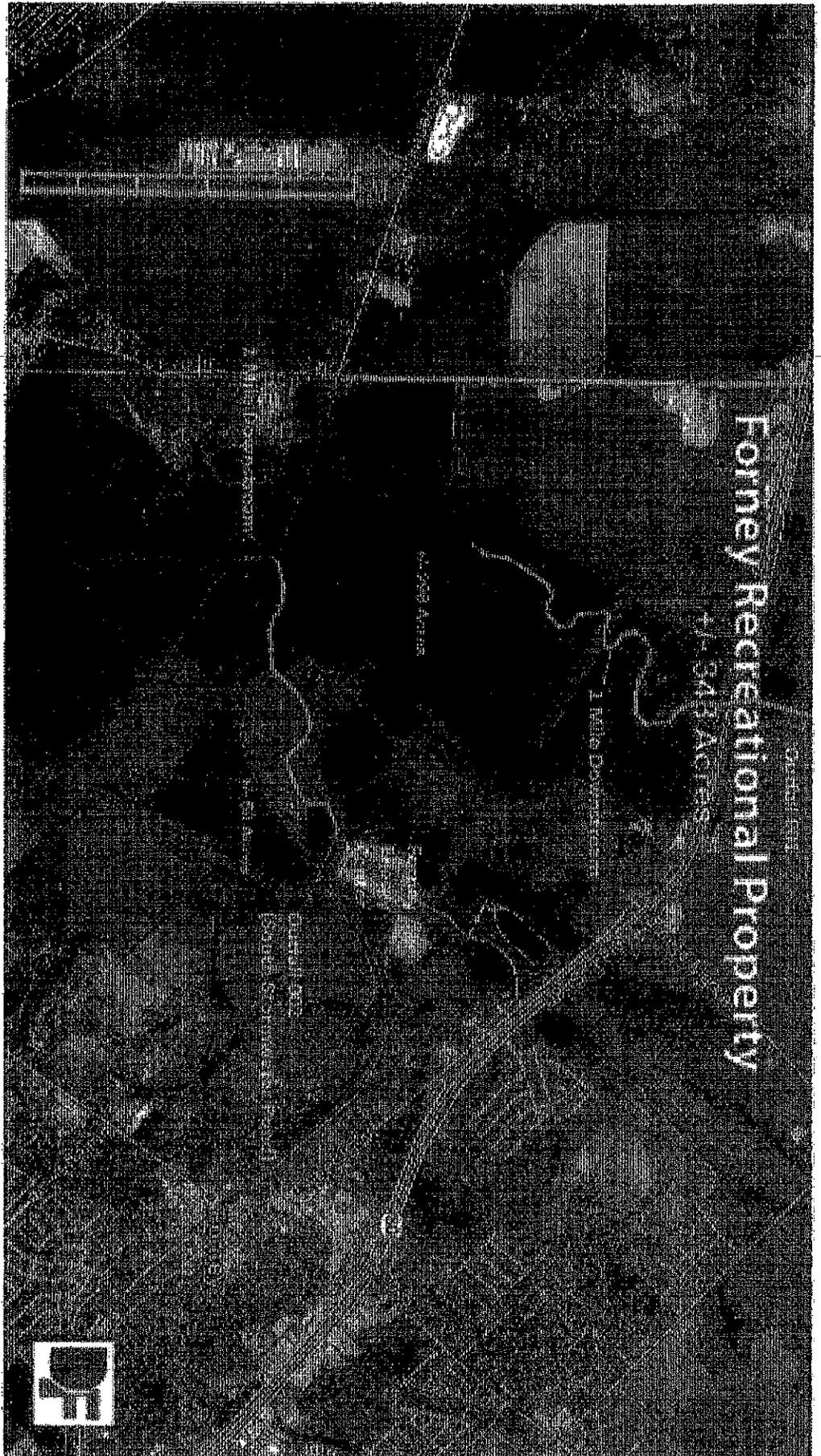
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Exhibit A



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FACSIMILE COVER LETTER

TO: BridgetBohac **PAGES:** 10
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FAX NO.: 15122393311
FROM: Gomez, Sylvia
TELEPHONE: +15124696107
SUBJECT: TCBQ Docket No. 2015-0406-IWD-TRBP's Reply to FPLE Forney, LLC's and ED's Response to TRBF
DATE/TIME: 21 May 2015 10:03
CLIENT/FILE #:

Dear Ms. Bohac,

Attached are the documents which have this date been hand delivered to you. Copies of the same have been sent to the parties listed on the certificate of service.

Thanks,

Sylvia Gomez | Thompson & Knight LLP
Legal Secretary to James C. Morriss III, Elizabeth A. Webb,

TEXAS
COMMISSION
ON
ELECTRONIC
DELIVERY
2015 MAY 21 AM 10:17
CHIEF CLERKS OFFICE

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Becky L. Jolin, Ashley T.K. Phillips & Charlene Heydinger

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