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December 28, 2015

Office of Chief Clerk
ATTN: Docket Clerk
TCEQ, MC 105
PO Box 13087
Austin, Texas 78711-3087

Re: Docket No. 2015-1624-MWD; Randolph Todd Company, LLC; WQ0015314001

Dear Docket Clerk:

Please find attached for electronic filing Randolph Todd Company, LLC's Response to Hearing Requests.

Copies will be provided to all on the attached mailing list by electronic means. Please do not hesitate to contact me with questions at 512-217-4956.

Very truly yours,


Andrew N. Barrett

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

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REQUESTER(S)/INTERESTED
PERSON(S):

See attached list.

REQUESTER(S)

Hector X Amaya
Dry Comal Creek Vineyards
1741 Herbelin Rd.
New Braunfels, TX 78132-1838

Teresa Barnhill
143 Dry Bear Crk
New Braunfels, TX 78132-1665

Dr. Jerry Barucky
20806 Woodland Cv
Garden Ridge, TX 78266-2775

John Hudson Blodgett
Detex Corporation
2345 Appellation
New Braunfels, TX 78132-2775

Mrs. Patricia L & Troy C Brand
1980 S Cranes Mill Rd
New Braunfels, TX 78132

Nelda S Davis
1789 S Cranes Mill Rd
New Braunfels, TX 78132

Ronald R Davis
1789 S Cranes Mill Rd
New Braunfels, TX 78132

Mrs. Susan R Dooley Logue
10120 W State Highway 46
New Braunfels, TX 78132-1626

Susan L. Dunlap
Southwest English Setter Rescue
462 San Marcos Trl
New Braunfels, TX 78132-1653

Carol Farmer
1600 S Cranes Mill Rd
New Braunfels, TX 78132

Bonnie Hauser
Dry Comal Creek Vineyards
1741 Herbelin Rd.
New Braunfels, TX 78132-1838

Mr. Franklin Houser
Dry Comal Creek Vineyards
1741 Herbelin Rd.
New Braunfels, TX 78132-1838

Sabrina A Houser-Amaya
Dry Comal Creek Vineyards
1741 Herbelin Rd.
New Braunfels, TX 78132-1838

Edmund O Hubler Retired
692 Rock Castle
Canyon Lake, TX 78133-4844

Sharon Elaine Huber
692 Rock Castle
Canyon Lake, TX 78133-4844

The Honorable Susan Ingram
29751 Twin Creeks Dr
Bulverde, TX 78163-2407

Richard Lamb
1504 Vino Cir
New Braunfels, TX 78132-2771

Daniel Laroe
922 Homestead Rdg
New Braunfels, TX 78132-1644

Kenneth C Laubach
633 Herbelin Rd.
New Braunfels, TX 78132-1837

Victoria Beth Laubach
633 Herbelin Rd.
New Braunfels, TX 78132-1837

Mrs. Marjorie Marks
1355 Ranch Pkwy Apt 112

New Braunfels, TX 78130-3988
Mrs. Elizabeth L Martin
900 Heritage Oaks
New Braunfels, TX 78132-1667

Mr. Taylor Martin
900 Heritage Oaks
New Braunfels, TX 78132-1667

Mr. Ted M Martin
900 Heritage Oaks
New Braunfels, TX 78132-1667

Ellen McClellan
2282 S Cranes Mill Rd
New Braunfels, TX 78132-1604

Sandy L Nott
143 Dry Bear Crk
New Braunfels, TX 78132-1665

R Pappas
1100 Homestead Rdg
New Braunfels, TX 78132-1605

Mr. Rick Peyton
1015 Provence Pl
New Braunfels, TX 78132-2769

Mrs. Sandy Peyton
1015 Provence Pl
New Braunfels, TX 78132-2769

Mrs. Phyllis Yvonne Ritter
2360 S Cranes Mill Rd
New Braunfels, TX 78132-1618

Jessica Smith
The Springs Event
PO Box 936
Dripping Springs, TX 78620-0936

Mrs Brenda R Sturtevant
1170 Sapling Spg
New Braunfels, TX 78132-2676

Mr John Wesley Sturtevant
1170 Sapling Spg
New Braunfels, TX 78132-2676

Connie Terao
2241 Appellation
New Braunfels, TX 78132-2774

Ms. Felicia S Thomas
1128 Provence Pl
New Braunfels, TX 78132-2770

Carl Thompson
1026 Stradina
New Braunfels, TX 78132-2778

Aurora Dozier White
2230 Pinot Blanc
New Braunfels, TX 78132-4800

Randal Dean White
2230 Pinot Blanc
New Braunfels, TX 78132-4800

James A Whitmore
Usaf Retired
257 Dry Bear Crk
New Braunfels, TX 78132-1633

James A Whitmore
President, Waggener Ranch
Property Owners Association
4802 S Cranes Mill Rd
New Braunfels, TX 78132-1647

Mr. Ed Harris
1670 S. Crane's Mill Rd
New Braunfels, TX 78132-1651

TCEQ DOCKET NUMBER 2015-1624-MWD

APPLICATION BY RANDOLPH TODD COMPANY, LLC FOR TPDES PERMIT NO. WQ0015314001	X X X X	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**APPLICANT RANDOLPH TODD COMPANY, LLC'S RESPONSE TO HEARING
REQUESTS**

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

Randolph Todd Company, LLC (Applicant or Randolph Todd) files this Response to Hearing Requests with the Texas Commission on Environmental Quality (TCEQ) requesting the TCEQ to deny the Hearing Requests. Approximately 41 individuals requested a contested case hearing. Of the 41 Requestors, many appear to be family members and/or show identical addresses. It appears that only one organization joined that request but several organizations did submit public comment.

Randolph Todd will show that none of the 41 Requestors are within one downstream mile of the discharge point. There are 8 Requestors who are within ½ mile of the plant site. These 8, however; are either not along the discharge route or are over 3 miles from the discharge point. Other Requestors are adjacent to the project but over ½ mile from the wastewater plant site and not adjacent to the discharge route. Other Requestors are either several miles upstream from the discharge route and plant site or several miles downstream and the plant site.

Thus, despite the large number of Requestors, the number of affected persons is relatively limited, pursuant to 30 Texas Administrative Code (TAC) Section 55.203, due to the distance from discharge point to the Requestors' property or from treatment plant location to Requestors' property.

OVERVIEW

Randolph Todd seeks to have development on approximately 737 acres. The planned development will have approximately 1,500 homes. As there is no regional or existing plant

within three miles, Randolph Todd has opted to apply for a Texas Pollution Discharge Elimination System (TPDES) Permit. The Permit, if granted, would authorize the discharge of 390,000 Gallons Per Day (GPD) in the final phase. The discharge parameters will be, based on a 30-day *average*, 5 mg/l for both Carbonaceous Biochemical Oxygen Demand (CBOD) and Total Suspended Solids (TSS), Ammonia-Nitrogen 2.0 mg/l and Total Phosphorous 0.5 mg/l. In addition, the permit would require Dissolved Oxygen minimum of 4.0 mg/l.

The treatment plant will be located in the southeast portion of the project *See Attachment 1*. The treated effluent will then be pumped to the north central portion of the property where it will be discharged into Dry Comal Creek where it will flow for approximately 14,980 linear feet, 2.84 miles, through the project before it leaves Randolph Todd Property.

The large number of commenters and requestors brought about a wide variety of issues. Naturally, some of the comments and bases for hearing requests are not relevant to a wastewater permit matter but others were. Randolph Todd will address requests. The Requestors' location is important in determining whether a Requestor is affected. For convenience, Randolph Todd will group the Requestors who reside in the same or similar neighborhoods or share other geographic similarities.

RESPONSES TO HEARING REQUESTS

30 TAC Section 55.209(e) sets out the requirements to respond to hearing requests. The response must address the following:

1. Whether the requestor is an affected person;
2. Which issues raised in the hearing request are disputed;
3. Whether the dispute involves questions of law or fact;
4. Whether the issues were raised in the public comment period;
5. Whether the basis for the hearing request was based solely on a withdrawn comment;
6. Whether the issues are relevant and material to a decision on the application;
7. Maximum expected duration for a contested case hearing.

Further, 30 TAC Section 55.211(c) requires a contested case to be granted if the request is made by an affected person and if that request, among other matters, raises a disputed issue(s) of fact. So, whether an issue is referred to a contested case, the issue must be raised by an affected

person and it must be relevant and material to the application as well as timely filed and an interest protected by law.

Randolph Todd believes this important concerning whether certain topics should be an issue referred to a contested case hearing. That is, Randolph Todd believes that 30 TAC Section 55.211(c) prohibits the Commission from sending an issue to a contested case hearing that was not raised by an affected person. For example, only Ms. Farmer raised the issue of odor. Given her proximity to the plant, odor is a relevant and material issue. On the other hand, none of the remaining 7 raised odor as an issue. Therefore, Randolph Todd believes that these 7 did not raise a relevant and material issue.

RESPONSE SUMMARY

As stated, approximately 41 people wrote to TCEQ requesting a contested case hearing. Randolph Todd believes that only Ms. Patricia and Mr. Troy Brand, Ms. Ellen McClellan, Mr. Edward Harris, Mrs. Phyllis Yvonne Ritter, Ms. Carole Farmer, Ms. Nelda and Mr. Ronald Davis are sufficiently within the proximity of the wastewater treatment plant to merit a discussion of their affected person status and whether the issues they raised are relevant. However, only Ms. Farmer raised an issue that is relevant and material to this application. The 32 of the remaining 33 Requestors are over ½ mile from the plant location and either over 3 miles from the discharge point, over 3 miles upstream of the discharge point and/or simply not adjacent to the discharge route. The exception is Ms. Susan Dooley Logue whose property is over ½ mile from the treatment plant and 1.5 miles downstream of the discharge point.

REQUESTORS WITHIN ½ MILE OF WASTEWATER TREATMENT PLANT SITE

Randolph Todd believes that Patricia and Troy Brand, Ms. Ellen McClellan, Edward Harris¹, Mrs. Phyllis Yvonne Ritter, Carole Farmer and Nelda and Ronald Davis all own

¹ It is unclear whether Mr. Harris requested a hearing or withdrew his hearing request. The Chief Clerk's list of Requestors did not include Mr. Harris as being a Requestor but instead listed him and Mrs. Harris as having withdrawn hearing requests. The database indicates that by letter dated September 30, 2015 the Harris's indeed did withdraw their requests. However, the database also reflects that on October 10, 2015, Mr. Harris again requested a hearing. In the body of the "comment" it appears that Mr. Harris requested a "contested case hearing". Randolph

property that is in the proximity to the proposed wastewater treatment plant site to make them affected persons if they claimed an interest that is reasonably impacted by the proposed discharge permit. The Requestors' locations are identified on Attachment 1. Mr. and Mrs. Brand's property is No. 2; Ms. McClellan is No. 9; Mr. and Mrs. Davis' property is No. 3; Ms. Ritter's property is No. 11 and Mr. Harris' property is No. 28; Ms. Farmer's property is No. 5.

However, only Ms. Farmer and Mr. Brand raised issues that are relevant and material to this application. For that reason, only Ms. Farmer and Mr. Brand should be referred to the State Office of Administrative Hearings and it should be based on odor and whether the proposed treatment plant is adequately protected from the 100 year event.

ANALYSIS OF ISSUES

ODOR

Ms. Farmer is the only Requestor within ½ mile of the proposed plant site to raise odor as an issue. It should be noted that her property is located upwind of proposed plant. Nonetheless, this is likely an issue that should be referred to a contested case hearing.

IMPACT TO GROUNDWATER AND WATER WELLS

Each of the 8 Requestors above raised the issue of impact to groundwater and their water wells from the discharge of treated effluent. Randolph Todd believes that groundwater contamination is a material issue if raised by an affected party. As shown on Attachment 1, only Mr. Harris is on the discharge route. However, he is approximately 3.5 miles downstream of the point of discharge. Given that distance, he is not affected by the discharge of the treated effluent. The remaining 7 Requestors are also not affected since they are not adjacent to the discharge route nor does the discharge route (Dry Comal Creek) pass through their property.

Randolph Todd will also point out that most of the 8 Requestors expressed a concern about the discharge impacting the Edwards Aquifer. These Requestors did not state or show that

Todd assumes that Mr. Harris, in his final correspondence, did request a contested case hearing. For that reason, Randolph Todd will address the Mr. Harris' October 10, 2015 "comment" as being a hearing request. If the Commission determines that Mr. Harris did not request a public hearing, Randolph Todd would support that as well.

their wells are in the Edwards Aquifer. Regardless of which aquifer the wells are in, the distance from point of discharge to the well precludes any likely impact on the Requestors' wells.

However, Randolph Todd does understand that groundwater can be a material issue to a wastewater discharge application. For that reason, if the Commission determines to refer Randolph Todd believes that the relevant and material inquiry would be whether the operation of the wastewater plant will impact groundwater and the 8 Requestors' water wells.

IMPACT ON LIVESTOCK

Certain of these Requestors named a concern that the proposed discharge would have on their livestock. As discussed, of these Requestors, only Mr. Harris has property where the discharge traverses. Therefore, livestock will not be drinking from the discharge route. So, the concern must be whether the water from the well will adversely impact the livestock.

Once again, the distance from the discharge point to the well precludes any likely impact on the Requestors' wells, and thereby, any livestock.

Randolph Todd believes that issue is covered in impact on the groundwater and need not be repeated. However, if the Commission wishes to refer the issue of impact to livestock to a contested case hearing, Randolph Todd believes that the relevant and material inquiry would be whether the operation of the wastewater treatment plant will adversely impact Requestors' livestock.

PLANT OVERFLOW

One Requestor, Mr. Brand, raised the possibility of a plant overflow during a weather disaster. While this is unlikely, Randolph Todd believes this to be a relevant and material fact issue. Randolph Todd would suggest the issue be phrased as "whether the Applicant will adequately protect the plant from 100 year flood events".

FLOODING

Certain of these Requestors raised the issue of flooding. Randolph Todd believes that this fact issue is outside of the Commission's jurisdiction in reviewing a discharge permit.

ALTERNATIVES TO DISCHARGE PERMIT

Certain of the Requestors questioned whether there were better alternatives for Randolph Todd than seeking a TPDES permit. Randolph Todd believes that this is not a relevant and material inquiry into determining whether to grant this application.

REQUIREMENT FOR OPERATOR PRESENCE AT PLANT

One Requestor voiced concern about the TCEQ's rules requiring the operator to be present at the wastewater treatment plant. Randolph Todd believes that this is a legal question and not a fact question. The TCEQ rules do not require an operator to be at the plant 24 hours a day/7 days a week. However, the operator is required to be available by telephone or pager 7 days per week. That provision is in the draft permit.

PUMPING TREATED EFFLUENT FROM TREATMENT PLANT TO PROPOSED DISCHARGE POINT

One Requestor suggested that Randolph Todd should not be allowed to pump the treated effluent from the plant site to the proposed point of discharge. Randolph Todd believes that this is a legal question and not a fact issue. There are no rules preventing this.

RECHARGE FEATURE ON MR. HARRIS' PROPERTY

Mr. Harris expressed concern that the proposed discharge would impact groundwater due to a recharge feature on his property. Due to the distance from the point of discharge, approximately 3.5 miles, Randolph Todd does not believe this to be a relevant issue.

INCREASE IN TRAFFIC

One Requestor complained of additional traffic in the area if this permit is granted as well. This is not an issue relevant and material to this permit application.

POTENTIAL IMPACT THAT DEVELOPMENT WILL HAVE

One Requestor expressed concern of the impact of an additional amount of homes that Randolph Todd proposes. This is not an issue relevant and material to this permit application.

SUMMARY OF RELEVANT AND MATERIAL ISSUES

Randolph Todd believes that the issues that are relevant and material to this matter that were raised by affected persons, Ms. Farmer and Mr. Brand, are the following:

1. Odor from the plant's operation;
2. Whether the Applicant will adequately protect the plant from 100-year flood events.

However, if the Commission determines that the Requestors' concern about potential impact to the groundwater from the plant's operation are relevant and material to send to SOAH, then the two following issues should be included:

1. Whether the operation of the wastewater plant will impact groundwater and the 8 Requestors' water wells;
2. Whether the operation of the wastewater plant will adversely impact human health and livestock.

REQUESTORS NOT AFFECTED DUE TO DISTANCE

Mr. Hector X. Amaya, Ms. Sabrina Houser-Amaya, Mr. Franklin Houser and Ms. Bonnie Houser

Randolph Todd will address Mr. Amaya, Ms. Sabrina Houser-Amaya, Mr. Franklin Houser and Ms. Bonnie Houser together since each cite the same address—1741 Herbelin Road, New Braunfels, Texas 78132. In addition, each are part of Dry Comal Creek Vineyards. For convenience, Randolph Todd will refer to the land where the four individuals reside as “The Dry Creek Vineyard Property”. The Dry Creek Vineyard Property is identified as No. 1 on Attachment 1.

ARE MR. AMAYA, MS. HOUSER-AMAYA, MR. HOUSER AND MS. HOUSER AFFECTED PERSONS?

Randolph Todd believes that the above four individuals are not affected persons. Each admits to being approximately 3 miles from the proposed treatment facility. Attachment 1 shows the Dry Creek Vineyard Property is approximately 4 miles downstream of the discharge point. Additionally, these Requestors are over 1/2 mile south of the wastewater treatment plant. In this area, the prevailing winds are from the south to north.

There is not a reasonable relationship of the proximity of Dry Comal Creek Vineyards Property to the concerns that they raise. The distance between the discharge point and the Dry Comal Creek Vineyards property decreases the likelihood that Mr. Amaya, Ms. Houser-Amaya, Mr. Houser and Ms. Houser will be personally affected in a way not common to the public. The distance is too great to impact these Requestors.

ANALYSIS OF ISSUES

These 4 Requestors raise several interrelated fact related issues but they can be summed up as a concern that the proposed discharge will impact the use and enjoyment of their property, including their wine vineyard, and whether the proposed plant site is properly sited. They also voiced a concern that a perennial pond on the Dry Comal Creek Vineyards Property was not properly taken into account. Other issues raised include impact to cattle and wildlife.

IMPACT ON GROUNDWATER

These 4 Requestors express a concern about the impact to vineyard operations. The 4 Requestors' concern about eutrophication is not relevant and material due to the distance from the discharge point to their property. Similarly, their concern about impact to the vineyard is not relevant and material for the same reason.

PUBLIC WATER SUPPLY AND ABILITY OF A BUSINESS TO REMAIN IN BUSINESS.

Their stated concern is that the winery has to sample for E-Coli in water supply and an upstream discharge could result in higher likelihood of a positive reading. Randolph Todd believes this to be an issue of law. Dry Comal Creek Vineyards is required to sample for E Coli regardless of Randolph Todd's proposed treated effluent discharge. Contamination could come from sources such as local septic tanks. The fact that Randolph Todd would discharge at a point 5 miles upstream does not impact Dry Comal Creek Vineyards' responsibility to sample for E Coli.

REGULATORY GUIDANCE 421

The 4 Requestors use RG-421, related to Public Water Supply's requirements to sample for coliform, as an example where TCEQ is being inconsistent. Whether Randolph Todd obtains a wastewater discharge permit or not, the Dry Creek Vineyard is required to comply with coliform counts. To the extent that the Requestors raise a fact question, it is also not relevant since the vineyard is over 4 miles from point of discharge. Further, it is not clear whether Dry Creek Vineyards' irrigation well is Edwards water or not.

PERENNIAL POOL

The 4 Requestors expressed concern about a perennial pool on their property that TCEQ, allegedly, did not consider. First, Randolph Todd will point out that the pool is too far downstream to be relevant to this application. Second, to the extent that the Requestors' concern is about the potential pools upstream, they do not have adequate standing to raise that concern since they are so far from the point of discharge.

REMAINING ADJACENT LANDOWNERS

Randolph Todd will address Susan Dooley Logue next. Ms. Logue's address is 10120 W. State Highway 46, New Braunfels, Texas 78132. Her property is shown as No. 4 on Attachment 1. Her property, where Dry Comal Creek is closest to her land, is approximately 1 mile from the discharge point.. In addition, Ms. Logue is over ½ mile from the proposed plant site.

IS MS. LOGUE AN AFFECTED PERSON?

Randolph Todd does not believe Ms. Logue to be an affected person due to her distance from the discharge point and the plant site. Ms. Logue alleges that Dry Comal Creek is on her property. While a portion of Dry Comal Creek is on her property, as shown on Attachment 2, shows that that portion of Dry Comal Creek flows from Ms. Logue's property onto Randolph Todd property. Thus, any discharge from Randolph Todd does not, and will not, flow onto her property.

ANALYSIS OF ISSUES

RUNOFF AND CONTAMINATION FROM WASTEWATER SYSTEM AND DISCHARGE

Runoff from a wastewater system is similar in nature to issue No. 3 above relating to whether the wastewater plant is adequately protected against the 100-year flood. This is a fact issue that is relevant and material to the application. However, given that Ms. Logue is over ½ mile from the plant, she does not have standing to raise the issue. In the event the Commission considers Ms. Logue to be an affected person, then Randolph Todd believes that the issue should be considered with Issue 3 above related to protecting plant from 100-year flood event.

Concerning Ms. Logue's concern about contamination from the actual discharge, Randolph Todd does not believe that it is relevant and material due to the fact that the discharge

will not cross her property. Furthermore, the distance from the discharge point to her property, 1.5 miles is too great to give her standing on this issue.

IMPACT TO GROUNDWATER AND TO LIVESTOCK

Randolph Todd believes that these are material issues to those persons within the proximity of the plant. However, Ms. Logue is not one of them. Given the distance both from plant and point of discharge, she does not have standing to raise these issues.

Should the Commission decide that she is an affected person, Randolph Todd believes that the issues should be identical to Issues 1 and 2 above.

ODOR

Again, Ms. Logue does not have standing to raise odor as an issue given her distance from the plant. Should the Commission determine that Ms. Logue is an affected person, then the odor issue would become relevant and material to this application. In such an event, the issue should be phrased “will the plant be operated so as to prevent odor conditions?”. However, given the distance from her property to the point of discharge, the issue of whether the proposed discharge would cause odor should not be included.

WATER WELLS DRILLED BY RANDOLPH TODD

Ms. Logue also raises a concern about potential wells Randolph Todd may drill and whether that would deplete the aquifer and dry existing wells. This issue is beyond TCEQ jurisdiction and is not relevant and material to this matter.

HERITAGE OAKS RESIDENTS

Randolph Todd will address Randall and Nancy Pappas, Daniel Laroe, Elizabeth, Ted and Taylor Martin, in a group. It appears that these 6 Requestors reside in the Heritage Oaks Subdivision so we are referring to them collectively as the Heritage Oaks Residents. Each of the Requestors is adjacent to the proposed project but each over 1 mile from the proposed plant site. None are adjacent to the discharge route. The Pappas Property is identified as No. 10 on Attachment 1; the Martin Property as No. 8 on that Attachment; and the Laroe Property as No. 6 on that Attachment.

ARE THE HERITAGE OAKS SUBDIVISION RESIDENTS AFFECTED PERSONS?

Randolph Todd disputes that these 6 Requestors are affected persons. None of these 6 Requestors is in the proximity of the discharge point or the proposed treatment plant site. Each is over 1 mile from the proposed treatment plant.

ANALYSIS OF ISSUES

Since many of the issues that these 6 Requestors raised have already been addressed, Randolph Todd will only address issues that either were not previously

ADVERSE IMPACT ON GROUNDWATER AND WELLS

Each of these 6 Requestors raised a concern about the impact the proposed discharge will have on groundwater quality and their wells. While these are certainly relevant issues to a wastewater discharge application, the distance from both the proposed plant site and the point of discharge do not give these Requestors standing for such an issue. The closest Requestor(s) to the point of discharge is the Martin Family. They are not adjacent to the discharge route and over ½ mile from Dry Comal Creek. The Laroe Property and the Pappas Property are in upstream of the discharge point.

HOUSING PROJECT IMPACTING GROUNDWATER AND SURFACE WATER

One Requestor raised the issue of whether the housing development would contaminate groundwater, wells and downstream livestock. This issue may be a fact question but it is not relevant to a wastewater discharge application.

AIR QUALITY CONCERNS

One Requestor voiced concern over potential airborne pollutants from the discharge. This is a legal issue as wastewater treatment plants are permitted by rule.

CHLORINATION

Three Requestors expressed concern over chlorine as a disinfection method and its possible detrimental impacts. Chlorination is an approved method for disinfection and there is no prohibition for chlorination or requirement to de-chlorinate in this area. Thus, this is not a fact issue.

WAGGENER RANCH SUBDIVISION

Four Requestors reside in the Waggener Ranch Subdivision, which is located north of the proposed project. In addition, it appears that the Waggener Ranch Property Owners Association

(WRPOA) may have requested a hearing. The term “may” is used because it is not clear that the Requestor, Gen. Whitmore, made the request on behalf of the WRPOA or in his personal and individual capacity in his February 9, 2015 request.

The Waggener Ranch Subdivision is shown in the area of No. 14 on Attachment 1. It is approximately 3.5 miles from the proposed wastewater treatment plant site. The subdivision, at its nearest point to the discharge route is approximately one mile upstream of the proposed discharge route. However, none of the actual Requestors, Teressa Barnhill, Sandy Nott, Susan Dunlap or Gen. Whitmore are within 1 mile upstream of the proposed discharge point.

REQUESTORS

The addresses of the 4 Requestors are: Ms. Barnhill and Ms. Nott each show the address of 143 Dry Bear Creek, New Braunfels, Texas 78132. Their property is listed as No. 13 on Attachment 2. The property is too far away to have been included on Attachment 2. Ms. Dunlap’s address is 462 San Marcos Trail, New Braunfels, Texas 78132 and shown as No. 16 on that Attachment. General Whitmore has as his address 257 Dry Bear Creek, New Braunfels, Texas 78132, which is marked as No. 25 on that Attachment.

ARE THE WAGGENER RANCH REQUESTORS AFFECTED PERSONS?

Randolph Todd does not believe that the Waggener Ranch Requestors are affected persons. The distance from both the proposed plant site and the proposed discharge point is too great making it unlikely that their property will be impacted in a way that is not common to members of the general public.

In their hearing requests, neither Ms. Nott nor Ms. Barnhill identified their personal justiciable interest as required by 30 TAC Section 55.201(d)(2). Neither Requestor described their location and distance relative to the proposed facility. Neither Requestor described how her property would be impacted by the proposed discharge.

Similarly, Gen. Whitmore, in his individual hearing request dated September 7, 2015, did not state a personal justiciable interest. Instead, he expressed a general concern about impact on the Edwards Aquifer and a concern that pumping the treated effluent from the treatment plant to the proposed discharge point is an attempt to circumvent a prohibition on discharges into the

Edwards Recharge Zone. He also complained of increased flooding and additional bacteria impact on Dry Coal Creek.

The fact that the Waggener Ranch Subdivision is a great distance upstream of the discharge point, eliminates the likelihood that any of their properties will be affected in a way not common to the public.

WAGGENER RANCH PROPERTY OWNERS ASSOCIATION

The WRPOA did not meet the requirements for association standing pursuant to 30 TAC Section 55.205. First, it is unclear whether Gen. Whitmore's February 9, 2015 hearing request is actually a request for hearing by the WRPOA. Nowhere in his request does he definitely state that he is requesting the hearing on behalf of WRPOA. Further, as previously discussed, none of the members of the WRPOA would have individual standing due to the Waggener Ranch Subdivision's distance from the regulated activities. The February 9, 2015 hearing request did not state an interest to be protected. That hearing request, in a vague question, asked if the discharge will be treated to drinking water standards with no odor to minimize impact to Edwards Aquifer Recharge Zone. The request also raised irrelevant issues such as flooding, traffic and water supply to the proposed subdivision. Finally, the February 9, 2015 request did not describe the WRPOA and what interests it is protecting and what the purpose of the organization is.

For those reasons, Randolph Todd does not believe that the WRPOA meets the burden of being an affected party.

ANALYSIS OF ISSUES

Ms. Dunlap raised a concern about her water well. This is an issue of fact and, if raised by an affected person, would be relevant and material to the application. However, as shown, Ms. Dunlap's property is at least one mile from the point of discharge and her property is upstream of the discharge point.

VINTAGE OAKS SUBDIVISION

Randolph Todd counted a total of 12 Requestors from the Vintage Oaks Subdivision, which is located in the area of No. 22 on Attachment 1. The nearest Requestor to the proposed plant, Ms. Thomas, is approximately 1.5 miles. The discharge route is not near her property and,

in any event, is over 7 miles downstream from the discharge point. In fact, none of the Vintage Oaks Subdivision Requestors are on or adjacent to the discharge route, Dry Comal Creek.

The 12 Requestors are Mr. John Blodgett, shown as No. 15, Ms. Aurora White and Mr. Randal White, shown as No. 24, Mr. Carl Thompson, shown as No. 23, Ms. Felicia Thomas, shown as No. 22, Ms. Connie Terao, shown as No. 26, Mrs. Brenda Sturtevant and Mr. John Sturtevant, shown as No 27, Mrs. Sandy Peyton and Mr. Rick Peyton, shown as No. 21, Mrs. Marjorie Marks, shown as No. 20, and Mr. Richard Lamb, shown as No. 19. Each of the Requestors property is identified on Attachment 1.

It should be noted that Mr. Blodgett and Mr. and Mrs. White identified their respective properties as being 1.5 to 1.75 miles from the proposed facility. Randolph Todd suggests that the distance is actually closer to 2 miles to each of these Requestors' property. *See*, Attachment 1.

There is not a reasonable relationship of the proximity of each of the Requestors' property to the concerns that they raise. The distance between the discharge point and the Vintage Oaks Subdivision decreases the likelihood that each will be personally affected in a way not common to the public. Not only is the discharge route approximately 5 miles upstream of the Vintage Oaks Subdivision, none of the Requestors' property is on the discharge route.

REMAINING REQUESTORS

The remaining 7 Requestors either have property at an even greater distance from the wastewater plant and/or discharge route or did not express a personal justiciable interest or list of relevant issues.

Dr. Jerry Barucky

Dr. Barucky lists his address as 20806 Woodland Cove, Garden Ridge, Texas. His property is shown as No. 14 on Attachment 2. Dr. Barucky's property is too far from the proposed treatment plant to be shown on Attachment 1. Randolph Todd does not believe that Dr. Barucky is an affected person in this matter. Dr. Barucky did not identify his personal justiciable interest nor did he describe his location and the distance from the proposed facility as required by 30 TAC Section 55.201(d)(2). The address provided is at least 5 miles, and likely much more, from the project and not on the discharge route. Dr. Barucky's hearing request only contained a

general concern about the type of plant proposed, well contamination and noxious odors for “area homeowners”. He did not, however, identify himself as an area homeowner. Thus, it is apparent that Dr. Barucky has no personal justiciable interest in this matter.

Ms. Jessica Smith

Ms. Smith states that she owns property at 1723 Herbelin Road, New Braunfels, Texas. Her property is marked as No. 12 on Attachment 1. Ms. Smith is not an affected person. Her property is over one mile from the wastewater treatment plant and over 4 miles from the discharge point. In addition, Ms. Smith only requested a public hearing and did not list any personal, justiciable issues to be considered. Instead, her request was for the TCEQ to hold a hearing so they could voice any concerns. Thus she did not comply with 30 TAC Section 55.201(c) & (d) and 55.203(c).

The Honorable Susan Ingram

Ms. Ingram’s stated that her property is located at 29751 Twin Creeks Drive, Bulverde, Texas, 78163. Ms. Ingram’s property is at least 6 miles southwest of the proposed project and, therefore, she is not an affected person. Moreover, Ms. Ingram, in her February 18, 2015 hearing request, did not list any personal, justiciable issues to be considered. Instead, her request was for the TCEQ to hold a hearing due to her concern over “probable” contamination of the Edwards Aquifer and flooding. She did not, however, describe how she had an interest different than that of the general public. Thus she did not comply with 30 TAC Section 55.201(c) & (d) and 55.203(c).

Ms. Sharon Elaine Hubler and Mr. Edmund O. Hubler

The Hublers’ property, 692 Rock Castle, Canyon Lake Texas 78133 is over 5 miles from the project. The Hublers, in their hearing requests, did not list any personal, justiciable issues to be considered. Instead, their requests were for the TCEQ to hold a hearing due to their concern over possible contamination of the environment and the Edwards Aquifer. Neither, however, described how they had an interest different than that of the general public. Thus they did not comply with 30 TAC Section 55.201(c) & (d) and 55.203(c).

Ms. Victoria Beth Laubach and Mr. Kenneth C. Laubach

The Laubach's property is located at 633 Herbelin Road, New Braunfels, Texas 78132. It is identified as No. 7 on Attachment 1. The property is over 2 miles from the proposed plant site and over 5 miles from the proposed discharge point. There is not a reasonable relationship of the proximity of the Laubach's property to the concerns that they raise. The distance between the proposed plant site and the proposed discharge point and the Laubach's property decreases the likelihood that they will be personally affected in a way not common to the public.

FINAL THOUGHTS

It is always intimidating to address the issues and complaints of a large number of protestants. It is easy to allow the weight of the number of opponents and issues to appear to have more impact than what they may merit. Randolph Todd urges the Commission to remain mindful that, as owner of the project, it is equally concerned about the quality of treated effluent discharge. Randolph Todd is not asking the Requestors to accept any burden that it is unwilling to accept. That is, the discharge point is located so that the treated effluent will flow through almost the entirety of the project before exiting onto someone else's property. That distance is approximately three miles.

The proper inquiry should focus on issues raised by those Requestors within ½ mile of the proposed wastewater treatment plant. Requestors whose property is outside of that proximity are not impacted by this application.

IF REFERRED TO SOAH, EXPECTED MAXIMUM DURATION SHOULD BE SIX MONTHS

Randolph Todd realizes that, at first blush, this might seem an ambitious request. However, given that the discharge should not be an issue given the distance from the discharge point to any affected party, the issues should be limited to those involving the plant and its operations. We would be remiss if not admitting that delay is the enemy of a developer—something opponents know too well and couch their concerns in water quality.

CONCLUSION

For the reasons discussed in the Response, Randolph Todd believes that the issues that are relevant and material to this matter that were raised by affected persons, Ms. Farmer and Mr. Brand, are the following:

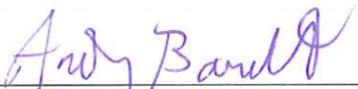
1. Odor from the plant's operation;
2. Whether the Applicant will adequately protect the plant from 100-year flood events.

However, if the Commission determines that the concern the 8 Requestors' who reside within ½ mile of the proposed plant about potential impact to the groundwater from the plant's operation are relevant and material to send to SOAH are proper, then the two following issues should be included:

1. Whether the operation of the wastewater plant will impact groundwater and the 8 Requestors' water wells;
2. Whether the operation of the wastewater plant will adversely impact human health and livestock.

Respectfully submitted,

Andy Barrett & Associates, PLLC

By: 

Andrew N. Barrett

State Bar No. 01808900

3300 Bee Cave Road, Suite 650 #189

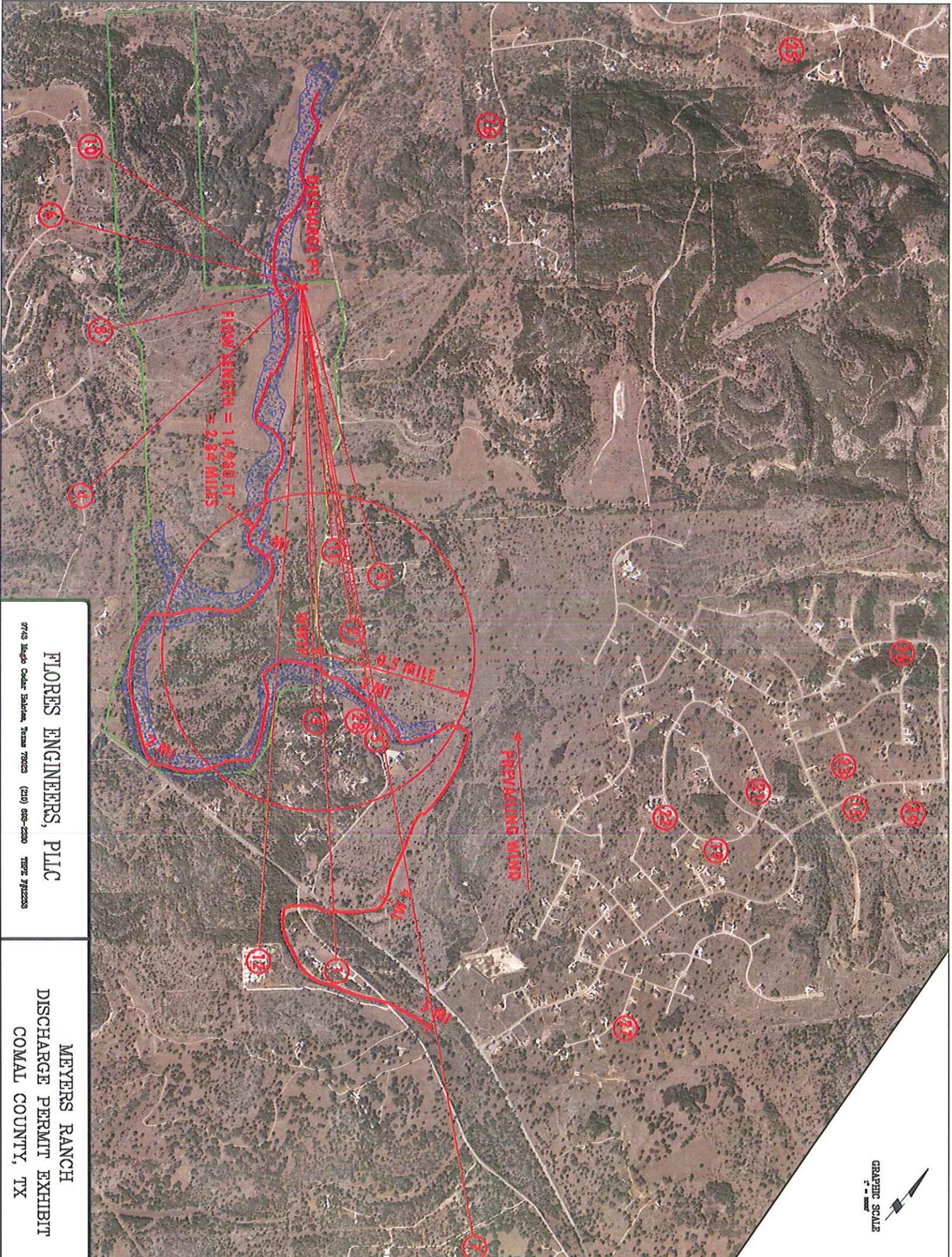
Austin, Texas 78746

512-600-3800

512-330-0499 FAX

ATTORNEY FOR APPLICANT
RANDOLPH TODD COMPANY, LLC

ATTACHMENT 1



GRAPHIC SCALE
 1" = 1000'

7143 Maple Cedar Boulevard, Texas 76023 (214) 889-2300 FAX: 7672268

FLORES ENGINEERS, PLLC

MEYERS RANCH
 DISCHARGE PERMIT EXHIBIT
 COMAL COUNTY, TX

ATTACHMENT 2

Number	Address
1	1741 Herbelin Rd. New Braunfels, TX 78132
2	1980 S Cranes Mill Rd New Braunfels, TX 78132
3	1789 S Cranes Mill Rd New Braunfels, TX 78132
4	10120 W State Highway 46 New Braunfels, TX 78132
5	1600 S Cranes Mill Rd New Braunfels, TX 78132
6	922 Homestead Rdg New Braunfels, TX 78132
7	633 Herbelin Rd. New Braunfels, TX 78132
8	900 Heritage Oaks New Braunfels, TX 78132
9	2282 S Cranes Mill Rd. New Braunfels, TX 78132
10	1100 Homestead Rdg New Braunfels, TX 78132
11	2360 S Cranes Mill Rd. New Braunfels, TX 78132
12	P.O. Box 936 Dripping Springs, TX 78620
13	143 Dry Bear Creek New Braunfels, TX 78132
14	20806 Woodland Cv Garden Ridge, TX 78266
15	2345 Appellation New Braunfels, TX 78132
16	462 San Marcos Trl New Braunfels, TX 78132
17	692 Rock Castle Canyon Lake, TX 78133
18	29751 Twin Creeks Dr Bulverde, TX 78163
19	1504 Vino Cir New Braunfels, TX 78132
20	1355 Ranch Pkwy Apt 112 New Braunfels, TX 78130
21	1015 Provence Pl New Braunfels, TX 78132
22	1128 Provence Pl New Braunfels, TX 78132

23	1026 Stradina New Braunfels, TX 78132
24	2230 Pinot Blanc New Braunfels, TX 78132
25	257 Dry Bear Crk New Braunfels, TX 78132
26	2241 Appellation New Braunfels, TX 78132
27	1170 Sapling Spg New Braunfels, TX 78132
28	1670 S. Cranes Mill Rd. New Braunfels, TX 78132