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*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 28, 2015

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

**RE: RANDOLPH TODD COMPANY, LLC  
TCEQ DOCKET NO. 2015-1624-MWD**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, reading "Isabel Segarra".

Isabel G. Segarra Treviño, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2015-1624-MWD**

**IN THE MATTER OF THE  
APPLICATION BY RANDOLPH  
TODD COMPANY, LLC FOR A  
NEW TPDES PERMIT  
NO. WQ0015314001**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUESTS FOR HEARING**

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Background of Facility**

Randolph Todd Company, LLC (Randolph Todd or Applicant) has applied to the TCEQ for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015314001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 million gallons per day (MGD) in the Interim I Phase, a daily average flow not to exceed 0.27 MGD in the Interim II Phase, and a daily average flow not to exceed 0.39 MGD in the Final Phase. The Meyer Ranch Wastewater Treatment Facility (Facility) will be an activated sludge process plant operated in the extended aeration mode. Sludge generated from the Facility will be hauled by a registered transporter to be digested, dewatered, and then disposed. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site or co-disposal landfill. The Facility will serve the Meyer Ranch subdivision. The Facility has not been constructed.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand, 5 mg/l total suspended solids, 2 mg/l ammonia nitrogen, 0.5 mg/l Total Phosphorus, 126 colony forming units or most probable number of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The Facility will be located at 2959 South Cranes Mill Road, in Comal County, Texas 78132. The treated effluent will be discharged to Dry Comal Creek; then to the Comal River in Segment No. 1811 of the Guadalupe River Basin. The unclassified receiving water use is minimal aquatic life use for Dry Comal Creek. The designated uses for Segment No. 1811 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation. Dry Comal Creek is currently listed for bacteria in the lower 25 miles of the water body (AU 1811\_01) on the State's inventory of impaired and threatened waters pursuant to federal Clean Water Act § 303(d).

## **B. Procedural Background**

The TCEQ received the application on November 6, 2014, and declared it administratively complete on January 6, 2015. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on January 13, 2015, in Comal County in the *New Braunfels Herald-Zeitung* newspaper. The Executive Director's (ED) staff completed the technical review of the application and prepared a draft permit. The Notice of Public Meeting and Notice of Application and Preliminary Decision for a Water Quality Permit was published in English on May 15, 2015, in Comal County in the *New Braunfels Herald-Zeitung* newspaper. Alternate language publication in Spanish was required for this application, but the Applicant

could not find a Spanish language newspaper. The public comment period ended on June 18, 2015. A public meeting was held on June 18, 2015. The Chief Clerk mailed the ED's Decision and Response to Public Comment on September 11, 2015 and the deadline for filing requests for a contested case hearing was October 12, 2015.

The TCEQ Chief Clerk's office received timely requests from Hector X. Amaya, Teresa Barnhill, Jerry Barucky, John Hudson Blodgett, Patricia L. Brand, Troy C. Brand, Nelda S. Davis, Ronald R. Davis, Susan R. Dooley Logue, Susan L. Dunlap, Carole Farmer, Bonnie Houser, Franklin Houser, Sabrina A. Houser-Amaya, Edmund O. Hubler, Sharon Elaine Hubler, Hon. Susan Ingram, Richard Lamb, Daniel Laroe, Kenneth C. Laubach, Victoria Beth Laubach, Marjorie Marks, Elizabeth L. Martin, Taylor Martin, Ted M. Martin, Ellen McClellan, Sandy L. Nott, Randall Pappas, Rick Peyton, Sandy Peyton, Phyllis Yvonne Ritter, Jessica Smith, Brenda R. Sturtevant, John Wesley Sturtevant, Connie Terao, Felicia S. Thomas, Carl Thompson, Aurora Dozier White, Randal Dean White, and James A. Whitmore. Denise and Edward Harris submitted a hearing request that was withdrawn on September 30, 2015.

As discussed below, OPIC recommends granting the hearing requests of: Hector X. Amaya, Bonnie Houser, Franklin Houser, Sabrina Houser-Amaya, Patricia L. Brand, Troy C. Brand, Nelda S. Davis, Ronald R. Davis, Susan R. Dooley Logue, Susan L. Dunlap, Carole Farmer, Daniel Laroe, Kenneth C. Laubach, Victoria Beth Laubach, Elizabeth L. Martin, Taylor Martin, Ted M. Martin, Ellen McClellan, Randall Pappas, Phyllis Yvonne Ritter, Aurora Dozier White, and Randal Dean White. OPIC recommends denying the hearing requests of: Teresa Barnhill, Jerry Barucky, John Hudson Blodgett, Edmund O. Hubler, Sharon Elaine Hubler, Hon. Susan Ingram, Richard Lamb, Marjorie Marks, Sandy L. Nott, Ricky Peyton, Sandy Peyton,

Jessica Smith, Brenda R. Sturtevant, John Wesley Sturtevant, Connie Terao, Felicia S. Thomas, Carl Thompson, James A. Whitmore, and the Waggener Ranch Property Owners Association.

## II. APPLICABLE LAW

A person may request the TCEQ reconsider the ED's decision on an application or hold a contested case hearing on an application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEX. WATER CODE (TWC) § 5.556). The requirements of House Bill 801 only apply to applications declared administratively complete on or after September 1, 1999. The TCEQ declared the Randolph Todd's application administratively complete on January 6, 2015. Therefore, Randolph Todd's application is subject to the procedural requirements of House Bill 801.

TCEQ rules require that a person seeking a hearing must substantially comply with the following: (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who filed the request, (2) identify the requestor's personal justiciable interest affected by the application, including a written statement describing the requestor's location or distance in relation to the proposed facility or activity, and, how or why the requestor believes he or she will be affected by the proposed facility or activity in a manner not common to members of the general public, (3) request a contested case hearing, (4) list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request, and (5) provide any other information specified in the public notice of the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

Only affected persons are granted contested case hearings. TWC § 5.556(c). An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC § 55.203(a). This justiciable

interest does not include an interest common to the general public. *Id.* Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

A group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

The Commission shall grant an affected person's timely filed contested case hearing request if the request: (1) raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application, (2) is timely filed with the Chief Clerk, (3) is made pursuant to a right to hearing authorized by law, and (4) complies with the request for reconsideration and contested case hearing requirements.

30 TAC § 55.211(c). Responses to hearing requests must specifically address:

- (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 fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

### III. DISCUSSION

The following individuals submitted timely hearing requests, that were not withdrawn, that substantially comply with the procedural requirements of 30 TAC § 55.201(d): Hector X. Amaya, Teresa Barnhill, Jerry Barucky, John Hudson Blodgett, Patricia L. Brand, Troy C. Brand, Nelda S. Davis, Ronald R. Davis, Susan R. Dooley Logue, Susan L. Dunlap, Carole Farmer, Bonnie Houser, Franklin Houser, Sabrina A. Houser-Amaya, Edmund O. Hubler, Sharon Elaine Hubler, Hon. Susan Ingram, Richard Lamb, Daniel Laroe, Kenneth C. Laubach, Victoria Beth Laubach, Marjorie Marks, Elizabeth L. Martin, Taylor Martin, Ted M. Martin, Ellen McClellan, Sandy L. Nott, Randall Pappas, Rick Peyton, Sandy Peyton, Phyllis Yvonne Ritter, Jessica Smith, Brenda R. Sturtevant, John Wesley Sturtevant, Connie Terao, Felicia S. Thomas, Carl Thompson, Aurora Dozier White, Randal Dean White, James A. Whitmore, and the Waggener Ranch Property Owners Association.

#### A. Determination of Affected Person Status

For a hearing requestor to be an affected person, the request must be based on an interest that is protected under the law governing the permit application. 30 TAC 55.203(a). The TCEQ administers wastewater discharge permit applications pursuant to its authority under TWC § 26.027(a). As further explained below, OPIC finds that the following individuals are affected

persons: Hector X. Amaya, Bonnie Houser, Franklin Houser, Sabrina Houser-Amaya, Patricia L. Brand, Troy C. Brand, Nelda S. Davis, Ronald R. Davis, Susan R. Dooley Logue, Susan L. Dunlap, Carole Farmer, Daniel Laroe, Kenneth C. Laubach, Victoria Beth Laubach, Elizabeth L. Martin, Taylor Martin, Ted M. Martin, Ellen McClellan, Randall Pappas, Phyllis Yvonne Ritter, Aurora Dozier White, and Randal Dean White.

**1. Requesters who are dependent on groundwater and affected persons**

The following hearing requesters depend on well water drawn from the Edwards Aquifer in the vicinity of the Facility and discharge route. For these requesters, OPIC finds that a reasonable relationship exists between the treated effluent and groundwater quality. In addition to other issues raised by these requesters, OPIC finds that their dependence on groundwater alone is sufficient to find them affected persons.

Hector X. Amaya, Bonnie Houser, Franklin Houser, and Sabrina A. Houser-Amaya

Hector X. Amaya, Bonnie Houser, Franklin Houser, and Sabrina A. Houser-Amaya submitted substantially similar hearing requests raising issues relating to Dry Comal Creek Vineyards and Winery (Vineyard). They are concerned (1) that the effluent will reach wells used for drinking water and irrigation; (2) that wastewater discharge will seep into the Edwards Aquifer Recharge and Contributing Zones; (3) that the discharge will carry excess nutrients and result in eutrophication of the receiving waters; (4) that eutrophication will impact the quality of their soil and grapes; (5) that alternative fertilizers used to counteract the effluent will leech into their water source; (6) that the effluent will increase the likelihood of *E. coli* in water used for both human consumption and production of a food crop; (7) that positive test results for *E. coli* will shut down the Vineyard and place an onerous burden on the Vineyard to identify the *E. coli* contamination source; (8) that, in granting this permit, the TCEQ would violate its own rules for

Public Water Supply Systems; and (9) that the TCEQ failed to consider the eutrophication of perennial pools in the permit review process. Hector X. Amaya, Bonnie Houser, Franklin Houser, and Sabrina A. Houser-Amaya list the Vineyard address as within a mile of the proposed Facility, along Dry Comal Creek, and state the Vineyard is on the Edwards Aquifer Recharge Zone. *See* Executive Director's Map, Exhibit 1.

The issues raised by this group of requesters concern the potential contamination of groundwater used for human consumption and crop production. Further, the requesters are concerned about their continued ability to produce grapes and maintain a public water system. This group of requesters raises issues that are not common to the general public, and OPIC finds that Hector X. Amaya, Bonnie Houser, Franklin Houser, and Sabrina A. Houser-Amaya are affected persons.

Patricia L. Brand and Troy C. Brand

The Brands submitted a joint hearing request and are concerned (1) that effluent will worsen existing flooding at the intersection of Dry Comal Creek and South Cranes Mill Road; (2) that effluent may flow into their wells; (3) that a catastrophic failure at the proposed Facility will allow raw sewage to flow into their wells; (4) that the effluent will contaminate the Edwards Aquifer, which their wells draw water from; (5) that population overconcentration will burden existing residents and wildlife; and (6) that the home development to be serviced by the proposed Facility will cause increased truck traffic on roads. The Brands reside less than a quarter-mile from the Facility, along the Applicant's property line, and, approximately one mile from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding, land use, and traffic are beyond the TCEQ's jurisdiction to review this water quality application. Further, given the Brands' proximity to the Facility, a

catastrophic failure at the Facility would affect the Brands substantially more than other residents in the area. Because the Brands raise issues that are not common to the general public, OPIC finds that Patricia L. and Troy C. Brand are affected persons.

Nelda S. and Ronald R. Davis

Nelda S. and Ronald R. Davis submitted separate hearing requests that are substantially similar. The Davises are concerned (1) that the effluent will flow into the Edwards Aquifer; (2) that effluent will contaminate their wells which are on the Edwards Aquifer Recharge Zone; and (3) that the effluent should meet drinking water quality standards. The Davises reside less than a quarter of a mile from the proposed Facility, over a mile from the discharge outfall, and are adjacent to the Applicant's property line as the discharge route exits the property. *See* Executive Director's Map, Exhibit 1. Because the Davises raise issues that are not common to the general public, OPIC finds that Nelda S. and Ronald R. Davis are affected persons.

Susan R. Dooley Logue

Mrs. Dooley Logue is concerned (1) that effluent will contaminate the aquifer from which her well draws from; (2) that her cattle will drink contaminated water from Dry Comal Creek; (3) that the effluent will cause noxious odors; (4) that the proposed Facility will affect her property value; and (5) that the Meyer Ranch developers intend to drill wells that will deplete existing groundwater sources. Mrs. Dooley Logue resides less than a mile from the proposed Facility, over a mile from the discharge outfall, and borders the Applicant's property near the discharge route. *See* Executive Director's Map, Exhibit 1.

The issues concerning property values and future groundwater wells are beyond the TCEQ's jurisdiction to review this water quality application. Given Mrs. Dooley Logue's proximity to Dry Comal Creek and the Facility, it is possible for her cattle to drink from the

discharge route along the Dry Comal Creek and for Mrs. Dooley Logue to smell odors from the Facility. Because Mrs. Dooley Logue raises issues that are not common to the general public, OPIC finds Mrs. Dooley Logue is an affected person.

Susan L. Dunlap

Ms. Dunlap is concerned that effluent will contaminate her well. Ms. Dunlap resides over a mile from the proposed Facility and less than a mile from the discharge outfall. *See* Executive Director's Map, Exhibit 1. Because Ms. Dunlap raises an issue that is not common to the general public, OPIC finds Ms. Dunlap is an affected person.

Carole Farmer

Ms. Farmer is concerned (1) that effluent will discharge onto her property and into her well; (2) that effluent will harm the health and safety of humans and animals on her property; (3) that the effluent will cause noxious odors; (4) that the effluent will breed insects; (5) that a catastrophic failure at the proposed Facility will allow raw sewage to flow from the Facility; and (6) that the proposed housing development to be served by the Facility is not necessary. Ms. Farmer resides approximately half of a mile from the Facility, over one mile from the discharge outfall, and along the discharge route as it leaves the Applicant's property. *See* Executive Director's Map, Exhibit I.

The issue relating to land use is beyond the TCEQ's jurisdiction to review this water quality application. Given Ms. Farmer's proximity to Facility, noxious odors, nuisance conditions, and catastrophic failures could affect Ms. Farmer in a unique way. Because Ms. Farmer raises issues that are not common to the general public, OPIC finds that Ms. Farmer is an affected person.

Daniel Laroe

Mr. Laroe is concerned (1) that effluent will contaminate his water well; (2) that the new housing development will overburden existing groundwater supplies; (3) that effluent will contaminate the Edwards Aquifer; (4) that effluent will contaminate downstream livestock grazing; (5) that the effluent will affect property values; (6) that effluent will affect Mr. Laroe's use of his property; (7) that there are many errors with the application, including: the location of private wells, the characterization of the discharge route, and the location of the Facility; (8) that the effluent will cause noxious odors; (9) that construction of the proposed housing development would create impermeable ground cover and worsen existing flooding issues; and (10) that in the event of a failure due to flood, the Facility would release raw sewage. Mr. Laroe resides less than half a mile from discharge outfall and less than a mile from the Facility. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding, land use, groundwater well development, and property value are beyond the TCEQ's jurisdiction to review this water quality application. While Mr. Laroe states that downstream livestock grazing could be affected, he fails to state whether he will be personally affected. Given Mr. Laroe's location relative to the Facility and discharge route, without further facts, OPIC cannot find that odors and catastrophic failures will affect Mr. Laroe in a unique way. However, groundwater contamination could affect Mr. Laroe's wells and use of his property. Because Mr. Laroe raises issues that are not common to the general public, OPIC finds that Mr. Laroe is an affected person.

Kenneth C. and Victoria Beth Laubach

Kenneth C. and Victoria Beth Laubach submitted separate hearing requests that are substantially similar. The Laubachs are concerned (1) that the effluent could contaminate their

two wells situated on the Edwards Aquifer Recharge Zone and used for drinking water, agriculture, and livestock; (2) that the effluent could contribute to existing flooding issues; (3) that increased development will decrease the aquifer's recharge capacity; (4) that a catastrophic failure at the Facility will cause untreated discharge into the Dry Comal Creek; (5) that water discharged on the Edwards Aquifer should meet drinking water standards; and (6) that drinking water shortages already exist in the area. The Laubachs reside over a mile from the Facility and over two miles from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding and land use are beyond the TCEQ's jurisdiction to review this water quality application. While drinking water availability is an issue within the TCEQ's jurisdiction, it is not an issue that is relevant and material to this water quality application. The Laubachs reside along the Dry Comal Creek and a catastrophic failure could affect them and their livestock in a unique way. Because the Laubachs raise issues that are not common to the general public, OPIC finds that Kenneth C. and Victoria Beth Laubach are affected persons.

Elizabeth L. Martin, Taylor Martin, and Ted M. Martin

Elizabeth L. Martin, Taylor Martin, and Ted M. Martin submitted separate but substantially similar hearing requests. The Martins are concerned (1) that effluent will contaminate their well used for drinking water, agriculture, and livestock; (2) that effluent will negatively impact the Edwards Aquifer Recharge Zone ecosystem; (3) that TCEQ rules prohibit municipal wastewater discharges on recharge zones; (4) that effluent will cause flooding; (5) that water discharged should meet drinking water standards; (6) that the Comal County Commissioners denied a Water Conservation and Improvement District (WCID) designation to the Applicant; (7) that the TCEQ is not considering water supply in its review of this application; and (8) that the effluent will subject the Martins to noxious odors. The Martins reside within a

mile of the discharge outfall, over a mile from the Facility, and along the Applicant's property line. *See* Executive Director's Map, Exhibit 1.

The issues related to flooding and WCID designation are beyond the TCEQ's jurisdiction to review this water quality application. While drinking water availability is an issue within the TCEQ's jurisdiction, it is not an issue that is relevant and material to this water quality application. Given that the Martins are within a mile of the discharge route, it is possible that they could be exposed to noxious odors from the effluent. Because the Martins have raised issues that are not common to the general public, OPIC finds that Elizabeth L., Taylor, and Ted M. Martin are affected persons.

Ellen McClellan

Ms. McClellan is concerned (1) that her well will be contaminated; (2) that the Facility will affect the use of her property; and (3) that the Facility will affect her livestock. Ms. McClellan resides along the Applicant's property line, less than a mile from the Facility and the discharge route. *See* Executive Director's Map, Exhibit 1. Groundwater contamination could affect Ms. McClellan's wells and use of her property. Because Ms. McClellan has raised issues that are not common to the general public, OPIC finds that Ms. McClellan is an affected person.

Randall Pappas

Mr. Pappas is concerned that the Facility will discharge into the Edwards Aquifer and affect his well water quality. Mr. Pappas resides less than a mile from the discharge outfall, over a mile from the Facility, and is adjacent to the Applicant's property. *See* Executive Director's Map, Exhibit 1. Because Mr. Pappas has raised an issue that is not common to the general public, OPIC finds that Mr. Pappas is an affected person.

Phyllis Yvonne Ritter

Mrs. Ritter is concerned (1) that her two water wells, used for domestic and livestock watering, could be contaminated; (2) that the draft permit does not contain water quality standards specifically protective of cattle; (3) that in the event of a catastrophic failure, the Facility operator may not be able to address the failure in time to prevent contamination to Mrs. Ritter's wells; and (4) that water quality standards in the draft permit may not be protective of human health. Mrs. Ritter resides less than a mile from the discharge outfall, approximately half of a mile from the Facility, and is adjacent to the Applicant's property. *See* Executive Director's Map, Exhibit 1.

Regarding water quality standards, Mrs. Ritter states that the ED's Response to Public Comment has "no specific answer for the impact to cattle, there could be harmful effects to our calf/cow operation, which would affect our business." Given Mrs. Ritter's location and her cattle operation's dependence on groundwater, a catastrophic failure could affect Mrs. Ritter in a way uncommon to the general public. Because Mrs. Ritter raises issues that are not common to the general public, OPIC finds that Mrs. Ritter is an affected person.

Aurora Dozier White and Randal Dean White

Mr. and Mrs. White submitted separate hearing requests that are substantially similar. The Whites are concerned that (1) the effluent will affect their well; and (2) that the Applicant's selected discharge route is an attempt to circumvent TCEQ rules concerning the Edwards Aquifer. The Whites reside approximately two miles from the Facility and discharge outfall. *See* Executive Director's Map, Exhibit 1. Because the Whites have raised an issue that is not common to the general public, OPIC finds that Aurora White Dozier and Randal Dean White are affected persons.

## **2. Requesters who are not dependent on groundwater and not affected persons**

### Teressa Barnhill

Ms. Barnhill is concerned (1) that the effluent will affect environmentally sensitive features of the Edwards Aquifer, such as caves, natural springs, wildlife, and endangered species; (2) that effluent will flow over peoples' property and affect health; and (3) that the effluent will contribute to flooding issues. Ms. Barnhill resides over two miles from the proposed Facility and over a mile from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issue concerning flooding is beyond the TCEQ's jurisdiction to review this water quality application. While the Edwards Aquifer is environmentally sensitive, Ms. Barnhill does not state how it relates to a personal interest she has in the Aquifer. Further Ms. Barnhill does not state that her personal health will be affected. Because Ms. Barnhill raises issues that are common to the general public, OPIC finds Ms. Barnhill is not an affected person.

### Jerry Barucky

Dr. Barucky is concerned (1) that the hybrid aerobic treatment system proposed by the Applicant will be insufficient to treat the effluent; (2) that adjoining landowners will be exposed to noxious odors; and (3) that the effluent may contaminate wells. Dr. Barucky resides over nine miles from the proposed Facility and discharge route. *See* Executive Director's Map, Exhibit 1. While the issues raised by Dr. Barucky concern health and safety, Dr. Barucky does not state how he will be personally affected. OPIC finds that Dr. Barucky is not an affected person because he raises issues that are common to the general public.

### John Hudson Blodgett

Mr. Blodgett is concerned (1) that the effluent will affect the Edwards Aquifer; (2) that the effluent will flow into his subdivision, Vintage Oaks; (3) that the effluent will contribute to

flooding in the area; and (4) that adjoining landowners will be exposed to noxious odors. Mr. Blodgett resides over a mile from the proposed Facility and the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issue concerning flooding is beyond the TCEQ's jurisdiction to review this water quality application. The discharge route runs along the Dry Comal Creek which does not run through Vintage Oaks. While Mr. Blodgett is concerned about the Edwards Aquifer, he does not relate this concern to a personal interest. Given that Mr. Blodgett resides over a mile from the Facility, and without additional facts, OPIC cannot find that Mr. Blodgett will be affected by odors from the Facility. Because Mr. Blodgett raises issues that are common to the general public, OPIC finds Mr. Blodgett is not an affected person.

Edmund O. Hubler and Sharon Elaine Hubler

The Hublers submitted separate hearing requests that are substantially similar. The Hublers are concerned that the discharged effluent will cause accidents and contaminate the Edwards Aquifer. The Hublers reside several miles from the proposed Facility and discharge outfall. *See* Executive Director's Map, Exhibit 1. While the issues raised by the Hublers concern health and safety, the Hublers fail to state how they will be personally affected. OPIC finds that Edmund O. and Sharon Elaine Hubler are not affected persons because they raise issues that are common to the general public.

Hon. Susan Ingram

The Hon. Susan Ingram is concerned that the discharged effluent will contaminate the Edwards Aquifer and exacerbate flooding in the area. The Hon. Susan Ingram resides several miles from the proposed Facility and discharge outfall. *See* Executive Director's Map, Exhibit 1. The issue relating to flooding is beyond the TCEQ's jurisdiction to review this water quality

application. While groundwater contamination is a health and safety issue, the Hon. Susan Ingram fails to state how she will be personally affected. OPIC finds that the Hon. Susan Ingram is not an affected person because she raises issues that are common to the general public.

Richard Lamb

Mr. Lamb is concerned (1) that effluent could affect the Edwards Aquifer; (2) that the effluent could cause flooding; (3) that the operation of the Facility will cause increased noise in the community; (4) that the operation of the Facility will cause increased truck traffic; and (5) that the Facility will negatively impact property values. Mr. Lamb resides over a mile from the Facility and the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding, truck traffic, and property values are beyond the TCEQ's jurisdiction to review this water quality application. While groundwater contamination is a health and safety issue, Mr. Lamb fails to state how he will be personally affected. Without further facts, OPIC cannot find that noise from the Facility over a mile from Mr. Lamb's home will affect Mr. Lamb in a unique way. Because Mr. Lamb raises issues that are common to the general public, OPIC finds that Mr. Lamb is not an affected person.

Marjorie Marks

Mrs. Marks is concerned that the Facility will affect Dry Comal Creek and the Edwards Aquifer. While Mrs. Marks' current address is several miles from the proposed Facility, her hearing request states that she is building a home in the Vintage Oaks subdivision, which is just over a mile from the proposed Facility. *See* Executive Director's Map, Exhibit 1. While groundwater contamination is a health and safety issue, Mrs. Marks fails to state how she will be personally affected. Because Mrs. Marks raises issues that are common to the general public, OPIC finds that Mrs. Marks is not an affected person.

Sandy L. Nott

Sandy Nott is concerned (1) that the effluent will affect the Edwards Aquifer Recharge Zone; (2) that allowing effluent to be discharged over the Edwards Aquifer Recharge Zone violates TCEQ rules; (3) that the effluent will contribute to existing bacteria issues on Segment 1811A of the Dry Comal Creek ; (4) that the Applicant's selected discharge route is an attempt to circumvent TCEQ rules concerning discharges on the Edwards Aquifer Recharge Zone; and (5) that effluent will contribute to flooding issues in the area. Sandy Nott resides over two miles from the proposed Facility and over a mile from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issue concerning flooding is beyond the TCEQ's jurisdiction to review this water quality application. Sandy Nott does not relate the issues concerning the Edwards Aquifer and the Dry Comal Creek to a personal justiciable interest. Because Sandy Nott raises issues that are common to the general public, OPIC finds that Sandy Nott is not an affected person.

Rick Peyton and Sandy Peyton

Mr. and Mrs. Peyton submitted separate but substantially similar hearing requests. The Peytons are concerned (1) that the discharge will affect the Edwards Aquifer; (2) that the discharge will contribute to existing flooding issues; (3) that the Facility will increase noise levels; (4) that the Facility will cause increased truck traffic; and (5) that the Facility will negatively impact property values. The Peytons reside over a mile from the Facility and approximately two miles from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding, truck traffic, and property value are beyond the TCEQ's jurisdiction to review this water quality application. While the Peytons are concerned about the Edwards Aquifer, they fail to state how they will be personally affected. Given the Peytons'

location relative to the Facility, without further facts, OPIC cannot find that noise will affect the Peytons in a unique way. Because the Peytons raise issues that are common to the general public, OPIC finds that Rick and Sandy Peyton are not affected persons.

Jessica Smith

Ms. Smith is concerned that her business will be affected by the proposed Facility. Ms. Smith resides, approximately, a mile from the proposed Facility and two miles from the discharge outfall. *See* Executive Director's Map, Exhibit 1. Ms. Smith does not state how her business will be uniquely affected. Because Ms. Smith raises issues that are common to the general public, OPIC finds that Ms. Smith is not an affected person.

Brenda R. Sturtevant and John Wesley Sturtevant

Mr. and Mrs. Sturtevant filed separate but substantially similar hearing requests. The Sturtevents are concerned (1) about the Edwards Aquifer Recharge Zone and water quality; (2) about tourism in Comal County; and (3) the proximity of the proposed Facility to a future wastewater treatment plant at the Vintage Oaks subdivision. The Sturtevents reside approximately a mile from the Facility and two miles from the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to tourism and further development are beyond the TCEQ's jurisdiction to review this water quality application. The Sturtevents fail to relate their concerns about the Edwards Aquifer and water quality to a personal justiciable interest. Because the Sturtevents raise issues that are common to the general public, OPIC finds that Brenda R. and John Wesley Sturtevant are not affected persons.

Connie Terao

Ms. Terao is concerned (1) that the Facility will negatively impact the environment; (2) that effluent could contribute to existing flooding issues; and (3) that untreated sewage could seep into the Edwards Aquifer Recharge Zone. Ms. Terao resides over a mile from the Facility and the discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issue relating to flooding is beyond the TCEQ's jurisdiction to review this water quality application. Without further facts, OPIC finds that Ms. Terao fails to relate her remaining concerns to a personal justiciable interest. Because Ms. Terao raises issues that are common to the general public, OPIC finds that Ms. Terao is not an affected person.

Felicia S. Thomas

Ms. Thomas is concerned (1) that there are many errors with the permit application; (2) that the effluent could contribute to existing flooding issues; (3) that the Facility should not be located over the Edwards Aquifer Recharge Zone; (4) that a catastrophic failure could lead to sewage flowing onto neighboring properties; (5) that truck traffic from the Facility will cause road hazards; (6) that the Facility will cause noxious odors; and (7) that the Facility will negatively affect property values. Ms. Thomas resides over a mile from the Facility and discharge outfall. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding, truck traffic, and property value are beyond the TCEQ's jurisdiction to review this water quality application. OPIC finds that Ms. Thomas fails to relate her concerns regarding the Edwards Aquifer and catastrophic failures to a personal justiciable interest. Without further facts, and given Ms. Thomas' location relative to the Facility, OPIC cannot find how noxious odors will affect Ms. Thomas in a unique way. Because Ms. Thomas

raises issues that are common to the general public, OPIC finds that Ms. Thomas is not an affected person.

Carl Thompson

Mr. Thompson is concerned (1) that Dry Comal Creek is not a suitable discharge route; (2) that flooding in the area has not been adequately considered; and (3) that the Facility should be replaced by septic tanks. Mr. Thompson resides over a mile from the Facility and the discharge route. *See* Executive Director's Map, Exhibit 1.

The issue concerning flooding is beyond the TCEQ's jurisdiction to review this water quality application. In reviewing water quality applications, the TCEQ cannot compel applicants to use specific discharge routes or technologies. Because Mr. Thompson fails to raise issues not common to the general public, OPIC finds that Mr. Thompson is not an affected person.

James A. Whitmore

Mr. Whitmore is concerned (1) about the effects the Facility will have on the Edwards Aquifer; (2) that the Applicant's selected discharge route is an attempt to circumvent TCEQ rules concerning the Edwards Aquifer; (3) that the effluent will contribute to existing bacteria concerns on the Dry Comal Creek; (4) that the effluent will contribute to existing flooding issues; and (5) that the Facility threatens property rights. Mr. Whitmore resides over a mile from the discharge outfall and over two miles from the Facility. *See* Executive Director's Map, Exhibit 1.

The issues relating to flooding and property rights are beyond the TCEQ's jurisdiction to review this water quality application. Without further facts, OPIC finds that Mr. Whitmore has failed to relate his remaining concerns to a personal justiciable interest. Because Mr. Whitmore

raises issues that are common to the general public, OPIC finds that Mr. Whitmore is not an affected person.

#### Waggener Ranch Property Owners Association

The Waggener Ranch Property Owners Association (Waggener Ranch POA) is concerned (1) about environmental impacts on the Edwards Aquifer caused by the Facility; (2) about future road and infrastructure improvements; and (3) about the source of the water used to service the new subdivision. The Waggener Ranch POA states that it is in close proximity to the proposed Facility.

The Waggener Ranch POA hearing request was submitted by James A. Whitmore. OPIC found that Mr. Whitmore is not an affected person; the Waggener Ranch POA does not list any other group members. Further, the Waggener Ranch POA does not list its purpose. Without further facts, OPIC finds that the Waggener Ranch POA is not an affected person because the association fails to list an affected member and its purpose.

#### **B. Issues Raised in the Hearing Request**

The hearing requesters raise the following issues:

1. Whether the draft permit includes water quality standards protective of human health, agriculture, and livestock, specifically, cattle.
2. Whether the discharge will contaminate the Edwards Aquifer and wells that draw from the Edwards Aquifer.
3. Whether the draft permit is protective against noxious odors.
4. Whether the draft permit is protective against noise.
5. Whether the draft permit is protective against nuisance vermin breeding in the receiving waters.
6. Whether the draft permit accounts for catastrophic failures.
7. Whether the discharge will affect the use of property.
8. Whether the draft permit accounts for Dry Comal Creek at segment AU\_1811\_01, which is listed as an impaired and threatened water for bacteria.
9. Whether the discharge will cause eutrophication of the receiving waters.
10. Whether the draft permit adheres to special rules for the Edwards Aquifer Recharge Zone.

11. Whether the draft permit violates TCEQ rules for Public Water Supply Systems.
12. Whether the permit application contains errors.
13. Whether the discharge route was properly characterized.
14. Whether the discharged effluent will contribute to existing flooding issues.
15. Whether the subdivision to be serviced by the Facility will cause population overconcentration in the area.
16. Whether the proposed Facility will cause increased truck traffic in the area.
17. Whether there are planned road and infrastructure improvement in the area.
18. Whether the proposed Facility will affect property values.
19. Whether the new subdivision to be serviced by the Facility will also draw water from the Edwards Aquifer.
20. Whether the TCEQ is considering water availability in reviewing this permit application.
21. Whether the new subdivision is necessary.
22. Whether the Facility will affect tourism in Comal County.

**C. Issues Raised in the Comment Period**

Issues must be raised during the comment period and must have not been withdrawn. 30 TAC §§ 55.201(c) & (d)(4), 55.211(c)(2)(A). All the issues raised by the requesters were raised during the comment period and not withdrawn.

**D. Disputed Issues**

There is no agreement between the requesters and the ED on the issues raised in the hearing requests.

**E. Issues of Fact**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). Issues No. 1–14, 16–17, and 19–20 are issues of fact.

**F. Relevant and Material Issues**

Issues No. 1–6, 8–10 relating to health, water wells, and environmental degradation are relevant and material to the Commission’s decision under the requirements of 30 TAC § 55.211(c)(2). TCEQ rules provide that “[i]t is the policy of this state....to maintain the quality of

water in the state consistent with public health...” 30 TAC § 307.1. The rules prescribe specific distances between wastewater treatment facilities and private and public wells. 30 TAC § 309.13(c). Further, TCEQ rules provide that a wastewater treatment facility “abate and control a nuisance of odor prior to construction.” 30 TAC § 309.13(e). Chapter 309 of Title 30 of the Texas Administrative Code provides for numerous additional effluent limitations and standards.

Issues No. 7, 11–13 concerning the characterization of the discharge route and consistent application of TCEQ rules are relevant and material to the Commission’s decision on this application because the TCEQ is charged with applying the State’s water quality management program. 30 TAC § 309.1(e).

Issues No. 14–22 are not relevant and material because they are beyond the Commission’s jurisdiction to review this water quality application.

**G. Issue Recommended for Referral**

OPIC recommends referring Issues No. 1–13 in § III, B to SOAH for a contested case hearing.

**H. Maximum Expected Duration of Hearing**

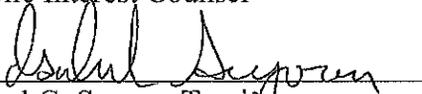
Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

#### IV. CONCLUSION

For the reasons set forth above, we recommend granting the hearing requests of: Hector X. Amaya, Bonnie Houser, Franklin Houser, Sabrina Houser-Amaya, Patricia L. Brand, Troy C. Brand, Nelda S. Davis, Ronald R. Davis, Susan R. Dooley Logue, Susan L. Dunlap, Carole Farmer, Daniel Laroe, Kenneth C. Laubach, Victoria Beth Laubach, Elizabeth L. Martin, Taylor Martin, Ted M. Martin, Ellen McClellan, Randall Pappas, Phyllis Yvonne Ritter, Aurora Dozier White, and Randal Dean White. We also recommend denying the hearing requests of: Teresa Barnhill, Jerry Barucky, John Hudson Blodgett, Edmund O. Hubler, Sharon Elaine Hubler, Hon. Susan Ingram, Richard Lamb, Marjorie Marks, Sandy L. Nott, Ricky Peyton, Sandy Peyton, Jessica Smith, Brenda R. Sturtevant, John Wesley Sturtevant, Connie Terao, Felicia S. Thomas, Carl Thompson, James A. Whitmore, and the Waggener Ranch Property Owners Association.

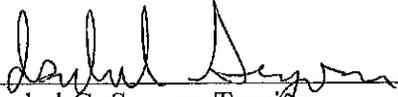
Respectfully submitted,

Vic McWherter  
Public Interest Counsel

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Public Interest Counsel  
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(512) 239-6377 Fax

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was 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, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Isabel G. Segarra Treviño

# Exhibit 1

# Randolph Todd Company, LLC TPDES Permit No. WQ0015314001

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



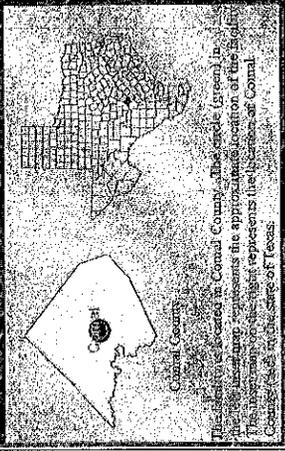
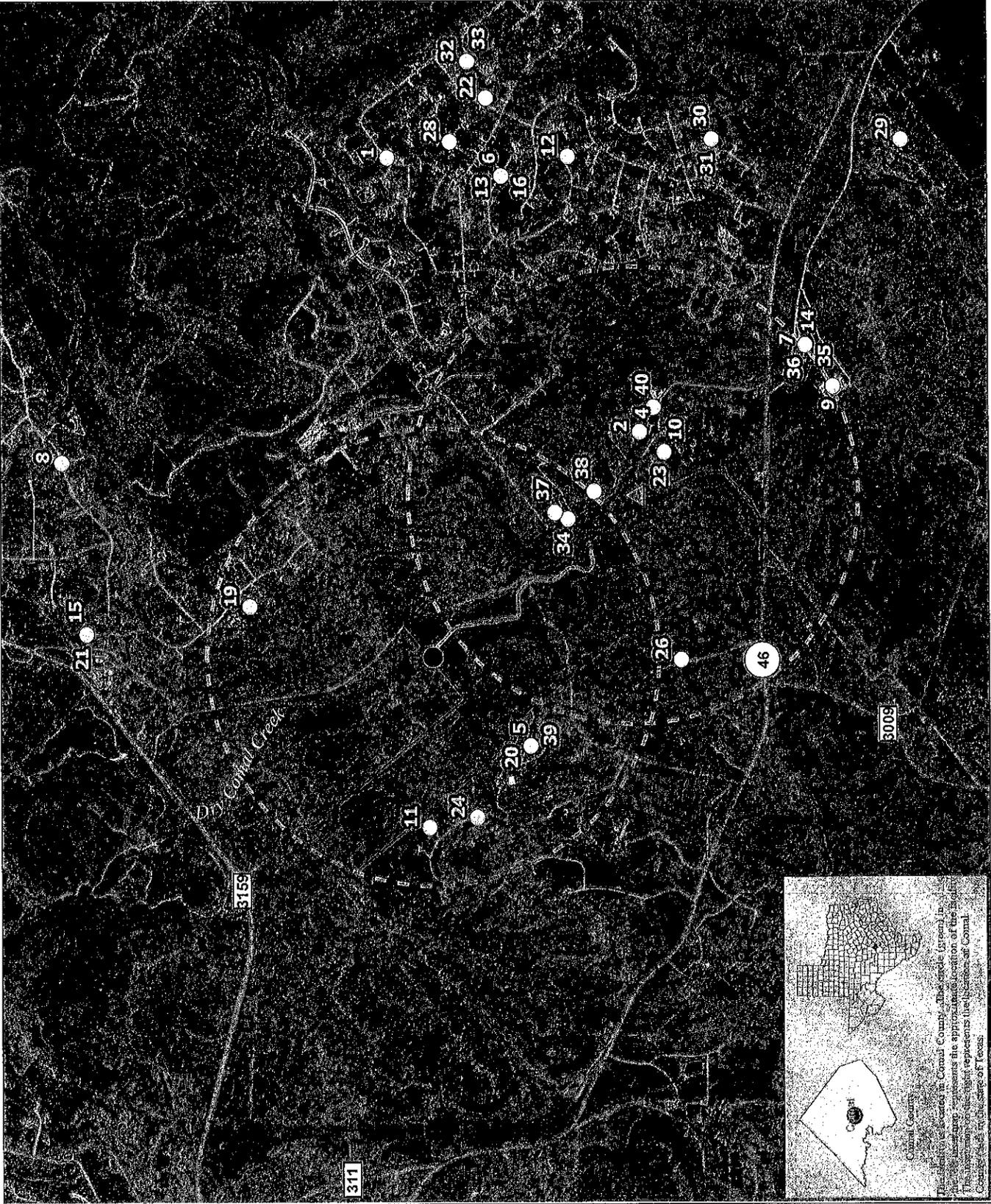
Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13067  
Austin, Texas 78711-3087  
Date: 11/4/2015



- ▲ WWTP Facility
- Outfall
- Line Events Table
- Applicants Property Boundary
- 1 mi radial distance
- Watercourse
- Major Highways
- Intermediate Roads
- Ramp
- Minor Roads
- Requester

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requester information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or the suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey, and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



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11/4/2015

Randolph Todd Company, LLC  
 TPDES Permit No. WQ0015314001

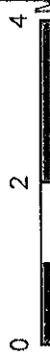
Map Requested by TCEQ Office of Legal Services  
 for Commissioners' Agenda

Protecting Texas by  
 Reducing and  
 Preventing Pollution



Texas Commission on Environmental Quality  
 GIS Team (Mail Code 197)  
 P.O. Box 13087  
 Austin, Texas 78711-3087

Date: 11/4/2015

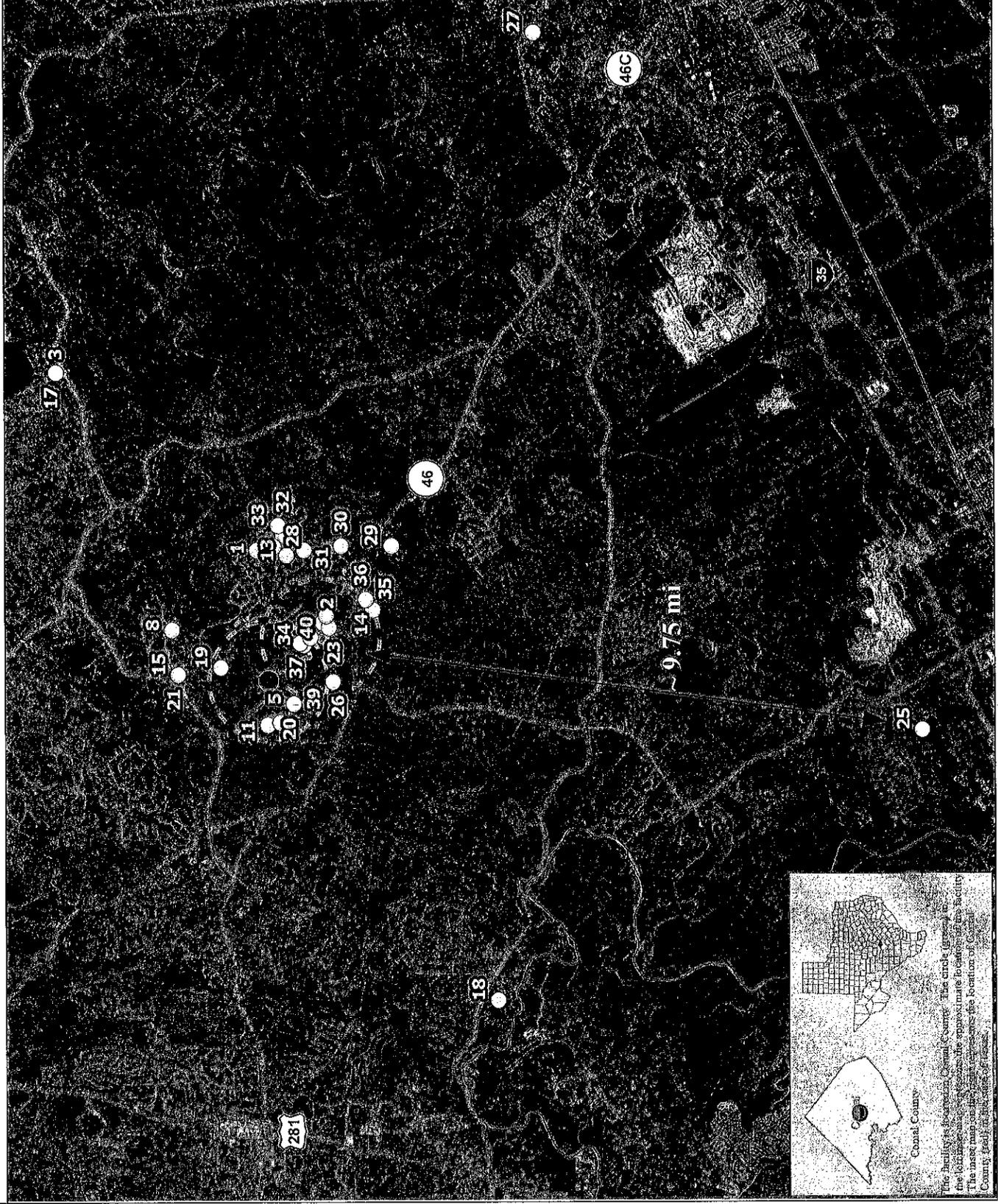


- ▲ WWTP Facility
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REF: 460501



Comal County

This map is for informational purposes only. The circle (green) on the inset map shows the approximate location of the facility. The map may not be used to determine the location of the facility. The map is not a survey and does not represent the location of the facility. The map is for informational purposes only.

<b>ID</b>	<b>Requestor</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
1	Connie Terao	2241 Appellation	New Braunsfels	TX	78132
2	Denise Harris	1670 S Cranes Mill Rd	New Braunsfels	TX	78132
3	Edmond Hubler	692 Rock Castle	Canyon Lake	TX	78133
4	Edward Harris	1670 S Cranes Mill Rd	New Braunsfels	TX	78132
5	Elizabeth L. Martin	900 Heritage Oaks	New Braunsfels	TX	78132
6	Felicia S. Thomas	1128 Provence Pl	New Braunsfels	TX	78132
7	Franklin Houser	1741 Herbelin Rd	New Braunsfels	TX	78132
8	James Whitmore	257 Dry Bear Crk	New Braunsfels	TX	78132
9	Jessica Smith	1723 Herbelin Rd	New Braunsfels	TX	78163
10	Nelda S. Davis	1789 S Cranes Mill Rd	New Braunsfels	TX	78132
11	R. Pappas	1100 Homestead Ridge	New Braunsfels	TX	78132
12	Richard Lamb	1504 Vno Cir	New Braunsfels	TX	78132
13	Rick Peyton	1015 Provence Pl	New Braunsfels	TX	78132
14	Sabrina A. Houser-Amaya	1741 Herbelin Rd	New Braunsfels	TX	78132
15	Sandy Nott	143 Dry Bear Crk	New Braunsfels	TX	78132
16	Sandy Peyton	1015 Provence Pl	New Braunsfels	TX	78132
17	Sharon Elaine Hubler	692 Rock Castle	Canyon Lake	TX	78133
18	Susan Ingram	29751 Twin Creeks Dr	Bulverde	TX	78163
19	Susan L. Dunlap	462 San Marcos Trl	New Braunsfels	TX	78132
20	Ted Martin	900 Heritage Oaks	New Braunsfels	TX	78132
21	Teresa Barnhill	143 Dry Bear Crk	New Braunsfels	TX	78132

22	John Hudson Blodgett	2345 Appellation	New Braunsfels	TX	78132
23	Ronald R. Davis	1789 S Cranes Mill Rd	New Braunsfels	TX	78132
24	Daniel Laroe	922 Homestead Ridge	New Braunsfels	TX	78132
25	Jerry Barucky	20806 Woodland CV	Garden Ridge	TX	78132
26	Susan R. Dooley Logue	10120 W State Highway 46	New Braunsfels	TX	78132
27	Majorie Marks	1355 Ranch Pkwy, Apt 112	New Braunsfels	TX	78130
28	Carl Thompson	1026 Stradina	New Braunsfels	TX	78132
29	Kenneth and Victoria Laubach	633 Herbelin Rd	New Braunsfels	TX	78132
30	John Sturtevant	1170 Sapling Spg	New Braunsfels	TX	78132
31	Brenda Sturtevant	1170 Sapling Spg	New Braunsfels	TX	78132
32	Randal Dean White	2230 Pinot Blanc	New Braunsfels	TX	78132
33	Aurora White Dozier	2230 Pinot Blanc	New Braunsfels	TX	78132
34	Ellen McClellan	2282 S Cranes Mill Rd	New Braunsfels	TX	78132
35	Bonnie Houser	1741 Herbelin Rd	New Braunsfels	TX	78132
36	Hector Amaya	1741 Herbelin Rd	New Braunsfels	TX	78132
37	Phyllis Yvonne Ritter	2360 S Cranes Mill Rd	New Braunsfels	TX	78132
38	Troy and Patricia Brand	1980 S Cranes Mill Rd	New Braunsfels	TX	78132
39	Taylor Martin	900 Heritage Oaks	New Braunsfels	TX	78132
40	Carole Farmer	1600 S Cranes Mill Rd	New Braunsfels	TX	78132

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**TCEQ DOCKET NO. 2015-1624-MWD**

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Carl Thompson  
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Aurora Dozier White  
Randal Dean White  
2230 Pinot Blanc  
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James A. Whitmore  
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James A Whitmore  
President, Waggener Ranch Property  
Owners Association  
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