

SOAH DOCKET NO. 582-06-0568
TCEQ DOCKET NO. 2005-1899-MWD

2007 MAY -8 PM 2: 50

CHIEF CLERKS OFFICE

IN THE MATTER OF	§	BEFORE THE
THE APPLICATION OF	§	STATE OFFICE OF
FAR HILLS UTILITY DISTRICT	§	ADMINISTRATIVE HEARINGS
FOR TPDES PERMIT NO. 14555-001	§	

**FAR HILLS UTILITY DISTRICT'S MOTION TO REOPEN THE RECORD TO
RECEIVE U.S. ARMY CORPS OF ENGINEERS' WETLANDS DETERMINATION
AND LETTER FROM MONTGOMERY COUNTY UTILITY DISTRICT NO. 2**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ") AND THE HONORABLE ADMINISTRATIVE LAW JUDGE ("ALJ"):

COMES NOW Far Hills Utility District ("Far Hills" or "the Applicant") and pursuant to 30 Tex. Admin. Code ("TAC") §80.265 (Reopening the Record) and Far Hills' Exceptions, files this Motion to Reopen the record of this case in order to receive the two documents attached hereto as Exhibits "A" and "B." Both of these documents were issued following the close of the record and are extremely relevant to, if not dispositive of, the two contested issues in this case. As described herein, there is good cause for reopening the record and the interest of justice will be served by the granting of this motion.

I. THE U.S. ARMY CORPS OF ENGINEER'S WETLANDS DETERMINATION

At a post-hearing telephonic conference on July 26, 2006, the ALJ denied Far Hills' motion to hold the record open to receive the U.S. Army Corps of Engineers' ("USACE") verification of Mr. Laskowski's wetlands delineation. Far Hills had submitted the wetlands delineation performed by its wetlands expert, Nicholas Laskowski, to USACE for official verification but such request had not been acted upon by USACE at the time of the ALJ's ruling. On August 24, 2006, the USACE did issue its official verification of Mr. Laskowski's wetlands delineation. Pursuant to 30 TAC §80.265, Far Hills requested in its Exceptions to the ALJ's

proposal for decision that the record be reopened to receive the USACE wetlands verification of August 24, 2006. In order for the Commission to fully evaluate the request to reopen the record, Far Hills is attaching to this motion as Exhibit "A" a copy of the actual USACE wetlands verification as an offer of proof.

As discussed in detail in Far Hills' Exceptions, the evidence in this case shows that submission of a wetlands delineation to the USACE for verification is a necessary step for obtaining USACE approval and official designation as a federal jurisdictional wetlands.¹ CAPPS Concerned Citizens' wetlands expert Dr. Jacob himself acknowledged that a USACE-verified wetlands delineation would be determinative of where wetlands actually existed at the subject property, and that he would defer to any such USACE-verified delineation of wetlands.² Obtaining USACE designation as a federal wetlands is highly significant because state law makes clear that there is no distinction between "federal wetlands" and "state wetlands" and state law further requires TCEQ to abide by federal determinations of wetlands.³

Accordingly, Far Hills respectfully requests that the Commission reopen the record to receive this vital piece of evidence. Far Hills' request to receive the USACE wetlands verification into the record of this case is not based on any lack of diligence on Far Hills' part in failing to have obtained the USACE verification at an earlier point in time since issuance of the USACE verification could not and did not occur until the normal USACE processes for issuing such wetlands verifications could take place.

As set forth in Exhibit "A," the USACE has not only verified the wetlands delineation performed by Nicholas Laskowski, but also stated that Dr. Jacob's wetlands delineation was not performed in accordance with USACE requirements. Since state law requires the Commission to

¹ Hearing Transcript, pgs. 160 (line 4) – 162 (line 3).

² Hearing Transcript, pg. 299 (lines 1 – 21).

³ TEX. WATER CODE §§11.502 and 11.506 (Vernon 2000).

abide by federal determinations of wetlands, and since the Commission has plenary authority to reopen the record in this case, the Commission should reopen the record in this case to receive the USACE's verification of Mr. Laskowski's wetlands delineation. Accordingly, with such wetlands verification from the USACE, the Commission can only find that no wetlands exist in the area where Far Hills' wastewater treatment plants will be located.

II. MONTGOMERY COUNTY UTILITY DISTRICT NO. 2'S LETTER OF DECEMBER 21, 2006

The other contested issue in this case is whether Far Hills' current wholesale wastewater service provider, Montgomery County Utility District No. 2 ("MCUD No. 2") is a viable regional service alternative to the new wastewater plant proposed by Far Hills. The ALJ recommended denial of the permit because Far Hills had not established a need for the proposed wastewater plant based on the ALJ's mistaken and unsupported finding that MCUD No. 2 "has the ability and willingness to serve" Far Hills.⁴ However, following the close of the record in this case, on December 21, 2006 MCUD No. 2 filed a letter with TCEQ stating that, contrary to the mistaken impression of the ALJ, MCUD No. 2 is not able to provide service. A copy of the letter is attached hereto as Exhibit "B."

As discussed in detail in Far Hills' Exceptions, the facts about MCUD No. 2's "ability and willingness to serve" Far Hills are simple and uncontroverted: The MCUD No. 2 wastewater plant is old, overloaded, and in need of significant upgrades and repairs.⁵ Existing and future growth in Far Hills' retail service area requires that it increase available wastewater

⁴ ALJ's Proposal For Decision, page 9; ALJ's proposed Finding of Fact No. 17.a.

⁵ Exh. A-4, testimony of Jim Haymon at pages 4-5 (Bates Stamp A00555 – A00556); see discussion of the extensive repairs needed for the MCUD No. 2 plant in the testimony of Tim Hardin, Exh. A-5 at pgs. 5-6; MCUD No. 2's president Larry Folk stated in his deposition that the MCUD No. 2 plant was in need of substantial repairs and that, given the approximate 30 years age of the plant, the substantial amount of plant repairs needed did not surprise him. Exh. P-5 at pgs. 16-17.

capacity from its current level of approximately 300 connections to 1,000 connections.⁶ MCUD No. 2 agreed to allow Far Hills to withdraw from the MCUD No. 2 plant so that, being freed up of the current and projected service demands from Far Hills, MCUD No. 2 would not have to undertake an immediate and major expansion of the MCUD No. 2 plant,⁷ but instead would only need to make needed but less costly plant repairs.⁸ Therefore MCUD No. 2 and Far Hills amended their existing wastewater treatment service contract to allow Far Hills to withdraw from the MCUD No. 2 plant and apply for a TCEQ permit to construct its own new wastewater plant to serve Far Hills' current and projected service needs.⁹

As described in the letter of December 21, 2006 from MCUD No. 2 to Derek Seal, after MCUD No. 2 read the ALJ's proposal for decision (PFD) it felt the need to "comment on and clarify" certain matters discussed in the PFD. In the letter, which was not solicited by Far Hills, MCUD No. 2 has made very clear that it is neither willing or able to expand its plant to accommodate the wastewater flows generated by Far Hills. Although Far Hills believes the record of this case is replete with evidence demonstrating that MCUD No. 2 is unable and unwilling to handle Far Hills' wastewater flows, the letter of December 21, 2006 from MCUD No. 2's president should completely negate any conceivable basis for positing MCUD No. 2 as a viable regional alternative for serving Far Hills' wastewater treatment needs. To deny the permit based on the mistaken belief that there is regional service alternative would result in the wastewater needs of Far Hills residents going unmet and would constitute a complete disservice to the public interest. Therefore the record should be reopened to receive this letter into evidence

⁶ Exh. A-4, testimony of Jim Haymon at page 4 (Bates Stamp A00555).

⁷ MCUD No. 2's president Larry Folk stated in his deposition that such a major plant expansion would have necessitated going to TCEQ for a permit amendment. Exh. P-5 at pg. 22.

⁸ Exh. A-4, testimony of Jim Haymon at pages 4-6 (Bates Stamp A00555 – A00557); Exh. P-5 at pg. 25; Exh. P-5, Exhibit No. 2 (letter of February 10, 2004 to MCUD No. 2 from Far Hills' attorney).

⁹ Exh. A-4, testimony of Jim Haymon at page 6 (Bates Stamp A00557); Exh. A-4-JH-4, agreement for withdrawal of FHUD from MCUD No. 2 plant (Bates Stamp A00571 – A00587).

in order to clarify and correct the ALJ's mistaken interpretation of the evidence on this vital issue.

III. PROTECTION OF PROCEDURAL RIGHTS OF ALL PARTIES

Because all parties are being provided with these two documents well in advance of the Commission's agenda consideration of this matter, there would be no case of unfair surprise if the record were reopened to receive these documents into evidence. Far Hills believes these two documents are crucial to obtaining an informed Commission decision on the two respective contested issues in this case and therefore they can and should be accepted into the evidentiary record by the Commissioners acting in the posted agenda meeting without the need for formal remand of this matter to the ALJ. However, to the extent the other parties believe that the matter should be remanded to the ALJ for formal introduction of these documents and consideration by the ALJ, then Far Hills would have no objection to such approach.

IV. CONCLUSION AND PRAYER

For the reasons set forth above, Far Hills Utility District respectfully requests that the record in this case be reopened to receive the documents attached hereto as Exhibits "A" and "B," and for such other relief to which Far Hills may be justly entitled.

Respectfully submitted,

KELLY HART & HALLMAN LLP

Stephen C. Dickman

State Bar No. 05836500

301 Congress Avenue, Suite 2000

Austin, Texas 78701

Tel: (512) 495-6400

Fax: (512) 495-6401

By: _____


Stephen C. Dickman

**ATTORNEYS FOR FAR HILLS UTILITY
DISTRICT**

CERTIFICATE OF SERVICE

This is to certify that on this the 8th day of May, 2007, a true and correct copy of the foregoing document was forwarded to the following persons in accordance with TCEQ and SOAH rules by the means indicated:

FOR EXECUTIVE DIRECTOR

John E. Williams
Texas Comm. on Environmental Quality
12100 Park 35 Circle, Building A/3rd Floor
Austin, TX 78753
Tel: (512) 239-0600
Fax: (512) 239-3434
Via Hand Delivery

FOR CAPPS CONCERNED CITIZENS:

Eric Allmon
Lowerre & Frederick
44 East Avenue, Suite 101
Austin, TX 78701
Tel: (512) 482-9345
Fax: (512) 482-9346
Via Hand Delivery

FOR PUBLIC INTEREST COUNSEL

Christina Mann
Office of the Public Interest Counsel
Texas Comm. on Environmental Quality
12100 Park 35 Circle, Building F/4th Floor
Austin, TX 78753
Tel: (512) 239-6363
Fax: (512) 239-6377
Via Hand Delivery

FOR SOAH:

Hon. Carol Wood, Admin. Law Judge
State Office of Administrative Hearings
300 W. 15th Street
Austin, TX 787041
Fax: (512) 475-4994
Via Hand Delivery

FOR SAN JACINTO RIVER

AUTHORITY:

W. B. Kellum, Manager
Lake Conroe Office
San Jacinto River Authority
P.O. Box 329
Conroe, TX 77305
Tel: (936) 588-7111
Fax: (936) 588-3043
Via U.S. Postal Service

FOR THE CHIEF CLERK:

LaDonna Castanuela
TCEQ Office of Chief Clerk, MC-105
12100 Park 35 Circle, Building F/1st Floor
Austin, TX 78753
Fax: (512) 239-3311
Via U.S. Postal Service

FOR RALPH & MARCIA SANDALL:

Ralph & Marcia Sandall
10213 Valley Drive South
Willis, TX 77318-6446
Tel: (936) 856-7651
Via U.S. Postal Service

FOR GENERAL COUNSEL:

Derek Seal
General Counsel
Texas Commission on Environmental
Quality
12100 Park 35 Circle, Building F
Austin, TX 78753
Tel: (512) 239-5525
Fax: (512) 239-6377
Via Hand Delivery


Stephen C. Dickman

EXHIBIT A



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

August 24, 2006

Compliance Section

SUBJECT: D-16980/(01); Langford Engineering, Jurisdictional Delineation Verification,
Lake Conroe, Cude Cemetery Road, Montgomery County, Texas

Mr. Nicholas Laskowski
Project Coordinator
Berg♦Oliver Associates
14701 St Mary's Lane, Suite 400
Houston, Texas 77079

Dear Mr. Laskowski:

This concerns your request for a jurisdictional verification on behalf of Langford Engineering, Inc., for a 4.287-acre site. The project area is located northwest corner of the Cude Road and Virginia Road intersection, Lake Conroe, Montgomery County, Texas.

Based on a desk review of the information you submitted, U.S.G.S. Topographic map, 1995 and 2004 Digital Orthophoto Quarter-Quadrangle, 2002 & 2004 HGAC color aerials, Flood Insurance Rate Map for Montgomery County, National Wetland Inventory Map and our June 1, 2006 site visit, we conclude that the project site contains 0.0082 acres of an unnamed stream and 0.0055 acres of adjacent wetlands, both waters of the United States. The wetlands met the hydrophytic vegetation, wetland hydrology and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual. The wetlands are contiguous with the unnamed tributary, which flows into Lake Conroe, and impoundment of the West Fork San Jacinto River. The discharge of dredged or fill material within waters of the United States is subject to Section 404 of the Clean Water Act and requires a Department of the Army permit.

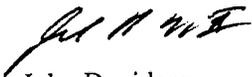
This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter contains an approved jurisdictional determination for your subject site, which is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Southwest Division Office at the following address:

Mr. James Gilmore
Appeal Review Officer, CESWD-ETO-R
U.S. Army Corps of Engineers
1100 Commerce Street, Room 8E9
Dallas, Texas 75242-0216
Telephone: 469-487-7061; FAX: 469-487-7190

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by October 21, 2006. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter. If you have any questions concerning this jurisdictional delineation verification, please reference file number **D-16980/(01)** and contact me at the letterhead address or by telephone at 409-766-3933 or email at john.davidson@swg02.usace.army.mil.

Sincerely,



John Davidson
Leader, North Compliance Unit

Enclosures

Copy Furnished:

✓ Roy Zboyan and Jonell Nixon
10677 JoAnn Street
Willis, Texas 77318

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Langford Engineering, Inc.	File Number: D-16980(01)	Date: 08-23-06
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Jayson Hudson
Project Manager, Compliance Section
CESWG-PE-RC
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3108; FAX: 409-766-3931

If you only have questions regarding the appeal process you may also contact:

Mr. James Gilmore
Appeal Review Officer, CESWD-ETO-R
U.S. Army Corps of Engineers
1100 Commerce Street, Room 8E9
Dallas, Texas 75242-0216
Telephone: 469-487-7061; FAX: 469-487-7190

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or authorized agent.	Date:	Telephone number:
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DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

August 24, 2006

Compliance Section

SUBJECT: **D-16980/(01)**; Langford Engineering, Jurisdictional Delineation Verification, Lake Conroe, Cude Cemetery Road, Montgomery County, Texas

Jonell Nixon and Roy Zboyan
10677 JoAnn Street
Willis, Texas 77318

Dear Ms. Nixon. & Mr. Zboyan:

This concerns your letter, dated 28 June 2006, requesting a review of Dr. John Jacob's wetland delineation, dated March 11, 2006 for the site of the proposed 4 acre waste water treatment site. The project area is located in the northwest corner of the Cude Road and Virginia Road intersection, Lake Conroe, Montgomery County, Texas.

Based on a review of U.S.G.S. Topographic map, 1995 and 2004 Digital Orthophoto Quarter-Quadrangle, 2002 & 2004 HGAC color aerials, Flood Insurance Rate Map for Montgomery County, National Wetland Inventory Map, the information submitted by Langford Engineering and our June 1, 2006 site visit, we conclude that the project site contains 0.0082 acres of an unnamed stream and 0.0055 acres of adjacent wetlands, both waters of the United States. The wetlands met the hydrophytic vegetation, hydrology and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual (Manual).

In addition, we have received the aforementioned delineation from Dr. Jacobs. In review of Dr. Jacobs's delineation, we have concluded that the delineation submitted does not meet the requirements of the Manual. Specifically, the data was not sampled per Section D, Routine Determinations.

However, we have determined that, as the land owner, you are an affected party as defined in 33 CFR 331. As such, you have a right to appeal Langford Engineering's approved delineation verification. You will be copy furnished the delineation verification letter, the Notification of Appeals Process fact sheet and the Request for Appeal (RFA) form when we issue our delineation verification letter to Langford Engineering.

If you have any questions please reference file number **D-16980/(01)** and contact me at the letterhead address or by telephone at 409-766-3108 or email at jayson.m.hudson@swg02.usace.army.mil.

Sincerely,

Jayson M. Hudson
Project Manager
Galveston District
U.S. Army Corp of Engineers

Enclosures

Copy Furnished:

Mr. Nicholas Laskowski
Project Coordinator
Berg♦Oliver Associates
14701 St Mary's Lane, Suite 400
Houston, Texas 77079

EXHIBIT B

Montgomery County Utility District No. 2
of
Montgomery County, Texas

c/o Coats, Rose, Yale, Ryman & Lee, P.C.
3 Greenway Plaza, Suite 2000
Houston, Texas 77046-0307
Telephone: 713-651-0111

December 21, 2006

Mr. Derek Seal, General Counsel
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Re: SOAH Docket No. 582-06-0568
TCEQ Docket No. 2005-1889-MUD
In Re Application of Far Hills Utility District for Water Quality Permit No. Wq
001455-001 in Montgomery County, Texas

Dear General Counsel Seal:

The Board of Directors of Montgomery County Utility District No. 2 ("MCUD2") has been given a copy of Proposal for Decision in the above captioned matter ("Far Hills UD Permit Application").

MCUD2 would like to comment on and to clarify certain matters that are referenced in the Proposal for Decision, especially Paragraphs V.A.3 and V.A.6.

While at an earlier point in time MCUD2 was willing to discuss the expansion of its existing wastewater treatment plant ("Plant") with Far Hills UD to attempt to accommodate Far Hills UD's future treatment capacity needs, that is not the case at this time. After the execution of the Agreement [Return of Waste Treatment Capacity from Far Hills Utility District to Montgomery County Utility District No. 2, dated October 29, 2004] between the two districts, such a course of action is no longer practical.

Based on that Agreement, MCUD2 has proceeded (1) to have its Engineer work on the renovation (with design plans and specifications therefor) but not the expansion of the existing Plant; (2) to enter into a construction contract for certain repairs and rehabilitation of the lift stations at the Plant for a cost in excess of \$300,000; (3) to not acquire additional control easements adjacent to the Plant necessary for its expansion (some of the properties over which the control easements would fall

now have homes constructed thereon); and (4) to postpone needed repairs to the Plant (in addition to the work noted in #2 above) awaiting Far Hills UD's withdrawal from use of capacity in the Plant.

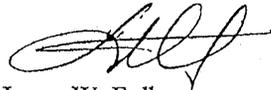
In addition, because the very substantial capacity needs of Far Hills UD would necessitate an expansion of the Plant to between two and three times its current capacity with a corresponding modification of the existing waste discharge permit, MCUD2 believes that the existing site for the Plant is not adequate in size for an expansion.

MCUD2 has concluded that to completely revise the planning and engineering work that it has commissioned since October of 2004 and to attempt to acquire control easements (that would be needed for an expansion of the existing Plant) would be prohibitively expensive at this point in time and not in the best interests of its constituents.

Finally, MCUD2 is directly responsible to its constituent residents, many of whom have property within the immediate vicinity of the Plant's discharge point. Since the discharge point is located in a relatively small cove on Lake Conroe, MCUD2 believes it is not wise to double or triple the effluent flow if that is not necessary.

Accordingly, MCUD2 is not in a position to negotiate with Far Hills UD for any future expansion of the Plant at this time.

Very truly yours,



Larry W. Folk
President, Board of Directors
Montgomery County Utility District No. 2

cc: Ms. Carol Wood
Administrative Law Judge
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

Ms. Christina Mann
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
MC-103
P. O. Box 13087
Austin, Texas 78711-3087

Mr. W. B. Kellum, Manager
San Jacinto River Authority
P. O. Box 329
Conroe, Texas 77305

Mr. Stephen C. Dickman, Attorney
Kelly, Hart & Hallman
301 Congress, Suite 2000
Austin, Texas 78701-2944

Mr. Eric Allmon, Attorney
Lowerre & Frederick
44 East Avenue, Suite 101
Austin, Texas 78701

Ralph & Marcia Sandall
10213 Valley Drive South
Willis, Texas 77318-6446