

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 5, 2006

TO: Persons on the attached mailing list.

RE: Galilee Partners, L.P.
TPDES Permit No. WQ001464001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Maypearl City Hall, 104 East 2nd Street, Maypearl, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

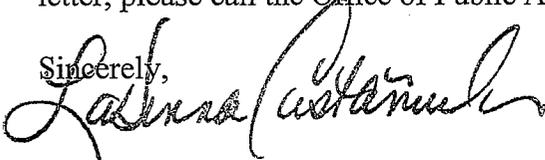
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

MAILING LIST
for
Galilee Partners, L.P.
TPDES Permit No. WQ001464001

FOR THE APPLICANT:

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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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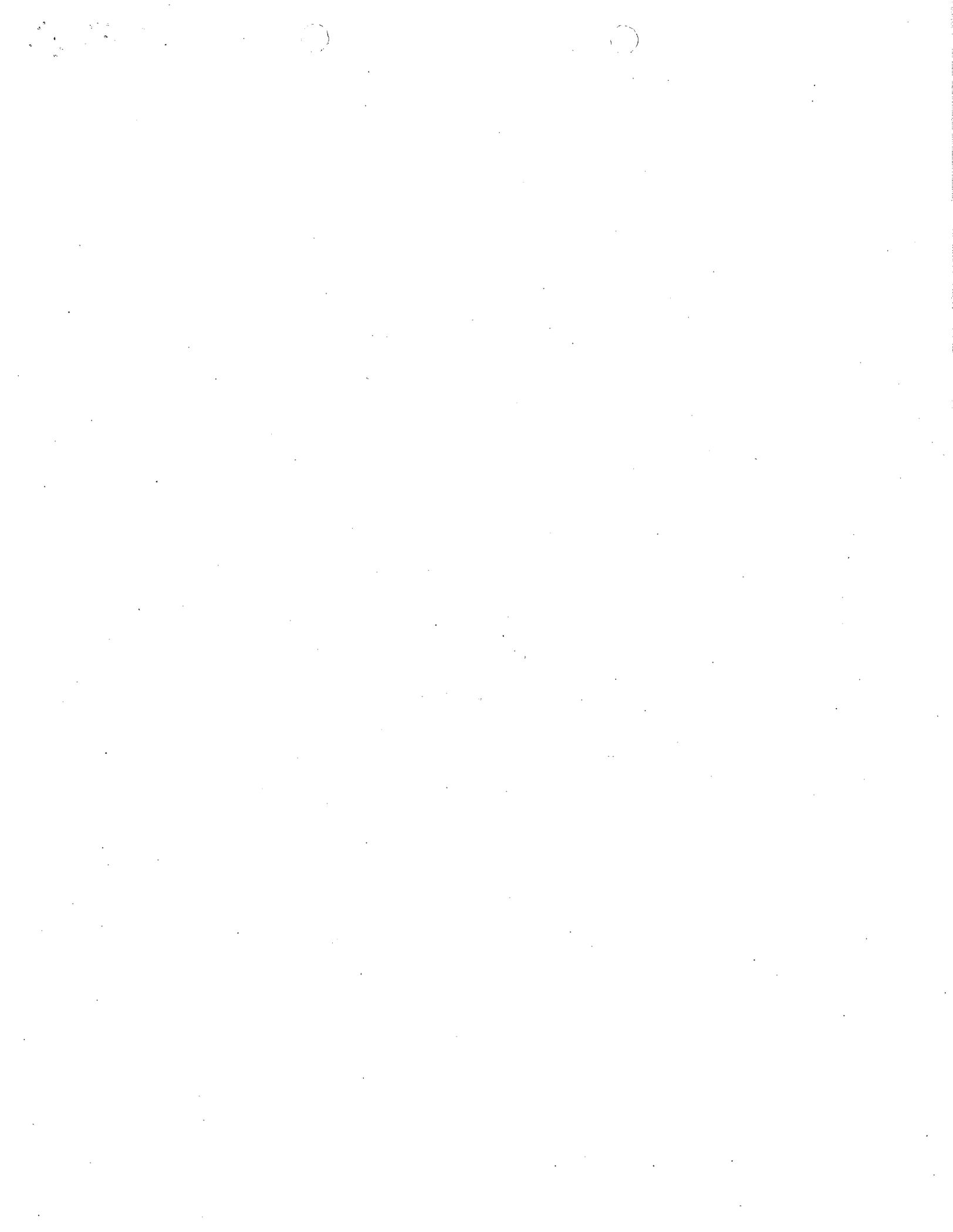
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PROPOSED TPDES PERMIT NO. WQ0014640001

APPLICATION BY

GALILEE PARTNERS, L. P.

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§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

APR 27 PM 10 10

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on Galilee Partners, L.P.'s (Applicant) application and the Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters and oral comments from the following persons: Ann Bynum, J. Heath Daniel, James L. Evans, Jeannie Evans (Maypearl City Secretary), Shane Gravens, Terry Haberzettle, Scott Jackson, Cindy Jacobson, JoAnn Mathers, Thomas A. Mathers, Clyde Melick (Ellis County Planner), Adele Mooney, Andy Penn, Representative Jim Pitts, Heath Sims (Precinct 3 Commissioner), Robert R. Smith, Terry Todd, and Kirk Wilson. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a new permit that will authorize the discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.41 million gallons per day. The wastewater treatment plant will serve the Maypearl development.

The treated effluent will be discharged to Boggy Branch, then to Armstrong Creek, then to Cottonwood Creek, then to North Fork Chambers Creek, then to Chambers Creek above Richland-Chambers Reservoir in Segment No. 0814 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for Boggy Branch. The designated uses for Segment No. 0814 are high aquatic life use, public water supply, and contact recreation. The facility will be located on the east bank of Boggy Branch, approximately 2,200 feet downstream of a Soil Conservation Service (SCS) dam and approximately 1,000 feet upstream of Farm-to-Market Road 2258 in Ellis County, Texas.

Procedural Background

The application for a new permit was received on July 22, 2005 and declared administratively complete on August 24, 2005. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on September 4, 2005 in the Waxahachie Daily Light. The TCEQ Executive Director completed the technical review of the application on October 6, 2005, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on December 13, 2005 in the Waxahachie Daily Light. The Notice of Public Meeting was published on March 1, 2006 in the Waxahachie Daily Light. A public meeting was held on March 30, 2006 in Maypearl, Texas. The public comment period ended on March 30, 2006. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Ann Bynum indicates that a new water well is within close proximity of the discharge. Scott Jackson is concerned that the discharge will impact shallow and deep water wells. Clyde Melick expresses his concern that there are nineteen drinking water wells located downstream of the facility. In the event of a plant failure, he is concerned how the failure will be addressed in regard to those wells.

RESPONSE 1:

TCEQ rules require that a wastewater treatment unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. The rules also indicate that no well site shall be located within 300 feet of a sewage pumping station or a drainage ditch which contains wastes from sewage treatment systems. The separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. The Applicant has met these requirements. In addition, groundwater contamination is typically not a concern for the discharge of treated effluent to surface water.

In the event of a failure, the facility is required to report any unauthorized discharge to TCEQ within 24 hours. If the applicant fails to report the unauthorized discharge or bypass to TCEQ within the prescribed time period, the applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

COMMENT 2:

Ann Bynum expresses that the elevation across her property only varies slightly and that distinct areas are eroding off of Cottonwood Creek where pooling might occur. Clyde Melick expresses concern that the amount of effluent will not be enough to create a continuous flow for the stream and will create pooling.

RESPONSE 2:

The effects of flow changes in streams, in terms of the physical effects of the water, are outside the purview of the normal evaluations of water quality for wastewater permit applications.

The immediate receiving water, Boggy Branch, is an intermittent stream. An intermittent stream is defined in 30 TAC § 307.3(a)(29) as a stream which has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a 7Q2 flow (the lowest average stream flow for seven consecutive days with a recurrence interval of two years, as statistically determined by historical data) of less than 0.1 ft³/s is considered intermittent. The Executive Director's staff assigned water quality uses and associated criteria for intermittent streams to Boggy Branch, which included a presumed contact recreation use, no significant aquatic life use, and a corresponding 2.0 mg/L dissolved oxygen criteria. This information was used to determine effluent limits needed to protect water quality uses. A modeling analysis of this discharge was conducted to evaluate whether the proposed effluent limits would be adequate to ensure that the dissolved oxygen criterion (2.0 mg/L) assigned to the intermittent Boggy Branch would be maintained. Based on model results, the proposed effluent set is predicted to be adequate to maintain the assigned dissolved oxygen criterion in Boggy Creek, as well as the dissolved oxygen criteria in water bodies farther downstream along the discharge route. Effluent limits and other permit requirements, including disinfection, were included in the draft permit in order to protect and maintain existing water quality uses. Therefore, the Executive Director does not expect the treated effluent to adversely affect the uses of the receiving waters.

COMMENT 3:

Ann Bynum expresses that the Ellis County Commissioner's Court had an issue with the density of the Galilee development and would challenge the "right to serve" under the Certificate of Convenience and Necessity (CCN) held by Mountain Peak Water Supply Corporation. She states that this "MUD" will be privately developed and is only interested in its bottom dollar.

Terry Haberzettle and Scott Jackson feel that Galilee Partners should pipe the effluent elsewhere or do something else with it, other than discharging into the creek and creating concerns about drainage, runoff, erosion and several other issues.

Robert Smith feels that if there is no acceptable alternative to discharging the wastewater, then tertiary treatment should be required to remove most of the nitrogen and phosphates from the wastewater stream. He states that disinfection by using ultraviolet (UV) light is more effective than chlorination which generate chlorinated-organic compounds that are toxic and carcinogenic. He also states that ozonation is a process that should be considered as a tertiary treatment.

RESPONSE 3:

The applicant is required to obtain a Certificate of Convenience and Necessity (CCN)

from the TCEQ in addition to the wastewater discharge permit if it intends to provide retail sewer service. The applicant is required to obtain a CCN before it can start billing customers for water and wastewater services. Mountain Peak Water Supply Corporation does own the CCN to provide water service to the proposed area; however, a CCN has not been established to provide sewer service.

TCEQ's jurisdiction in a TPDES permit application does not authorize TCEQ staff to evaluate alternatives to what the applicant requested. The Texas Water Code § 26.027 authorizes the TCEQ to issue permits for discharges into waters of the state provided the discharger obtains a permit from the commission. The Executive Director evaluates the permit application for compliance with applicable regulations and protection of water quality and can not mandate a different facility location, different discharge location, alternative means of conveyance, or different type of wastewater treatment plant. The Executive Director evaluates applications for wastewater treatment plants based on the information provided in the application.

COMMENT 4:

Ann Bynum expresses concern that it is unknown whether the information submitted in the permit application was verified. For example, she questions whether Appendix G (Guidelines for the Design of Constructed Wetlands Units for Use in Municipal Wastewater Treatment) was followed. She also expresses strong opposition to the "free water surface system" that is proposed.

RESPONSE 4:

On page 8 of the Administrative Report of the permit application, the Applicant is required to sign a signature page stating that the information provided in the permit application is to the best of his/her knowledge and belief, to be true, accurate, and complete. Therefore the Executive Director relies upon the accuracy and completeness of the information supplied and those representations made by the applicant. Appendix G is not applicable to the type of system that Galilee Partners, L.P. is requesting. The applicant is proposing the construction of an activated sludge process plant which will operate as a single stage nitrification system. They are not proposing a free water surface system.

COMMENT 5:

Ann Bynum expresses that her farm, recognized by the State of Texas, has been in continuous agricultural use for over 100 years. Ms. Bynum states that Cottonwood Creek and the North Fork of Chambers Creek flow across 163.49 acres of her farm, and that Cottonwood Creek divides the parcel. She states that the only access to the hay field is by a cement low water crossing and that the discharge may render this low water crossing inaccessible for large hay machinery. She feels that she may lose the ability to cultivate hay on 80 plus acres of agricultural land and lose income. She also states that the current appraised value of the divided parcel is the same value as her other parcels not in a 100-year flood plain.

Terry Haberzettle is also concerned that he will be losing part of his property. Clyde

Melick stated that there are many times of the year when the proposed discharge will be the only flow in the creek and that this will adversely affect land values down stream as well as in the close proximity of the treatment plant.

RESPONSE 5:

TCEQ's jurisdiction in a TPDES permit application is limited by the Texas Water Code to water quality issues. The TCEQ does not have jurisdiction to consider economic impacts, property loss or effects on property values when reviewing an application for a wastewater permit. However, the permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may interfere with a landowner's use and enjoyment of his or her property.

COMMENT 6:

Heath Daniel is concerned with the quality of water going into people's homes. He indicates that other state agencies, such as the Texas Board of State Plumbers should be included in the permitting process to ensure that drinking water is not contaminated by sewage wastewater.

RESPONSE 6:

Prior to the construction of the wastewater treatment facility, the applicant must submit a summary submittal letter for the design criteria of the wastewater treatment plant according to 30 TAC § 317.1. The summary letter must be signed and sealed by a licensed professional engineer. If requested by the Wastewater Permitting Section, the permittee must submit plans, specifications, and a final engineering design report which comply with Chapter 317, Design Criteria for Sewerage Systems. In addition, a licensed professional engineer must certify that the wastewater treatment facility was constructed according to the plans and specifications. It should be noted that Chapter 317.2(a)(7) provides design criteria for protecting public water supply.

COMMENT 7:

James L. Evans expresses his concern that he does not want his cattle drinking water from a creek which will be receiving sewer water and that the wildlife will be affected. Scott Jackson is also concerned how the discharge of treated wastewater will affect wild life and livestock that drink and graze in the area. Robert Smith expresses concern that the watershed is in the Central Flyway for migratory birds and that it is common to see ducks and geese present during migration. He also expresses concern that the protection of water quality is imperative for domestic livestock and wildlife. He states that during times of the year, stock ponds which may be referred to as a "closed" type of system are created. He feels that any byproduct from the wastewater that is not dispersed may accumulate within the ponds. He also feels that anything that jeopardizes the water source jeopardizes the way of life. Clyde Melick stated that the Ellis County Commissioners Court believes this permit will affect the water quality in and along Boggy Branch. Terry Haberzettle is concerned about sewer water being pumped into the creek.

RESPONSE 7:

Wastewater discharge permits must comply with the Texas Surface Water Quality Standards (TSWQS). The purpose of the TSWQS is to maintain the quality of water in the state and to protect aquatic life, human health, terrestrial wildlife, livestock, and domestic animals along the discharge route. The draft permit has been designed to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The effluent limitations in the draft permit are intended to maintain and protect the existing instream uses.

As to the concern regarding exposure of livestock to the proposed effluent, the advanced treatment levels which apply to the proposed discharge are expected to provide water quality which is safe for consumption by livestock. A helpful guidance document entitled "Water Quality: Its Relationship to Livestock" provides useful information and can be obtained from the Texas Agricultural Extension Service (publication no. L-2374). Comparison of substances and their concentrations typically known to occur in advanced-treated domestic discharges with Table 1 ("Recommended Limits of Concentration of Some Potentially Toxic Substances in Drinking Water for Livestock") of the above document indicates that these substances are either not expected to occur in the treated effluent above any natural background concentration (e.g., arsenic, mercury) or they should be present at levels well below the upper limits listed for those substances (e.g., dissolved solids, nitrates). Therefore, the Executive Director does not expect the treated effluent to adversely affect the livestock watering use of the streams.

COMMENT 8:

James L. Evans expresses his concern that the new development will require the city to build new schools and will cause their taxes to increase. He states that the home owners are responsible for supporting the school system because there is no industry in the area.

Ann Bynum states that the City of Maypearl and Maypearl ISD budgets will be strained by this development and is concerned about where the money for schools, buses, and a fire station will come from.

Jeannie Evans stated that the City of Maypearl has concerns on the potential rapid growth that would affect the Maypearl ISD, the codes and restrictions the homes will be built with/or without, and safety issues such as a fire and police department.

Shane Gravens expresses concern that the development will bring in over 1,200 kids and also place a burden on the school district, which is receiving the minimum amount of budget money from the state. The addition of students will require the district to double up on resources. He believes the quality of the school district will suffer. Mr. Gravens stated that in considering the impact of this permit, it needs to be determined if this development is a viable thing for the school districts. He also states that the additional children and buses that will have to travel on Highway 157 is a health and environment safety issue.

Thomas A. Mathers and Jo Ann Mathers express their concern that Galilee Partners

should follow the county rules and regulations for building a subdivision. They feel that the new development will fall to the county to upkeep roads and provide law enforcement and that fire protection would have to be provided by volunteers. They also stated that building the amount of homes proposed on the acreage will cause overbuilding and will place a burden on the school system.

Adele Mooney expresses concern that the rapid growth of the development in the area will impact the school district and is concerned that no improvements are planned for county roads. She also states that not having an onsite fire department or police department may result in safety issues. She indicates that the "buy in for \$1.00 down" method of advertising could potentially entice people to buy more home than they can afford.

RESPONSE 8:

While the Executive Director acknowledges these comments, the permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes and coastal waters. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider issues such as taxes or additional traffic when determining whether to approve or deny a permit application.

COMMENT 9:

James L. Evans expresses concern that he will have to suffer the smell and other problems that the wastewater treatment plant will create. Scott Jackson asked if it would smell when he took his grandkids to Cottonwood Creek to fish and swim. Shane Gravens states that the water will smell and cause problems.

RESPONSE 9:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC § 309.13(e). TCEQ rules require that wastewater treatment units may not be located closer than 150 feet from the nearest property line or the Applicant must obtain legal restrictions prohibiting residential structures within the 150-foot buffer not owned by the Applicant. These rules provide three options for applicants to satisfy the nuisance odor abatement and control requirement. The applicant can meet this requirement by ownership of the buffer zone area, restrictive easement from the adjacent property owners or by providing odor control. The permit application indicates that Galilee Partners, LP. will meet the buffer zone requirement by ownership.

Minimizing the generation of odors from a treatment plant depends on the design of the plant and its operation and maintenance. Maintaining an adequate dissolved oxygen concentration in the early stages of treatment helps to minimize sulfide generation and reduce odors. Aeration basins and aerobic digesters are the primary means of odor control at treatment plants of any size. Designing a plant to facilitate cleaning as well as the frequent removal of sludge and the cleaning of components are also important factors in odor control. In addition,

the draft permit contains operational requirements to ensure the facility is properly operated and maintained. If the permit is issued, the Applicant will have to design a plant that meets these and other criteria found in 30 TAC Chapter 317.

The draft permit requires that the wastewater discharge contain a minimum of 4.0 milligrams per liter dissolved oxygen so that the treated effluent will be constantly and adequately oxygenated once it is discharged.

COMMENT 10:

Shane Gravens indicates that an Environmental study should be done to determine the impact the issuance of the permit will have on the area.

RESPONSE 10:

The Executive Director Staff has reviewed this permit application and developed a draft permit that complies with the TCEQ rules adopted to protect human health and the environment. In addition, the National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements known as an Environmental Impact Statements (EIS). An EIS is only required for a federal action and not for a state action such as this permit.

COMMENT 11:

Shane Gravens is concerned that the drainage and runoff will cause erosion once it goes downstream and that quality controls will have to be put in place.

RESPONSE 11:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. TCEQ does not address erosion issues in the wastewater permitting process.

COMMENT 12:

Shane Gravens expresses concern that the creek will no longer be Boggy, but a miniature Trinity River because of the water being added to it and the runoff that will result from the Developer's use of concrete roads and curbs.

RESPONSE 12:

Effects of flow changes in streams are outside the purview of the normal evaluations of a TPDES permit application.

COMMENT 13:

Scott Jackson is concerned how the sewage treatment plant will dispose of rubber products and disposal diapers.

RESPONSE 13:

Any solid waste, as defined in 30 TAC § 330 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 330, relating to Municipal Solid Waste. According to the permit application, the headworks for the proposed wastewater treatment facility will consist of two mechanical bar screens to remove solid waste in the influent. This solid waste is usually sent to a landfill for proper disposal.

COMMENT 14:

Scott Jackson inquires how the wastewater treatment plant will dispose of chlorine in the discharge water. Robert Smith is concerned about chlorine getting onto his property in the event of a flood.

RESPONSE 14:

Chlorine is not a persistent chemical in the environment. TCEQ does not anticipate adverse effects on water quality uses due to the rapid dissipation of chlorine in the environment due to sunlight and biological action.

COMMENT 15:

Scott Jackson is concerned if flooding will cause an increase in the insect population, therefore spreading diseases. He is also concerned on how any mosquito problem will be addressed. Clyde Melick is also concerned that Boggy Creek will become a health hazard and become a harbor for insect growth. Commissioner Heath Sims and Robert Smith expresses concerns that pooling may occur along the branch, providing a breeding ground for mosquitoes and flies. They feel that diseases may transfer to humans, animals and birds because the pooled water will contain human excreta and waste. Terry Todd is concerned about the West Nile virus found in mosquitoes.

RESPONSE 15:

The Executive Director reviews permit applications to ensure that water quality is protected. Properly treated wastewater does not create a mosquito breeding area differently that that created by other surface waters.

COMMENT 16:

Scott Jackson is concerned if the effluent will discolor the creek banks or if continuous flow will promote undesirable tree and grass growth.

RESPONSE 16:

The TSWQS prohibit waste discharges from causing substantial and persistent changes from ambient conditions of turbidity or color. The advanced secondary treatment and the effluent limit for total suspended solids, 15 mg/L, should produce effluent that will meet the requirement in the TSWQS for color.

Continuous flow in the stream could promote the growth of trees and plant species, including desirable species such as pecan and willow trees. However, the potential growth of desirable or undesirable plant and tree species from a continuous flow is outside the TCEQ's evaluation of water quality for wastewater permit applications.

COMMENT 17:

Scott Jackson expresses concern with the discharge of effluent where his grandchildren swim and fish.

RESPONSE 17:

The draft permit has been designed to preclude adverse toxic effects on aquatic life and human health resulting from contact, consumption of aquatic organisms, or consumption of water. More specifically, the effluent limits included in the draft permit are intended to ensure that water quality in the creek will be maintained above the criteria dictated by the State of Texas Water Quality Standards. The draft permit also contains provisions for disinfection of the treated effluent via chlorination to remove harmful bacteria.

COMMENT 18:

Clyde Melick is concerned if future expansion of the facility may be great enough to possibly affect the floodplain. He states that the facility is located in the floodplain. Adele Mooney is concerned that roof and street runoff could potentially end up in the same creek bed and cause flooding. Robert Smith expresses his concern that Cottonwood Creek is prone to frequent floods causing its banks to overflow. He feels that the proposed discharge will increase both the number of floods and the severity of the flood events. He also states that the treated wastewater will not remain within the banks of the waterway, but will be dispersed into adjacent land, such as farms and ranches. Terry Todd indicated that a recent rain caused the water to come up out of the banks of Cottonwood Creek, flooding her property and is concerned that the water will rise even more with the addition of the discharge from the plant. She also indicates that she will have to buy flood insurance. She wants to know how much water will be flowing through the area.

RESPONSE 18 :

The Executive Director does not address flooding concerns in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit requires that the Applicant comply with the requirements of TCEQ rules that prohibit a wastewater treatment plant unit from being located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event. This provision is designed to protect a wastewater treatment facility from possible damage due to flooding as well as to protect the environment from potential contamination should a wastewater treatment facility be flooded. The permit application indicates that the proposed facility will be located above the 100-year frequency flood level. For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

If this permit is issued, it does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire all property rights necessary to use the discharge route. In addition, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 19:

Clyde Melick is concerned if the district may condemn property through eminent domain.

RESPONSE 19:

Typically, a privately owned entity such as the Applicant does not have condemnation powers. The Texas Legislature has granted and restricted the power of eminent domain in various degrees to statutory and constitutional districts in this state. Jurisdiction over the exercise of that power is with the civil courts of the state in the county where the property is located. The TCEQ does not have authority to interfere or to intervene in a civil court's jurisdiction over eminent domain, and the TCEQ does not have authority to consider the proper or improper exercise of that power in its decision on an application for wastewater discharge. This permit does not create any type of utility district, it only authorizes the Applicant to discharge treated domestic wastewater according to the terms of the permit.

RESPONSE 20:

Andy Penn is requesting the definition of what a public stream is. He expresses that if a stream is considered small enough than it may not be legal to discharge into it. He requests that TCEQ look into the legality of what a public stream is and consider his concern.

RESPONSE 20:

All surface water within the State of Texas are property of the State. Texas Water Code § 11.021(a). See also *Domal v. City of Georgetown*, 6 S.W.3d 349 (Tex. App.—Austin, 1999, pet. denied). Surface water in the state is defined in the TSWQS, 30 TAC, Chapter 307.3(a)(57), as lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state. Texas Water Code § 26.027 authorizes the TCEQ to issue permits for discharges into or adjacent to water in the state.

The immediate receiving water, Boggy Branch, as well as the other water bodies in the proposed discharge route are considered by TCEQ to be surface water in the state. Therefore, a TPDES permit is required in order to discharge wastewater into these water bodies.

COMMENT 21:

State Representative Jim Pitts expresses concern voiced by the Ellis County Commissioners Court, as well as the City of Maypearl and the Maypearl Independent School District, regarding the permit.

RESPONSE 21:

The Executive Director acknowledges these comments.

COMMENT 22:

Commissioner Heath Sims questions whether wastewater can be released onto private property and that TCEQ provide a definition as to what private property is. He feels that consideration of a dry branch running through private property needs to be considered.

COMMENT 22:

For purposes of the Private Real Property Act, Texas Government Code § 2007.002(4) defines "private real property" as an "interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, this state, or a political subdivision of this state." The beds of all water courses that are at least thirty feet wide whether navigable or non-navigable are the property of the state. *Domal v. City of Georgetown*, 6 S.W.3d 349, 357 (Tex. App.—Austin, 1999, pet. denied). The land under navigable streams is owned by the state. *Id.* at 358. Although the state did not retain ownership of lands underlying non-navigable water, it does not need title to use the bed and

banks of a watercourse for their defined purpose of transporting water. *Id.* The bed and banks of a watercourse are burdened with the flow of water through that watercourse regardless of who holds actual title to the land under the watercourse. *Id.* Also, 30 TAC 307.3(a)(57) defines the beds and banks of all water courses and bodies of surface water that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state as "surface water in the state."

The proposed wastewater discharge permit does not grant the right to use private or public property for the conveyance of wastewater along the discharge route. Before the applicant may begin discharging, it must acquire all necessary property rights. In addition, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 23:

Commissioner Heath Sims read from Subchapter B - Nuisances and General Sanitation, stating public health nuisances that will result from the discharge into the creek.

RESPONSE 23:

If the Applicant operates the facility in accordance with the terms of the draft permit and complies with all applicable TCEQ rules and state law, nuisance conditions are not expected to occur. To report complaints about the facility, please contact the TCEQ Region 4 Office at (817) 588-5800, or the Environmental Complaints hotline toll free at 1-888-777-3186. Noncompliance with the permit may result in enforcement action against the applicant. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property.

COMMENT 24:

Robert Smith states that the main soil type in the proposed watershed is a heavy Houston Black Clay which holds water, minerals and nutrients needed for crops. He feels that the soil will hold unwanted substances found in the wastewater which will be detrimental to the land. Such substances include polychlorinated biphenyls (PCBs), chlorinated compounds such as dioxin, polynuclear aromatic hydrocarbons, heavy metal, industrial solvents and various types of unwanted bacteria, fungi and protozoa. He feels that these substances or byproducts will accumulate, be held in the clay and eventually be leached out upon receipt of a rainfall, therefore affecting downstream locations.

RESPONSE 24:

The proposed discharge would consist of domestic wastewater from a municipal facility. The permit application indicates that Galilee Partners, L.P. is requesting a permit for the

development of residential housing. The proposed wastewater treatment facility will treat the wastewater generated by the subdivisions located within that development. Such substances as listed above should not be generated by a private residential development or found in the treated effluent prior to disposal.

The draft permit requires the facility to chlorinate for disinfection purposes. Disinfection by chlorination, as specified in the draft permit, is designed to remove harmful bacteria in the effluent.

COMMENT 25:

Robert Smith indicates that endangered and threatened species have been sighted in the area.

RESPONSE 25:

The permit application for this facility was reviewed by the Executive Director's staff to determine whether the discharge could potentially have any adverse effect on a federally endangered or threatened aquatic or aquatic dependent species, including proposed species. The discharge from this permit action is not expected to have an affect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES, September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. In addition, an Applicant is required to comply with all federal, state, and local laws. The United States Fish and Wildlife Service was given notice of this permit application.

COMMENT 26:

Robert Smith expresses concern that the proposed option of the disposal of wastewater is not a good one for this area. He feels that feasible alternatives exist and other options should be explored. He states that there is an existing wastewater treatment facility located north of the proposed development near Venus, Texas.

RESPONSE 26:

All applicants for new wastewater discharge permits are required to review a three-mile area surrounding the proposed facility to determine if there is an existing wastewater treatment plant or sewer collection lines within the area that the Applicant can utilize. Any existing wastewater treatment plant must have sufficient existing capacity to accept the additional waste. In this case, the Applicant indicated that there were no wastewater treatment and/or collection systems located within three miles of the proposed facility, and the Executive Director

determined that information was accurate.

COMMENT 27:

Robert Smith expresses concern that the approval of the permit will allow a development plan to proceed that will pose a serious threat to human health and the environment.

RESPONSE 27:

TCEQ staff evaluated the impacts on water quality associated with the proposed wastewater discharge. Impacts to human health and the environment that may result from the proposed development of residential housing is outside the purview of the evaluation of the TPDES permit application.

The TSWQS are established to be protective of human health, terrestrial and aquatic life. The draft permit for the proposed wastewater treatment facility meets the requirements of the TSWQS. The advanced secondary treatment and the effluent limitations established in the draft permit are intended to maintain and protect the existing instream uses.

COMMENT 28:

Kirk Wilson commented that the Applicant has studied other alternatives to putting a plant in this location and would be open to cooperating with a neighboring municipality. It would consider upgrading the Maypearl facility and running a pipe from the facility to the town.

RESPONSE 28:

The Texas Water Code § 26.027, authorizes the commission to issue permits for discharges into water in the state. The Executive Director evaluates applications for wastewater treatment plants, based on the information provided in the application to determine if the proposed discharge complies with regulations to protect human health and the environment. If the proposal does not comply, the Executive Director may recommend denial of the application.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

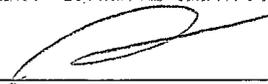


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on the 29th day of November, 2006, the attached "Executive Director's Response to Comments" in regard to the application by Galilee Partners, L.P., for proposed TPDES Permit No. WQ0014640001 was filed with the Texas Commission On Environmental Quality's Office of the Chief Clerk.



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