MWD
121531

LAW OFFICES OF CHARLES A. FINNELL

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2021 MAY 17 PM 12:54
CHIEF CLERKS OFFICE

May 13, 2021

REVIEWED
MAY 19 2021 PM
By GW H

VIA CERTIFIED AND FIRST CLASS MAIL

Texas Commission on Environmental Quality
Office of the Chief Clerk
MC-105
PO Box 13087
Austin, TX 78711-3087

Re: TPDES Permit no. WQ0014674001 renewal -- public comment and request for a public meeting

To the Executive Director:

My name is Charles A. Finnell. I am lifelong resident of the City of Holliday, Archer County, Texas. As a cattle-raiser my agricultural acreage is adversely effected as detailed below by the discharge of treated effluent under the above-referenced proposed permit renewal, and as a donor of the acreage for the Native Prairie Restoration Site at Midwestern State University referenced below. This letter serves as both public comment and as a formal request for a public hearing.

It is my understanding that the facts contained in the application are clearly erroneous. Reference is made in the Application to the treated effluent being discharged to "an unnamed tributary", thence to Holliday Creek and Lake Wichita. Lake Wichita empties into the Red River, a much higher saline and worse quality water resource.

The discharge pollutes and damages land including the MSU Native Prairie Restoration Outdoor Laboratory rendering it unusable as intended as the discharge totally evaporates before reaching any such tributary. For more than the last ten years, such effluent has been sent in any of 270 degrees from its point of discharge including a 136 acre tract belonging to Charles and Kay Finnell, and the afore-mentioned 24 acre Finnell Native Prairie Restoration which my late brother and I donated to MSU in 2004 for onsite educational purposes. (For the latter, see the attached Interagency Cooperation Contract between TXDOT, Parks and Wildlife, and MSU, the Restoration and Management Plan, as well as the 2004 Site Survey).

I believe that renewal of this permit is a matter of public concern and would merit a public meeting. Should no such meeting be authorized I reserve the right to request a contested case hearing.

Yours sincerely,

Charles A. Finnell

Charles A. Finnell

PS. Thankyou for your favoreble consideration of my request. The MSU Native Prarie-Outdoor lab wraps around the Cities' 9ac WWTP tract on 6 of its 7 sides. Finnell Agri-Use acres wrap around the MSU property on 2 5 sides. All Finnell Ag acres are part of USDA's Environment Quality Incentives Program (EQIP)-Archer Co Soil & W. dist

Attachment One

Interagency Cooperation Contract between TXDOT, Parks and Wildlife, and MSU

Contract No: CS-05-MIT-017

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

INTERAGENCY COOPERATION CONTRACT

THIS CONTRACT is entered into by and between the State agencies shown below as Contracting Parties under the authority granted and in compliance with the provisions of Chapter 771 of the Government Code.

I. **CONTRACTING PARTIES:**
Midwestern State University (MSU)
The Texas Department of Transportation (TxDOT) and,
The Texas Parks and Wildlife Department (TPWD)

II. **STATEMENT OF SERVICES TO BE PERFORMED**: The Agencies will undertake and carry out services described in **Attachment A**, Scope of Services.

III. **CONTRACT AMOUNT:** The total amount of this contract shall not exceed $7,500.

IV. **TERM OF CONTRACT:** This contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to any of the agencies. This contract begins when fully executed by all agencies and terminates 20 years from the execution date of the contract.

V. **THE AGREEING PARTIES** certify that:
1. The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government.
2. The proposed arrangements serve the interest of efficient and economical administration of the State Government.
3. The services or resources agreed upon are not required by Article XVI, Section 21 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

VI. **LEGAL AUTHORITY:**
MSU further certifies that it has the authority to request the above services by authority granted in Texas Education Code, Chapter 103.
TxDOT further certifies that it has the authority to perform the services by authority granted in Texas Transportation Code, § 201.607.
TPWD further certifies that it has the authority to perform the services by authority granted in Parks and Wildlife Code, Chapter 81.

This contract incorporates the provisions of **Attachment A,** Scope of Services, **and Attachment B,** General Terms and Conditions.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

Midwestern State University	Texas Parks and Wildlife Department	Texas Department of Transportation
BY:	BY:	BY:
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE
Jesse W. Rogers	SCOTT BORUFF, DEPUTY EXECUTIVE DIRECTOR	Janice Mullenix Director of Contract Services Office of General Counsel
TYPED OR PRINTED NAME AND TITLE President	TYPED OR PRINTED NAME AND TITLE	TYPED OR PRINTED NAME AND TITLE 10.25.04
DATE: 9-17-04	DATE: 10-11-04	DATE:

ATTACHMENT A
Interagency Cooperation Contract
Scope of Services

1.0 PROJECT SUMMARY

The Wichita Falls District of the Texas Department of Transportation (TxDOT), Midwestern State University (MSU), and the Texas Parks and Wildlife Department (TPWD) have the opportunity to cooperate in the restoration of approximately 24.87 acres of native prairie in the City of Holliday. The prairie restoration site was donated to MSU by the previous landowners, Mr. Charles Finnell and Mr. Leslie Finnell. As part of the proposed project, TxDOT would provide the resources necessary to restore the proposed site back to a native midgrass prairie in exchange for mitigation credits for impacts to native prairies resulting from future transportation projects within the Wichita Falls District. MSU would manage the mitigation site as a native prairie as well as utilize the property as an educational tool for the students and faculty of the University. TPWD would provide technical guidance in the restoration efforts and, in cooperation with TxDOT, account for the use of the native prairie mitigation credits. This interagency effort would restore and conserve 24.87 acres of native prairie in the Rolling Plains ecoregion.

2.0 BACKGROUND

2.1 Regulatory Process

Section 2.22(d)(4)(A)(ii) of the Memorandum of Understanding (MOU) between TxDOT and TPWD required an interagency team to establish a criteria for the appropriateness, planning, and implementation of compensatory mitigation when such mitigation is needed. The intent of the compensatory mitigation provision was to promote the conservation of significant, ecologically important habitats that are not protected under the authority of other State or Federal regulations.

The TxDOT/TPWD interagency team established guidelines for determining the need for compensatory mitigation in a Memorandum of Agreement (MOA) between TXDOT and TPWD signed in August of 2001. The MOA states that compensatory mitigation would be considered for:

a: habitat for Federal candidate species (impacted by the project) if mitigation would assist in the prevention of the listing of the species,
b: rare vegetation series (S1, S2, S3) that also locally provide habitat for state-listed species...,
c. all vegetation communities listed as S1 or S2, regardless of whether or not the series in question provide habitat for state-listed species,
d. bottomland hardwoods, native prairies, and riparian sites, and
e. any other habitat feature considered to be locally important that the TxDOT District chooses to consider.

The MOA further states that when mitigation is considered feasible, TxDOT and TPWD will consult on the planning and implementation of the mitigation on a project by project basis.

2.2 Native Prairies

Native prairies and grasslands once covered Texas from the shortgrass prairies of the Panhandle to the coastal prairies along the Gulf of Mexico. Since the arrival of European settlers in the 1800's, native prairies and grasslands have been lost to agriculture, the suppression of fire, and the intentional and unintentional introduction of non-native exotic species. With the invention of the steel plow, early settlers were able to break up the prairie

sod and convert the prairie into fertile farmlands. Grasslands deemed unsuitable for farming were often overgrazed resulting in decreased plant diversity in forage and lower quality cover for nesting and wildlife habitat. The suppression of fire within the grass and for dominated prairie ecosystems has changed the species composition of the prairies and promoted the invasion of woody species. In order to increase forage production, introduced species such as Bermuda grass, Johnson grass, and K-R bluestem were established in the prairies and grasslands. These introduced grass species typically form monocultures with significantly less wildlife forage and cover value than that of a diverse native prairie.

The Rolling Plains ecoregion of Texas is bordered on the west by the Caprock Escarpment, on the south by the Edwards Plateau, and on the east by the Western Cross Timbers and the Lampasas Cut Plain. Historically, the Rolling Plains encompassed thirty million acres of mid-grass prairie with scattered mesquite (*Prosopis glandulosa*). The prairies were dominated by sideoats grama (*Bouteloua curtipendula*), little bluestem, Texas wintergrass (*Stipa leucotricha*), and common curly mesquite (*Hilaria belangeri*). Currently it is estimated that 74.56% of the Rolling Plains has been converted to urban or agricultural uses and only 0.49% of public and private lands within the ecoregion has been set aside as preservation or conservation lands.

In 2002, the TPWD Land and Water Resources Conservation and Recreation Plan (LWRCRP) identified native prairies as a conservation priority in Texas. The LWRCRP states that the Rolling Plains ecoregion is a prime candidate for restoration efforts and that many species would benefit from the restoration of grasslands and riparian forests. In an effort to meet the conservation goals stated in the LWRCRP, it was recommended that TPWD should improve and enhance partnerships with federal and state agencies, local governments, and non-profit conservation organizations.

The proposed advanced native prairie mitigation project would satisfy TxDOT's future compensatory mitigation needs for impacts to native prairies and increase the number of acres of native prairie in the Rolling Plains ecoregion that would be protected under a conservation agreement.

2.3 Site History

The proposed advanced native prairie mitigation site is located north of the City of Holliday and south of an unnamed tributary of Holliday Creek. The site is approximately 24.87 acres and is bisected by the City's wastewater treatment facility. Oil and gas operations have historically occurred on the western portion of the property, but are currently inactive. The mitigation site was leased for the grazing of livestock by the previous landowner.

Much of the eastern portion of the project site has been recently plowed and is managed as a sunflower field. The western portion of the site is comprised of a degraded shrub/grassland supporting a population of medium density mesquite. Low lying portions along the north edge of the property are periodically inundated and support several pockets of non-native and invasive salt cedar (*Tamarix chinensis*).

A baseline survey of existing conditions has been conducted to assist in the development of the Restoration Plan and delineate which portions of the site should be restored.

3.0 PROJECT IMPLEMENTATION

The goal of the proposed native prairie mitigation project would be to restore portions of the approximately 24.87 acre tract of mesquite shrubland back to a climax native prairie community. In return for restoration efforts, TxDOT would receive mitigation credits for adverse impacts to native prairie habitats caused by future transportation projects within the Wichita Falls District. TPWD would

assist in the development of mitigation, restoration, and management plans for the project. The proposed project is contingent on the commitment of MSU to manage the property to ensure the sustainability of the restored native prairie. Specific responsibilities of each stakeholder are outlined below:

3.1 TxDOT – Wichita Falls District

3.1.1 Prairie Restoration – TxDOT and MSU will cooperate with TPWD in the development of the Prairie Restoration Plan.

TxDOT will provide material, equipment, and resources needed to establish a native midgrass prairie in accordance with the Prairie Restoration Plan developed for the project site. In cooperation with MSU, TxDOT will ensure the establishment of the native prairie which could include the management of weedy species and reseeding as necessary. Should the Prairie Restoration Plan incorporate prescribed burning as a recommended methodology, TxDOT will not be responsible for implementing this measure.

TxDOT will commit to funding expenditures up to $7,500. If the development of the Restoration Plan determines the cost of the restoration will exceed this, the acreage TxDOT restores will be limited. TxDOT will relinquish management responsibilities for the site to MSU after the success of the project has been evaluated (Section 4.0).

3.1.2 Invasive Species – TxDOT will provide material, equipment, and resources to ensure the control of non-native, invasive species identified in the Prairie Restoration Plan until the native prairie has been established. Methods used to control non-native, invasive species could be biological, mechanical, and/or chemical and must be approved by MSU, TxDOT, and TPWD.

3.1.3 Mitigation Credit Coordination –TxDOT will coordinate the use and allocation of mitigation credits with TPWD's Wildlife Habitat Assessment Program. TxDOT will maintain a database detailing each transportation project utilizing the native prairie mitigation bank as they become known, the number of acres of native prairie each project will impact, the number of mitigation credits each project will use, and a balance of mitigation credits remaining. After each use of the native prairie mitigation bank, TxDOT will reconcile the number of credits used and the number of credits remaining with a mirror database kept by TPWD.

3.2 TPWD – Wildlife Habitat Assessment Program

3.2.1 Baseline Conditions – In cooperation with TxDOT, TPWD will conduct a biological survey to determine the baseline conditions of the mitigation site. TPWD will submit a report detailing the baseline conditions to TxDOT and MSU prior to the development of the Prairie Restoration Plan. TPWD, TxDOT, and MSU will mutually agree which portions are restorable and are to be included in the Restoration Plan.

3.2.2 Restoration Plan – In cooperation with TxDOT and MSU, TPWD will develop a restoration plan to be used in establishing the native prairie within the project area. The restoration plan will address utilizing existing natural resources on the site, provide a list of native species to be planted on the site, recommend a methodology for removing mesquite, salt cedar, and other brush from the project area, and recommend a methodology for re-establishing the native prairie

grasses and forbs. The restoration plan will include management guidelines to ensure the establishment and sustainability of the native prairie.

3.2.3 Management Plan – In cooperation with MSU, TPWD will establish a management plan to ensure the sustainability of a climax mid-grass prairie habitat. The management plan will be developed so that MSU will be able to utilize the site for natural resource educational and research opportunities. The management plan will utilize an adaptive management strategy so that appropriate changes can be made to the management plan as needed. Any changes to the management plan will be coordinated with MSU and TPWD's Wildlife Habitat Assessment Program.

3.2.4 Mitigation Credit Coordination – TPWD will maintain a database detailing each transportation project utilizing the native prairie mitigation bank as they become known, the number of acres of native prairie each project will impact, the number of mitigation credits each project will use, and a balance of mitigation credits remaining. After each use of the native prairie mitigation bank, TPWD will reconcile the number of credits used and the number of credits remaining with a mirror database kept by TxDOT.

3.3 MSU

3.3.1 Ownership – MSU will retain ownership of the property. MSU will determine the areas within the donated property they wish to be used in the native prairie mitigation bank. MSU will allow TxDOT and TPWD access to the property for the development of a baseline habitat study, prairie restoration activities, management activities, and post restoration monitoring.

3.3.2 Site Management – Once the implementation of the Restoration Plan for the establishment of the native prairie mitigation site has concluded and the project has been evaluated as complete, MSU will maintain the property designated as the native prairie mitigation bank in accordance with the management plan. All educational and research activities will be conducted in a manner consistent with the goal of maintaining a climax mid-grass prairie ecosystem.

4.0 PROJECT EVALUATION

The developed Restoration Plan will define monitoring requirements and success criteria for the establishment of native prairie. After a period of three years, project success will be evaluated. Evaluation would yield the determination of 1) Project success, 2) Continued TxDOT management until project success, or 3) Completion of project at the present level of success.

4.1. Project Success

If project evaluation determines successful establishment of the native prairie, management responsibilities will be turned over to MSU according to the management plan and the mitigation bank will be set up as described in Section 5.0 Mitigation Bank.

4.2 Continued Management

Upon completion of the three years, if TPWD, TxDOT, and MSU agree that TxDOT management is necessary and feasible to complete the establishment of the native prairie according to the Restoration Plan, and the expense incurred is within TxDOT's budget, then management of the site will be continued by TxDOT. If all parties do not feel that success has been achieved, at TxDOT's discretion, the contract may be amended to increase the funds. Should TxDOT decide not to extend the contract, the project will end as described in Section

4.3. After an agreed upon amount of time by TxDOT, MSU, and TPWD, the project will be re-evaluated to determine success.

4.3 End Project at Current Level of Success

If the prairie is not completely established according to the Restoration Plan after TxDOT has implemented the plan and it is determined that continued management is not feasible, or TxDOT budgeted resources have been exhausted, the project will end. Management responsibilities for successful areas will be turned over to MSU and the mitigation bank for successful portions will be set up as described in Section 5.0, Mitigation Bank.

5.0 MITIGATION BANK

The purpose of the restoration of the native prairie on the project site is to provide TxDOT with a native prairie mitigation bank for adverse impacts to native prairies resulting from future transportation projects.

5.1 Service Area

The mitigation bank will provide credits for transportation projects impacting native prairie habitats within the Wichita Falls District of TxDOT. Transfer of native prairie mitigation credits to neighboring TxDOT districts will be coordinated with TPWD's Wildlife Habitat Assessment Program. The transfer of mitigation credits to neighboring districts would only be allowed for impacts of projects occurring within the Rolling Plains ecoregions.

5.2 Use of the Native Prairie Mitigation Bank

The determination of whether a project requires compensatory mitigation will be made in accordance with the MOA. TxDOT will coordinate with TPWD during the early stages of project development when a project could potentially utilize the native prairie mitigation bank. The native prairie mitigation bank should only be used after all efforts to avoid and/or minimize adverse impacts to native prairie habitats have been exhausted.

5.3 Native Prairie Credits

Once the native prairie has been established, TxDOT and TPWD will estimate the acreage of successfully established native prairie. The number of credits available to TxDOT will be determined by this estimate. The native prairie mitigation credits will be allocated to future transportation projects at a 1:1 ratio.

5.4 Life of Mitigation Bank

MSU will manage the native prairie mitigation bank for a period of 20 years upon completion of the restoration stage of the contract. At the end of 20 years, MSU has the right to continue the management of the native prairie mitigation bank in accordance with the management plan for an additional period of time agreed to by MSU and TPWD. Should MSU decline to maintain the mitigation bank as native prairie after the 20 year term, the mitigation bank should be transferred to a land trust or a land steward that will continue to manage the property in accordance with the management plan.

6.0 CONCURRENCE

TxDOT, MSU, and TPWD, by signature of their agency representatives, do hereby enter into an interagency cooperative contract in the development of a native prairie mitigation bank in the City of Holliday in Archer County, Texas. The intention of this contract is to establish a mitigation bank to provide TxDOT with credits for impacts to native prairie habitats resulting from transportation projects. The result would provide the restoration and protection of approximately 24.87 acres of native prairie in the Rolling Plains ecoregion. In addition, the native prairie would provide educational and research opportunities for faculty and students at MSU.

Contract No: _____

ATTACHMENT B
Interagency Cooperation Contract
General Terms and Conditions

Article 1. Amendments
This contract may only be amended by written agreement executed by all parties prior to the expiration of the contract.

Article 2. Disputes
TxDOT shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services.

Article 3. Records and Ownership
Except to the extent that a specific provision of this contract states to the contrary, all equipment purchased by TxDOT or its subcontractors under this contract shall be owned by TxDOT.

Article 4. Termination
This contract may be terminated by satisfactory completion of all services and obligations contained in this contract, by mutual written agreement, or by any party unilaterally after 30 days' written notice to the other party.

Article 5. Gratuities
Any person who is doing business with or who reasonably speaking may do business with TxDOT under this contract may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Executive Director of the Texas Department of Transportation.

Article 6. Authority of State Auditor
The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

Article 7. Compliance with Laws
The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement.

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

October 25, 2004

Texas Parks & Wildlife Dept.

OCT 27 2004

Wildlife Habitat Assessment Program

Danny Allen
Wildlife Habitat Assessment Program
Wildlife Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744-3291

RE: Wichita Falls District Native Prairie Mitigation Bank Agreement

Dear Mr. Allen:

Attached is an executed original of the native prairie mitigation bank agreement.

Sincerely,

Doris Pabon

Doris Pabon
Office of General Counsel,
Contract Services Section

Attachment

Attachment Two

Leslie and Charles Finnell
Native Prairie Site of Midwestern University
Restoration and Management Plan
Archer County, Texas

Leslie and Charles Finnell Native Prairie Site of Midwestern University Restoration and Management Plan Archer County, Texas

Prepared by:

Danny Allen
Wildlife Biologist
Wildlife Habitat Assessment Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

Jill Holmes
Environmental Coordinator
Texas Department of Transportation, Wichita Falls District
1601 Southwest Parkway
Wichita Falls, TX 76302

Dr. Norman Horner
Dean of College of Science and Mathematics
Bolin Hall Room 111A
Midwestern State University
3410 Taft Blvd.
Wichita Falls, TX 76308

1.0 SCOPE

The Wichita Falls District of the Texas Department of Transportation (TxDOT), Midwestern State University (MSU), and the Texas Parks and Wildlife Department (TPWD) entered into a mitigation bank agreement on October 25, 2004 to restore a 24.87 acre tract of land located in the City of Holliday to a native prairie (Appendix A). The land was donated to MSU by the previous landowners, Mr. Leslie Finnell, Jr. and Mr. Charles Finnell. The agreement states that TxDOT would provide the resources necessary to restore the proposed site back to a native midgrass prairie in exchange for mitigation credits for impacts to native prairies resulting from future transportation projects within the Wichita Falls District. MSU would manage the mitigation site as a native prairie as well as utilize the property as a research and educational tool for the students and faculty of the University. TPWD would provide technical guidance in the restoration efforts and, in cooperation with TxDOT, account for the use of the native prairie mitigation credits. This document provides guidelines for the restoration and management of the Leslie and Charles Finnell Native Prairie Site of Midwestern University (FNPS).

2.0 BACKGROUND

2.1 Native Prairies

Native prairies and grasslands once covered Texas from the shortgrass prairies of the Panhandle to the coastal prairies along the Gulf of Mexico. Since the arrival of European settlers in the 1800's, native prairies and grasslands have been lost to agriculture, the suppression of fire, and the intentional and unintentional introduction of non-native exotic species. With the invention of the steel plow, early settlers were able to break up the prairie sod and convert the prairie into fertile farmlands. Grasslands deemed unsuitable for farming were often overgrazed resulting in decreased plant diversity in forage and lower quality cover for nesting and wildlife habitat. The suppression of fire within the grass and forb dominated prairie ecosystems has changed the species composition of the prairies and promoted the invasion of woody species. In order to increase forage production, introduced species such as Bermuda grass, Johnson grass, and K-R bluestem were established in the prairies and grasslands. These introduced grass species typically form monocultures with significantly less wildlife forage and cover value than that of a diverse native prairie.

The Rolling Plains ecoregion of Texas is bordered on the west by the Caprock Escarpment, on the south by the Edwards Plateau, and on the east by the Western Cross Timbers and the Lampasas Cut Plain. Historically, the Rolling Plains encompassed thirty million acres of mid-grass prairie with scattered mesquite (*Prosopis glandulosa*). The prairies were dominated by sideoats grama (*Bouteloua curtipendula*), little

bluestem (*Schizachyrium scoparium*), Texas wintergrass (*Stipa leucotricha*), and common curly mesquite (*Hilaria belangeri*). Currently it is estimated that 74.56% of the Rolling Plains has been converted to urban or agricultural uses and only 0.49% of public and private lands within the ecoregion has been set aside as preservation or conservation lands.

In 2002, the TPWD Land and Water Resources Conservation and Recreation Plan (LWRCRP) identified native prairies as a conservation priority in Texas. The LWRCRP states that the Rolling Plains ecoregion is a prime candidate for restoration efforts and that many species would benefit from the restoration of grasslands and riparian forests. In an effort to minimize further losses of native prairies due to transportation projects, TxDOT, MSU, and TPWD would cooperatively ensure that the FNPS would be set aside, restored, and managed as a native prairie conservation site.

2.2 Site History

The FNPS is located north of the City of Holliday and south of an unnamed tributary of Holliday Creek. The site is 24.87 acres and is bisected by the City's wastewater treatment facility (Attachment B). Oil and gas operations have historically occurred on the western portion of the property, but have since been abandoned. Prior to the donation of the property to MSU, the site was leased for the grazing of livestock by the previous landowners, Mr. Leslie Finnell, Jr. and Mr. Charles Finnell.

Much of the eastern portion of the project site has been recently plowed and was managed as a sunflower field. The western portion of the site is comprised of a degraded shrub/grassland supporting a population of medium density mesquite. Herbaceous vegetation in the western portion of the project area is dominated by Texas wintergrass (*Stipa leucotricha*), foxtail barley (*Hordeum jubatum*), and rescuegrass (*Bromus unioloides*). Low lying portions along the north edge of the property are periodically inundated and support several pockets of non-native and invasive salt cedar (*Tamarisk chinensis*) and several tufts of switchgrass (*Panicum virgatum*).

3.0 NATIVE PRAIRIE RESTORATION

3.1 Site Preparation

Native prairies are diverse plant communities dominated by grass species which often make up 50 to 90 percent of the vegetation in the community. The remaining species within the native prairie community consist of forbs or herbaceous plants. In order to establish a native prairie ecosystem, existing vegetation association on the property must be modified.

3.1.1 Mesquite Removal – The portion of the property to the west and south of the City of Holliday's wastewater treatment plant is dominated by mesquite shrublands. In order to restore the native prairie grassland ecosystem, the mesquite must be thinned and/or removed from the site. The mesquite should be grubbed or rootplowed so that the taproot is severed below the basal crown. Depending on the size of the mesquite, the basal crown would be located 6- to 14-inches below the soil surface. Failure to sever the taproot below the budding zone will result in vigorous resprouting of the mesquite and the need for additional control efforts. The mesquite should be removed or burned on site in order to properly prepare the seedbed for revegetation efforts. In addition, a portion of the mesquite could be placed in brush piles in areas where mesquite control will not be attempted in an effort to provide habitat and cover for resident wildlife on the site.

3.1.2 Sunflower Field – The portion of the property east of the City of Holliday's wastewater treatment plant is dominated by sunflowers. In order to reduce the dominance of the sunflowers on the site, the sunflower field should be mowed the spring and summer and, if possible, burned before native prairie seeds are planted in the fall. Subsequent mowing and prescribed burns in the following years should control the dominance of sunflowers in the future allowing the native species planted and those found in the soil's seed bank to become established.

3.1.3 Saltcedar – Several saltcedars occur along the unnamed tributary to Holliday Creek and the surrounding floodplain areas along the northern portion of the property. The saltcedar should be treated utilizing a mixture of 25% Remedy and 75% diesel. The herbicide mixture should be sprayed lightly, but evenly, at the base of each tree in order to cover the entire basal stem area up to 12 inches above the ground. Care should be taken to avoid runoff and puddling of the herbicide on the ground. Dead salt cedar resulting from herbicidal control should remain standing for 2-3 years in order to prevent accelerated re-sprouting. After 2-3 years the salt cedar should be removed utilizing the first prescribed burn for the management of the native prairie.

3.2 Seeding

The soils types on the FNPS are divided east/west along the floodplain gradient (Appendix C). The majority of the FNPS is located on the Port

and Wheatwood soils found along the floodplain areas associated with the unnamed tributary to Holliday Creek. The vegetation associated with Port and Wheatwood soils consist of indiangrass (*Sorghastrum nutans*), little bluestem, sand bluestem (*Andropogon hallii*), big bluestem (*Andropogon gerardii*), switchgrass (*Panicum virgatum*), wildrye (*Elymus canadensis*), Texas wintergrass (*Stipa leucotricha*), vine-mesquite (*Panicum obtusum*), falseswitchgrass (*Panicum plenum*), meadow dropseed (*Sporobolus asper*), western wheatgrass (*Agropyron smithii*), sideoats grama (*Bouteloua curtipendula*), ragweed (*Ambrosia* spp.), Engelmann daisy (*Engelmannia pinnatifida*), heath aster (*Aster ericoides*), maximillian sunflower (*Helianthus maximimiliani*), gaurus (*Gaura* spp.), elm (*Ulmus* spp.), hackberry (*Celtis* spp.), bumelia (*Bumelia* spp.), soapberry (*Sapindus drummondii*), grapes (*Vitis* spp.), cottonwood (*Populus deltoides*), and ash (*Fraxinus* spp.).

The drier upland portions in the southern portions of the FNPS are located in the Jolly-Rock Outcrop complex. The vegetation associated the the Jolly-Rock Outcrop complex is little bluestem, sand lovegrass (*Eragrostis trichodes*), purpletop (*Tridens flavus*), sideoats grama, scribner panicum (*Dichanthelium oligosanthes*), post oak (*Quercus stellata*), live oak (*Quercus virginiana*), elm, hackberry, bumelia, greenbriar (*Smilax* spp.), sensitivebrier (*Schranki* spp.), sagewort (*Artemesia* spp.), lespedeza (*Lespedeza* spp.), and other forbs.

3.2.1 – Seed Mix

If possible, the native seed source should be located within 300 miles of the FNPS to ensure adaptability and maximize the success of the initiation of the vegetation. The native seeds should have a high pure live seed or germination rating

The seed mix for the FNPS should incorporate at the following four grass species depending on the soils and hydrology:

Floodplain Grass Seed Mix	Upland Grass Seed Mix
65% Littlebluestem	65% Littlebluestem
10% Indiangrass	15% Sand bluestem
10% Blackwell switchgrass	5% Buffalograss
15% Sideoats grama	15% Sideoats grama

In addition, the forb seed mix for the FNPS should be comprised of 5-10 of the following species:

Forb Seed Mix
Bush sunflower (*Simsia calva*)
Engelmann's daisy (*Engelmannia pinnatifida*)
Foxglove (*Penstemon cobaea*)
Gayfeather (*Liatris* spp.)
Golden-wave (*Coreopsis basilis*)

Greenthread (*Thelesperma filifolium*)
Indian blanket (*Gaillardia pulchella*)
Mealy blue sage (*Salvia farinacea*)
Primrose (*Oenothera speciosa*)
Purple prairie clover (*Dalea purpurea*)
Standing cypress (*Ipomopsis rubra*)
White gaura (*Gaura lindheimeri*)
Yellow flax (*Linum* spp.)
Bundleflower (*Desmanthus illinoensis*)

3.2.2 Seeding

Many forbs benefit from fall plantings as they germinate in the fall and develop a small rosette during the winter. These forbs usually develop an extensive root system over the winter to support their flowers in the spring. In preparation for seeding, the above referenced site preparation activities in Section 3.1 should be completed. If a prescribed burn was not conducted on the sunflower field, the site should be lightly disked to prepare the seedbed. If the mesquite areas have grown back with weeds before seeding has occurred, these areas should also be lightly disked before seeding.

The forb seed mix should be planted in the fall, after the first freeze in October or November. The forb seed mix should be planted at the rate of 10-15 lbs of live seed per acre. The grass seed mix should be planted in early spring (March) at a seeding rate of 8-12 lbs of live seed per acre.

The seeds should be sowed utilizing a seed drill. Dry sand or low nitrogen fertilizer (0-20-10) should be added to the seed mix as a carrier or disperser to allow the flow of seed through the drill box. The drill should plant the seeds no deeper than ½ inch below the soil surface. If the seed drill is not feasible, the seeds may be sown by broadcast methods preceded and followed by a harrow or rake to ensure proper soil-seed contact.

3.3 Maintenance and Management

During the first year, the growth of grass seedlings and perennial forbs may not appear successful. However, most of the first year growth will be in the development of the root systems. In order to reduce the competition from annual weeds and undesirable grasses, the restoration site should be mowed to a height of no less than 4 inches during the first year after seeding. The second year after seeding, the timing of mowing activities should be dependent on the growth stage of the perennial forbs and the development of the desired grasses in order to maximize the seed

production of planted species and desired plant species that may become established from the existing seed bank.

It may take two or three years for the native grasses to become established. Therefore, no burning or grazing activities should occur within the first three years of project. Because fire is an important component of native prairies, a prescribed burn plan should be established for the FNPS so that the native prairie is burned on a three to four year rotation. The fire will stimulate growth of dormant forb seed, promote growth of above ground vegetation, improve soil fertility, and inhibit the re-establishment of mesquite on the property. The prescribed burn will release nutrients back into the soil and reduce the shading of new grass and forb seedlings. The prescribed burn should be scheduled during the winter to promote the growth of the warm season grasses such as little bluestem, indiangrass, switchgrass, sideoats grama, buffalograss, and sand bluestem as well as encouraging the re-establishment of other native grass species potentially found in the existing seed bank.

Depending on the research and educational goals of MSU, future management of the FNPS should include the use of scheduled burning, mowing, and/or grazing in order to maintain the desired seral stage of the native prairie.

Attachment Three

Site Survey of Existing Conditions
June 2004

The Leslie and Charles Finnell Native Prairie Site of Midwestern State University

Holliday, Texas
Archer County

Site Survey of Existing Conditions For Native Prairie Restoration Plan

Cooperating Agencies:
Midwestern State University
Texas Parks and Wildlife Department
Texas Department of Transportation

June 2004

Project Summary

The Wichita Falls District of the Texas Department of Transportation (TxDOT), Midwestern State University (MSU), and the Texas Parks and Wildlife Department (TPWD) have the opportunity to cooperate in the restoration of approximately 24.87 acres of native prairie in the City of Holliday. The proposed prairie restoration site has been donated to MSU by Mr. Charles Finnell and Mr. Leslie Finnell. TxDOT would provide the resources necessary to restore the proposed site back to a native midgrass prairie in exchange for mitigation credits for impacts to native prairies resulting from future transportation projects within the Wichita Falls District. MSU would manage the mitigation site as a native prairie as well as utilize the property as an educational tool for the students and faculty of the University. TPWD would provide technical guidance in the restoration efforts and, in cooperation with TxDOT, account for the use of the native prairie mitigation credits. This interagency effort would restore and conserve approximately 24.87 acres of native prairie in the Rolling Plains ecoregion.

Existing Conditions

Land Use

The proposed mitigation site is located within the city limits of Holliday, Texas, north of existing US 277 and south of proposed US 277 re-route around Holliday (see attached USGS topographic map). Land in the surrounding area consists of residences, agricultural pasture land used for ranching and oil production, Holliday Cemetery, the City water treatment plant, and Finnell Park.

The proposed project site is approximately 24.87 acres and is bisected by the City's wastewater treatment facility. Oil operations have historically occurred on the property, but are currently inactive. The mitigation site was leased for the grazing of livestock by the previous landowner.

Much of the eastern portion of the project site has been recently plowed and is managed as a sunflower field. The western portion of the site is comprised of a degraded shrub/grassland supporting a population of medium density mesquite. Low lying portions along the north edge of the property are periodically inundated and support several pockets of non-native and invasive salt cedar (*Tamarix chinensis*).

Biological Resources

Soils

The project area is located in the Kamay-Deandale general soil unit within two soil map units: 1) Jolly- Rock Outcrop Complex (2- 12 percent slopes, stony), and 2) Port and Wheatwood soils (frequently flooded). See attached Vegetation & Soils aerial photograph.

The Kamay-Deandale general soil unit is characterized as nearly level and gently sloping soils located on terraces and uplands dissected in some areas by narrow floodplains with slopes ranging between 0 and 3 percent.

The Jolly Rock Outcrop complex soils are typically located on gently sloping to steep uplands on side slopes and ridgetops. Topsoils are shallow with often exposed subsoils or rock exposed. Permeability is moderate to rapid and water holding capacity is very low. This soil is not on the "Hydric soils of Texas" list or the "Hydric Soils of the US" list.

Approximately 23 percent of the project site is located in this soil map unit, located south of the floodplain areas. Based on the soil survey, climax vegetation for this map unit is savannah and includes little bluestem (*Schizachrium scoparium*), sand love grass (*Eragrostis trichodes*), purpletop (*Tridens flavus*), sideoats grama (*Bouteloua curtipendula*), post oak (*Quercus stellata*), live oak (*Quercus virginiana*), elm (*Ulmus* sp.), hackberry (*Celtis* sp.), bumelia (*Sideroxylon lanuginosum*), greenbrier (*Smilax* sp.), sensitive brier (*Mimosa* sp.), sagewort (*Artemesia* sp.), and other forbs.

The Port and Wheatwood soils are typically located in floodplains. Soils are deep silty loams. Permeability is moderate and water holding capacity is high. This map unit is often used as rangeland but not for cropland or development due to frequent flooding. This soil is not on the "Hydric soils of Texas" list or the "Hydric Soils of the US" list. Approximately 77 percent of the project site is located in this soil map unit, primarily located on the northern portion of the property. Based on the soil survey, vegetation for this map unit could include Indian grass (*Sorghastrum nutans*), little bluestem, sand bluestem (*Andropogon gerardii* subsp. *hallii*), or big bluestem (*Andropogon gerardii*), switch grass (*Panicum virgatum*), wild ryes (*Elyus* sp.), Texas winter grass (*Stipa leucotricha*), vine mesquite (*Panicum obtusum*), meadow dropseed (*Sporobolus compositus*), western wheatgrass (*Pascopyrum smithii*), sideoats grama, ragweeds (*Ambrosia* sp.), Engelmann daisy (*Engelmannia peristenia*), Heath aster (*Aster ericoides*), maximilian sunflower (*Helianthus maximiliani*) gauras (*Gaura* sp.), elms, hackberry, bumelia, soapberry (*Sapindus saponaria*), grapes (*Vitis* sp.), cottonwood (*Populus deltoides*), and ash (*Fraxinus* sp.).

Vegetation

The proposed project is located in the Rolling Plains Ecological Area of Texas in the Mesquite Plains. The project area is located in the Mesquite-Lotebush Shrub community based on the Vegetation Types of Texas (TPWD, 1984). There are four vegetation communities located in the project area: 1) mesquite-lotebush shrub community, 2) irregularly maintained disturbed community, 3) salt cedar community, and 4) emergent vegetation in pond areas. The table below describes the community characteristics including diameter at breast height (DBH) range, a range in height, percent canopy cover, and size of the community in the project area. All measurements are approximate. See attached Vegetation & Soils aerial photograph for a delineation of the vegetation communities.

Community	Size (ac)	DBH Range (in)	Height Range (ft)	% Canopy
1) Mesquite- Lotebush	9.6 ac	<1 - 10 in	2 - 20 ft	20 - 70%
2) Irregularly Maintained	9.6 ac			
3) Salt Cedar	3.4 ac	<1 - 5 in	3 – 15 ft	10%
4) Emergent Vegetation	1.3 ac			

1) Mesquite Lotebush Shrub Community

The mesquite-lotebush shrub community is located on the western portion of the property and south of the City's water treatment facility. Age and density of mesquite varies throughout the community, however species composition remains similar throughout. The dominant woody vegetation includes honey mesquite (*Prosopis glandulosa*) with occasional lotebush (*Ziziphus obtusifolia*) scattered throughout. Dominant grass species included Texas winter grass, rescue grass (*Bromus catharticus*), little barley (*Hordeum pusillum*), tridens (*Tridens* sp.), with small patches of buffalo grass (*Buchloe dactyloides*), silver bluestem (*Bothriocloa laguroides*), threeawn (*Aristida* sp.), and Texas grama (*Bouteloua rigidiseta*). Forb species included silver leaf nightshade (*Solanum elaeagnifolium*), ragweed (*Ambrosia artemisiifolia*), wooly plantain (*Plantago patigonica*),

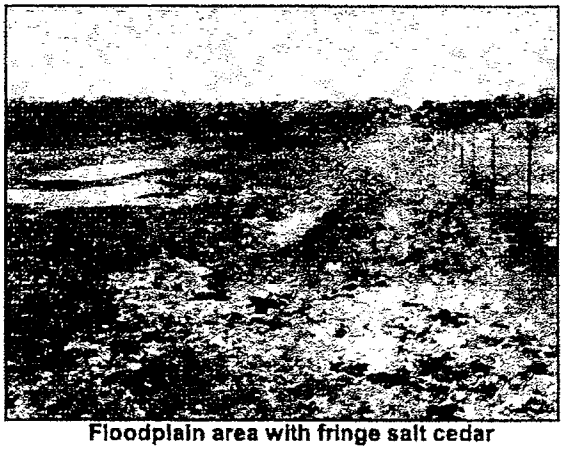
common yarrow (*Achillea millefolium*), sensitive brier, and Indian blanket (*Gaillardia pulchella*). Prickly pear cactus (*Opuntia* sp.), and pencil cactus (*Opuntia leptocaulis*) were also present in this community. Approximately 9.6 acres of the site is mesquite-lotebush shrubland.

2) Irregularly Maintained Disturbed Community

The irregularly maintained disturbed community is located on the eastern portion of the property and has recently been cleared of mesquite. This community is void of woody vegetation with the dominant herbaceous species consisting of sunflower (*Helianthus* sp.), curly dock (*Rumex crispus*), little barley, and rescue grass. Approximately 9.6 acres of the site is located in this community.

3) Salt Cedar Community

The northern limits of the project area west of the City's water treatment facility is a floodplain area largely void of vegetation due to frequent inundation and/or salt scalds in the area related to oil field activity. Along the fridges of the floodplain area, the dominant woody species is salt cedar, with less mesquite than south of the floodplain. Dominant herbaceous vegetation in this area consisted of switchgrass, spike rush (*Eleochris* sp.) and rescue grass. Approximately 3.4 acres of the site is located in this community, including the areas not vegetated.

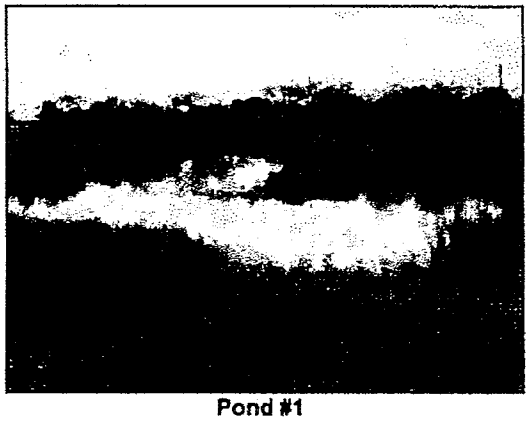


Floodplain area with fringe salt cedar

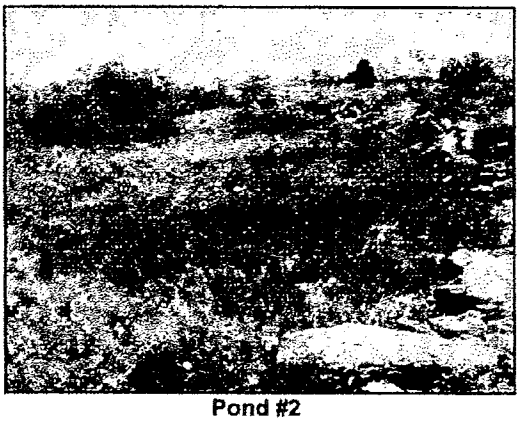
Salt scarred area with fringe salt cedar

4) Emergent Vegetation in Pond Areas

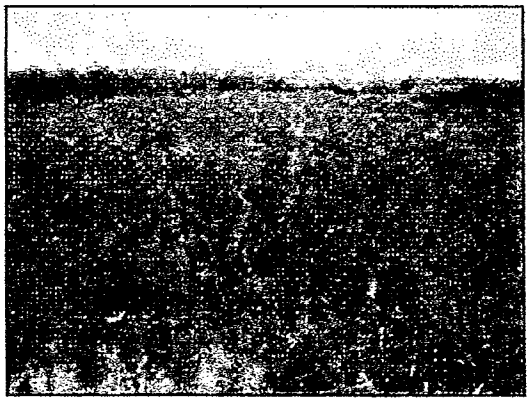
There are three low lying areas within the project area that have the potential to hold water. Two are located south of the City's water treatment facilities pond, and the other located northeast of Holliday Cemetery. These ponds have little woody vegetation and support hydrophytic vegetation due to seasonal flooding, as the ponds do not hold water year round. Dominant vegetation includes cattails (*Typha latifolia*), spike rush, a sedge (*Carex* sp.), curly dock, smartweed (*Polygonum* sp.), and little barley. Pond Area #1 is approximately 0.4 acres. Pond Area #2 is approximately 0.2 acres. Pond Area #3 is approximately 0.7 acres. See attached aerial photograph for location.



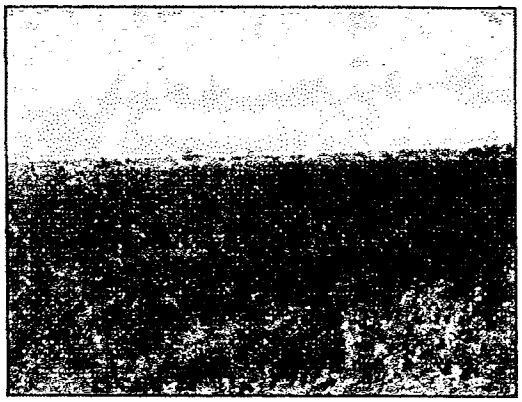
Pond #1



Pond #2



Pond #3 (taken April 04)



Pond #3 (taken May 04)

Wildlife

Wildlife observed in the mesquite lotebush community includes the Northern mocking bird (*Mimus polyglottos*), Northern cardinal (*Cardinalis cardinalis*), ladderbacked woodpecker (*Picoides scalaris*), Northern flicker (*Colaptes auratus*), Western kingbird (*Tyrannus verticalis*), blue jay (*Cyanocitta cristata*), Eastern cottontail (*Sylvilagus floridanus*), bullsnake (*Pituophis melanoleucus sayi*), whiptail (*Cnemidophorus* sp.), as well as evidence of white tailed deer (*Odocoileus virginianus*), and unidentified rodents. Species observed along the floodplain area include kill deer (*Charadrius vociferus*), great blue heron (*Ardea herodias*), great egret (*Ardea alba*), mallard (*Anas platyrhynchos*), an unidentified turtle, and evidence of raccoons (*Procyon lotor*). Species observed in the irregularly maintained areas included Northern bobwhite (*Colinus virginianus*), mourning dove (*Zenaida aurita*), Eastern cottontail, red winged blackbird (*Agelaius phoeniceus*), and unidentified rodents.

Protected Species

There are eight protected species that potentially could be located within Archer County. The following table lists these eight species, their protected status, and whether habitat is located within the proposed project area.

Common Name	**Scientific Name**	**Status* (Federal/State)**	**Habitat Present**
Bald Eagle**^	*Haliaeetus leucocephalus*	T / T	No
Black-Tailed Prairie Dog	*Cynomys ludovicianus*	C /	No
Interior Least Tern	*Sterna antillarum athalassos*	E / E	No
Peregrine Falcon**	*Falco peregrinus*	DL / E	No
Texas Horned Lizard	*Phrynosoma cornutum*	/ T	Yes
Texas Kangaroo Rat	*Dipodomys elator*	/ T	Yes
Western Burrowing Owl	*Athene cunicularia hypugaea*	SOC /	No
Whooping Crane**	*Grus americana*	E / E	No

* Federal: (E): Endangered, (T): Threatened, (PT): Proposed Threatened, (C): Candidate
(DL): Delisted (SOC): Species of Concern
State: (T): Threatened, (E): Endangered
** Listed species whose migratory routes cross Archer County
^ Winter resident of Archer County

A survey of the proposed project was performed on April 6, 2004 and May 19, 2004. At the time of the surveys, the floodplain area was inundated in areas, however it has also been observed dry. The ponded areas and floodplain area would not provide sufficient surface water in the proposed project area to support the bald eagle. The floodplain area probably does not provide a good food source or provide adequate horizontal visibility to provide preferred habitat for the migrating whooping crane. There are no sandbars on the banks of water resources that would provide suitable nesting habitat for the interior least tern. The vegetation communities in the project area are not open or sparse enough to provide preferred habitat for the black-tailed prairie dog or Western burrowing owl. The flat terrain and lack of sufficient roosting habitat would not support the peregrine falcon. Harvester ants, the main food source for the Texas horned lizard, were prevalent throughout the mesquite-lotebush community and sufficient bare ground was present, therefore suitable habitat for the Texas horned lizard is present. The mesquite community bordering open areas could provide suitable habitat for the Texas kangaroo rat.

A check of the TPWD Element Occurrence Records from the Biological and Conservation Data System (BCD) (dated March 26, 2004) revealed occurrence of the Texas kangaroo rat near the project area.

The presence of the above-mentioned species was not observed within the limits of the proposed project during field investigations or surveys. The project would have no effect on any federally listed species. Measures would be taken to avoid the take of migratory birds, their young, and their eggs. If vegetation clearing is conducted during nesting season, surveys will be conducted to determine if active nests are present. If present, the nests shall not be disturbed until the young have fledged.

Harvester Ant Bed

Burrow at Base of Mesquite

Water Resources

Watershed/Basin Overview

The proposed project is located in the Red River Basin. Storm water runoff in the proposed project area flows into unnamed tributaries to Holliday Creek above Lake Wichita (segment 219A).

Unnamed Tributary to Holliday Creek

An unnamed tributary to Holliday Creek, previously referred to as the floodplain area, flows through the northwestern corner of the project area. West and outside of the project area, the tributary has a defined channel which spreads out into a wide floodplain area and continues north out of the project area (see attached aerial photograph). This area is seasonally inundated and is void of vegetation due to frequent flooding and salt scarring from past oil production. Salt cedar is prevalent along the fringes of this area. Water clarity was poor and flow was not observable. The substrate is a silty clay loam. The area of the floodplain within the project site is approximately 2.2 acres. The channel originates to the west and flows east toward Holliday Creek. For pictures see "Salt Cedar Community" in the "Vegetation" section.

Ponds

There are three areas within the project area that periodically hold water (see attached aerial photograph). These areas are isolated with no connection to any water of the United States and are all likely man made. These ponds are seasonal and do not hold water year round, however they are inundated often enough to support hydrophytic vegetation. For pictures see "Emergent Vegetation in Pond Areas" in the "Vegetation" section.

POND #1
Pond Area #1 is located west of Holliday Cemetery and south of Pond #2 and the City's water treatment facility pond. There is a man made earthen dam between the City's pond and Pond #2 and a concrete rubble dam between Pond #1 and #2 that were constructed to help the low areas hold water. The site exhibits wetland characteristics including low chroma soils, hydrophytic vegetation, and saturated soil; however, there is no evidence that this pond is hydrologically connected to a water of the US. A wetland determination by the U.S. Army Corps of Engineers (USACE) has not been made.

POND #2
Pond Area #2 is located west of Holliday Cemetery and north of Pond #1 and the City's water treatment facility pond. There is a man made earthen dam between the City's pond and Pond #2 and a concrete rubble dam between Pond #1 and #2 that were constructed to help the low areas hold water. Water from Pond #1 is seeping through the concrete dam into Pond # 2. Portions of this site also exhibit wetland characteristics including low chroma soils, hydrophytic vegetation, and saturated soil; however, there is no evidence that this pond is hydrologically connected to a water of the US. A wetland determination by the USACE has not been made.

POND #3
Pond Area #3 is located northeast of Holliday Cemetery south of the irregularly maintained vegetation community. It is a low lying area that holds water seasonally with dominant vegetation consisting of cattails and spike rush. It also exhibits wetland characteristics including low chroma soils, hydrophytic vegetation, and saturated soil; however, there is no evidence that this pond is hydrologically connected to a water of the US. A wetland determination by the USACE has not been made.

Areas Regulated by Federal Permit

Unnamed tributary to Holliday Creek would be considered a water of the US regulated by the USACE and would require a Section 404 permit if work was to occur within the channel/floodplain. The pond areas exhibit wetland characteristics. If work is to occur within these areas, the USACE should be contacted to determine if these areas are regulated wetlands requiring a Section 404 permit. If a Section 404 permit is required, a Section 401 water quality certification from Texas Commission on Environmental Quality (TCEQ) would also be required. This tributary is not considered navigable. No U.S. Coast Guard permits would be necessary for this project.

Floodplains

The City of Holliday/Archer County is a participant in the National Flood Insurance Program. A portion of the project area is located within a documented FEMA (Federal Emergency Management Agency) 100-yr flood plain.

Stormwater

This project would disturb more than one acre, however, compliance with the TCEQ-Texas Pollutant Discharge Elimination System General Permit would not be required since storm water discharges from agricultural activities, including clearing and cultivating, are not subject to the requirements of the permit (Part II, Section B.10).

Hazardous Materials

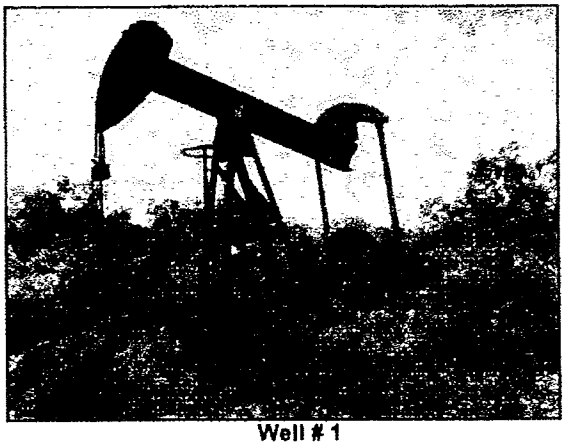
The proposed project area and the surrounding area are primarily undeveloped and used for ranching and has previously been used for oil production. A walking survey of the proposed

project area was performed on May 19, 2004 and revealed the extent of oilfield activity at the site. There are two currently inactive pump jacks located on the property as well as flow lines lying on top of the ground. See attached aerial photograph for locations of the following features.

Well #1: Shappell Oil Co., Gulf Lease, RRC 00666 No. 4

The tank battery for most of the oilfield activity on the project site is located off-site southwest of Well #1. Inactive flow lines lying on top of the ground lead from the tank battery to Well #1. A second flow line comes off of this well and dead ends, coiled up approximately 150 ft northwest of the well.

The Texas Railroad Commission revealed that this well has not produced in at least two years, however the oil producer has bonded the well, therefore it can be left in place. Mineral rights owner Mr. T.D. Whitehead stated that enough room needs to be left around the well to allow it to be serviced and requested that the poly flow lines be left in place. The steel lines are dead and may be removed.



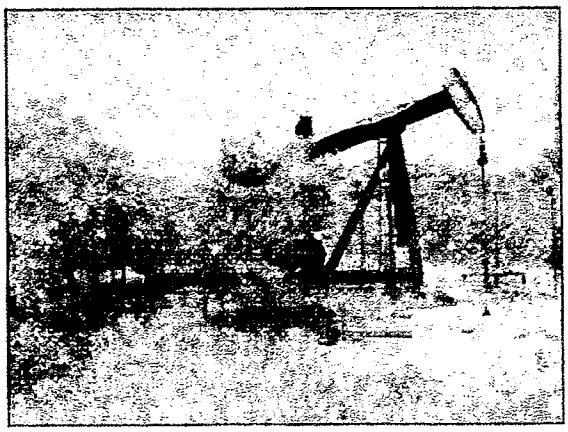
Well # 1

Off-site Tank Battery

Well #2: Shappell Oil Co., Gulf Lease, Well No. 3

A second well was located on the property northwest of the City's water treatment facility. There is one flow line coming off this well, however it dead ends approximately 60 ft from the well. There is also an electrical line lying on top of the ground between the well and a utility pole (likely the oil producer's), however, there is no motor at the well, therefore, it is not likely it is active.

Data from the Texas Railroad Commission revealed that this well has not produced in at least two years, however the oil producer has bonded the well, therefore it can be left in place. Mineral rights owner Mr. T.D. Whitehead stated that enough room needs to be left around the well to allow it to be serviced and requested that the poly flow lines be left in place. The steel lines are dead and may be removed.

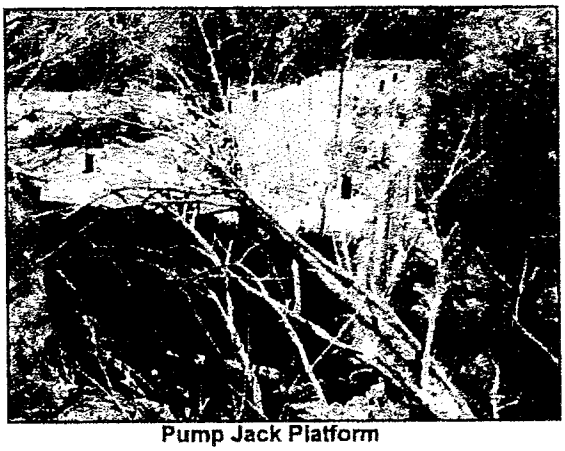


Well #2 Well in Relation to Electric Line

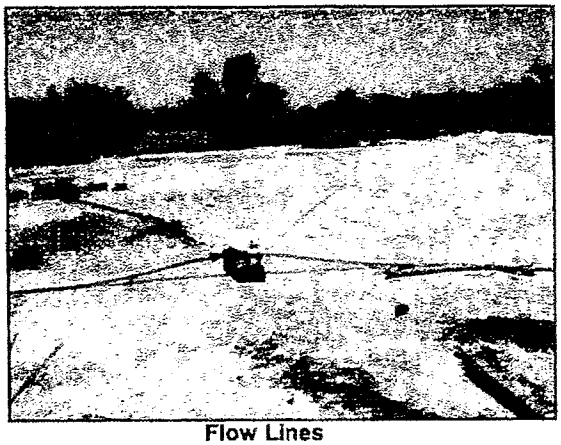
Pump Jack Platform & Flow Lines

Located in the floodplain area was a concrete base confirmed to be platform for a pump jack used due to the wet conditions in this area. Mineral rights owner Mr. T.D. Whitehead stated that this could be removed from the site. No pump jack was located near this platform.

Flow lines lying on top of the ground were located near this area. The flow line originates off-site to the west and goes southeast to the off-site tank battery location with only small portions coming onto the project area.



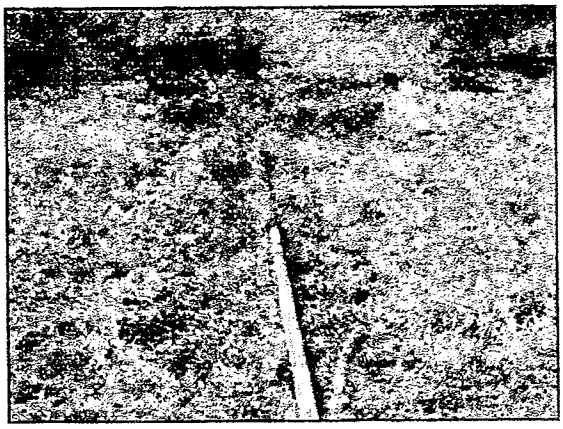
Pump Jack Platform



Flow Lines

Metal Pipe

A steel pipe is located east of City's water treatment facility pond. It is capped off at the northern end and runs above ground south along the west side of Holliday Cemetery where it leaves the project site and goes underground.



Salt Scarring

Based in visual observation, salt scarring has occurred in areas along the floodplain area likely as a result of oilfield activity in the area. Several problems from salt impacted soils could be present. Salt can inhibit vegetation growth or kill vegetation; displace calcium and magnesium in the soil; and can be a source of impacts to groundwater through leaching. Recommendations to address salt contaminated soils include using phytoremediation which is the use of halophyllic (salt-loving) plants to revegetate the soil and stimulate natural recovery.

Database Research

Surveys conducted revealed no surface evidence of contamination other than what is previously described. A check of the TCEQ's registered petroleum storage tank and leaking petroleum storage tank databases revealed no known underground storage tanks at the site. A review of the EPA's Enviromapper website revealed one permitted water discharger in the area, the City of Holliday Waste Water Treatment Plant. Effluent is discharged at the northeast corner of the City's property onto the adjacent landowner. Water is not being discharged onto the project site. No hazardous waste sites, toxic release sites, or Superfund sites were revealed within or in close proximity to the project area.

Social Considerations

Historic Properties: Standing Structures

There are no structures, including those 50 years or older, located in the project area. A review of the THC Historic Site Atlas indicates no properties in the immediate area that are listed in the National Register of Historic Places nor are there any Official State Historical markers.

Historic Properties: Archeology

A check of the Texas Archeological Sites Atlas by an approved archeologist will need to be conducted. An impact evaluation may be required.

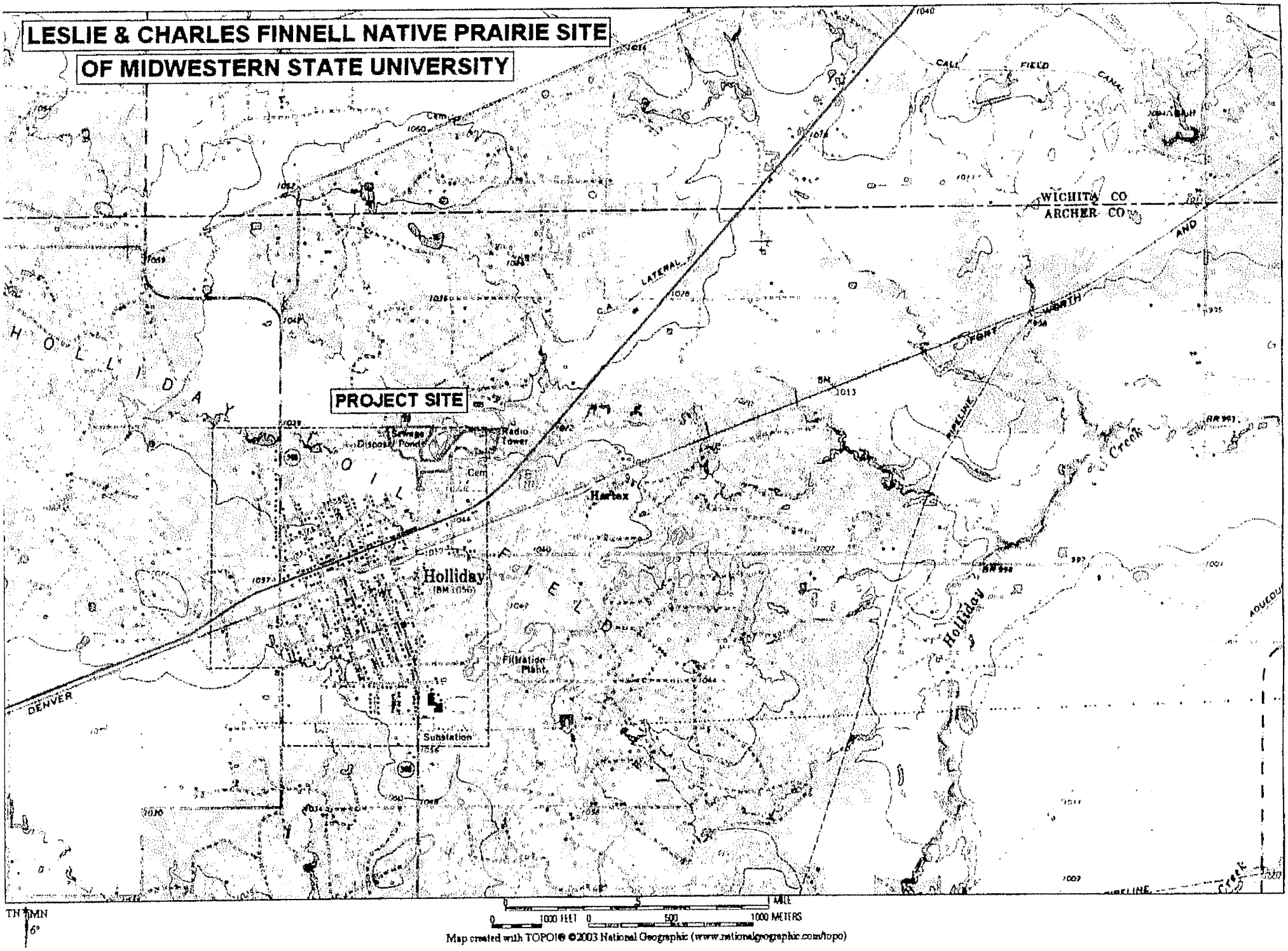
Holliday Cemetery is adjacent to the southeast portion of the project area and would not be impacted by the proposed project. The first grave marked at the Holliday Cemetery was on June 3, 1892 according to the Handbook of Texas Online.

If archeological deposits are accidentally encountered during construction, work in the immediate area will cease and accidental discovery procedures will be initiated.

Holliday Cemetery

Conclusion

The site survey of the existing conditions will be used to assist in the preparation of the Restoration Plan to be developed for the site to restore it to native prairie conditions and should be used for planning purposes.


LESLIE & CHARLES FINNELL NATIVE PRAIRIE SITE
OF MIDWESTERN STATE UNIVERSITY
PROJECT SITE
WICHITA CO
ARCHER CO
Harlex
Holliday
Substation
Filtration Plant
Radio Tower
Sewage Disposal Ponds
DENVER
TN 7MN
6°
1000 FEET
500
1000 METERS
Map created with TOPO!® ©2003 National Geographic (www.nationalgeographic.com/topo)

MIDWESTERN STATE UNIVERSITY

3410 TAFT BOULEVARD WICHITA FALLS, TEXAS 76308-2099
OFFICE OF PUBLIC INFORMATION (940) 397-4352 / FAX: (940) 397-4011

News Release

Contact: Janus Buss
Director of Public Information 5-14-04
940-397-4352

Midwestern State University received a generous donation on Friday from Charles Finnell and Leslie Finnell. The Finnells donated close to 25 acres of land located in Holliday, Texas adjacent to Finnell Park. The MSU Board of Regents approved naming the land the **Leslie and Charles Finnell Native Prairie Site of Midwestern State University.**

The land will undergo a major restoration to native prairie habitat. This restoration will be completed by the Texas Department of Transportation (TxDOT) and supervised by the Texas Parks and Wildlife Department (TPWD) biologist, and MSU. The restoration will include the removal of the mesquite and the planting of grasses that were native to the area in the late 1800s.

After the habitat has been restored, the agreement among these three Texas agencies is that the land will be maintained as native prairie habitat for a minimum of 20 years by MSU. The land will be primarily used as a field laboratory for the Environmental Science and Biology programs at MSU. The land will be especially useful in teaching laboratories in courses like ecology, entomology, invertebrate zoology, vertebrate zoology, field zoology, araneology, environmental science, and other field laboratory oriented courses.

This land being restored to the native habitat is a great opportunity for students to obtain field experience under natural conditions. Very little native habitat remains in north-central Texas. Once restored, students will be able to experience the environment as it was more than 100 years ago. Few universities have a natural laboratory within a short driving distance from campus.

"We are delighted that the Finnell brothers have made such a generous gift to Midwestern State University, and we are especially pleased that TxDOT and TPWD have agreed to assist MSU with this project," stated Dr. Norman Horner, dean of the College of Science and Mathematics.

5/14/04

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109833

WARRANTY DEED

Date: **April 1, 2004**

Grantor: **Charles Adkins Finnell; and Leslie B. Finnell, Jr.,(not joined by our spouses for the reason the property herein conveyed is our inherited and separate property)**

Grantor's Mailing Address (including county): **Charles Adkins Finnell**
Main Street - FM 368
Holliday, Archer County, Texas 76366

Leslie B. Finnell, Jr.
2704 Hamilton Boulevard
Wichita Falls, Wichita County, Texas 76308

Grantee: **Midwestern State University, an Institution of higher learning and an agency and political subdivision of the State of Texas.**

Grantee's Mailing Address (including county): **3410 Taft Boulevard**
Wichita Falls, Wichita County, Texas 76308

Consideration:

Ten Dollars ($10.00) and other good and valuable consideration, and as a gift in furtherance of the Educational Purposes of the University.

Property (including any improvements):

See attached Exhibits "A" and "B"

Reservations from and Exceptions to Conveyance and Warranty:

Grantors reserve unto themselves, their successors and assigns, all rights in and to oil, gas, and other mineral interests in and to the property herein conveyed, it being the express intent of this deed and conveyance to convey the surface estate only; provided however, there shall be no placement of equipment, pumpjacks, tank batteries, flow lines, or drilling or testing for mineral reserves upon the property herein conveyed without the express written approval of the surface owner.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold unto Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

A CERTIFIED COPY
ATTEST: 7-7 ,2004
KARREN WINTER, COUNTY CLERK
ARCHER COUNTY, TEXAS
BY: Jennifer McClain DEPUTY

When the context requires, singular nouns and pronouns include the plural.

CHARLES ADKINS FINNELL

LESLIE B. FINNELL, JR.

(Acknowledgment)

THE STATE OF TEXAS
COUNTY OF ARCHER

This instrument was acknowledged before me on the 1st day of April, 2004, by Charles Adkins Finnell

HEATHER D. REDDING
Notary Public, State of Texas
My Commission Expires Oct. 22, 2006

Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

(Acknowledgment)

THE STATE OF TEXAS
COUNTY OF WICHITA

This instrument was acknowledged before me on the 1st day of April, 2004, by Leslie B. Finnell, Jr.

HEATHER D. REDDING
Notary Public, State of Texas
My Commission Expires Oct. 22, 2006

Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

AFTER RECORDING RETURN TO:

LAW OFFICES OF ROGER LEE
1401 HOLLIDAY ST., STE. 204
WICHITA FALLS, TEXAS 76301

PREPARED IN THE LAW OFFICE OF:

ROGER LEE
1401 HOLLIDAY ST., STE. 204
WICHITA FALLS, TEXAS 76301

A CERTIFIED COPY

ATTEST: 7-7 ,20 04
KARREN WINTER, COUNTY CLERK
ARCHER COUNTY, TEXAS
BY: DEPUTY

FIELD NOTES

FIELD NOTES OF 24.87 ACRES OF LAND OUT OF BLOCK 8 AND 9, DENTON COUNTY COUNTY SCHOOL LAND, LEAGUE NO. 3, ARCHER COUNTY, TEXAS AND DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point being the Southeast corner of Block 5, Denton County School Land, League No. 3, Archer County, Texas and also being the Southwest corner of a tract of land conveyed to T.D. Whitehead, et al, as recorded in Volume 532, Page 922, Official Public Records of Archer County, Volume 269, Page 54, and Volume 238, Page 28, Archer County Deed Records, said point also being the Southwest corner of Block 4, Denton County School Land, League No. 3, Archer County, Texas, said point also being in the North line of a tract of land conveyed to Leslie B. Finnell, Volume 262, Page 362, Archer County Deed Records, Archer County, Texas, said point also being the Northeast corner of Block 8, Denton County School Land, League No. 3, Archer County, Texas and the Northwest corner of Block 9, Denton County School Land, League No. 3, Archer County, Texas;

THENCE S 89°23' E along the South line of said Block 4 to a point in the Northwest corner of a dedicated 8.989 acre tract, owned by the City of Holliday, Block 9, Denton County School Land, League No. 3, Archer County, Texas, a distance of 237.00 feet; (Ref: City of Holliday, Volume 262, Page 352, Archer County, Texas)

THENCE along the West, South and East property line of said 8.989 acre tract as follows: S 01°44' E a distance of 205.9 feet; S 32°04' W a distance of 374.5 feet; S 00°20' W a distance of 158.7 feet; S 81°48' E a distance of 377.4 feet; N 37°49' E a distance of 756.5 feet; North a distance of 71.2 feet;

THENCE N 89°17'37" W–930.02 feet to a point being the most Northeasterly point in this tract;

THENCE S 16°32'35" W, a distance of 534.92 feet to a point;

THENCE N 89°44'01" W, a distance of 601.89 feet to a point;

THENCE N 39°00'01" W, a distance of 197.56 feet to a point;

THENCE West a distance of, 177.41 feet to a point;

THENCE S 39°00'01" W, a distance of 189.25 feet to a point;

THENCE S 01°11'55" W, a distance of 230.00 feet to a point;

THENCE West, a distance of 607.91 feet to a point;

THENCE South, a distance of 357.68 feet to a point;

THENCE S 44°17'11" E–84.62 feet to a point, said point also being the most Southeasterly point in this tract;

THENCE West–51.17 feet passing a point at a distance of 96.21 feet to the West line of Block 9, Denton County School Land, League No. 3, and the Eastline of Block 8, Denton County School Land, League No. 3, Archer County, Texas and continuing in all a distance of 208.72 feet to the most Southwesterly point in this tract;

THENCE N 44°17'11" E, a distance of 85.40 feet to a point;

THENCE North, a distance of 449.34 feet to a point;

THENCE N 25°19'09" W, a distance of 97.29 feet to a point;

THENCE N 87°27'42" W, a distance of 191.72 feet to a point;

THENCE N 25°19'09" W, a distance of 182.13 feet to a point;

THENCE East, a distance of 132.75 feet to a point;

THENCE N 25°19'09" W–518.62 feet to the most Northwesterly point in this tract;

THENCE S 89°50'02" E along the aforementioned Block 5, a distance of 736.47 feet to the PLACE OF BEGINNING and containing 24.87 acres of land.

A CERTIFIED COPY

ATTEST: 7-7 ,20 04
KARREN WINTER, COUNTY CLERK
ARCHER COUNTY, TEXAS
BY: Jennifer McRae DEPUTY

EXHIBIT "A"

FIELD NOTES

FIELD NOTES OF THE CENTERLINE OF A 20 FOOT WIDE NATURE WALK PATHWAY, PROVIDING CONNECTION ACROSS LAND CONVEYED TO LESLIE B. FINNELL, BY DEED RECORDED IN VOLUME 262, PAGE 362 AND VOLUME 372, PAGE 1, ARCHER COUNTY DEED RECORDS, AS DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the North line of the 5.494 acre tract conveyed to Communities Foundation of Texas, Inc., said point bears N 32°47'34" E a distance of 251.50 feet;

THENCE N 89°41'55" E a distance of 391.81 feet to a point;

THENCE S 89°22'02" E a distance of 373.27 feet to a point;

THENCE S 87°23'54" E a distance of 232.37 feet for the end of this easement.

THE STATE OF TEXAS

County of Archer

I, Karren Winter, Clerk County Court in and for said county do hereby certify that the foregoing instrument was filed for record in my office the 7 day of July 2004, at 8:40 O'clock A M., and duly recorded on that date, in Official Public Records of said county, Volume 644 on page 560.

WITNESS my hand and seal of County Court at my office in Archer City, Texas the day and year last above written.

By Jennifer McClain, Deputy

Karren Winter, Clerk County Court
Archer County, Texas

A TRUE AND CORRECT COPY, I HEREBY CERTIFY
this 7 day of July A.D. 20 04
Vol. 644 Page 560 Karren Winter, County Clerk
Archer County, Texas
Official Public Records By Jennifer McClain Deputy

Charles A. Finnell
PO Box 468
Holliday, TX 76366

PRIORITY MAIL
TRACKED INSURED

UNITED STATES POSTAL SERVICE

Label 107R, May 2014

For Domestic and International Use

RECEIVED
MAY 17 2021
TCEQ MAIL CENTER
BC

1005

78711

U.S. POSTAGE PAID
PM 1-Day
AUSTIN, TX
78703
MAY 15, 21
AMOUNT
$10.65
R2305P150284-14

MAY 15 2021
USPS AUSTIN, TX 78763

RETURN RECEIPT REQUESTED

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL

7020 0640 0000 5945 8796

Texas Commission on Environmental Quality
Office of Chief Clerk
MC-105
PO Box 13087
Austin, TX 78711-3087

RETURN RECEIPT REQUESTED

PRIORITY MAIL
TRACKED INSURED

UNITED STATES POSTAL SERVICE

For Domestic and International Use

Label 107R, May 2014

Photos - Do Not Bend / Photos – Ne pas plier