

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 21, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Requests for Development
Corporation of Tarrant County; Permit No. WQ0015954001; Docket No. 2022-
0271-MWD

Dear Ms. Gharis:

Enclosed for filing is the "Executive Director's Response to Hearing Requests." If you have any questions or comments, please call me at (512) 239-5692.

Sincerely,

A handwritten signature in cursive script that reads "Celia Castro".

Celia Castro
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

DOCKET NUMBER 2022-0271-MWD

| | | |
|-------------------------|---|-----------------------|
| APPLICATION BY | § | BEFORE THE |
| DEVELOPMENT CORPORATION | § | TEXAS COMMISSION |
| FOR TARRANT COUNTY | § | ON |
| PERMIT NO. WQ0015954001 | § | ENVIRONMENTAL QUALITY |

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application by the Development Corporation for Tarrant County (Applicants) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015954001. Timely hearing requests were received from the Trinity River Authority (TRA).

Attached for Commission consideration are two satellite maps of the facility area (Attachment A) and the Landowners' Map and List (Attachment B).

II. Facility Description

The Applicant applied for a new TPDES permit that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 57,000 gallons per day (gpd). The wastewater treatment facility will be located approximately 1,201 feet east northeast of the intersection of Bennett Lawson Road and Willow Creek Circle in Tarrant County, Texas. The proposed wastewater treatment facility will serve the Willow Branch subdivision. The facility has not been constructed.

The treated effluent will be discharged to Willow Branch, then to Walnut Creek, then to Joe Pool Lake in Segment No. 0838 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for Willow Branch, and high aquatic life use for Walnut Creek. The designated uses for Segment No. 0838 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. The 2020 Clean Water Act § 303(d) list, the State's inventory of impaired and threatened waters, does not currently list Segment No. 0838.

III. Procedural Background

The TCEQ received this application on December 30, 2020, and declared it administratively complete on February 10, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on March 8, 2021, in the *Star-Telegram* and in Spanish on February 23, 2021, in the *La Prensa Comunidad*. ED staff completed the technical review of the application on June 2, 2021 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in English on August 13, 2021, in the *Star-Telegram* and in Spanish on August 24, 2021, in the *La Prensa Comunidad*. The comment period for this application closed on September 23, 2021. This application was filed on or after September 1, 2015; therefore, it is subject to the procedural requirements adopted pursuant to House Bill

801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature (2015), which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests for applications filed on or after September 1, 2015. Because the application in this case was filed on September 11, 2018, it is subject to the House Bill 801 and Senate Bill 709 requirements. The Commission implemented both bills by adopting procedural rules in title 30, chapters 39, 50, and 55 of the Texas Administrative Code. The evaluation process for hearing requests is as follows:

A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment, and, for applications filed on or after September 1, 2015, must be based only on the requestor's timely comments.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the name, time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes they will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person/“Affected Person” Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected” person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
 - 2) distance restrictions or other limitations imposed by law on the affected interest;
 - 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - 5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - 6) whether the requestor timely submitted comments on the application which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- d) In making affected person determinations, the commission may also consider, to the extent consistent with case law:
- 1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - 2) the analysis and opinions of the executive director; and
 - 3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues referred to SOAH for a hearing.” 30 TAC § 50.115(b). “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
 - 2) was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted; and
 - 3) is relevant and material to the decision on the application.
- 30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

1. Whether the Requesters Complied With 30 TAC §§ 55.201(c) and (d)

TRA submitted timely written hearing requests, provided contact information, and requested a contested case hearing. TRA raised disputed issues presented by them during the public comment period that have not been withdrawn.

The ED recommends the Commission find that the hearing request of TRA substantially complies with the requirements of 30 TAC § 55.201(c) and (d).

2. Whether the Requesters Met the Requirements of an Affected Person

TRA

TRA is not adjacent to the proposed facility or the Applicant's property (Attachment A) and is not listed on the landowner's map and list of affected persons (Attachment B). TRA claims to have a certificate of adjudication that gives them rights in and to water stored in Joe Pool Lake. TRA states that it furnishes municipal water supply from Joe Pool Lake to several customers and claims that the proposed discharge could negatively affect water quality in Joe Pool Lake. However, the ED's satellite maps show that although Joe Pool Lake is at the end of the discharge route, the lake is situated many miles from the proposed discharge point. TRA states in its hearing request that the distance is 13.1 stream miles.

As to regionalization, if there is a wastewater treatment or collection system within three miles of the plant, the Applicant is required to provide information to the ED as to whether such facility has sufficient existing capacity to accept the additional volume of wastewater proposed in the application. The Applicant is required to provide copies of all correspondence with the owners of the existing facilities within three miles of the proposed facility regarding connection to their system. Two wastewater treatment plants were found to be within the three-mile radius and per agency guidelines, Applicant sent out certified requests for service on 10/1/20. An immediate response was received from the Marline treatment facility who declined to provide service. No response was ever received from the City of Mansfield. If there are no treatment plants that are available and willing to accept the proposed flow, the Applicant need go no farther in the agency's requirements to seek out an alternative treatment plant or collection system.

Although TRA raised water quality and regionalization issues, it does not assert any affected landownership and admits that there is a significant distance from the discharge point to Joe Pool Lake. Also, the amount of the proposed discharge, 57,000 gpd, is small. Based on the distance from the proposed facility and discharge point to the lake and the small amount of the proposed discharge, TRA has not demonstrated that a reasonable relationship exists between the proposed facility and the interests

asserted in the hearing request. In addition, TRA has not shown how the regionalization issue qualifies it as an affected person, given that TRA did not show that there is an existing treatment plant or collection service that is able and willing to accept the proposed flow as required by TCEQ policy. Considering the factors listed in 30 TAC § 55.203 that are used to determine affected person status, the ED concludes that TRA does not qualify as an affected person.

The ED recommends the Commission find that TRA is not an affected person under the requirements of 30 TAC § 55.203.

B. Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing

The ED analyzed issues raised in the hearing request it has recommended denying in accordance with the regulatory criteria and provided the following recommendations regarding whether the issues can be referred to SOAH if the Commission grants the hearing request. The issues discussed were raised during the public comment period, are considered disputed, and addressed in the RTC. None of the issues were withdrawn. Under SB 709, only those issues raised in a timely comment by a requester whose request is granted may be referred. The ED has listed the relevant RTC responses and the requestors who raised each issue.

1. Whether the draft permit will be protective of water quality in the receiving waters? (Response #1; TRA)

This issue involves a question of fact, was raised during the public comment period, and was not withdrawn. If it can be shown the draft permit would adversely affect water quality in the receiving waters, that information would be relevant and material to a decision on the application. The proposed draft permit was developed through a series of rigorous technical reviews in accordance with the TSWQS to be protective of water quality. The effluent limitations and conditions in the draft permit comply with the TSWQS. The 2020 Clean Water Act § 303(d) list, the State's inventory of impaired and threatened waters, does not list Segment No. 0838 where Joe Pool Lake is located. The ED has determined that the proposed draft permit for the facility meets the requirements of the TSWQS and is protective of water quality in the receiving waters including Joe Pool Lake.

The ED recommends referring this issue to SOAH if the Commission grants TRA's hearing request.

2. Whether the draft permit complies with agency policy regarding regionalization? (Response #2; TRA)

This issue involves a mixed question of fact and law, was raised during the public comment period, and was not withdrawn. If it can be shown the draft permit would not follow agency policy as to regionalization, that information would be relevant and material to a decision on the application. The ED typically evaluates regionalization inquiries when an Applicant files an application for a new permit or an application for a major amendment to an existing permit to increase flow. In these instances, if there is a wastewater treatment or collection system within three miles of the plant, the Applicant is required to provide information to the ED as to whether

such facility has sufficient existing capacity to accept the additional volume of wastewater proposed in the application. The Applicant is required to provide copies of all correspondence with the owners of the existing facilities within three miles of the proposed facility regarding connection to their system. On October 1, 2020, the Applicant mailed certified letters requesting service to two public sewer supply systems within the 3-mile radius. On October 5, 2020, Marline Treatment, LLC responded that they did not wish to provide service to the Applicant. According to the Applicant, there has been no response from the City of Mansfield in over a year. Therefore, on Page 22 of the Domestic Technical Report 1.1, the Applicant answered that there was no domestic wastewater treatment facility or collection system located within three (3) miles of the proposed facility that currently had the capacity to accept or was willing to accept the proposed volume of wastewater. Accordingly, the ED concludes that the Applicant's draft permit in this case is consistent with the Commission's regionalization policy.

The ED recommends referring this issue to SOAH if the Commission grants TRA's hearing request.

VI. Duration of the Contested Case Hearing

The ED recommends a duration of 180 days for a contested case hearing on this matter, should there be one, between preliminary hearing and the presentation of a proposal for decision to the Commission.

VII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

1. The ED recommends that the Commission deny the hearing request.
2. If the Commission finds that TRA is an affected person and grants its hearing request, the ED recommends that Issue Nos. 1-2 be referred to SOAH for a proceeding with a duration of 180 days.
3. If the Commission finds that TRA is an affected person and grants its hearing request, the ED recommends that the Commission order concurrent mediation between them and the Applicant.

Respectfully submitted,
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Toby Baker
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division

By 

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350
P.O. Box 13087, MC-173
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(512) 239-5692
(512) 239-0606 (Fax)
REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 21, 2022, the “Executive Director’s Response to Hearing Requests” for the Development Corporation of Tarrant County, TPDES Permit No. WQ0015954001, was filed with the TCEQ’s Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, electronic transmission, inter- agency mail, or by deposit in the U.S. Mail.



Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350

MAILING LIST
THE DEVELOPMENT CORPORATION OF TARRANT COUNTY
DOCKET NO. 2022-0271-MWD; PERMIT NO. WQ0015954001

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via electronic mail:

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via electronic mail:

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FOR THE CHIEF CLERK:

<https://www14.tceq.texas.gov/epic/eFiling/>
Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S):

John Kevin Ward, General Manager
Trinity River Authority of Texas
P.O. Box 60
Arlington, Texas 76004

John Kevin Ward, General Manager
Trinity River Authority of Texas
5300 South Collins Street
Arlington, Texas 76018

Attachment A

The Development Corporation of Tarrant County

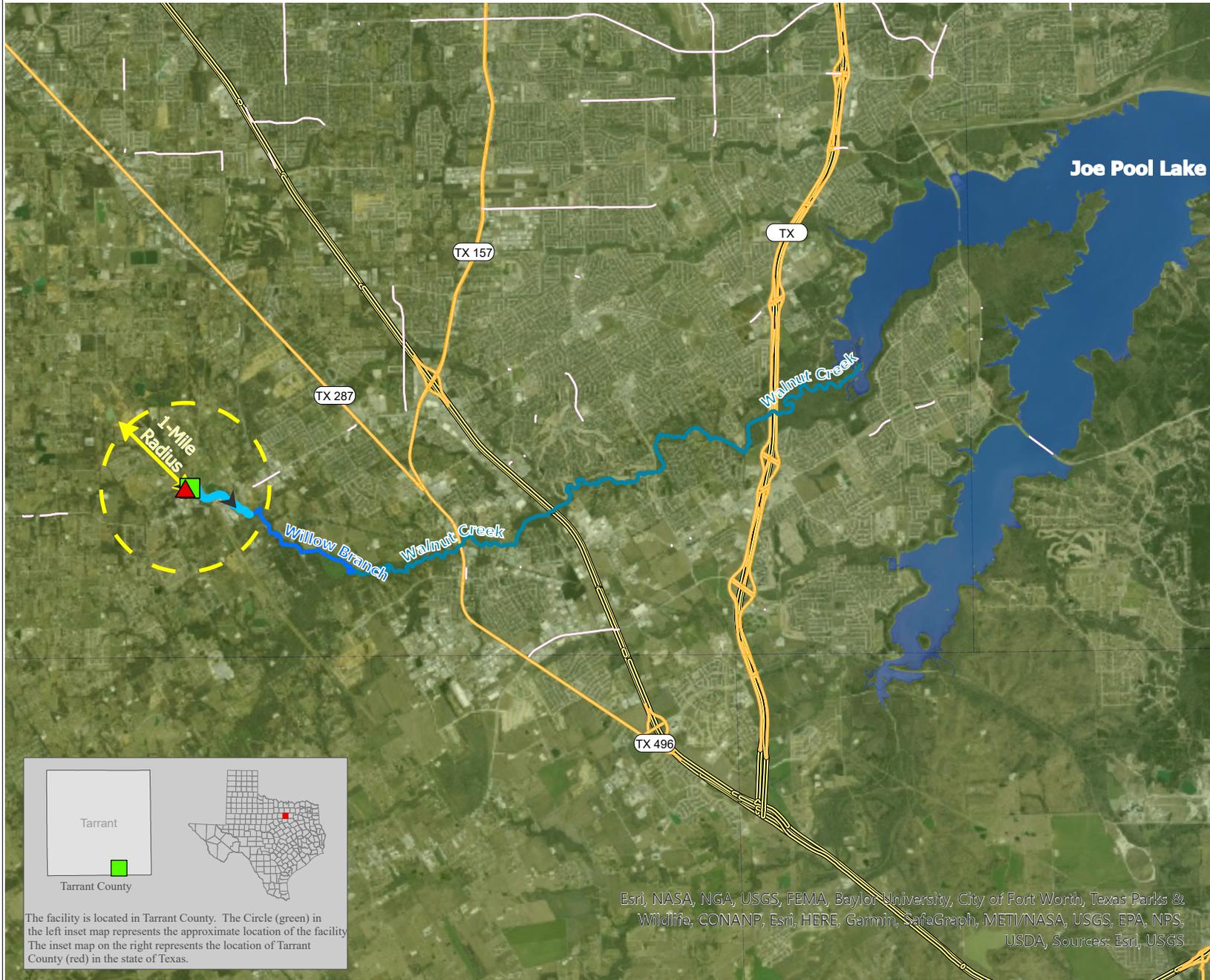
WQ0015954001

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/2/2022
CRF 0063318
Cartographer: ABanda



- Facility Location
- Outfall Location
- 1-Mile Radius
- 1-Mile Dishcharge Route
- Willow Branch
- Walnut Creek

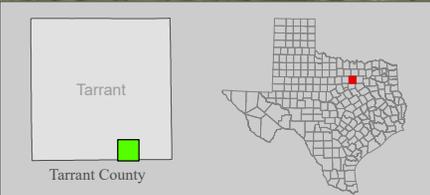
Requestor:

**Trinity River Authority (TRA)
claims water rights to Joe Pool
Lake.**



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

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



The facility is located in Tarrant County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Tarrant County (red) in the state of Texas.

Esri, NASA, NGA, USGS, FEMA, Baylor University, City of Fort Worth, Texas Parks & Wildlife, CONANP, Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, USDA, Sources: Esri, USGS

The Development Corporation of Tarrant County

WQ0015954001

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



Protecting Texas by
Reducing and
Preventing Pollution

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/2/2022
CRF 0063318
Cartographer: ABanda



- Facility Location
- Outfall Location
- 1-Mile Radius
- 1-Mile Discharge Route
- Willow Branch
- Walnut Creek

Requestor:

Trinity River Authority (TRA)
claims water rights to Joe Pool
Lake.



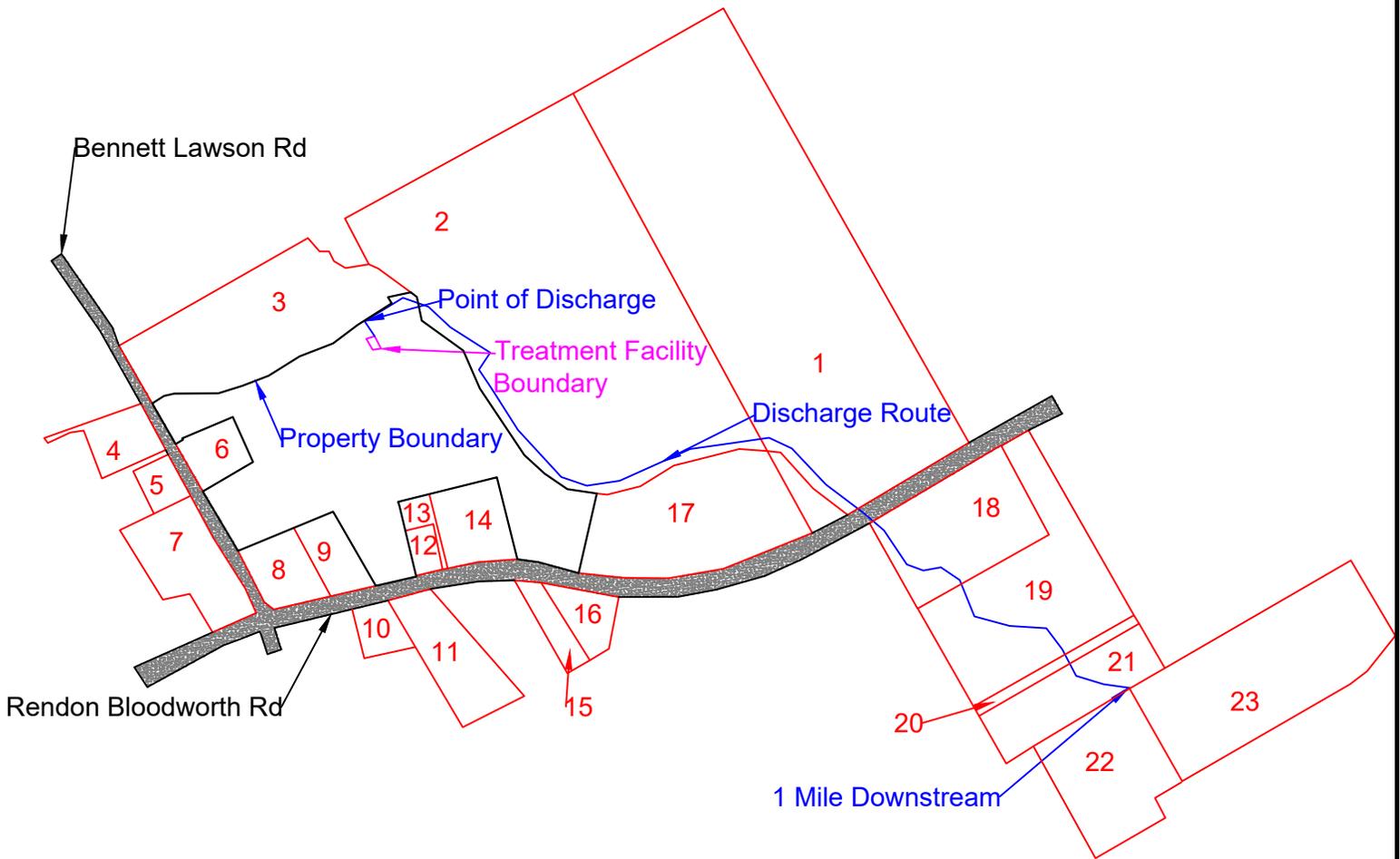
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

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Esri, NASA, NGA, USGS, FEMA, Sources: Esri, USGS, Baylor University, City of Fort Worth, Texas Parks & Wildlife, CONANP, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

The facility is located in Tarrant County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Tarrant County (red) in the state of Texas.

Attachment B



Date
December 2, 2020

Drawn By
CE

Scale
1" : 900'

consulting **environmental** engineers, inc.
 150 n. harbin drive - suite 408 | geophenville, tx 76401
 (254)968-8130 fax: (254)968-8134 email: ceengineers@ceeinc.org
 registered firm: #F-2323

Willow Branch WWTP
 Rendon Bloodworth Rd.
 Mansfield, Tarrant County, TX
 Affected Landowners Map

Sheet 003

Willow Branch Subdivision
Wastewater Permit Application
Affected Landowners Cross Reference
Exhibit IV

1. Creekwood Church
260 N Miller Rd
Mansfield, TX, 76063
2. Creekwood Church
260 N Miller Rd
Mansfield, TX, 76063
3. Fleming Kenneth E Fleming Brenda
PO Box 2107
Mansfield, TX, 76063
4. Klingman Carl P Klingman Kimberly R
100 Willow Creek Cir
Mansfield, TX, 76063
5. Doolin Jeff Doolin D'Anna
101 Willow Creek Cir
Mansfield, TX, 76063
6. Lam Ngoc Phuong
2217 Belton Dr
Arlington, TX, 76018
7. Singh Gurpreet Singh Jagit
1302 Liverpool Ln
Mansfield, TX, 76063
8. Anderson & Anderson LLC
202 N Court St
Florence, AL, 35630
9. Corcon Investments LLC
7109 Diamond Oaks Dr
Mansfield, TX, 76063
10. Hahn Robert
2921 S Cooper St. STE 209
Arlington, TX 76015
11. Adolf Brigitte
3807 Inverness Way
Augusta, GA, 30907

12. Grobe Linda
7615 Rendon Bloodworth Rd
Mansfield, TX, 76063
13. Grobe Linda
7615 Rendon Bloodworth Rd
Mansfield, TX, 76063
14. LMLL Texas Properties LLC
5107 E California PKWY Forest
Hill, TX, 76119
15. Sterling Joseph A
7826 Rendon Bloodworth Rd
Mansfield, TX, 76063
16. Sterling Joseph A
7826 Rendon Bloodworth Rd
Mansfield, TX, 76063
17. RDS Opportunity Fund LLC
5940 Eden Rd
Haltom City, TX, 76117
18. Rafah Real Estate LLC Series J
PO Box 181811
Arlington, TX, 76096
19. Rafah Real Estate LLC Series J
PO Box 181811
Arlington, TX, 76096
20. Oncor Electric Delivery Co LLC
PO Box 139100
Dallas, TX, 75313
21. Rafah Real Estate LLC Series J
PO Box 181811
Arlington, TX, 76096
22. Meek James C
PO Box 171292
Arlington, TX 76003
23. Meek James C
PO Box 171292
Arlington, TX 76003