

**COMMENTS BY CHUCK MARKHAM TO SUNSET COMMISSION ON
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DECEMBER 15, 2010**

Good morning. My name is Chuck Markham, and I am here as an individual property owner and as the President of the Bosque River Coalition to discuss why TCEQ enforcement of environmental laws is so important for me and my neighbors.

I have lived in the Bosque River watershed for over many years. I want to clarify at the outset that my remarks today should not be viewed as anti-ag or anti-dairy. I have friends and neighbors in the industry and have been a rancher myself. But being sympathetic to agricultural operations does not mean that I can ignore or be blind to impacts that such operations have on my property and my community.

Our river and streams in the watershed have had significant pollution problems for many years—to the point that TCEQ listed the river as impaired and developed a Total Maximum Daily Load and Implementation Plan to address the problem. This Legislature has also passed legislation mandating stricter permits for dairy operations in our watershed. But as we have found, the TMDL development and the stricter permits don't mean much without timely and aggressive enforcement to stop the illegal pollution of our watershed.

Quite simply, I and my neighbors want the pollution to stop—so much so that we formed the Bosque River Coalition several years ago to help focus our efforts. And it is a shame that we individually can't rely on the TCEQ to enforce the rules and the permits to the extent that we have to invest our personal time and effort on this. We want a TCEQ enforcement policy that works to stop the pollution in our watershed so there is no more need for our Coalition.

In my own case, I have a large dairy operation upstream of my property that drains to Little Duffau Creek—a creek that runs through my place. Many years ago, I and my family were able to play and wade in the creek. That changed when the dairy moved in upstream. After many years of pollution that basically killed the creek, I had to spend my own time and money contesting the dairy's permit renewal through a contested case hearing at TCEQ. Thank goodness I had the resources to take on that fight. I don't know what people do who don't. And because the findings in that case were so egregious, the Commission denied the permit renewal. And the lesson here is important—the pollution didn't stop because TCEQ took aggressive enforcement action to protect the creek—the pollution

stopped because I had to intervene and spend my own time and money on the permit renewal.

Fast forward several years and the creek is just now showing signs of recovery—at the same time a new property owner applied to the TCEQ for a significant expansion of operations on the same site. Again I, and this time with the help of the BRC, requested a hearing on the permit because I wanted to make sure that every protection that could possibly be included in that permit be in there. We were actually able to work out some very good provisions with the new owner and reach a settlement.

As a downstream property owner who has been severely impacted by pollution in the past, I am putting my faith and the future of my property in TCEQ's ability to prevent violations and enforce against permit violators. I am troubled, though, as are my fellow members of the BRC, by the seemingly inadequate fines and penalties assessed against violators in our watershed. Of the violations referred by the local TCEQ Stephenville office to enforcement in the past few years, penalties generally run between several hundred dollars to several thousand dollars, with hardly any exceeding \$7,000. And these are often multi-day violations discharging the very pollutant for which our watershed is listed as impaired. Only one fine has exceeded \$20,000, and even that penalty was less than it should have been because the TCEQ failed to fully consider previous enforcement actions. These minimal fines have no deterrent effect. It is clearly easier for a permittee to wait to be caught and pay the fine, rather than make the operational changes necessary to come into compliance. The BRC has filed many comments on the adequacy of the proposed fines and penalties with the TCEQ, but these comments have had no effect.

It isn't enough that an enforcement action is brought, it is not enough that a fine is paid—there must be something significant about that enforcement action to deter ongoing pollution in an impaired watershed. I and my neighbors, fellow members of the BRC, just want the pollution to stop, and we want to trust that the enforcement program implemented by the TCEQ in our watershed will make that happen.