

**COMMENTS BY DWAIN MAYFIELD TO SUNSET COMMISSION ON  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,  
DECEMBER 15, 2010**

Good morning. My name is Dwain Mayfield. My family owns and operates our family ranch near Stephenville, Texas. The ranch lies along Greens Creek in the Bosque River watershed. I am also a member of the Bosque River Coalition and want to echo the concerns raised by Mr. Markham in his remarks. I want to expand on them by providing this committee with more specifics on what I perceive as ineffective TCEQ enforcement efforts and to highlight the difficulties I have encountered in trying to stop the pollution impacting our property from a large CAFO, known as DeVries Dairy.

One portion of our ranch is directly across a county road from the CAFO. There we have seen runoff from the dairy with ecoli counts in the hundreds of thousands of parts per million entering our property. From there it flows through Greens Creek into our lake that is about ½ mile downstream of the Devries Dairy. Our lake is identified on maps as Kiker Lake, and it spans about 15 acres. We used the lake for recreation, irrigation and for watering our livestock. Today, however, our use is limited to irrigating our fields and watering our cattle. Even those uses, however, have been severely impacted by the contamination from the CAFO. We have to limit our young stock's access to the lake for health concerns, and our use of the lake for irrigation is limited by the large amounts algae, which is a result of the pollutants discharge from the CAFO and which severely clogs our irrigation system.

Our aesthetic enjoyment of our property, some of which has been in our family since 1875, has also been negatively affected due to the visual impact of the scum and algae caused by the CAFO's pollutants. I have included two photographs taken at the lake on June 29, 2010, which show the visual and physical impact of the algae growth due to the excess nutrients in the water. You can imagine the impediments to using this lake for recreational purposes or trying to irrigate from it.

Because of the long history of the impaired situation in our lake, Greens Creek and the Bosque River, I have lost confidence in the ability of TCEQ to manage the quality of the waters in this watershed. I have filed numerous complaints with the local TCEQ field office in Stephenville, after having personally witnessed the obvious discharge of waste from the dairy onto our property. The TCEQ's local office has been extremely helpful. They have consistently responded in a timely

manner. They document the discharge, determine its cause, issue a notice of violation to the dairy, and recommend an enforcement action. However, after the violations are referred up the organizational chain to Austin for the formal enforcement action, the system becomes soft and ineffective.

As evidence of the lack of effectiveness of TCEQ, I would point out that in the past four years, DeVries has signed five separate agreed orders with the TCEQ (the most recent of which was signed this month) in five separate enforcement actions related to approximately thirteen different violations. These violations run the gamut of the various illegal and irresponsible ways that a CAFO can dispose of animal waste – *i.e.*, by keeping cows confined in pens with no vegetation or runoff control structures, by over-applying waste to fields that are already saturated with nutrients, by apply waste where it has no authority to do so, by failing to maintain sufficient storage capacity to retain the wastewater generated by its operations, and even by dumping solid waste directly into a creek. Some of the violations spanned multiple days and even months.

In each case, DeVries was allowed to sign an agreed order, pay a penalty, and continue to operate. In one instance, it took two years from the time the violations were referred from the Stephenville office to TCEQ headquarters until the Agreed Order was finally approved. The penalties assessed by TCEQ under the agreed orders have ranged from \$1,860 to \$28,755.00 (this latter figure the highest penalty assessed to date for violations in the watershed). In most cases, however, TCEQ abated a portion of the penalty, or allowed the penalty to be paid in small monthly installment over multiple years, or both.

TCEQ has not stopped the ongoing pollution caused by DeVries' operations. Instead, it has essentially adopted a revolving door enforcement scheme – after an enforcement action is filed, DeVries comes in, signs an agreed order, pays a fine, and then leaves and continues to operate his facility in an unlawful manner. In fact, new violations have been referred for enforcement action against DeVries while a proposed Agreed Order was pending approval in the previous action.

In its response to comments by the Bosque River Coalition recent dairy permit applications for the Bosque watershed, the TCEQ has made much of the fact that its permits are “no discharge permits,” and that, therefore, it does not expect much impact to downstream property owners from these operations. I am here this morning to tell you that a “no discharge permit” is not worth the paper it is written on if TCEQ allows the permittee to operate illegally as long as he signs agreed orders and pays fines, so that TCEQ can issue press releases regarding the amount

of fines it collects. By its soft enforcement process and apparent willing participation in a cat and mouse game, TCEQ is allowing this repeat violator to continue to operate in an irresponsible and illegal manner and to continue to pollute my family's lake and the watershed in general. The fact remains, our lake is seriously impaired. It has been for some time and will continue to be so until the TCEQ steps up the enforcement when violations occur.

I have spent my own time and considerable resources to hire consultants to sample and document the oxygen depletion, and excessive levels of bacteria and phosphorus in the lake. Science confirmed what we already knew from observation: the water quality is severely impacted, is not safe for contact and the nutrients are excessive.

It is inexplicable to me that in such a clear cut case of violations and real world impacts, more effort is not made to protect not only my property but the impaired Bosque River watershed, which has been studied, tested, evaluated and reported on ad naseum but remains impaired.

I expect better from my state and from the agency charged with protecting our natural resources.

No new laws are needed and no new regulatory agency is required. All that is needed is for this agency to follow and enforce its own rules.