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Texas Commission on Environmental Quality  
Office of the Chief Clerk  
MC 105  
PO Box 13087  
Austin, TX 78711  
Via: Hand Delivery

Reference: TCEQ Application for an Air Quality Standard Permit Number 152092L001 for a Portable Sand/Rock Crusher and Reconsideration of the application for a Permit by Rule Permit Number 110404407 for a Sand and Gravel Operation upon the Nash Ranch located near the intersection of Hwy 71 and RR 2233 Llano County.

Gentlemen and Ladies,

I have been retained to represent *pro bono* **Miriam F. Redwine, Winnie Tate-Morgan, Randy and Kathy Binder, John Wiley, Erwin Johnson, Lewanne Ray, Jesus Vazquez, Richard and Mary Miller, and Tracy Black** and their families, landowners of a portion of Sandy Creek and within proximity to the Nash Ranch where a portable crusher and sand and gravel operation are proposed. Their properties are located on the map which is attached as Exhibit 1. **Each and every one of them objects to the granting of the permits as requested in the subject applications.** All of the persons I represent except for Ms. Black own tracks of land that cross Sandy Creek. None of these landowners have granted Collier Materials or Steve Nash a lease to remove sand from the portion of Sandy Creek that they each own or permission to enter on their property. None will in the future. They believe that the operation of this sand and gravel mine and portable crusher will irreversibly damage the environment in which they live. Some such as Mrs. Tate-Morgan have lived on Sandy Creek for over 40 years. These landowners will bear most, if not all, of the burden of this project.

## **Request for a Public Meeting and Public Hearing**

My clients request a public meeting and public hearing to assure that the TCEQ is fully familiar with the scope of the proposed project and the positions of those that will have to endure its affects. The two applications referenced above should be considered together since the project depends upon both to become operational. A public meeting and a hearing on both applications will

assure that the representations and promises made by Collier Materials are bona fide, on the record, and will be enforceable. Public officials with the City of Sunrise Beach Village and Llano County have passed resolutions requesting such a meeting and subsequent hearing.

We encourage a representative of TCEQ to come to the location of the proposed mine and walk Sandy Creek. A full understanding of the issues can only be gained by an on site visit. My clients will provide parking and easy access to the creek. If a 4 wheel ATV is necessary it will be provided as well. In an earlier public hearing on the proposed rock crusher at the intersection of Hwy 71 and Hwy 281, the TCEQ official in charge started the public meeting by saying that he had just learned that there was a hospital within a mile of the site. He explained that he had relied on a 2 year old Google Earth photo. It goes without saying that this was not taken positively by those attending the meeting. Please do a thorough site inspection. Google Earth Pro does not suffice, in our opinion.

Unfortunately, Collier Materials has embarked on a campaign to convince neighboring landowners that they will conduct the proposed operation much differently than what has been shown on the subject applications. For example on page 30 of the Portable Crusher Application it states that there will be a total capital costs of \$149,000. However, Collier Materials lobbied the Sandy Harbor Property Owner's Association with a promise of a water treatment plant valued at \$1.6 Million. Similar assertions have appeared in local media where the applicant has stated that there is no opposition and that he has a verbal approval of LCRA and TPWD. These assertions are not true. Furthermore, the reconstruction of Hwy 71 and enlargement of the Hwy 71 bridge over Sandy Creek may cost as much as \$2,000,000. As you may know under the Texas Statute of Frauds any agreement touching land must be in writing to be enforced. Requiring a public meeting and hearing will allow the TCEQ to question the applicant and require them to put in the written application whatever representations they have made so that they can be enforced at anytime should the permit be granted.

It is our understanding that a permit has been issued under application 110404407. My clients request that this application be reconsidered. Two governmental entities have passed resolutions opposing this application and such resolutions were timely filed. Although they were electronically filed timely apparently, the reviewer failed to receive them or take them into consideration. In light of the above and the considerable opposition, we request that this application together with application number 152092L001 be set for a public meeting and hearing.

### **The Application should be rejected because it misidentifies the location of Sandy Creek**

Page 14 of the application (152092L001) contains a plot plan identifying the Sandy Creek as the Llano River. It is not. Apart from misinforming the public as to the correct location of the portable crusher one must question the knowledge and care that Westward Environmental put into this application if they cannot properly identify the waterway that would be impacted by this project. Furthermore, the signatory, Kevin Collier stated that all facts contained in the application were true and correct and they were, without question, not. This is not a mere simple mistake. It goes to the integrity of the entire application. This application should be rejected out of hand and the application resubmitted. The members of the public that viewed this application and determined that it did not impact their land because it was the Llano River that was being discussed and not Sandy Creek were not given proper notice so that their voices could be heard.

Additionally, the zip code for the Nash Ranch is incorrect. The application lists it as 78657 when it is 78643. Furthermore it states that it is 30 minute drive from Sunrise Beach Village when it is no more than 10 minutes. Those reviewing this application and concluding, mistakenly, that it does not apply to them have been silenced by this inexcusable lack of care on the part of the applicant. The application must be rejected and one with proper identification resubmitted.

### **The 2004 Environmental Assessment**

LCRA commissioned an environmental assessment of Sandy Creek and the Nash Ranch to determine if it would be responsible to put power poles across the Nash Ranch or to locate them along the right of way of Ranch Road 2233 (Exhibit 2.) Mr. Nash successfully argued to the Public Utility Commission that the environmental sensitivity of his property and Sandy Creek dictated that the power line be placed along RR 2233 where it was eventually built. Now he seeks to lease his property for a sand mine that would be many times more destructive to the environment than a set of power poles.

The assessment indicates that there may be as many as 14 threatened, protected or endangered species in the Sandy Creek area (see table 2-1.) Three residents Kathy and Randy Binder and Kelly Brecht have confirmed the presence of a bald eagle nest on the Binder property on the bank of Sandy Creek. This applicant has done nothing to study the possible affects on endangered, protected, or threatened species.

This assessment is in no way complete and needs substantial updating but it is far and away a more comprehensive analysis than that proffered by the applicant.

### **Application fails to account for the air pollution caused by large trucks hauling material from the proposed plant.**

The applicant seeks a permit for production of up to 1,000,000 tons of material per year operating 24 hours a day 7 days a week and 52 weeks a year. A standard 18 wheel gravel truck can haul 24 tons of material. The permit sought would allow the transport of 41,000 truck loads of material from the location. A conservative estimate of entry, loading and exit time per vehicle is 20 minutes. That would allow a minimum of 8,300 hours of diesel engine operation from the location yearly. At no point in its application does Collier Materials advise the public of this pollution or the health affects of same. It appears from the application that sand and gravel for the crusher will have to be excavated from the creek and then trucked from Sandy Creek than the location where the crusher will operate. At no time are the affects of the pollution from these excavators or transport vehicles considered. They are not mobile sources of pollution since they are permanent equipment essential to the operation. There is no way TCEQ can do a realistic evaluation of the air pollution that could be caused by this operation without taking into consideration the exhaust gases of this excavation equipment or trucks.

### **Ground Water Access**

My clients generally use “sand points” to access water from Sandy Creek. These are iron pipe rods with striations and net filters that are driven about 5’ into the sand. The upper end is

connected to a water pump and the water is pumped up the bluff to a cistern where it is stored until it is used. No filtration or treatment is necessary. This provides clean drinking water for many of these families. If the permit is granted and mining begins in Sandy Creek these families will lose their fresh water source. Nothing in the applications address the affect on groundwater.

Drilled water wells in the area are stressed. Neighbors, the Gibbons and Angely families, have experienced inadequate well production and recently a new neighbor on Co. Rd. 316 directly across from the Tate-Morgan property drilled two dry holes and have no water. Nowhere in this application is there any indication that the applicant studied the affect on ground water resources.

**Danger to the travelling public from entering and exiting large trucks and the air pollution from the rebuilding of 6,000 feet of Hwy 71 and the widening of the Sandy Creek bridge.**

As shown on the application, the plant entry on to a two lane portion of Hwy 71 is 1,100 feet east of the headwall of the bridge over Sandy Creek. (See Exhibit 3.) Collier Materials or the Nash Ranch will have to secure a permit for a plant road from Texas Department of Transportation before they can operate the plant road the allows heavy trucks to enter Hwy 71. A third turn lane or acceleration lane for the loaded 18 wheel trucks exiting the proposed plant road will need to be constructed to accommodate slowing, turning and accelerating heavy trucks. For the trucks exiting the plant road and proceeding eastbound that lane will need to be constructed to the top of the adjacent hill or about 8,000 feet. For those trucks exiting the plant road and proceeding westbound there is insufficient distance before the bridge headwall to accelerate to highway speeds and enter the main lane. Therefore, it is believed that Texas Department of Transportation will require Collier Materials to widen the bridge at least 14 feet to accommodate the acceleration lane. That cost can be conservatively estimated to be between 1.5 and 2.0 million dollars. There is no indication that Collier Materials has the financial wherewithal to make the needed highway construction improvements for the safety of the travelling public.

Attached as Exhibit 4 is an engineering report by William B. Nalle P.E. confirming the need for a large expansion of Hwy 71 and a widening of the bridge over Sandy Creek. Mr. Nalle's resume is attached. He is a lifelong resident of Austin and owns a ranch on the north shore of Lake LBJ west of Sandy Creek.

Even if the bridge were widened and an additional lane added for over 8,000 feet the addition of thousands of heavy trucks to Hwy 71 at this location will result in numerous serious and perhaps fatal accidents. The intersection of Hwy 71 and FM 2147 is a perfect example of the problem. There have been several fatal accidents at this location. Hwy 71 is two lanes at this intersection as is FM 2147. There appears to be sufficient sight distance on Hwy 71 and the approach from FM 2147 is much wider than is standard. It is much wider than any plant road intersection will be from the Nash Ranch. Still there are an alarming number of accidents at this location. TxDOT has tried mightily to alleviate the hazard by installing flashing lights and "Highway Intersection Ahead" signs but there does not appear to be any lessening of accidents.

Texas Department of Public Safety personnel have rated Hwy 71 as the most dangerous roadway in their district. Accidents have occurred on Hwy 71 east of Hwy 281 where asphalt, gravel, and concrete plants discharge numerous heavy trucks onto the highway and these locations are four lanes wide not two.

Collier Materials has done nothing to assure the safety of drivers using Hwy 71. One would expect an engineering analysis of the truck movement however none has been done to date. A request is made that any TCEQ permitting consideration be suspended until such an engineering study is produced to those users of Hwy 71 most endangered by this operation.

When the roadway is widened and the bridge rebuilt there will be a substantial increase in particulate sand and dust from such construction. Nowhere in the applications is there any reference to the amount of pollution from such activities.

**Aerial Photographs indicate that the Nash Ranch owner has operated a sand and gravel operation without a permit.**

Aerial photographs that show the maintenance of a stock pile of manufactured sand or gravel material along with large haul truck that could be used to transport the material from the Nash Ranch. The Google Earth Pro aerial photographs Exhibit 5 are of the Nash Ranch by his large barn. The photos are dated. They show that in January 2015 there was no stockpile of sand and gravel. In January 2017 there is a large stockpile of sand and gravel and a large gravel haul truck parked nearby. It appears that Mr. Nash started stockpiling sand and gravel for his operation long before the application was filed. Note there are no sprinklers or other dust suppression systems in operation to contain the fly away dust. Neighbors report seeing bull dozers in the creek harvesting sand and large trucks moving it together with a conveyor and other large sand handling equipment. The application indicates that the proposed operation is new and it may not be so. Further investigation must be done by TCEQ to determine if its regulations have been followed in the past. Certainly someone that refuses in the past to abide by the requirements of the law cannot be expected to abide by them in the future. If this needs to be submitted as a formal complaint, please consider this letter to be such a formal complaint.

**The creditability of the applicant must be considered**

The creditability of the applicant must be considered in determining whether the representations made in the application are true and if the applicant has shown in the past that he is capable of adhering to the obligation to operate the plant consistent with the permit and Texas law. The application is signed by Kevin Collier, a twice-convicted felon. Exhibit 6 contains the public court records of Mr. Collier's two felony convictions one in Burnet County District Court (Cause No 9344 Aggravated Assault-Threaten with a Firearm and 9345 Possession of a Controlled Substance) and one in Federal District Court for the Northern District of Texas (Cause 3:04-mj-00104-BD-2 Possession with intent to distribute methamphetamine, a scheduled II controlled substance.) These records also confirm Mr. Collier's subsequent incarceration in Seagoville Federal prison for over 10 years. Both Federal and Texas Rules of Evidence allow introduction of a felony conviction to impeach the creditability of anyone giving evidence at a trial. Here, Mr. Collier as the applicant has provided evidence to support the application, placing his creditability in issue. Therefore, it is entirely proper for TCEQ or any other governmental agency, city or county officials, together with those involved in the process to know Mr. Collier's significant criminal history. Furthermore, Mr. Nash, when he appeared before the Llano County Commissioners on July 9th, stated that he wanted to be "entirely transparent."

My clients thank you for your attention to this matter. This is their home and request that this decision be considered as if the TCEQ official were the one so impacted. Should you have any questions please contact me at 512-658-7801 or by email.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry G. Black", written in a cursive style.

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LARRY G. BLACK