

Public Notice

Applicant: Daisy Farms, LLC and DF Holdings LLC

(Daisy Farms)

Permit Application No.: SWF-2011-00206

Date: October 24, 2014

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States.* The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

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JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States (WOUS) associated with the proposed Daisy Farms Development, located south of the City of Paris, Lamar County, Texas.

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LOCATION: The proposed project location is south of the City of Paris in Lamar County, Texas. The project site is located on the east and west sides of Highway 19 near the intersection of Highway 2036 and Highway 19. The proposed project would be located approximately at N 33.554341° latitude; W -95.572924° longitude within the Biardstown 7.5-minute USGS quadrangle map in the North Sulphur River USGS Hydrologic Unit 11140301.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

PROJECT DESCRIPTION: The applicant proposes to discharge 10,703 cubic yards of dredged and fill material into approximately 3.43 acres of WOUS (direct and permanent impacts) in conjunction with the proposed diversion structure on Auds Creek, Sump Pond, Sump Channel, Williams Pond, and Proposed Ponds 1 and 2. Adverse impacts to WOUS would total approximately 14.77 acres. Direct and permanent impacts to WOUS resulting from these proposed structures would subtotal 3.43 acres including 0.24-acre of forested wetland, 2.87 acres of impoundment (open water), 159 lf (0.04 acre) of perennial stream, 798 lf (0.13 acre) of intermittent stream, and 988 lf (0.15 acre) of ephemeral stream. The indirect and permanent impacts to WOUS would subtotal approximately 11.34 acres resulting from the inundation caused by these proposed structures including 6,669 linear feet (1.34 acres) of ephemeral stream, 2,657 linear feet (0.42 acre) of intermittent stream, 9.41 acres of open water, and 0.17 acre of non-forested wetland. The proposed indirect impact to 9.41 acres of open water would result from the proposed enlargement/deepening of existing on-channel ponds. The USACE currently does not have any information addressing potential adverse downstream effects.

I. INTRODUCTION: Daisy Farms is proposing to construct a diversion structure on Auds Creek, a Sump Pond to store water diverted from Auds Creek, a Sump Channel to convey water from the diversion structure to the Sump Pond, Williams Pond, Proposed Ponds 1 and 2, and Water Transfer Pipelines. The applicant's stated purpose for the project is to develop a reliable source of water for the expansion of the ongoing livestock operation at Daisy Farms with the goal of being a fully sustainable operation. The operation includes livestock maintenance (watering, barn flushing) and crop irrigation. The diversion structure on Auds Creek would allow a controlled diversion of water to the Sump Channel, releasing water down Auds Creek to maintain the ordinary high water mark. The amount diverted to the Sump Channel and the amount bypassed in Auds Creek can be changed by gate settings at the diversion structure. Water would be carried by gravity in the Sump Channel from the diversion structure to the Sump Pond. The Sump Channel would be approximately 60 feet in width, and the length of the Sump Channel from the diversion structure to the Sump Pond is approximately 1.58 miles.

The Sump Pond would impound water diverted from Auds Creek and runoff from its own watershed, with a maximum capacity of 1,592 acre-feet. The Sump Pond would have a surface area of 121 acres and a drainage area of 1.67 square miles. Material excavated to build the Sump Pond would be used to build the dam for Williams Pond. Water would be pumped from the Sump Pond at a rate of up to 40 cfs by a pump station on its perimeter. The pump station would be able to send water to Williams Pond for storage and eventual diversion and use. Water may also be diverted directly from the Sump Pond.

The Williams Pond dam would impound 4,102 acre-feet, with a surface area of 198 acres at conservation pool, 509 feet above mean sea level. There is an existing pond at this location, which currently impounds less than 200 acre-feet and was likely constructed as a domestic water and/or livestock impoundment. The dam would be an earthfill structure 8,700 feet long, with the top of dam at 514 feet above sea level and a maximum height of 72 feet. The embankment would have a 3.5:1 slope on the upstream side and a 4:1 slope downstream, with a 20 foot top width. Soil cement slope protection would be provided on the upstream side of the embankment. The dam would impound flows from its drainage area of 0.349 square miles, but most of the water impounded from the dam and used would be diverted from Auds Creek to the Sump Pond and pumped from the Sump Pond to Williams Pond. The spillway would consist of a concrete intake tower with overflow weirs at the top of conservation storage, 509.0 feet above mean sea level. The tower has two five-foot overflow weirs, with discharges being conveyed to a downstream impact basin via a 24-inch conduit.

Daisy Farms is also proposing to construct two new ponds for irrigation, livestock, and recreation use. The Proposed Pond 1 dam would impound 38 acre-feet, with a surface area of 6.8 acres at the top of conservation storage, 460 feet above sea level. The dam would be an earthfill structure 686 feet long, with the top of dam at 467 feet above sea level and a maximum height of nine feet. The embankment would have a 3.5:1 slope on the upstream side and a 4:1 slope downstream, with a 12 foot top width. Soil cement slope protection would be provided on the upstream side of the embankment. The dam would impound flows from its drainage area of 0.81 square miles.

The Proposed Pond 2 dam would impound 38 acre-feet, with a surface area of 6.0 acres at the top of conservation storage, 478 feet above sea level. The dam would be an earthfill structure 577 feet long, with the top of dam at 482 feet above sea level and a maximum height of 12 feet. The embankment would have a 3.5:1 slope on the upstream side and a 4:1 slope downstream, with a 12 foot top width. Soil cement slope protection would be provided on the upstream side of the embankment. The dam would impound flows from its drainage area of 0.68 square miles.

The proposed Water Transfer Pipelines consist of a series of underground pipelines which would deliver water from the Sump Pond to Williams Pond as well as deliver water to actively farmed fields on the Daisy Farms site for irrigation purposes. The pipelines would also deliver water bought from Lamar Power Partners LLC to Williams Pond for storage. The Water Transfer Pipelines would range from 10 to 36 inches in size. Approximately 15.42 miles of Water Transfer Pipelines would be installed on the Daisy Farms site.

II. EXISTING CONDITIONS: The project is located in a rural area which is primarily surrounded by agricultural land.

The general topography within the proposed project area is nearly level to gently sloping and ranges from approximately 450 to 500 feet above mean sea level. The proposed diversion structure, Sump Channel, Sump Pond, and a small portion of Williams Pond are located within the 100-year floodplain.

According to the Soil Survey of Lamar County eleven soil series are located within the proposed project area: Elbon silty clay loam (0 to 1 percent slopes, frequently flooded), Ferris clay (5 to 12 percent slopes, eroded), Heiden clay (2 to 5 percent slopes), Heiden-Ferris complex (3 to 5 percent slopes, Houston Black clay (1 to 3 percent slopes), Lamar clay loam (5 to 8 percent slopes), Stephen silty clay (1 to 3 percent slopes), Stephen-Eddy complex (2 to 5 percent slopes), Trinity clay (0 to 1 percent slopes, occasionally flooded), Trinity clay (0 to 1 percent slopes, frequently flooded), Wilson silty loam (0 to 2 percent slopes).

The project area contains one perennial stream (Auds Creek), two intermittent streams, nine ephemeral streams, two on-channel stock ponds, three non-forested wetlands, and one forested wetland. Auds Creek flows from the north to the south bisecting the property. The un-named tributaries of Auds Creek originate on both the east and west sides. The two on-channel stock ponds are located on un-named tributaries to Auds Creek on the west side. The four wetland features are located on the west side of Auds Creek. Vegetation within the identified non-forested wetland areas consists of sand spikerush (*Eleocharis montevidensis*), cocklebur (*Xanthium strumarium*), round-head rush (*Juncus validus*), and balloon vine (*Cardiospermum halicacabum*). Vegetation within the identified forested wetland consists of green ash (*Fraxinus pennsylvanica*), American elm (*Ulmus Americana*), and sugarberry (*Celtis laevigata*).

III. APPLICANTS ALTERNATIVES: The applicant has provided an alternatives analysis that includes five proposed alternatives.

Alternative 1 – No Action

The No Action alternative would have no impact on WOUS but would not meet the water needs of the Daisy Farms Project due to the insufficiency of existing water supplies (i.e. effluent, potable water, raw water purchase) to meet project water demands. If the water needs for irrigation and livestock production are not met, the dairy site cannot be self-sustaining.

Alternative 2 – Use of Groundwater

The use of groundwater was considered for irrigation and livestock production proposed on the dairy site. However, the total groundwater supply available for all of Lamar County is 5,405 acre-feet per year, which is much less than the 15,000 acre-feet per year dry-year irrigation needs for Daisy Farms. In addition, almost all of the available groundwater in Lamar County contains elevated levels of dissolved salts, making it unsuitable for long-term intensive irrigated agriculture planned for Daisy Farms. For these reasons, groundwater was not considered further as a source of supply for Daisy Farms.

Alternative 3 – Development of Surface Water Supply Reservoir on Auds Creek

Daisy Farms developed an estimate of the available yield, cost, and environmental impact of a reservoir on Auds Creek. When compared to the diversions from the creek to reservoirs on minor tributaries considered in an Engineering Report prepared by Freese & Nichols, Inc., a reservoir on Auds Creek would supply more water than the Auds Creek tributary reservoirs (Proposed Action) and would cost less than the Proposed Action on a unit cost basis. To develop comparable water supplies, a reservoir on Auds Creek would require more land, have a greater environmental impact and affect more wetlands, stream length, and bottomland hardwood forest than development of the Proposed Action.

This alternative was rejected because of concerns over environmental impacts (much greater than the Proposed Action) and the greater amount of land inundated. Due to the width of the Auds Creek floodplain, the reservoir would have been a wide, shallow water body with high evaporative losses and a large surface area. Auds Creek is a perennial stream bordered by a broad floodplain with scattered patches of bottomland hardwoods, forested wetlands, and emergent wetlands. Constructing the pond on Auds Creek would have inundated 559 acres of the Auds Creek floodplain and would have permanently impacted some of the higher quality habitat on the dairy property as well as inundating 49,162 linear feet of stream.

Alternative 4 – Construction of Proposed Ponds 1 and 2, Williams Pond, Sump Pond, Sump Channel, and Water Transfer Pipelines (Applicant's Proposed Action)

The Proposed Action alternative includes a diversion structure on Auds Creek, a Sump Pond to store water diverted from Auds Creek, a Sump Channel to convey water from the diversion structure to the Sump Pond, and Water Transfer Pipelines to convey water from Sump Pond to Williams Pond as well as deliver water to actively farmed fields on the Daisy Farms site for irrigation purposes. The details of the proposed project components are discussed in the Introduction of this public notice.

The proposed action alternative would result in less adverse impacts to WOUS and the environment and provide the necessary water required to meet the irrigation and livestock production demands of the Daisy Farms Dairy Site.

Alternative 5 – Proposed Action + Southeast Pond

Alternative 5 would consist of all of the components of Alternative 4 and Southeast Pond. Southeast Pond would be a large pond located near the southeast corner of the project area. Alternative 5 was rejected as the supply provided by Southeast Pond is not needed for the near term, but this could change if future production dictates the need.

In order to demonstrate a comparison of the alternatives a desktop analysis was conducted using a combination of the WOUS delineation data, NWI data, NHD data, FEMA data, and aerial photo interpretation and is provided in Table 1, Comparison of Alternatives.

Table 1. Comparison of Alternatives

Alternative	Stream Impacts (Linear	Wetland Impacts (Acres)	Open Water Impacts	Bottomland Hardwood Forest Impacts (Acres)	Floodplain Impacts (Acres)
	Feet)		(Acres)		
Alternative 1, No Action	N/A	N/A	N/A	N/A	N/A
Alternative 2, Use of	N/A	N/A	N/A	N/A	N/A
Groundwater					
Alternative 3,	*49,162	*37.1	*16.7	*217	*559
Development of Surface					
Water Supply Reservoir					
on Auds Creek					
Alternative 4, Proposed	11,271	0.41	12.3	*12	*140
Action					
Alternative 5, Proposed	*24,204	*0.41	*16.65	*24	*168
Action + Southeast Pond					

^{*}Estimated using a combination of WOUS delineation data, NWI data, NHD data, FEMA data, and aerial photo interpretation.

IV. COMPENSATORY MITIGATION: The applicant proposes to compensate for the loss of wetlands with the purchase of mitigation credits from a currently serviceable mitigation bank. Currently the applicant proposes to purchase one credit from the Bunker Sands Wetland Mitigation Bank calculated according to the approved Mitigation Banking Instrument as follows: 0.17 acre emergent wetland x 1.2 credits/acre x 1.5 (secondary service area multiplier) = 0.306 rounded to 0.3 credit; plus 0.24 acre forested wetland x 1.8 credits/acre x 1.5 (secondary service area multiplier) = 0.648 rounded to 0.7 credit.

The proposed ponds would create approximately 332 acres of open waters to compensate for the loss of open waters (on-channel stock ponds) within the proposed pond footprints. There are no mitigation banks with stream credits available whose service area includes the Daisy Farms site. Therefore, the applicant proposes to compensate for stream impacts through the restoration of

existing, degraded stream channels on-site in the Auds Creek watershed. The applicant proposes to restore 10,290 linear feet of ephemeral streams and 6,200 linear feet of intermittent streams utilizing natural stream channel design methods with regional reference reaches as design targets. The proposed stream restoration would provide both in-channel ecological lift and riparian buffer ecological lift. A minimum of 50% of the total ecological lift would be achieved through in-channel work as per the Fort Worth Stream Mitigation Method (PN CESWF-13-MIT-1). Riparian buffers would be restored through plantings of native bottomland hardwood tree species in order to provide connectivity with the Auds Creek riparian corridor and reestablishment of riparian woodlands adjacent to the restored stream reaches. The applicants mitigation plan also includes measures for a maintenance plan, USACE approved conservation easements, a 5 year monitoring plan, a long-term management plan, and financial assurances.

V. FIGURES:

- A. Figure 1: Vicinity Map
- B. Figures 2-10: Topographic Project Mapbook
- C. Figures 11-19: Aerial Project Mapbook
- D. Figures 20-23: Project Alternatives
- E. Figure 24: Mitigation Areas Map

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

STATE WATER QUALITY CERTIFICATION: This project would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any species may occur in the project area. The proposed project would be located in Lamar County where the Interior least tern (*Sterna antillarum*) and American Burying beetle (*Nicrophorus americanus*) are known to occur or may occur as migrants. The Interior least tern and American Burying beetle are endangered species. Two presence-absence surveys for the American Burying beetle were conducted and no species were captured. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: A pedestrian survey of the project area was conducted by professional archeologists. One site was recorded as being ineligible for listing in the National Register of Historic Places and no other sites were found.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to

the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before November 24, 2014, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to; Regulatory Division, CESWF-DE-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to Mr. Darvin Messer at (817) 886-1744. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER FORT WORTH DISTRICT CORPS OF ENGINEERS















































