

R U I Z

JULIUS RUIZ
HIDALGO COUNTY JUDGE

N O T I C E

NOTICE is hereby given in accordance with Article 6252-17, Sections 2E, 2G, and 3A, as amended, that a SPECIAL MEETING of the Commissioners' Court will be held on Wednesday, March 21, 9:30 A.M. in the Commissioners' Courtroom of the Courthouse, Edinburg, Hidalgo County, Texas, at which time the following business will be transacted:

1. Consideration of Hidalgo County Drainage District #1 Browning-Ferris, Inc. Permit

DATED on this the 15th day of March, 1990

P.O. BOX 1356
EDINBURG, TEXAS 78840
512 383-2751

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THE STATE OF TEXAS :
COUNTY OF HIDALGO :

BE IT REMEMBERED that on the 21ST day of MARCH, 1990, after due notice having been given, there was begun and holden, a SPECIAL MEETING of the Commissioners' Court in the Commissioners' Courtroom of the Hidalgo County Courthouse in the City of Edinburg, Hidalgo County, Texas with the following members of said Court present and participating:

Hon. J. Edgar Ruiz
County Judge

Hon. Ramiro Cavazos
County Commissioner, Precinct #1

Hon. Lalo Arcaute
County Commissioner, Precinct #2

Hon. Norberto Salinas
County Commissioner, Precinct #3

Hon. Leonard Camarillo
County Commissioner, Precinct #4

WHEREUPON, the following proceedings

were had, to-wit:

-----000-----

JUDGE RUIZ

I hereby call this meeting to order. This Court is now in session. Today's date March 21, 5 minutes till 10:00. We are here to consider, consideration of Hidalgo County Drainage District 1 request for permit by Brow., Browning Ferris Incorporated for a Drainage District permit. Ladies and gentlemen and Commissioners first of all let me make a, a few comments. Obviously as I have just mentioned that BFI has requested a drainage permit to our drainage system. I want to make a couple of things clear so that we understand what is the scope of the hearing and this meeting. First of all obviously BFI has gone to the State of Texas to, requested a permit for a landfill in the general vicinity of the Donna area., area. They have received this permit from the health department. Secondly they have also addressed Donna Irrigation District for discharge to that direct permit for drainage discharge. Donna irrigation district has also approved the discharge. So we are here under authority for a drainage permit. Our, our concerns in terms of, of our, our authority under these laws given by the State of Texas is really the amount of discharge that has to be regu., regulated by this Commissioners' Court and also the quality of discharge that is going into as far as drainage is concerned. The quality of discharge is a concern obviously because we know for a fact that the Donna Irrigation District ditch also connects to the Engleman District ditch which apparently the Engleman District at, at some points in time during the year they use this water for crop irrigation. So that is sort of the scope of, of authority at this point. I'm going to ask that anyone who is going to speak either for or against the permit hold their discussion in terms of drainage both in the amount of drainage of discharge and secondly in the quality of discharge. Our legal council and our engineer have actually been reviewing this drainage request for quite a bit of time now. The latter part of last year is when the request from the BFI came, came in. So since that time we have looked at all rules and regulations applying to this potential, for this request and this po., potential approval or denial ----- authority of this Commissioners' Court. What I'd like to do and I'd, I'd like to keep this meeting obviously to a minimum. We, I am going to have first of all Mr. Jim Darling and our engineer make their recommendation in terms of their finding. Secondly I've, I have had a request by Mr. Glen Jarvis to, to speak and he has told me that he, he has a few experts to, to discuss on record on this discharge and some other people and, and thirdly and lastly I will give the opportunity to BFI to either ask questions or rebuttle any of the comments that have been made either by Glen Jarvis and his group and our attorney and engineer. I will put a limit, a time limit to both pro and con discussion to no more than 15 minutes and I will be strict on that issue. No more than 15 minutes. So while I presume that Mr. Darling and, and our engineer make a presentation to Commissioners' Court I would suggest that, that both parties group thoughts and, and group their people so that we can, we can have a, a good discussion within that 15 minute, minute period. I will first call on Mr. Jim Darling our, our legal council for this drainage

district issue.

JIM DARLING

Thank you Judge. The recommendation after conferring with the engineer is that the permit, the drainage district permit be granted, be granted under the following particulars. The first is that indemnification agreement that is standard for the County be executed by both the BFI subsidiary they supply- ing for the permit and the parent BFI company as was done with the Donna Irrigation District. The second is that a violation of the Texas Department of Health permit relating to contaminable water or other violations which may affect the County drainage system as it relates to pollutants be also considered grounds of action on the, on the drainage district's permit. The third is that the, as part of the permit application that the requirements for the engineers testing parameters that you have be met ----- the road ----- being part of the Donna Irrigation District system be replaced with a re- inforced concrete and that's actually paragraph 3 of a November 1st letter from Meldon and Hunt. The rest of the paragraphs in that letter are really not subject matter of this hearing but are handled by the right of way or, and or other applicable County road and bridge people. The fourth provision is that the permit be subject to any additional changes which are across the board changes to all other permit holders, drainage district permit holders and also be subject to any new rules and regulations relating to landfill operations or similiar operations as will be required under the pending NPDES, National Pollution Discharge Elimination System regulations being promulgated by the Environmental Protection Agency for non point spe., non point diverters of water. That is right now the regulating all sewage treatment plants pretty soon they're going to regu- late all drainage diversion points too and if we have to come up with new regulations to meet federal requirements. As a drainge district they would part of the and subject to those requirements as would all landfill operators, but based on those criteria along with what's already been approved by the engineer concerning the quantity of discharge we would make a recommendation that the permit be granted.

JUDGE RUIZ

Okay. Are there any questions on the 5 points that Mr. Jim Darling, we do have our engineer present here. Let me, let me summarize; indemnification by both BFI subsidiary company and their parent company, any violation of the Texas Department of Health permit would be a violation that would be encompassed to the drainage district issue, the testing paramiters, they comply with the testing paramiters provided by our County engineer that the permit, drainage permit does not carry a grandfather clause, that any changes that are applied by Department of Health and or any new regulations that are set by either State or Federal Government should be adhered to. Any violations of those would also be a violation of drainage district permit and also obviously the quantity of the discharge to that would have to be adhered to. I, I think that has been already discussed and approved. Are there any questions by any Commissioner on these 5 points? The recommendation obviously is to approve the

permit based on these 5 requirements.

COM. SALINAS These 5 requirements are also going to be specified to all the farmers and anybody that uses any other drain ditch throughout the County?

JIM DARLING The, my understanding is that testing parameters will be made applicable to any permit, existing permit holder that is operating a drainage, a, a landfill site at this point.

COM. SALINAS So this is going to be actually just for landfill sites?

JIM DARLING Right.

COM. SALINAS How about the pesticides from the farmer, farm lands?

JIM DARLING You have to ask the County engineer on that.

COM. ARCAUTE Aren't those already regulated?

COM. CAMARILLO Yes they are.

COM. ARCAUTE The use of pesticides.

JIM DARLING Yes. The use, the use and type of pesticides is regulated as, as it relates to us we're not regulating them, but the Department of Agriculture does regulate.

JUGE RUIZ Now Jim all these regulations or, or stipulations that we've made to the permit are, are under authority as far as your, your research as, as.....

JIM DARLING Under both the statute and your code of engineer permit which puts, places certain restrictions on the County Drainage District it's my opinion that they would be.....

COM. SALINAS No, this, this waters come out of this landfill and go into the Donna Irrigation ditch?

JIM DARLING Yes Sir.

COM. SALINAS Has Donna Irrigation ditch issued a permit to BFI?

JIM DARLING Yes Sir. Yes, it's my understanding that it has.

COM. SALINAS The Donna Irrigation District has issued a permit and has not fought this, this, this battle. Donna Irrigation District has passed the buck to us?

JIM DARLING Well I don't know if I'd say pass the buck. They, they

COM. SALINAS Well I mean I think we all need to be very, very....

JIM DARLING ...they settled the lawsuit.....

COM. SALINAS ...clear here where everybody stands. I mean if, if those people went ahead and issued the permit for them to use their, their irrigation district where these people are living at. I think these people are entitled to know that their own folks that represent Donna Irrigation went ahead and issued

them a permit. I, I just, I mean....

JIM DARLING

But the reason -----is, is unusual is normally we permit, the district permits, for instance, the City or the Irrigation District relating to their system into County wide system and so that's why when you see some of the landfill sites are not permitted directly because their depositing into and they've got a permit with say irrigation district and so they don't come to the County. This is unusual in that either BFI, and I'm not sure, has volutarily come before the commission or that was part of their agreement with Donna that they also get drainage district approval.

COM. SALINAS

We, we were never contacted.....

JIM DARLINGE

So that's why this is a little unusual.

COM. SALINAS

....by anybody that they were going to be issuing and permit by the Health Department. We do not regulate landfills. We have nothing to do with landfills, nothing to do with landfills. Now irri., irrigation, Donna Irrigation District has, has permission from us to use our drain ditch. Now we don't control what they put into their ditch. I mean they do their own maintenance, maintenance and operations on their own district, they have their own tax levy, they have, they have their own governmental entity within that district. I mean and they have issued a permit for BFI to dump the drainage into that, into that ditch. Is that correct?

JIM DARLING

That's correct.

COM. SALINAS

I have not been ----- by anybody. That is what is happening. Now this is a, a matter I think that has to be dealt with the, with the, with the health department. They have issued a permit since when?

JIM DARLING

I don't know. I'm sure BF....

RHANDY WHITTINGTON

1987.

COM. SALINAS

1987.

AUDIENCE

(INAUDIBLE)

COM. SALINAS

Well but they have a permit.

JIM DARLING

They, they have a permit. They have the ability to operate it right now not withstanding the, the appeal. They go forward with operation and if they lose on appeal then they hvae gone ----- at their -----, but they have the right to operate, my understanding is.....

COM. SALINAS

Let me ask my, our engineer here. Do you all have a, do you all have an agreement with the irrigation districts on the amount CFS that are going to be dumped into their canal, into our ditches?

FRED KURTH

Currently the procedure for discharging permits begins with an application to the ----- irrigation district and that was done on, on the -----, on the drainage districts form and

which I have a copy of and, and they did give approval on that August 20, 1987 for 32.5 cfs.

COM. SALINAS

We gave it to Donna Irrigation?

FRED KURTH

Donna Irrigation District signed this permit which then, was then brought to the drainage district for their approval.

COM. SALINAS

For thier approval.

FRED KURTH

And that's what we're reviewing....

COM. SALINAS

So we gave, we gave approval to Donna Irrigation? Don't, do we have an agreement with.....

FRED KURTH

Donna Irrigation District gave approval to BFI to discharge into their, their drain ditch which flows east to the Donna drain with flow north to our south main drain.

COM. SALINAS

Okay.

FRED KURTH

And, and the procedure for the permit process is that then this comes to the drainage district for our review and approval.

COM. SALINAS

And being that it was recommended by Donna Irrigation and approved by them we went ahead and issued a permit.

FRED KURTH

We have not issued, the drainage district has not issued the permit.

COM. SALINAS

We haven't?

FRED KURTH

That's what we're reviewing today.

COM. SALINAS

Okay.

JUDGE RUIZ

Any other question by the Commissioners?

COM. CAMARILLO

Yes, Judge I realize that the normal procedures have been taken place and in spite of the fact that legal council has recommended that we grant this permit I, just in my right mind, I cannot ignore the presence of the audience here and I believe that they have a concern. I have a concern also as a member of the Hidalgo County District, or Drainage District #1. I have a resolution in my files filed by the Engleman Garden Irrigation District where they state that they use in times of need they use the discharge of water from the Donna Irrigation District for their irrigation needs and as a member of this board I feel that I cannot in my right mind be able to concur with the recommendations of legal council and for that reason I, I strongly state at this time that I will abstain from voting on this issue. I cannot ignore the presence of the audience because of the fact that their users of water of North Alamo Water Supply Corporation which is an entity that's got a holding pond, a 30 acre holding pond less than a 1,000 feet away from this facility.

JUDGE RUIZ

Thank you Commissioner.

AUDEINCE

(APPLAUSE)

(03-21-90)

JUDGE RUIZ

You will be refrain from any other discussion Commissioner after this.

COM. CAMARILLO

Thank you sir.

JUDGE RUIZ

Any other questions or comments from the Commissioners to Mr. Jim Darling.

COM. CAVAZOS

Since I'm the County Commissioner representing all these people, the majority of these people and I feel that they are here because they don't want that permit and I'm going to go ahead and make a motion to deny this permit.

AUDIENCE

(APPLAUSE)

JUDGE RUIZ

Commissioner at this point your motion is not in order.

COM. ARCAUTE

Point of order, yes sir.

JUDGE RUIZ

We do have a, a, a process that we have to go to in terms discussions by other people who have, have requested the audience of the Commissioners' Court. So I will not accept your motion. Any other questions from Mr. Jim Darling or our engineer?

COM. ARCAUTE

When it was mentioned Judge that the, by our engineer, as far as the permitting as it relates to, to water districts the point has been brought up about the pesticides and also introduced by the Commissioner as far as Engleman Gardens using the discharge from Donna Irrigation District. I, well I don't question Englemans Judgement there if one farmer in the Donna irrigation District is discharging a certain waters with a certain pesticide and it's going to be used to irrigate other lands in Engleman I, I just thought I'd mentioned that the use of the discharge waters by the Donna Irrigation District by the Engleman Garden Water District leaves some questions there for, why they use that water. I just wanted to throw that in.

COM. SALINAS

Well our, our drain ditch is not used to, is not for the purpose of irrigating, you know, it's, it's, it's not an irrigation district that we have. It's a, it's a drainage district. We drain waters into the Laguna Madre and we as far as I've been here since 1981 and we have not issued a permit for anybody to use our waters for irrigation. It has never been done and we have nev., we have not the authority to do that either. We're not, we're, we're, we're, we don't control the water rights and I think some people here know that. We don't have any control of who can use the water. That water cannot be used. We cannot permit anybody to use that water because it, it might be contaminated. This is why we're here. Whether Engleman Garden uses it to irrigate well the shouldn't do it, because they have never gotten a permit from us and if something happens to their farmland and if something happens to their, to their, to their constituency it's, they need to give us indemnification clause also. Because we here represent the whole County and we got, I know it's a tough decision here today, but we got to do what's right. We got to do what's right for everybody in the County and I tell you one thing I

don't, I don't want a landfill in your area but....

AUDIENCE

(APPLAUSE)

COM. SALINAS

...but you also have to, to do exactly what we were elected to do, to do what is right. I don't ever want to see a landfill anywhere close to a neighborhood. I have one in, in Alton and I'm fighting that one, but I got, I got to do what's right. I got to do what our legal council is, is telling us to do and what is right for everybody in this County not -----, not what's right for a little group or not what's right for a little community. I think we were elected to do what is the best for every tax payer in this County and, and I feel bad that they are doing this to you all but we will have to do, I will have to do what I have to do here for the safety and the care of our tax payers as a whole.

COM. CAMARILLO

Can I comment on the pesticide issue Judge?

JUDGE RUIZ

Commissioner I, I would rather you would not Commissioner. I think your abstainion is, is well taken because of your, your dual authority in terms of North Alamo and I will restrict you from, from, from participating.

All right, if there are no other question from our, for our engineer and from our legal attorney I will call on Mr. Glen Jarvis. Mr. Jarvis it is now 10:15 at 10:16 at 10:31 I will have to stop you.

GLEN JARVIS

Thank you Judge and Commissioners. My name is Glen Jarvis and with me is J.W. Dyers and we're attorney's for North Alamo Water Supply Corporation, Jimmy Steineger, Doctor ----- and, and many others who are opposed to this drainage permit and certainly Commissioner Salinas we're, we're only here asking you to do what is right and we say to, what is right is to deny this permit. We have serious concerns about the permit. Number one let's straighten out, as I understand the, the procedure in the drainage permit area this, this board sitting as the, the board of directors of Hidalgo County grant permits for diversions into your drainage system. The custom has been for the irrigation districts to, to grant their approval or acceptance or indicate their approval to the County with respect to discharges into the ditches within their boundaries. So when the Donna District indicated their approval they had several conditions attached to it. They only granted their approval with respect to the discharge in their ditches because they had, they deemed that they did not have the jurisdiction that this Court has County wide. It can not control the effect on the quality of the water downstream and outside their boundaries and they looked to this body to, to, to protect it's citizens and, and the, and the quality of the water down stream outside the boundaries of the Donna District, speci., specifically on Engleman Gardens. I think their here and they've put on testimony before that they have water rights from the, from the Texas Water Commission, they have a permit. The State issues water rights because the water in the, the water rights are, are, are to waters in that ditch are public waters and they have rights issued by the State and they're asking that this Court sit-

ting as a drainage district to protect the quality of their water. Not only for irrigation but that water is also mixed for, for domestic and drinking purposes and they have serious concern about that and they have a vested property right to, to that water to take that water and, and they have a right for this Court to protect that right and the quality of the water. North Alamo Water Supply as you know ha., has, is very much opposed to the permit. They have a, their main reservoir <-? to the water plant only less than, around 1,000 feet from it. We're concerned about the pollution down stream. We're, we're concerned about ground water pollution as well as -----, about debree getting into the ditch and going downstream and, and, and this district also has the responsibility to protect the public health and safety. Now we're not going to concern ourselves with the many attributes of the landfill and Commissioner Salinas and the rest of you know about landfills. They stink, it's already happened at Alton and it, it attracts birds that destroy the citrus crops and other crops. We're not going to take up those items, although all of you know about those kinds of things. What we're concened about here is the quality of the water and the drainage and some assurance that, that, that's not going to be ----- Sev., we are several others who, who want to speak to the Court and we can, we can work within the 15 minute framework. I think first Mr. Jimmy Steineger has a few pictures that he wants to explain and some of the conditions in that area.

JIMMY STEINEGER

In the first place this is North Alamo Water Supply right here, this is the landfill here. It comes clear over to here which is 135 acres. We have a 16 inch water line running on the easement up in the landfill, 16 inch water line and this 16 inch water line runs into the Alamo, ----- Alamo, Pharr, San Juan, Alamo. So we're not just talking about in our area. We're talking about the whole County 2., it goes clear over to 281. So it's a ----- concern I think in, in Lalo's area and all the Commissioners area. With the water running off they talk about the pesticide, the pesticide regulations if we have a bad pesticide we can take it off of the market tomorrow. The government will take it off, but how do you take this land off of this place here? You can't. Once you put a landfill in it's there. BFI says there., there's a need for a landfill. ----- there good for the next 10 or 15 years. ----- a little of it they've been dumping up there and I can't see why they can't keep it down ----- there. I'm on the Texas Citrus Exchange Boa., Citrus in Mission and I noticed when we were going over our budget the other day we had \$3,400.00 budgeted to BFI. We don't mind paying the expense. Let them haul it out there and, and not bother the poor people.

AUDIENCE

(APPLAUSE)

GLEN JARVIS

And, and, and Commissioners you must keep in mind when looking at these pictures that we're not talking about a hole where they're going to put garbage. We're talking about building a hill that's over 40 feet high in, in this, in this same area and water is going to be running off of that hill,

what's it going to look like, but water is going to be running off of that hill and into this drainage district and on to these surrounding neighbors and that's a real concern. At, at this time we have some others who want to make statements about some of the technical things. J. W. do you want to introduce them?

J.W. DYER

Commissioners I'm J.W. Dyer and we have two experts here today that I'd like to have an opportunity to speak to you. They have examined the application criteria for the permit and have reached certain conclusions with respect to the type of runoff that you can expect from this site and the problems associated with it. In addition to that they can talk to you a little bit about the relationship between the ground water and your drain ditch and the expectations you might have with the impact of this landfill. First I'd like to start with Doctor Hoverson who will speak to you about the proposed, the impact and proposed cover on this landfill and the rainfall associated with it and, and what, in his estimation, is going to, is going to happen in this area. Doctor Hoverson will kind of give you a little bit of a background as to his expertise and it is extensive in this area.

COM. ARCAUTE

Judge before you go any further, do we have a representative from the State Health Department here?

DR. RICHARD HOVERSON

My name is Richard Hoverson. I've lived in Cameron County in the rural area in Western Cameron County for 60 years and I'm familiar with our natural environment and farming environment. I have a PHD from Texas A&M University in plant physiology and I've worked for the extension service and Texas A&M for about 20 years here at Weslaco.

AUDIENCE

We can't hear you.

COM. ARCAUTE

That's not a P.A. system, that's just for recording...

AUDIENCE

Turn that thing up.

DR. RICHARD HOVERSON

It won't, it won't work.

COM. SALINAS

No it's just to record it.

JUDGE RUIZ

No it's, it's, it doesn't have....

COM. CAMARILLO

You need to speak a little louder.

JUDGE RUIZ

....it's not a speaker. It's really just a, a mic.

DR. RICHARD HOVERSON

The reason I'm here and I came voluntarily is because I do live in a rural area and I use the ground water and we've used it for 60 years since we've lived here and we're concerned about the quality of that water. My chief concern about the landfill is that I don't believe that BFI can do what they say they can do. They intend to cover this 44 foot mound of garbage with an 18 inch layer of compacted clay to prevent the penetration of water into this and the formation of ----- on the inside of the garbage dump. On top of that they're going to put 6 inches of top soil and my expertise in grass. I know grass probably better than any man in this room and maybe in the

State. This is the way I make my living. I'm self employed and I'm a private consultant and I've worked ranchers and farmers in their pasture management and so forth. Establishment of grass is on of my, my areas of expertise and these people intend to cover the garbage and pack the clay and then put the 6 inches of top soil on, on top and see grass on this, the top of it is 4% slope which is very mild slope, the sides are 25% slope which is indeed quite steep and their going to be doing this over a period of, as I understand it 17 years. It will not be done at optimum times except by chance in which if they finish filling this particular section and covering it during April or May it might be an ideal time or say the latter part of September when the normal rains occur because they don't intend to irrigate at this moment. What they're going to do is put on hydro mulch which is a system of mixing fibers with seed and fertilizer and put it on wet, it sticks to the surface and if you have moisture underneath at that moment you might get germination of the seed. If it dries out then you probably lost more than 1/2 of your seed in the first few days and then when the rains come it's going to move stuff downhill and the first foot won't move much because that, only that, that 6 inch cap of soil is only going to hold about an inch and a quarter of, of water. If it comes a 2 inch rain it will absorb the inch and quarter and the rest of it runs off and with it goes the top soil into your drainage ditch. How much there's no telling. You can not the erosion and I have personally inspected on the slopes along the highway, on the IBWC borders that go up and down, well the gentleman here has pictures of this erosion that I'm trying to describe but I suggest that you look at it. It, they seeded this and they tried to get grass to grow on it. It didn't work and -----, this is deep soil, this is not soil that's got 6 inches on top and the rest of it underneath the impermeable. This is, this is a deep profile. The problem with it is it's hard to get grass established on a slope and even, almost impossible to get it on there when it's only 6 inches deep. Even if you are successful in establishing this grass on this slope then the first 7 day period of dry period of dry weather this grass will be stressed and it will begin to die because it's run out of moisture. In the normal situation grass will absorb moisture from 6 or 7 or 8 or 9 feet into the ground because it's an open profile that can store the moisture. On this thing they're saying that the 6 inch is all you've got to live on and if it isn't protected it's going to run off into your drain ditch. Now the other point that I want to address here is that they contend that this capsule of garbage is going to sit there forever. Now I don't have any concept of what forever is, but in my lifetime I've watched abandoned roads up near falcalm dam when they put in the dam completely barron, compacted, asphalt on top and then have a ----- tree grow right up through the middle of it after a few years. I propose to you that this sealed surfaced is going to be preferated by wetting and drying and opening of small cracks and then the, what plants grow there will penetrate and eventually there will be grass cover established on this after the 18 inch clay layer is reached and destroyed by natural action. Inter-action between the physical forces that are working on the

clayd, wetting and drying and heating and cooling and then the plant roots. It's a dynamic situation. The plant will penetrate and then there will be trees growing on it and they say they're going to mow them, but you don't kill ----- by mowing it or mesquite. They're penetrate the top and then the next time we get a Buella, large quantities will penetrate into that garbage that's suppose to be in this envelope. As the water rises within where is it going to go? We get 25 inches of rainfall at this location, approximately, and any time, well as the water fil., filters down through the soil in a normal situation it replenishes the water suppply that we pump out of and, and use in our households. This is going to be trapped in a clay dish. The tops going to be open and the water is going to accumulate in it. As it rises where's it going to go. Eventually it's going to break out of there. That's my professional opinion that we can not tolerate this because it can cantaminate the water supply that many of these people in this room are using. I don't think it would cantiminate me over La Feria, but I'm not sure that it wouldn't because I think the, it's all one ----- under there. Now there's one other question that I think Mr. ----- is going to address. My concern is for the, the open area where they're acually putting, adding garbage and it's open to rainfall. They haven't covered it yet. That when a heavy rain falls and they have to handle that water just to continue their operations, they have to get it out of there. That they're going to pump it into your drain ditch and it will have washed over garbage, the exposed garbage. What contaminates might be in that water that they're pumping out of there. I mean Beulla can happen any time from June to October and that 24 inches is going to be an often lot of water to handle in your drain ditch. First I think your going to get alot of top soil in your drain ditch and later your going to have contaizates, ----- from this garbage in to your water supply. In, in the drain ditch water and contaminating the ground water in the surrounding area. If you have questions I'll be glad to.....

JUDGE RUIZ

Well Doctor Hoverson, Commissioners if you have any questions, you have taken all the time that, that was aloted. Mr. Jarvis I know that you all have some other people who would, wait in line. I, I, I ask that, that, that I, I would be strict on, on the 15 minutes ----- . Are there any questions from Doctober Hoverson from the Commis-sioners?

COM. SALINAS

Do you, do you understand that the Health Department regulates health and, State Health Department.

AUDIENCE

(INAUDIBLE)

DR. RICHARD HOVERRSON

I don't know all these details.

COM. SALINAS

Well...

GLEN JARVIS

They, they regulate the ground water but they do not regulate the drainage

COM. SALINAS

Well....

GLEN JARVIS ...in the drain ditch. That's what we're talking....

COM. SALINAS Yes, but....

GLEN JARVISabout here, this group does that.

COM. SALINAS Yes, but your talking about contamination of the water supply and that, didn't, didn't the health, State Health Department look at that before they gave the, these people....

GLEN JARVIS They only looked at the contamination to the ground water. They did not, they left that up to this district and this is what your...

COM. SALINAS Yes.

GLEN JARVIS They left that up to your jurisdiction to, to control the contamination into the drain ditch and that's, he's saying that the ----- will not only get into the ground water but it will rise up and get into the drain ditch.

COM. SALINAS Well doesn't the State Department of Health which is a control body, our legislature and Doctor Bernstein, don't you think that they would know this or they would stop it if they thought it was bad deal.

GLEN JARVIS They have left that up to this....

COM. SALINAS Did they -----... did, did, did they have a public hearing when they issued the permit?

AUDIENCE This, this, by permit that the Health Department does not allow any surface water to be discharged.

COM. SALINAS Okay. When they got this permit from the Health Department did, did they get a, a public hearing here in Edinburg or in Weslaco?

AUDIENCE 23 days Commissioner.

COM. SALINAS And after that public hearing what, the health department decided to give them a permit.

AUDIENCE That's correct.

COM. ARCAUTE May I ask a question Judge?

GLEN JARVIS Let., but that permit was granted Commissioner subject to the approval of this drainage district board on, on discharge into your drainage district. It was, it was granted subject to the proper roads being, it was granted subject to whatever local authorities there are. So yes that permit, but, but with respect to control of the surface water into that drain ditch the department of health has seeded that jurisdiction to this body here. The permit that they've issued was subject to your all's action here today and we need to, I understood that our, our, our witnesses would have 15 minutes each.

JUDGE RUIZ Oh no. 15 minutes complet....

GLEN JARVIS We, we can not live within the 15 minutes for the whole presentation.

JUDGE RUIZ

Well Mr. Jarvis....

GLEN JARVIS

So I, I urge your consideration because these people have alot of concerns and, and, that we need to develop a record here....

JUDGE RUIZ

I think we've, I think that through the research that we've done through our engineer and our, and of course the Commissioners and, and previous discussions in, in other meetings we have heard the, the, the amount of it.

GLEN JARVIS

Your honor with due respect I have an engineer, Mr. Rehtrick here, that's traveled the distance and has taken his time to come. I, I would, I misunderstood I thought that each ----- 15 minutes. I think that, that he can summarize it very quickly, but I still think that the Commissioners should consider it. He is an engineer and he's dealt very much with relationships between water and soil and drainage in the Rio Grande Valley.

JUDGE RUIZ

I'm, I'm sure he's a good expert and I, and I appologize for, for not giving you the, the opportunity. Basically ladies and gentleman we have an, an action item on the agenda. Out of courtesy I think that we, we opened up as a public hearing. It is an action item. So, so I would have to limit it to 15 minutes Mr. Jarvis and I, and I appologize to you all that

GLEN JARVIS

You mean we can, we can not put on Mr. Rehtrick. I think we're being denied due process of law. I think that, that these people here deserve to be heard.

AUDIENCE

(APPLAUSE)

JUDGE RUIZ

I understand, I understand and, yes Commissioner.

COM. ARCAUTE

Judge I, you know I, I realize and, and, and, and I sympathize, okay, with this, with this situation. So far as we're concerned in, in my opinion we've got 2 things, okay.

HAROLD FRANTZ

Your mind is already made up.

COM. ARCAUTE

The jepordizing of our permit with our core of engineers which would shut the whole operation then nobody would have any drainage, okay. All right, the other one that you just addressed, I think this has been my contention from the beginning that a testing of these waters before they are discharged into our drain ditch. If this is addressed, this has been my point from day 1. We can not obviously do anything about permitting BFI to operate or not. That's up to the health department and if it's on appeal and they're operating and, and the appeal is, is carried through they shut them down and I think BFI realizes this, okay. But to ask, to ask this, this group here or this board of directors for us or for the health department to throw that on, on our hands subject to our approval. I, I, I, I just don't see it. This is, this is the only statutory powers that we have as a drainage district and I think these are the ones that we should be addressing. So I'm going to ask again if the testing of these waters is going to be done before it's released into the drain ditch....

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JUDGE RUIZ We'll have....

COM. ARCAUTE ...whether it be Donna or whether it be the, the...

JUDGE RUIZ We're going to have Mr. Whittington if he wishes to address Commissioners' Court. Mr. Jarvis thank you very much.

GLEN JARVIS That, well we would like the record to reflect that we have evidence that should be considered by this board....

COM. SALINAS Why don't you give them another 15 minutes and then give BFI 15 more minutes.

GLEN JARVIS ...which would speak to the issues that you have raised, but that we have been denied presenting that to this Commission.

JUDGE RUIZ So noted.

GLEN JARVIS And so we take exception. Now that's all of our case, the others may have their own case.

JUDGE RUIZ So noted, thank you. Mr. Whittington if you want to ask any questions from our engineer or, or make any presentation.

RANDY WHITTINGTON Judge and Commissioners I suspect whenever I finish my remarks that I'm not going to get any applause from this audience and I, I, I think that the reason, one of the reasons is, is and I, and I don't know if you all understand this. This is a controversial issue that you have before you and it's not particu..., landfills are not particular popular items. I've been an elected official before just like you gentlemen and I've had lots of decisions come before me which were not particular popular decisions to make and in my tenure as Mayor over at Harlingen I think I made probably everybody in the City of Harlingen mad at one time or another including my closest friends. Sometimes though you, you have to make a decision to do the very things that you are elected to do in accordance with the regulations and the laws that your elected to uphold and I think that, that is a situation that we have here this morning. These people who are here today are opposed to this landfill primarily because it is in the vicinity of where they live or work. If the landfill were lo., located 10 miles in other direction you would have another group of people similiar to these expressing similiar concerns here before you opposing that landfill. These people would not be here because it wouldn't be in their neighborhood. That's, that's the nature of.....

HAROLD FRANTZ (INAUDIBLE)

JUDGE RUIZ Please.

AUDIENCE (INAUDIBLE)

JUDGE RUIZ Please, please.

RANDY WHITTINGTON That's the nature of landfills and I know landfills are not the only type of projects that you have become before you as a body that people will oppose no matter what. Unfortunately we have and generate

alot of waste in the Rio Grande Valley and it has to be put somewhere. We have to have landfills. There's nothing that we can do about that at this point and so the, what this, this body and the other bodies and governmental agencies that have authority to regulate landfills have to do is to insure that their regulations are complied with because those regulations are intended to provide the maximum amount of protection available for, to the citizens in the area from that particular project. Let me give you just a, take a few minutes of my time to take a, give you a little bit of a history and I want to make sure that the record is very clear about a couple of things. We first, BFI first contacted the Hidalgo County Drainage District regarding this permit that we're here before you today on in 1985. We contacted your staff and pre-designed and before we had ever desinged the faciltiy to determine what your discharge requirements would be. We met with your staff, we met with your engineers. We were told what those discharge requirements would be. We had in our hands at that time a copy of your regulations and your procedures that you published in 1980. We desinged our facility to meet all your requirements that was given to us by your staff ----- of the drainage district. We complied with every single requirement of your published regulations and procedures. We went to the Donna Irri..., and we designed our facility around the 32 cfs discharge that your staff required. We went to the Donna Irrigation District, Commissioner Salinas, so that there's not any misunderstanding about that because your procedures required us to go to the Donna Irrigation Distrist. The Donna Irrigation District granted us a permit, the Donna Irrigation felt and rightfully so I believe that they are not the environmental protection agency and that they had no authority to be dealing with anything other than the quantity of discharge into their ditch. They further felt and they expressed to us that if they intruded into an area and began to regulate activities that they had no authority to regulate that they would be subjecting themselves to ----- the liability if they didn't do it right or didn't do it riht or didn't do it properly. I think that was a proper decision on their part. We came back and we got the Donna Irrigation District permit and after we had received the Texas State Department of Health permit ----- renewed our application with this body. The Texas State Department of Health regulates under the Texas Solid Waste Disposal Act, regulates the permitting and the operation of solid waste landfills. They regulate every aspect of it. We have a, a hea..., public hearing in Weslaco Texas which many of these people were ----- Mr. Jarvis's clients were all ----- and we dealt with the very issues that have been raised before you here today. We dealt with ground water. We dealt with surface water. The, the Texas State Department of Health did not leave to this body or the Donna Irrigation District the regulation of the quality of surface water runoff. That is absolutely incorrect. Our permit regulates the quality of, of the solid waste. We're not allowed under our permit to discharge poor quality of fluent surface water into your ditch or anybody else's ditch or on to our neighbor's or anything else. We're prohibited under our permit from doing that and the reason for that is because that is within the Texas

State Department of Health Jurisdiction to regulate. I think your, your council over the 2 years or so that we've been dealing with this and certainly since he's been involved last May has had any number of discussions that I know he has written the Commissioners of the Drainage District about the limits of your jurisdiction and, and what you can regulate and what you can't regulate and I, and I'm afraid quite frankly that the, the district may be moving into some areas which don't have any authority to regulate, but I'm not here this morning to argue that. Let me, let me address the, the points that Mr. Darling presented to you and I believe that you ought to follow his recommendations. The indemnification issue, will we provide it? We have already provided them indemnification agreement to the Hidalgo County Drainage District. Your, your procedures require it and we have done that. We did provide an indemnification agreement to the Donna Irrigation District, they have no regulations over there. We did it ----- seat of our pants as we went along as did they. They required an indemnification agreement from the permittee and permittee's parent company with no objection to doing that. We've had no objection to, to providing it to this body and will. Second matter of the violation of the Texas Department of Health permit. I'm, i'm not sure, I've not heard this until this morning and let me, let me tell you that we appeared before this body here I think 3 weeks ago. The Judge was absent in Mexico City and we were, and we received a letter the following day that advised us that we would be provided with the engineering standards within 5 working days so that we would have an opportunity to study them and analyze them and address them and discuss them with the Commissioners here today. I received those because I called Mr. Darling's office yesterday to advise him that I had never receive anything and I received those by fax yesterday at 5:07 in my office. The BFI representatives did not see those standards until this morning when they arrived here by airplane at 9:30 this morning. I was also provided this morning a copy of the letter which I've been asking for, for some time relating to any other requirements that the engineer might have. That letter was addressed to the Judge. It's dated November 1st to Mr. Smith and I was given a copy of that letter for the first time this morning after this meeting started. There's nothing in the written materials that we provided relating to the violation of Texas Department of Health permit, but I can, I can assure this body that if we required to do something or prohibited from doing something by the Texas Department of Health permit or by the National Environmental protection agency, the Water Quality Board or anybody else who regulates us we're going to comply with those standards. Those are standards which are promulgated under authority and jurisdictions and other agencies other than this body has. As far as the engineer's testing parameter, let me skip over that I'll come back to it in just a minute. The question about ----- number 3, that was addressed. We've been telling you all for some period of time we have no objection to that and we will comply with ----- requirement. As far as the, any future changes that the EPA, as I understand it and I'm not an environmental lawyer, but as I understand it the

National Environmental Protection Agency is in the process and has been in the process for some period, period of time with promulgating regulations with respect to non ----- source pollution. We will be subject to those requirements. Any, any requirements that the Texas Department of Health may promulgate relating to those things we will be subject to and we're going to comply with them whether it's in, in, a requirement of your permit or not because we're required by law to, to comply with them independently with permit. So that to me that doesn't make a whole lot of difference. Now we'll suggest to you that what we have, what we've been provided here today as far as the testing standards are concerned are some testing standards which do not apply across the board to your permittees. You have other landfills that are, as I understand it, that are discharging into your drainage system directly or indirectly which are not permitted by you at all. You have another landfill which I believe is permitted by you directly or indirectly that is not presently subject to these requirements. I would suggest to you that you have a lot of potential or, or existing discharges into your drainage system in Hidalgo County who are a greater potential source of contaminants to your water than BFI is or any other landfill. Now you addressed one aspect of it in the pesticides this morning. They're not subject to any testing requirements by this drainage district. Many of them are not even permittees even though they are technically required to get a permit from you they've never even bothered to do that. They just discharge into your ditch. It's, it's curious to me that in a situation where the pesticides come up the response seems to be well don't need to get into that because somebody else regulates that, but we get into the landfill system and the response is not the same. Well let's re., regulate this stuff whether anybody else regulates it or not. That's sort of the, the situation that we're faced with here with today and I suspect to some extent because this such an unpo., landfills are such unpopular things. The testing parameters themselves and, and discussed it with your engineer this morning which is the first opportunity I've had to do that. Our, our technical people have not had an opportunity to address it at all. The initial comment was that there has been ----- that these are not standards that you, I assume you all have been provided with copies of them, these are not standards which anybody is applying, and by anybody I mean anybody. Any state agency, federal agency or anybody else is applying to surface water discharge anywhere in the United States as of today ----- Most of the standards relates ground water which is clearly with., has been dealt with and ----- Texas State Department of Health an area of jurisdiction. We don't know that we have a problem with the standards as they've been provided to us this morning but the problem is that there hasn't been any sort of background testing done out there because there's no landfill out there. We just had a 5 minute conversation this morning and we've been advised that in fact some of the contaminants that are on the list there may just in it's native state already be exceeded which would render it impossible and I think that would refer primarily to the ----- or the ----- because nobody knows what the, the

level is out there as they exist today. These are pulled out of the book and with, in consultation with the Department of Health as I understand it Fred relating to some ground water standards that they look for not surface water standards. Nobody knows what the levels are, are out there today. We're going to be required and when the EPA promulgates their regulations to get a discharge permit from them with respect to surface water anyway. It may be that their standards are going to be the same as the ones that you suggested today. If they are we're going to comply with them anyway. It may that they'll be stricter, I don't know. Nobody knows as this point. We'll all have an opportunity to deal with that. I do think it is an area that this body ought to tread lightly in, but I, we have no problem with you issuing your permit subject to the conditions that Mr. Darling has set out. It, some of it as, as, as I say we've not had an opportunity to study it. There are some questions we have about the language in there. Some of is frankly not very clear. We don't know what a rainfall ----- is. There are some, some things which are just sort of generally left to, to be developed in the future. We've been and ready, willing and able now for almost 5 years to deal with you all, this body and any other body to negotiate those things out, discuss them in a professional manner. We remain willing and able to do that. We've been available to do that this entire period of time and I assume that we have a probl., if we have a problem in the future that we can still continue to work on, work out issues to everybody's mutual benefit. We're willing to do that. All we've been asking for is a discharge permit. Discharge 32 1/2 CFS into the Donna Irrigation District ditch to go into your ditch. That's, and that is based strictly on the requirements that were given to us by your engineers and your staff 5 years ago. No one has ever raised these other issues until today. All of the issues that you have heard testimony about today has been dealt with in 20 plus days of hearings and findings and conclusions by the Texas State Department of Health ----- permit.

JUDGE RUIZ

It's....

RANDY WHITTINGTON

I'll be happy to answer any questions.

JUDGE RUIZ

Okay. Any questions you may have Commissioners.

COM. ARCAUTE

Yes I have 2 questions. That's in regard to this water quality standards. Let me say that I got them this morning too, okay. I, I do have a question on these. These will apply to all other existing landfills in this County?

COM. SALINAS

That's, yea that's my....

AUDIENCE

(INAUDIBLE)

COM. ARCAUTE

This water quality standards?

JUDGE RUIZ

Yes.

COM. ARCAUTE

Those are the only 2 questions I have, but we got them this morning to.

JUDGE RUIZ Any other questions by the Commissioners?

RANDY WHITTINGTON Some, some of them unfortunately aren't permitted right now.

COM. ARCAUTE I've haven't read it all but I....

JUDGE RUIZ Any other questions from the Commssioners?

JIMMY STEINEGER Can I ask him one question? He said that for the past, with ----- with the Texas Department of Health that they've been doing the right thing. For the past 10 years they've been contaminating the water. What makes that they're going to do anything different. Are they going to change it up or, I'd like for the, know that.

JUDGE RUIZ Okay Jimmy, thank you. Any other questions from the Commissioners? Thank you Mr. Whittington.

RANDY WHITTINGTON Thank you Judge.

JUDGE RUIZ You have, Commissioners you have heard the pros and cons. A 15 minute pros and cons of, of if is, of the issue concerning a drainage district permit to BFI. You have heard the recommendation of Mr. Jim Darling and our engineer in terms of, of, of, their recommendation is basically to recommend approval with the 5 conditions that have been made a record and have been explained to you and briefed to you. Based on the recommendation I, I will ask for a motion to for or against the permit at this point in time.

GLEN JARVIS I, I have to raise a point of order. With all due respect your honor there may be some other people that I don't represent out here that may have something to say and I, I don't want to be responsible for it appearing to the Court that I represent all these people and I have ended up cutting them off from saying something.

JUDGE RUIZ I understand that and I will....

GLEN JARVIS You know I don't, I've represented a few of the parties and I just don't want to be responsible for them being denied if they want to say something.

JUDGE RUIZ I understand. You will not be held responsible Mr. Jarvis.

GLEN JARVIS So if any ----- they can understand that they're entitled to be heard.

JUDGE RUIZ Well I'm, I'm going to call for, for

AURORA VALDEZ Can I say a few words?

JUDGE RUIZ ...a motion and a vote. Thank you very much. I appreciate it.

AURORA VALDEZ Yo soy Aurora Valdez y soy de la orginacion de Valley Interfaith en Donna y nosotros como iglesia nos interesa mucho la calidad de nuestros familias y este nosotros queremos que se le niegue el permiso a este desague porque ya que va, va estar muy afectosa la salud de nuestras, de nuestras familias y esto de las comunidades va afectar mucho y pues si afecta

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todas nuestras familias en la salud. Tambien va a afectar todo el condado y queremos que sean mas responsables en eso de la salud proque ya que to..., va a afectar todas nuestras familias, Gracias.

Gracias. I will close duscussion...

JUDGE RUIZ

(APPLAUSE)

AUDIENCE

I will close any other liscussion from the public at this point in time. Commissioners you, you have heard the recommendation. Is there a motion for or against?

JUDGE RUIZ

Judge I so move that we grant the permit.

COM. ARCAUTE

There is a motion to grant the permit. Is there a second?

JUDGE RUIZ

Second.

COM. SALINAS

There is a motion and a se...

JUDGE RUIZ

I want to, I want to specify that it's under the reco..., recommendation of our council, legal council.

COM. SALINAS

Okay. There is a motion and a second to approve the permit upon the recommendation of, with, I'm sorry, with the following restrictions that have been stated and upon recommendation of our engineer and our legal council. There is a motion and a second. May I call for question, is there a motion for question?

JUDGE RUIZ

So moved.

COM. SALINAS

Is there a second?

JUDGE RUIZ

I don't think it be necessary, but yes. Second.

COM. ARCAUTE

Motion and a second for the question. We'll call for the question. All in favor of approving the motion of approving the permit with the following....

JUDGE RUIZ

Aye.

COM. SALINAS

...restrictions signify by saying aye.

JUDGE RUIZ

Aye.

COM. ARCAUTE

Aye.

COM. SALINAS

There are 2 in favor. All opposed the per..., the permit being approved....

JUDGE RUIZ

Aye.

COM. CAVAZOS

....the same.

JUDGE RUIZ

Abstainsion.

COM. CAMARILLO

There is one against and one abstainsion, okay. Commissioners let me state my, my position. I do have an authority to vote on this Commissioners' Court not only to create or break a tie but, but as a elected official I represent 1 vote in this Court and I wanted to state that for, for the record. I am seriously concerned with the health and welfare of the general

JUDGE RUIZ

area of the landfill. In the experience, the limited experience that I have in landfills and basically dealing with landfill in San Juan as City Manager, dealing with landfills in Donna as City Manager and now as County Judge in dealing with other landfills. I find that basically the drainage district as a body has a legal responsibility for outright violations and it has a legal responsibility because usually and normally health and welfar violations are caught after the fact, after they actually happen. They are normally not caught by testing or requirements and the district has a legal responsibility and a legal liability that when a health or welfar problem comes after the fact we are still liable because we had testing requirements. So it's really a no win situa- tion for the drainage district that if that a land- fill is actually built and permitted in accordance with any other regulations or future regulations even if it, if it does do that and there is a health concern we are not out of the woods legally, okay. So I think that the problem we have here is that, that this, this landfill is basically, I know have, have gone to department of health regulations and Donna Irrigation regulations, but nothing stops the possibility of, of health hazzards. Nothing stops it, not even our testing. The only thing that could stop it is it not be built there. So I will vote against.....

AUDIENCE

(APPLAUSE)

JUDGE RUIZ

I will, I will vote against the motion and the motion dies 2 against, 2 in favor and 1 abstainsion.

AUDIENCE

(APPLAUSE)

JUDGE RUIZ

Is there a motion to adjourn?

COM. CAMARILLO

So moved.

COM. SALINAS

Second.

COM. CAVAZOS

Second.

JUDGE RUIZ

Meeting adjourned. Thank you all.

THERE BEING NO FURTHER BUSINESS TO COME

BEFORE SAID COURT, the meeting of the Commissioners' Court was adjourned.

J. Edgar Ruiz _____
County Judge

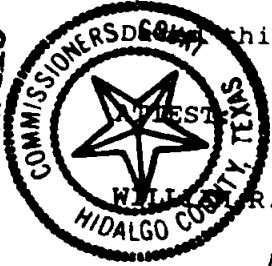
Ramiro Cavazos _____
County Commissioner, Precinct #1

Lalo Arcaute _____
County Commissioner, Precinct #2

Norberto Salinas _____
County Commissioner, Precinct #3

Leonard Camarillo _____
County Commissioner, Precinct #4

0119 416



this 21ST day of MARCH, 1990.

WILLIAM R. LEO, COUNTY CLERK

By: Jennifer Castillo
Jennifer Castillo, Deputy