

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

MARJORIE CORNWELL MCREE,
EMORY CORNWELL WEBB,
*Individually and as Executor of the Estate of
Sue Rawls Cornwell,*
LINDA CORNWELL TURPIN,
*Individually and as Trustee of the Woodie C.
Cornwell Marital and Residuary Trusts,*
CLAIRE CORNWELL-WILLIAMS,
*Individually and as Trustee of the Woodie C.
Cornwell Marital and Residuary Trusts,*
MARK W. ISRAEL,
CHARLES L. ISRAEL,
HAROLD J. ISRAEL, JR.,
HENRY S. TEAFORD, JR.,
MARY BETH POWELL ROGERS,
JENNY CRISP,
J CRISP ENTERPRISES, LLC,
MARY LINDA COTTEN,
VERDURA LAND & TIMBER CO., and,
FLINT RIVERKEEPER, INC.,

Plaintiffs,

v.

LEATHERBROOK HOLSTEINS, LLC,
LEATHERBROOK HOLSTEINS #3, LLC,
ADAM L. GRAFT,

Defendants.

CIVIL ACTION NO.:

TRIAL BY JURY DEMANDED

**COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE RELIEF, DAMAGES, AND
ATTORNEYS' FEES AND EXPENSES OF LITIGATION**

1. Plaintiffs, lifelong Sumter County farmers, residents, and/or landowners Marjorie Cornwell McRee, Emory Cornwell Webb (individually and as Executor of the Estate of Sue Rawls Cornwell), Linda Cornwell Turpin (individually and as Trustee of the Woodie C. Cornwell Marital and Residuary Trusts), Claire Cornwell Williams (individually and as Trustee of the Woodie C. Cornwell Marital and Residuary Trusts), Mark W. Israel, Charles L. Israel, Harold J. Israel, Jr., Jenny Crisp, J Crisp Enterprises, LLC, Dr. Henry S. Teaford, Jr., Mary Beth Powell Rogers, Mary Linda Cotten, Verdura Land & Timber Co. (collectively, “Local Farmer Plaintiffs”), and nonprofit organization Flint Riverkeeper, Inc. (individually and on behalf of its members), bring this citizen suit under the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1365(a), against Defendants Leatherbrook Holsteins, LLC, Leatherbrook Holsteins #3, LLC, and Adam L. Graft, for past and ongoing discharges of manure, wastewater, silage waste/exudate, dredged and fill material, and other pollutants, from a large dairy operation with more than 12,000 dairy cows in Sumter County, Georgia, into local streams and wetlands, including Bear Branch a/k/a Oaheathla Creek, Muckalee Creek, and Muckaloochee Creek, without coverage under and/or in violation of the terms and limitations of an National Pollutant Discharge Elimination System (“NPDES”) permit and/or a permit issued by the U.S. Army Corps of Engineers, in violation of Sections 301, 402, and 404 of the CWA.

2. The Local Farmer Plaintiffs also bring state law claims of negligence per se, negligence, violation of riparian rights, trespass, nuisance, punitive damages, and attorneys’ fees and expenses of litigation against Defendants for damage to and interference with their use and enjoyment of their farms and properties from the operations of Leatherbrook Holsteins, including from water pollution, noxious malodors, and destruction of wetlands and highly erodible land.

BACKGROUND

I. Leatherbrook Holsteins.

Fig. 1: Leatherbrook Holsteins' Waste Lagoons (Facing U.S. 19/Northwest)



3. Defendants Leatherbrook Holsteins, LLC and Leatherbrook Holsteins #3, LLC are Florida limited liability companies.

4. Defendant Adam L. Graft is the Managing Member of Defendants Leatherbrook Holsteins, LLC and Leatherbrook Holsteins #3, LLC.

5. Defendant Adam L. Graft resides at 2620 South Lee Street, Americus, Georgia.

6. Defendants Leatherbrook Holsteins, LLC, Leatherbrook Holsteins #3, LLC, and Adam L. Graft own and/or operate a dairy operation with more than 12,000 cows located near the intersection of U.S. 19 and Bear Branch Road in Sumter County (“Leatherbrook Holsteins”).

7. Defendants Leatherbrook Holsteins, LLC, Leatherbrook Holsteins #3, LLC, and Adam Graft are the alter egos, business conduits, and joint venturers of one or more Defendants.

8. The average dairy farm in Georgia has a few hundred cows in confinement.

9. Around 2008, Defendant Adam L. Graft acquired the dairy at issue from Mr. Charles Lamar Anthony and/or Mr. Jerry Wayne Anthony.

10. Around 2008, Mr. Anthony had only about 1,000 mature cows in confinement.

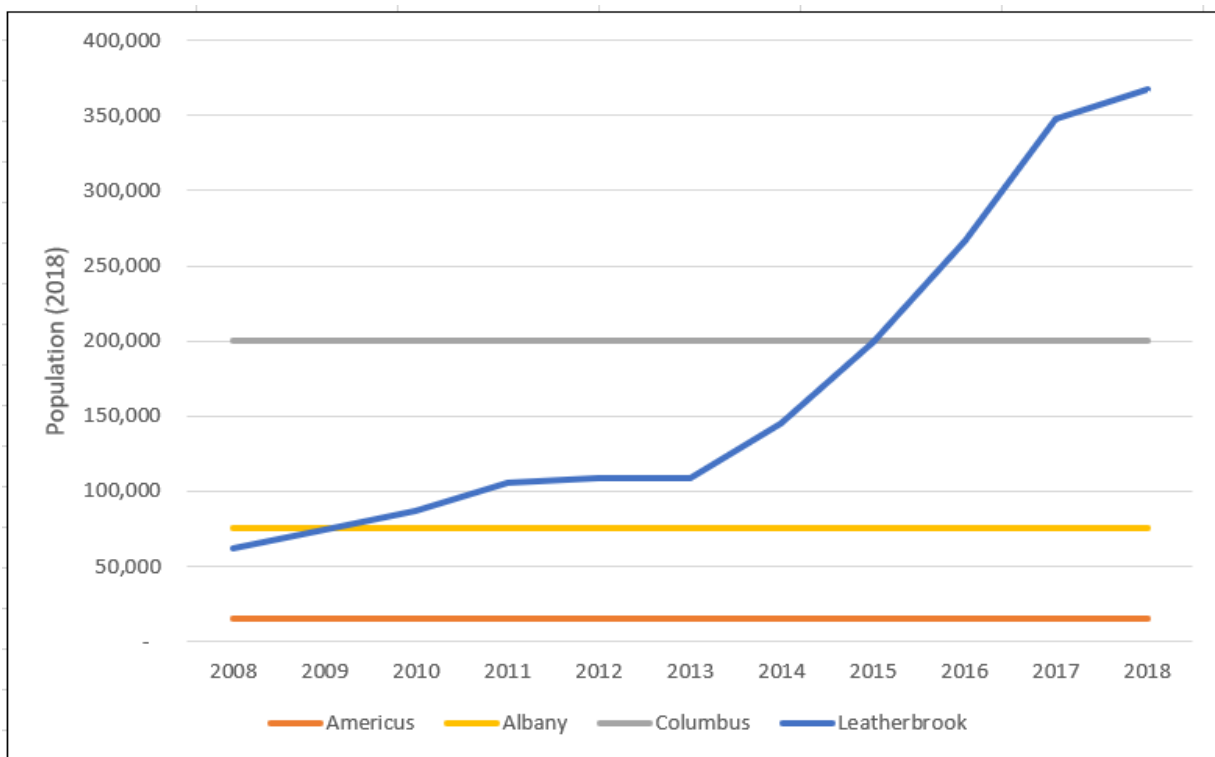
11. According to its latest annual report, Leatherbrook Holsteins has more than 12,400 cows (6,900 mature cows and 5,500 other cows) (about 14,750 animal units (“AU”)).

12. An animal unit (“AU”) is a unit of measurement of the amount of waste generated by an animal feeding operation. One mature dairy cow is equal to about 1.4 AU.

13. On average, 6,900 mature dairy cows and 5,500 dairy heifers produce about as much waste per day as at least 350,000 people. By comparison, the population of Columbus is about 200,000 people and the population of Albany is about 75,000 people.

14. According to plans submitted to the State of Georgia, Leatherbrook Holsteins may have more than 15,000 cows.

Fig. 1: Avg. Daily Waste from Leatherbrook Holsteins in Equivalent Human Population



15. Sumter County Parcel No. 16035713 is about 147 acres and contains at least 12 large confinement barns and three large manure/wastewater lagoons.

16. Defendant Leatherbrook Holsteins #3, LLC owned Parcel No. 16035713 from approximately 2012 to December 2017.

17. Around December 2017, Defendant Leatherbrook Holsteins, LLC, acquired Parcel No. 16035713 from Defendant Leatherbrook Holsteins #3, LLC.

18. Since 2012, Defendant Leatherbrook Holsteins #3, LLC, has received at least \$17.5 million (\$17,500,000) in loans from Southwest Georgia Farm Credit ACA for its operations of Leatherbrook Holsteins.

19. Since 2016, Defendant Leatherbrook Holsteins, LLC, has received at least \$3.86 million (\$3,860,000) in loans from Southwest Georgia Farm Credit ACA for its operations of Leatherbrook Holsteins.

20. A good deal of these loans have been used to purchase large amounts of land (more than 6,000 acres) near and adjacent to Local Farmer Plaintiffs' farms and residences.

21. Since 2012, Defendant Leatherbrook Holsteins #3, LLC, has owned most of the land that comprises the operations of Leatherbrook Holsteins.

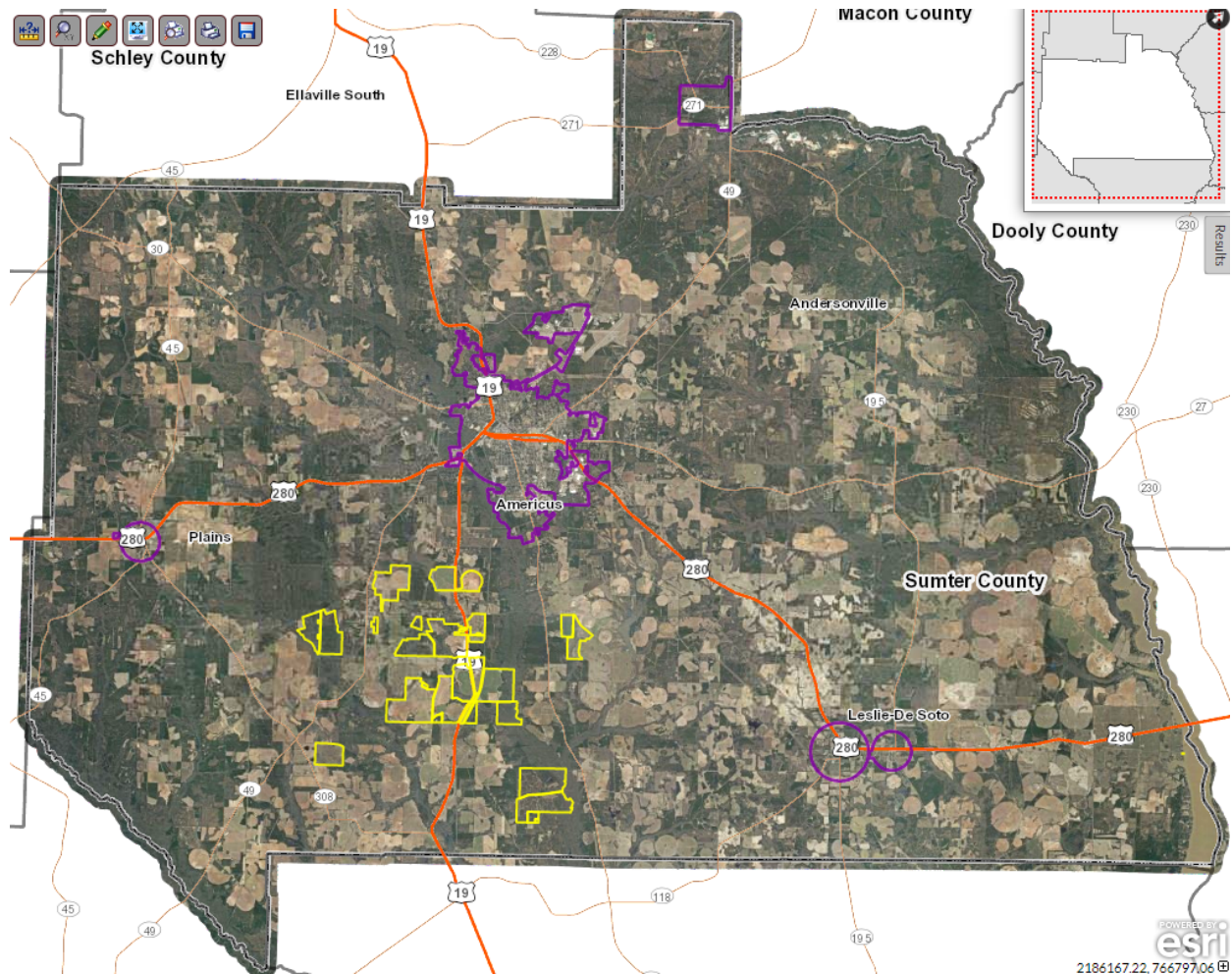
22. Defendants have cleared and/or converted much of this acquired land to pens, feedlots, and/or manure application areas for the operations of Leatherbrook Holsteins.

23. As alleged in greater detail below, during this land clearing and/or conversion Defendants discharged dredged and fill material into Bear Branch and tributaries of Muckaloochee Creek without a CWA Section 404 permit.

24. As alleged in greater detail below, during this land clearing and/or conversion Defendants converted wetlands and highly erodible land into pivots/manure application areas.

25. According to the Georgia Environmental Protection Division (“EPD”), Leatherbrook Holsteins is in an area of “high susceptibility” to groundwater pollution and “most significant groundwater recharge” in the Claiborne aquifer.

Fig. 3: Land Area Leatherbrook Holsteins (Yellow) v. City of Americus (Purple)



II. The Local Farmer Plaintiffs.

26. Plaintiffs are lifelong farmers, residents, and/or landowners of Sumter County.

27. Plaintiffs use, enjoy, and rely on local streams and wetlands, including Bear Branch, Muckalee Creek, and Muckaloochee Creek, for farming, irrigation, and aesthetic and recreational enjoyment, including wading, swimming, fishing, hunting, hiking, camping, and family gatherings.

28. The Cornwell Plaintiffs include Plaintiffs Emory Cornwell Webb, Linda Cornwell Turpin, Claire Cornwell-Williams, and Marjorie Cornwell McRee.

29. Plaintiffs Linda Cornwell Turpin, Claire Cornwell Williams, and Marjorie Cornwell McRee are the daughters of the late Mr. and Mrs. Woodie C. and Sue Rawls Cornwell.

30. Plaintiff Emory Cornwell Webb is the son of Plaintiff Marjorie Cornwell McRee and the Executor of the Estate of Sue Rawls Cornwell.

31. Plaintiff Emory Cornwell Webb owns, farms, and resides with his children at an approximately 316-acre farm located at 1210 Sam Rodgers Road, Smithville, GA 31787.

32. Plaintiff Emory Cornwell Webb's residence is riparian to Muckaloochee Creek and is next to some of Leatherbrook Holsteins' cow pens and manure application fields.

33. Plaintiff Emory Cornwell Webb also owns and farms several hundred other acres near Leatherbrook Holsteins including several other parcels riparian to Muckaloochee Creek and parcels within the Webb Family Farm National Historic Register District.

34. Plaintiffs Linda Cornwell Turpin and Claire Cornwell Williams are Trustees of the Woodie C. Cornwell Marital and Residuary Trusts.

35. The Cornwell Plaintiffs, the Estate of Sue Rawls Cornwell, and/or the Woodie C. Cornwell Marital and Residuary Trusts collectively own and/or control an approximately 1,475-acre farm ("Cornwell Farm") adjacent to and downstream of portions of Leatherbrook Holsteins in the historic farming community of Sumter.

36. Plaintiff Marjorie Cornwell McRee operates the Cornwell Farm for a living.

37. The Cornwell Farm includes parcels that are adjacent to and downstream of Leatherbrook Holsteins and riparian to Bear Branch and Muckalee Creek.

38. The Cornwell Farm includes a residence at 304 Cornwell Road that the Cornwell Plaintiffs and their family members frequently use and enjoy including for family gatherings.

39. The Cornwell Plaintiffs and their family members use and enjoy the Cornwell Farm, including portions of Bear Branch and/or Muckalee Creek on the Cornwell Farm, for aesthetic and recreational enjoyment, including wading, swimming, fishing, hunting, hiking, camping, and family gatherings.

40. Plaintiffs Mark W. Israel, Charles L. Israel, and Harold J. Israel, Jr., are the sons of Harold Israel. The Israel family has farmed in Sumter County for more than 100 years.

41. Plaintiff Mark W. Israel owns, farms, and resides with his family at an approximately 500-acre farm located at 607 Croxton Cross Road, Smithville, GA 31787.

42. Plaintiff Mark W. Israel's residence is riparian to a tributary of Muckaloochee Creek and is adjacent to and downstream of portions of Leatherbrook Holsteins.

43. Plaintiff Charles L. Israel owns, farms, and resides with his family at an approximately 200-acre farm located at 284 Croxton Cross Road, Smithville, GA 31787. Plaintiff Charles L. Israel owns this farm with his brother Plaintiff Harold J. Israel, Jr.

44. This farm and Plaintiff Charles L. Israel's residence is riparian to Muckaloochee Creek and is downstream of portions of Leatherbrook Holsteins.

45. Plaintiffs Mark W. Israel, Charles L. Israel, and Harold J. Israel, Jr. also own and/or farm several hundred other acres downstream of Leatherbrook Holsteins including several other parcels riparian to Muckaloochee Creek.

46. Plaintiff Jenny Crisp is a managing member of Plaintiff J Crisp Enterprises, LLC and operates the Crisp Farm.

47. Plaintiff J Crisp Enterprises, LLC owns Parcel 16071283, an approximately 585-acre farm ("Crisp Farm") that is riparian to Bear Branch and/or Muckalee Creek and downstream of portions of Leatherbrook Holsteins.

48. Plaintiff Dr. Henry S. Teaford, Jr. owns Parcel 16061251, a 350-acre farm that is riparian to Muckalee Creek and across from the waste lagoon area of Leatherbrook Holsteins.

49. Plaintiff Mary Beth Powell Rogers owns Parcel 160612510, a 150-acre farm that is riparian to Muckalee Creek and across from the waste lagoon area of Leatherbrook Holsteins.

50. Plaintiffs including the Cornwell Plaintiffs, Jenny Crisp, J Crisp Enterprises, LLC, Dr. Henry S. Teaford, Jr., and/or Mary Beth Powell Rogers have relied on and/or continue to rely on water from portions of Bear Branch, Muckalee Creek, and/or Muckaloochee Creek downstream of Leatherbrook Holsteins to irrigate crops and vegetables on their farms.

51. Plaintiff Mary Linda Cotten is the CEO of Plaintiff Verdura Land & Timber Co.

52. Plaintiff Verdura Land & Timber Co. owns an approximately 775-acre farm (“Cotten Farm”) adjacent to and downstream of portions of Leatherbrook Holsteins.

53. The Cotten Farm is riparian to portions of Muckalee Creek and adjacent to and downstream of portions of Leatherbrook Holsteins.

54. Plaintiff Mary Linda Cotten’s sons reside on the Cotten Farm.

55. The Cotten Family uses and enjoys the Cotten Farm, including portions of Muckalee Creek the farm, for family gatherings and aesthetic and recreational enjoyment, including wading, swimming, fishing, hunting, hiking, camping, and family gatherings.

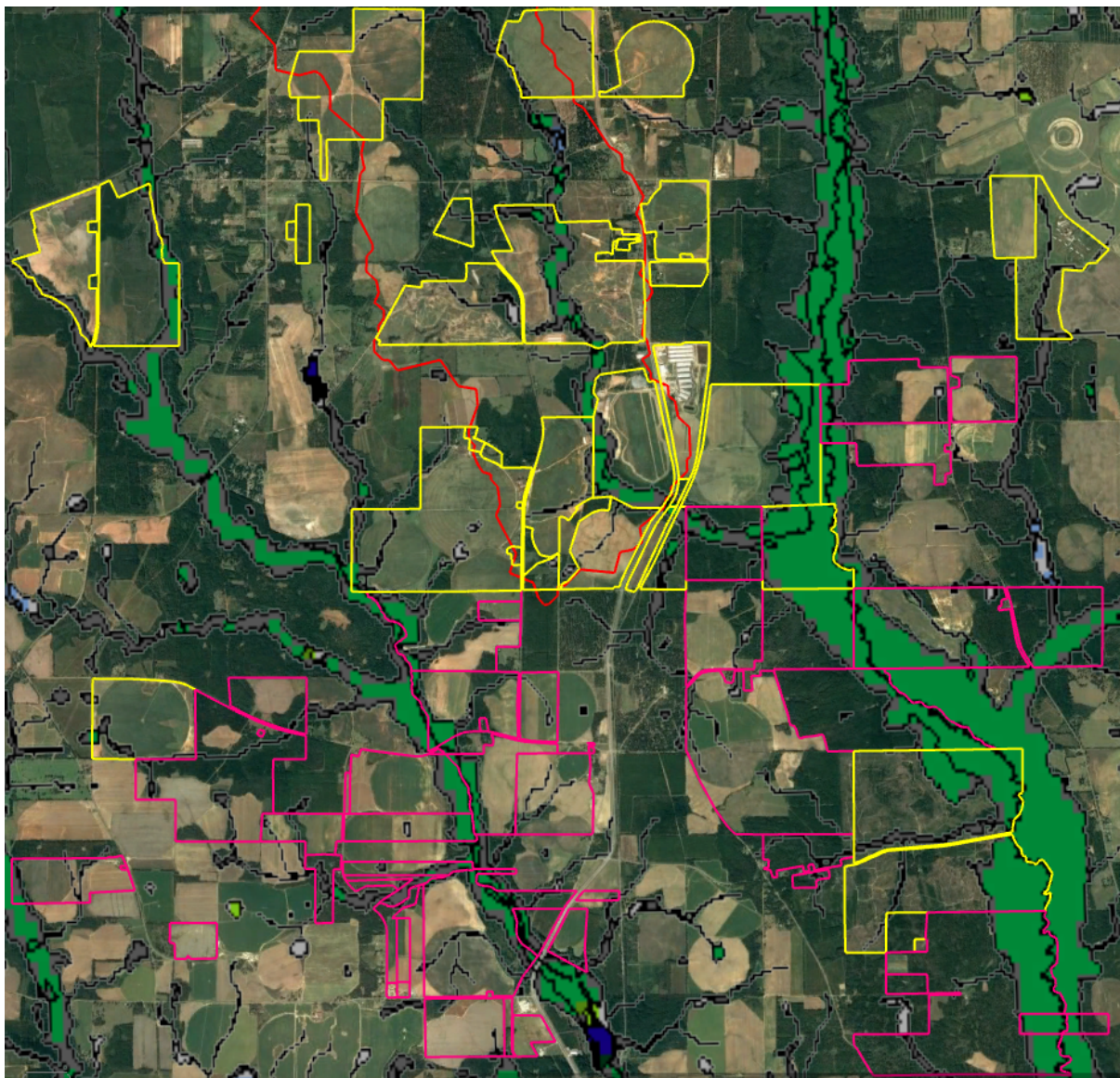
56. Plaintiff Flint Riverkeeper, Inc. is a local 501(c)(3) nonprofit corporation with a principal office in Albany, Georgia.

57. The purpose of Flint Riverkeeper is to “restore and preserve the habitat, water quality and flow of the Flint River watershed [which includes Bear Branch, Muckalee Creek, and Muckaloochee Creek] for the benefit of the general public, including [Flint Riverkeeper’s] members, and future generations and dependent wildlife in the Flint River watershed.”

58. Flint Riverkeeper has around 900 members consisting of farms, families, and businesses. These members include several of the Local Farmer Plaintiffs.

59. Members of Flint Riverkeeper use, enjoy, and rely on Bear Branch, Muckalee Creek, and Muckaloochee Creek, for farming, irrigation, aesthetic, and recreational enjoyment, including wading, swimming, fishing, hunting, hiking, camping, and family gatherings.

Fig 4: Streams (Green), Leatherbrook (Yellow), Plaintiffs' Downstream Farms (Purple)



III. Pre-Suit Notice Letter

60. On May 8, 2019, Plaintiffs sent Defendants a Notice of Intent to Sue under the Clean Water Act and Resource Conservation and Recovery Act (“Notice Letter”).

61. Plaintiffs attach and incorporate by reference the allegations in the Notice Letter.

62. This Notice Letter notified Defendants of the CWA violations alleged below and Plaintiffs’ intent to file a citizen suit after 60 days should the violations continue.

63. As alleged in more detail below, Defendants have failed to cease their violations of the CWA, and these violations are currently continuous and/or reasonably likely to recur.

64. Neither the Georgia EPD nor the U.S. Environmental Protection Agency (“EPA”) is prosecuting a pending civil or criminal action to redress the violations alleged herein.

65. This Court has exclusive jurisdiction over this case under § 505(a) of the Clean Water Act. 33 U.S.C. § 1365(a).

66. Plaintiffs’ Notice Letter also notified Defendants of violations of the Resource Conservation and Recovery Act (“RCRA”) and Plaintiffs’ intent to file a citizen suit under RCRA after 90 days should the violations continue. Plaintiffs may amend their complaint to add claims under RCRA at an appropriate time.

STATUTORY AND REGULATORY BACKGROUND

I. The Clean Water Act.

67. The primary objective of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

68. Another objective of the CWA is to ensure that citizens can fish, swim, and recreate in all the Nation’s waters. 33 U.S.C. § 1251(a)(2).

69. To achieve these objectives, § 301(a) of the CWA prohibits the “discharge of pollutants” by any “person” from “point sources” into “waters of the United States.”

70. “Pollutants” means “dredged spoil, solid waste . . . sewage, garbage, sewage sludge . . . chemical wastes . . . biological materials . . . rock, sand, cellar dirt and industrial, municipal, **and agricultural waste** discharged into water.” 33 U.S.C. § 1362(6) (emphasis added).

71. Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (“NPDES”) permitting program, which prohibits the discharge of pollutants from “point sources” into “waters of the United States” without an NPDES permit or in violation of the limitations of an NPDES permit. 33 U.S.C. § 1342.

72. Section 502(14) of the CWA defines “point source” as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] **concentrated animal feeding operation [“CAFO”]**. . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14) (emphasis added).

73. Under § 402(b) of the CWA, U.S. EPA has delegated to Georgia EPD the authority to issue NPDES permits in the State of Georgia under the Georgia Water Quality Control Act (“GWQCA”).

II. Regulation of AFOs and CAFOs under the Clean Water Act.

74. An “animal feeding operation” (“AFO”) means a “lot or facility” where “animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” 40 C.F.R. § 123.23(b).

75. Incidental vegetation in an area of confinement such as a pen or feedlot does not exclude the area from being an AFO or CAFO. 68 Fed. Reg. 7,176, 7,189 (Feb. 12, 2003).

76. An AFO is a “large CAFO” if it confines at least “700 mature dairy cows, whether milked or dry” or “1,000 cattle other than mature dairy cows [including] heifers, steers, bulls, and cow/calf pairs.” 40 C.F.R. §122.23(b)(4).

77. An AFO is a “medium CAFO” if it confines at least “300 cattle other than mature dairy cows” including “heifers, steers, bulls and cow/calf pairs.” 40 C.F.R. §122.23(b)(6).

78. CAFOs are “point sources, subject to NPDES permitting requirements.” 40 C.F.R. § 123.23(a).

79. “Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.” 40 C.F.R. § 122.23(a).

80. “Land application area” means “land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.” 40 C.F.R. § 122.23(b)(3).

81. “Production area” means “that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.” 40 C.F.R. § 122.23(b)(8).

III. NPDES Permit Requirement for CAFOs.

82. “A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit.” 40 C.F.R. § 122.23(d)(1).

83. “Process wastewater” includes any water that comes into contact with litter, manure, bedding, and silage waste/exudate. *See* 40 C.F.R. § 122.23(b)(7).

84. “The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge.” 40 C.F.R. § 122.23(e).

85. “For unpermitted large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.” 40 C.F.R. § 122.23(e)(1).

86. The CWA and GWQCA prohibit dry weather discharges of manure and/or process wastewater from land areas under control of Defendants into waters of the United States by point sources such as pipes and channels no matter if the area is an AFO or CAFO or part of the operations of an AFO or CAFO.

87. In Georgia, the Georgia EPD has issued NPDES CAFO General Permit GAG930000 (“General NPDES Permit”). Coverage under this permit is required for any AFO and CAFO that discharges to waters of the State.

88. The General NPDES Permit is based on the effluent limitations at 40 C.F.R. §§ 122.42(e) & 412.

89. A facility, however, cannot obtain coverage under the General NPDES Permit and must obtain an individual NPDES permit if its discharges contribute directly or indirectly to an impaired stream.

90. Under the General NPDES Permit, “a discharge of wastewater is considered the discharge of pollutants from an animal confinement or storage and handling areas or from the improper use of land application area(s), under the control of the CAFO owner, which enters waters of the State.”

91. The General NPDES Permit and the federal regulations prohibit the discharge of pollutants in manure, litter, and process wastewater from the production area into waters of the United States unless precipitation causes an overflow of manure, litter, or process wastewater from the production area and the production area is properly designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event.

92. The General NPDES Permit and the federal regulations prohibit the discharge of pollutants in manure and/or process wastewater from the land application areas to waters of the United States except from precipitation-related discharges where the manure and/or process wastewater have been land applied in accordance with a valid and current site-specific Nutrient Management Plan (“NMP”) approved by Georgia EPD.

93. Under the General NPDES Permit, the NMP must be developed and implemented to meet all the Minimum Standards and Best Management Practices (“BMPs”) in the General NPDES Permit and 40 C.F.R. § 412.4, including:

- a. No land application of manure and/or process wastewater except in accordance with proper agricultural practices;
- b. No land application of manure and/or process wastewater except in accordance with land application rates that at a minimum: (i) prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and minimize water pollution, and (ii) be quantified and based on the

most appropriate nutrient in the soil, type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater;

c. No land application of manure and/or process wastewater on land that is saturated with water at the time of land application where the manure and/or process wastewater may enter waters of the State; and

d. No land application of manure and/or process wastewater during rainfall events and when precipitation with the potential to create manure and/or process wastewater runoff into waters of the State is forecast within 24 hours of the planned application.

94. Georgia EPD requires an AFO that does not discharge to waters of the State to obtain coverage under General Land Application System (“LAS”) Permit GAG940000 (“General LAS Permit”). The General LAS Permit is not a CWA NPDES permit.

95. Under General LAS Permit, the permittee must submit an updated NMP for review and approval by EPD 180 days before modifying, increasing the number of animals, or adding any spray fields.

IV. Failure of EPA and EPD to Enforce CAFO Regulations in Georgia.

96. Georgia has the third most AFOs with more than 1,000 AUs in the United States.

97. For at least the past decade, Georgia EPD has allowed the Georgia Department of Agriculture to review permit applications and approve NMPs for and conduct inspections of AFOs and CAFOs in Georgia.

98. In 2011, the U.S. EPA Office of Inspector General (“IG”) investigated a complaint that EPA was not adequately overseeing Georgia’s CAFO program and issued a report that found “significant deficiencies in the Georgia [EPD’s] management and [U.S. EPA] Region 4’s oversight of the CAFO program [in Georgia].”

99. The IG found that “CAFOs were operating without NPDES permits or Nutrient Management Plans, inspection reports were missing required components, and the Georgia Department of Agriculture was not assessing compliance with permit conditions.”

100. The IG stated that “there is a significant risk that Georgia’s CAFO program is failing to protect water quality” particularly given that “the animals produce large quantities of waste—many times more waste than humans annually.”

101. As shown by this case, EPA and EPD continue to fail to oversee and enforce the CAFO program and regulations in Georgia.

102. EPA and EPD’s failure to enforce the CWA and the CAFO regulations is not a defense to Defendants’ violations of the CWA and the CAFO regulations.

V. Unpermitted Discharges of Dredged or Fill Material.

103. Section 404 of the CWA prohibits the “discharge of dredged or fill material” into waters of the United States except in accordance with a permit issued by the U.S. Army Corps of Engineers (“Section 404 permit”). 33 U.S.C. § 1344.

104. Section 404(f)(1)(A) of the CWA creates a narrow exception to this prohibition for “the discharge of dredged or fill material from normal farming . . . activities such as plowing [and] minor drainage.” 33 U.S.C. § 1344(f)(1)(A).

105. To qualify as “normal farming activities,” the activities “must be part of an established (i.e., ongoing) farming . . . operation and must be in accordance with definitions in § 323.4(a)(1)(iii).” 33 C.F.R. § 323.4(a)(1)(ii).

106. “Activities that bring an area into farming . . . use are not part of an established operation.” 33 C.F.R. § 323.4(a)(1)(ii).

107. The term plowing “does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land.” 33 C.F.R. § 323.4(a)(1)(iii)(D).

108. For example, “the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing.” 33 U.S.C. § 323.4(a)(1)(iii)(D).

109. “Minor drainage” does “not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland . . . or conversion from one wetland use to another (for example, silviculture to farming).” 33 C.F.R. § 323.4(a)(1)(iii)(C)(2).

110. In addition, “minor drainage” does “not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies . . . any other wetland . . . constituting waters of the United States. *Id.*

111. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.” *Id.*

112. Where Section 404(f)(1) exempts a discharge from the permit requirement, it may still be subject to the permit requirement under the “recapture” provision of Section 404(f)(2).

113. Section 404(f)(2) states that “any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.” 33 U.S.C. § 1344(f)(2).

114. Under the “recapture” provision, “a permit will be required for . . . the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion.” 33 C.F.R. § 323.4(c).

CLAIMS FOR RELIEF

115. All Plaintiffs bring the First and Second Claims for Relief. Only the Local Farmer Plaintiffs bring the remaining claims for relief under state tort law.

116. Defendants Leatherbrook Holsteins, LLC, Leatherbrook Holsteins #3, LLC, and/or Adam L. Graft are derivatively liable for violations by one or more Defendants of the CWA and state law alleged below because they are the alter egos, business conduits, and/or joint venturers of one or more Defendants.

**FIRST CLAIM FOR RELIEF
(Violations of Sections 301 and 402 of the Clean Water Act through Ongoing Discharges of Pollutants Without or in Violation of a Valid NPDES Permit)**

117. Plaintiffs incorporate by reference the factual allegations in the factual and regulatory background sections above and the allegations in the Notice Letter.

118. Bear Branch, Muckalee Creek, and Muckaloochee Creek, and the wetlands adjacent to them are waters of the United States (hereinafter “waters at issue”).

119. Defendant Leatherbrook Holsteins #3, LLC is an owner and/or operator of Leatherbrook Holsteins.

120. Defendant Leatherbrook Holsteins, LLC is an owner and/or operator of Leatherbrook Holsteins.

121. Defendant Adam Graft is an owner and/or operator of Leatherbrook Holsteins.

122. Leatherbrook Holsteins is a large CAFO.

123. Since at least December 1, 2014, Defendants have not had any NPDES permit to discharge pollutants from point sources into waters of the United States under the CWA.

124. For the past five years, Defendants have not had and still do not have a valid, current, or an EPD-approved Nutrient Management Plan (“NMP”) for Leatherbrook Holsteins.

125. From 2010 to October 2018, Defendants greatly increased the number of animals (from 3,000 to more than 12,000 cows) and the acreage of the land application areas (by hundreds of acres) at Leatherbrook Holsteins but did not submit an updated NMP for review and approval by EPD 180 days prior to such increases.

126. In October 2018, Defendants submitted a revised NMP to the Georgia Department of Agriculture.

127. Georgia EPD has yet to approve the revised October 2018 NMP.

128. The October 2018 NMP does not meet the Minimum Standards and BMPs in 40 C.F.R. § 412.4, and it does not accurately reflect the operations of Leatherbrook Holsteins.

129. The October 2018 NMP also does not cover or account for the large amounts of waste generated by hundreds to thousands of cows on various pens and/or feedlots at Leatherbrook Holsteins, including those identified in the Notice Letter (“pens/feedlots”).

130. The operations of the Leatherbrook Holsteins CAFO include several pens/feedlots including those identified in the Notice Letter.

131. These pens/feedlots are medium to large AFOs.

132. Leatherbrook Holsteins confines and feeds and/or maintains at least 300 and very likely more than 1,000 cows and/or heifers on these pens/feedlots for more than 45 days per year.

133. Leatherbrook Holsteins does not grow crops or forage on these pens and/or feedlots, and the pens and/or feedlots contain only incidental vegetation with large barren areas and runoff channels and other point sources.

134. The NPDES requirements also apply to these pens and/or feedlots because they are AFOs and also because they are part of the operations and production areas of Leatherbrook Holsteins, which is a large CAFO.

Fig. 5: Leatherbrook Holsteins Feedlot and Eutrophication of Downstream Waters



135. For at least the past five years, Defendants have land applied manure, process wastewater, and/or commercial fertilizer to land application areas of Leatherbrook Holsteins in excess of agronomic rates, i.e., manure containing more nitrogen and/or phosphorus than the crops can and/or could use.

136. For at least the past five years, Defendants have land applied manure and/or process wastewater to land application areas of Leatherbrook Holsteins using a constant “book value” of 680 pounds of organic nitrogen per acre and not site-specific nutrient management practices.

137. The level of phosphorus in several land application areas of Leatherbrook Holsteins is greater than 200 pounds per acre, which is in excess of agronomic rates.

138. Defendants have violated and continue to violate Sections 301 and 402 of the CWA because, from July 2014 to the present, during and as a result of Defendants' operation and/or ownership of Leatherbrook Holsteins, there have been and continue to be repeated:

- a. Dry weather discharges of manure, process wastewater, silage waste/exudate, and/or other pollutants from the CAFO to the waters at issue without and/or in violation of the terms of a valid NPDES permit.
- b. Dry weather discharges of manure, process wastewater, silage exudate, and/or other pollutants from pens, feedlots, production areas, and land application areas of Leatherbrook Holsteins to the waters at issue via pipes, drains, ditches, channels, and other point sources (including the point sources identified in the Notice Letter) without and/or in violation of the terms of a valid NPDES permit.
- c. Discharges of stormwater containing manure, process wastewater, silage exudate, and other pollutants from pens, feedlots, production areas, and other non-land application areas that are part of the operations of the Leatherbrook Holsteins CAFO to the waters at issue via pipes, drains, ditches, channels, and other point sources (including the point sources identified in the Notice Letter), during storm events less than a 25-year, 24-hour storm event, without and/or in violation of the terms of a valid NPDES permit.
- d. Discharges of stormwater containing manure, process wastewater, silage exudate, and/or other pollutants from land application areas of Leatherbrook Holsteins to the waters at issue, where the land application of manure, process wastewater, and/or commercial fertilizer was not in accordance with a valid, current, and approved NMP and/or site-specific nutrient management practices that ensure appropriate agricultural use of the nutrients in the manure and/or process wastewater, without and/or in violation of the terms of a valid NPDES permit.

139. The dates and locations of the CWA violations alleged in the preceding paragraph including but are not limited to those specified in the Notice Letter.

140. The “other pollutants” referred to in Paragraph 137 and this complaint include but are not limited to those drugs, viruses, pathogens, and chemicals specified in the Notice Letter.

141. Defendants also have violated and continue to violate Sections 301 and 402 of the CWA because, from December 2014 to the present, during and as a result of Defendants’ operation and/or ownership of Leatherbrook Holsteins:

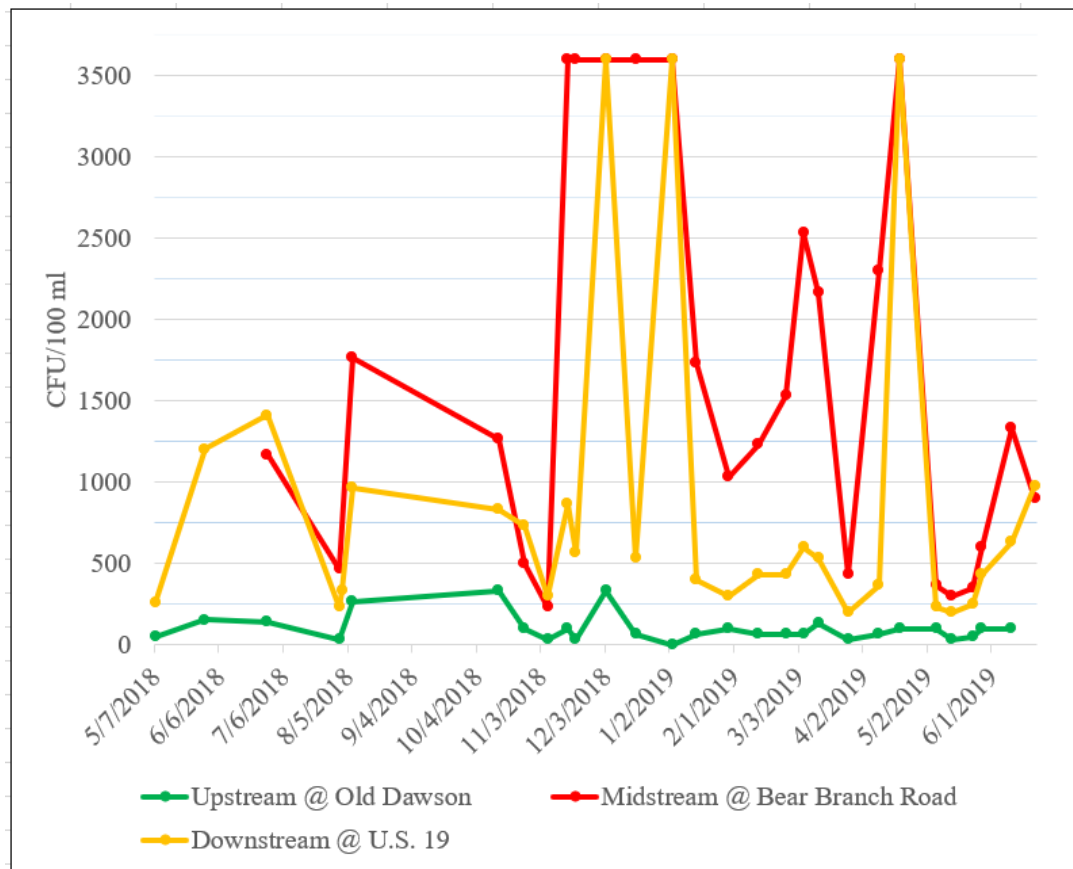
a. They have failed to design, construct, maintain, and operate retention structures on pens, feedlots, silage storage areas, and other production areas to contain all manure and/or process wastewater and/or silage waste/exudate from the operations of Leatherbrook Holsteins and all runoff from a 25-year, 24-hour rainfall event; and

b. They have failed to develop and implement an NMP that meets all the BMPs and Minimum Standards in the General NPDES Permit and 40 C.F.R. § 412.4.

142. The discharges and violations of the CWA alleged above have caused and/or contributed to pollution of Bear Branch, Muckalee Creek, and/or Muckaloochee Creek, including the portions of the waters at issue on Local Farmer Plaintiffs’ farms, with the pollutants specified in the Notice Letter. *See* Notice Letter at 3.

143. The violations of the CWA alleged above have caused and/or contributed to violations of Georgia’s water quality standards for E. coli, dissolved oxygen, and other parameters in the waters at issue including portions on Local Farmer Plaintiffs’ farms.

144. The violations of the CWA alleged above have caused and/or contributed to eutrophication (excessive levels of nutrients) in the waters at issue including the portions of the waters at issue on Local Farmer Plaintiffs’ farms.

Fig. 6: Recent Bear Branch E. Coli Data (CFU/100 ml) (3,600 ≈ Too Numerous to Count)

145. The repeated discharges and pollution of the waters at issue alleged above have caused Local Farmer Plaintiffs and members of Flint Riverkeeper to curtail their use of the waters at issue, including the portions of the waters at issue on their farms, for wading, swimming, fishing, hunting, hiking, camping, and other aesthetic and recreational enjoyment.

146. The repeated discharges and pollution of the waters at issue alleged above have impaired and/or threatened the ability of Local Farmer Plaintiffs to use the portions of the waters at issue on their farms to irrigate crops because of the potential for contamination of the crops with the drugs, viruses, pathogens, and chemicals specified in the Notice Letter.

147. The violations of the CWA alleged above have caused and/or contributed to elevated levels of nitrates and phosphorus in the groundwater on Local Farmer Plaintiffs' farms including levels of nitrates near and/or in excess of applicable MCLs.

SECOND CLAIM FOR RELIEF
(Ongoing Violations of Sections 301 and 404 of the Clean Water Act)

148. Plaintiffs incorporate by reference the factual allegations in the factual and regulatory background sections above and the allegations in the Notice Letter.

149. Upon information and belief, each Defendant violated and continues to violate Section 404 of the CWA because during their operation and/or ownership of Leatherbrook Holsteins each Defendant discharged dredged and/or fill material into the waters at issue without a Section 404 permit.

150. The locations of these violations include those specified in the Notice Letter. *See* Notice Letter at 10.

151. These discharges of dredged and/or fill material by Defendants include the discharge of soil, rock, metal, concrete, and other structures into a portion of Bear Branch to build a road/embankment in Bear Branch within the past five years.

152. These discharges of dredged and/or fill material by each Defendant also include the redistribution of surface materials by blading, grading, or other means to fill in wetlands and change them to dry land to bring them into farming use and construct new center pivots, including at the locations specified in the Notice Letter.

153. These discharges of dredged and/or fill material by each Defendant also include the construction of canals, ditches, dikes, and other structures which continue to drain or otherwise significantly modify wetlands and tributaries of Bear Branch and Muckaloochee Creek, and continue to convert them from wetlands to non-wetlands and/or one from silviculture use to farming use, including at the locations specified in the Notice Letter, within the past five years.

Fig. 7: Fill Material and Eutrophication of Bear Branch on Leatherbrook Holsteins



154. These violations of Section 404 are ongoing because the discharges continue to impair the flow and/or circulation and reduce the reach of the waters at issue.

155. These violations of Section 404 are ongoing because the discharges continue to add and leach fill material, and manure, process wastewater, silage waste/exudate, and other pollutants, to the waters at issue.

156. Each Defendant continues to add fill material to these areas through their ongoing addition and application of solid manure to these areas.

157. Each Defendant continues to add fill material to these areas through continued blading and grading of these areas including the road/embankment in Bear Branch.

158. These violations of the CWA have caused and/or contributed to the pollution and degradation of water quality of the waters at issue, including portions on Local Farmer Plaintiffs' farms.

159. These violations of the CWA have also caused and/or contributed to the past and ongoing flooding of portions of Plaintiff Mark L. Israel's farm and residence.

160. Because of the violations of the CWA alleged in the First and Second Claims for Relief, one or more Local Farmer Plaintiffs cannot use Bear Branch to irrigate their crops.

161. The violations of the CWA alleged in the First and Second Claims for Relief have frustrated the mission of Flint Riverkeeper and caused Flint Riverkeeper to divert significant resources to monitoring and counteracting these violations.

162. An order from the Court requiring Defendants to come into consistent and permanent compliance with the CWA would redress the injuries to Local Farmer Plaintiffs and Flint Riverkeeper alleged in the First and Second Claims for Relief.

Fig. 8: Ditches/Structures on Leatherbrook Holsteins Draining Wetlands to Israel Property



**THIRD CLAIM FOR RELIEF
(Negligence Per Se)**

163. Plaintiffs incorporate the preceding factual allegations by reference.

I. Violations of the CWA.

164. Defendants have violated and continue to violate the CWA as alleged in the First and Second Claims for Relief, which allegations Plaintiffs incorporate by reference.

II. Violations of the LAS General Permit.

165. Defendants violated the LAS General Permit by discharging manure, process wastewater, and other pollutants from point sources to the waters at issue.

166. Defendants violated the LAS General Permit by failing to submit an updated NMP no later than 180 days after obtaining coverage under the LAS General Permit.

167. Defendants violated the LAS General Permit by failing to submit an updated NMP to Georgia EPD for review and approval 180 days before modifying, increasing the number of animals, and adding any spray fields.

168. Defendants violated the LAS General Permit by applying manure and/or process wastewater to areas not identified in the 2010 NMP from at least 2010 through the present.

169. Defendants violated the LAS General Permit by failing to amend, develop, and implement a site-specific NMP that includes all the elements and information required by the permit including a failure to establish protocols to land apply manure and/or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural use of the nutrients in the manure and/or process wastewater.

170. Defendants violated the LAS General Permit by failing to ensure that the effective implementation of the NMP resulted in compliance with all permit conditions.

171. Defendants violated the LAS General Permit by failing to report discharges of manure and/or process wastewater from feedlots and silage storage areas to the waters at issue.

172. Defendants violated the LAS General Permit by applying manure and/or process wastewater to sites that were flooded, when conditions were such that the applied wastewater would not be absorbed into the soil, and/or when it was raining and/or the soil was saturated.

173. Defendants violated the LAS General Permit because the new and/or existing waste lagoons exceed a maximum contaminant level (“MCL”) for drinking water and/or seepage from the new waste lagoons exceed the criteria in the permit.

174. Defendants violated the LAS General Permit because the groundwater in the wells has exceeded the primary MCL for nitrate nitrogen in drinking water (10 mg/l).

175. Defendants violated the LAS General Permit by not complying with all the reporting, monitoring, and record-keeping requirements in the LAS General Permit.

176. Defendants violated the LAS General Permit by failing to take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

III. Violations of Wetland and Highly Erodible Land Conservation Regulations.

177. From 2008 to the present, Defendant Leatherbrook Holsteins, LLC, has received more than \$200,000 in farm subsidy payments from USDA.

178. From 2008 to the present, Defendant Adam L. Graft has received more than \$45,000 in farm subsidy payments from USDA.

179. Upon information and belief, Defendants have failed to comply with the Wetland (“Swampbuster”) and Highly Erodible Land (“Sodbuster”) Conservation regulations of the Food Security Act by converting a wetland that made the production of an agricultural commodity possible and by planting or producing an agricultural commodity on a converted wetland and/or highly erodible land without having and/or following a conservation plan approved by the U.S. Natural Resources Conservation Service.

180. The violations of the statutes and regulations by Defendants alleged above (the CWA, the LAS General Permit, and the wetland and highly erodible land conservation regulations) were intentional and/or the result of Defendants' failure to exercise ordinary care.

181. Local Farmer Plaintiffs fall within the class of persons these statutes and regulations were intended to protect.

182. Defendants breached duties owed to Local Farmer Plaintiffs through their violations of the statutes and regulations alleged above.

183. Defendants' violations of the statutes and regulations above were the direct and proximate cause of damage to and pollution of Local Farmer Plaintiffs' farms in amounts to be proven at trial.

184. The damage to and pollution of Local Farmer Plaintiffs' farms are the same damages that the statutes and regulations above were intended to guard against.

**FOURTH CLAIM FOR RELIEF
(Negligence)**

185. Plaintiffs incorporate by reference all the preceding factual allegations.

186. Defendants had a duty to operate Leatherbrook Holsteins with a degree of care exercised by ordinarily prudent persons under the same or similar circumstances and which every prudent man takes of his own property of a similar nature. O.C.G.A. § 51-1-2.

187. Defendants had a duty to use BMPs while operating Leatherbrook Holsteins.

188. Defendants had a duty not to so pollute or adulterate the waters at issue as to interfere with the enjoyment of them by, or lessen their value to, the next owner.

189. During each Defendant's operation and/or ownership of Leatherbrook Holsteins, each Defendant breached these duties alleged above owed to Plaintiffs.

190. The breaches of these duties by each Defendant damaged and polluted Local Farmer Plaintiffs' farms in amounts to be proven at trial.

**FIFTH CLAIM FOR RELIEF
(Violation of Riparian Rights)**

191. Under O.C.G.A. § 44-8-1, a “landowner has no right to . . . use or adulterate [a stream] as to interfere with the enjoyment of it by the next owner.”

192. Under O.C.G.A. § 51-9-7, “the polluting [of a watercourse] so as to lessen its value to the owner of such land shall constitute a trespass upon the property.”

193. During each Defendant’s operation and/or ownership of Leatherbrook Holsteins, each Defendant’s acts and omissions alleged in the first three claims for relief so polluted and adulterated the waters at issue that flow into and/or through Local Farmer Plaintiffs’ farms as to interfere with the use and enjoyment of these waters by Local Farmer Plaintiffs and lessen the value of them to Plaintiffs, in violation of O.C.G.A. §§ 44-8-1 and 51-9-7.

**SIXTH CLAIM FOR RELIEF
(Trespass)**

194. During each Defendant’s operation and/or ownership of Leatherbrook Holsteins, each Defendant’s acts and omissions alleged in the first three claims for relief caused pollution of the waters at issue on Plaintiffs’ farms.

195. These discharges constitute trespasses to Local Farmer Plaintiffs’ farms.

196. Sometime around 2015, one or more Defendants ditched and/or destroyed wetlands adjacent to the farm of Plaintiff Mark L. Israel, which has caused and continues to cause repeated flooding of portions of his farm including portions near his residence.

197. Additionally, sometime between 2016 and 2018, one or more Defendants trespassed upon the farm of Plaintiff Mary Beth Powell Rogers and dug part of a channel on her farm down to Muckalee Creek.

198. Local Farmer Plaintiffs are entitled to damages for the trespasses to their farms and the diminution in value to their farms in amounts to be proven at trial.

**SEVENTH CLAIM FOR RELIEF
(Nuisance)**

199. During each Defendant's operation and/or ownership of Leatherbrook Holsteins, each Defendant's acts and omissions alleged in the first three claims for relief caused pollution of the waters at issue on Local Farmer Plaintiffs' farms.

200. During each Defendant's operation and/or ownership of Leatherbrook Holsteins, each Defendant's acts and omissions caused the emission of noxious malodors from Leatherbrook Holsteins onto Local Farmer Plaintiffs' farms.

201. This pollution and noxious malodors have caused Local Farmer Plaintiffs hurt and inconvenience and damage to Plaintiffs' farms and constitute a nuisance.

202. This pollution and noxious malodors have substantially and unreasonably interfered with Local Farmer Plaintiffs' use and enjoyment of their farms and constitute a nuisance.

203. This pollution and noxious malodors result from the negligence, improper, and illegal operation of Leatherbrook Holsteins.

204. Local Farmer Plaintiffs are entitled to damages for the hurt and inconvenience to them from the pollution and noxious malodors, in amounts to be determined by the enlightened conscience of a jury.

**EIGHTH CLAIM FOR RELIEF
(Punitive Damages)**

205. In the past few years, Local Farmer Plaintiffs repeatedly notified Defendants of the discharges of pollutants, noxious malodors, and excess runoff/stormwater from Leatherbrook Holsteins during each Defendant's operation and/or ownership of Leatherbrook Holsteins.

206. Despite each Defendant having this notice, each Defendant willfully and repeatedly failed to cease or ameliorate the repeated discharges of pollutants, noxious malodors,

and excess runoff and stormwater, and thereby acted with specific intent to cause harm to Local Farmer Plaintiffs and their farms.

207. Each Defendant acted with conscious indifference to the consequences of, and specific intent to cause harm to Local Farmer Plaintiffs in, creating and then in repeatedly failing to correct the discharges of pollutants, noxious malodors, and excess runoff and stormwater from Leatherbrook Holsteins that have and continue to cause damage to Local Farmer Plaintiffs and their farms, authorizing a jury to award punitive damages under O.C.G.A. § 51-12-5.1.

**NINTH CLAIM FOR RELIEF
(Attorneys' Fees and Expenses of Litigation)**

208. Each Defendant knew about the pollution of the waters at issue and the emission of noxious malodors by Leatherbrook Holsteins during each Defendant's operation and/or ownership of Leatherbrook Holsteins.

209. In the past few years, Local Farmer Plaintiffs repeatedly notified Defendants of the discharges of pollutants, noxious malodors, and runoff from Leatherbrook Holsteins.

210. Despite each Defendant having this notice and/or knowledge, each Defendant willfully and repeatedly failed to cease or ameliorate the discharges of pollutants, noxious malodors, and/or excess stormwater and thereby intentionally trespassed upon Local Farmer Plaintiffs' farms and acted in bad faith, authorizing a jury to award attorneys' fees and expense of litigation under O.C.G.A. § 13-6-11.

211. Each Defendant was stubbornly litigious and caused Local Farmer Plaintiffs unnecessary trouble and expense because there exists no bona fide controversy that each Defendant violated the CWA, the LAS General Permit, and/or Sodbuster and/or Swampbuster requirements, and polluted the waters at issue yet each Defendant refused to correct these violations before the case was filed, which authorizes a jury to award attorneys' fees and expenses of litigation under O.C.G.A. § 13-6-11.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for this Honorable Court to:

212. Grant Plaintiffs a trial by jury on all their claims for relief;
213. Enter judgment in favor of Plaintiffs and against Defendants on all their claims for relief;
214. Declare under the Declaratory Judgment Act that Defendants are liable and/or derivatively liable for violations of §§ 301, 402, and 404 of the CWA;
215. Impose civil penalties of \$54,833 per violation of the CWA per Defendant per day under § 505(a) of the CWA;
216. Issue a temporary and/or permanent injunction ordering Defendants to cease their violations of the CWA, including any more illegal and/or unpermitted discharges of pollutants, remove all dredged or fill material discharged into the waters of the United States at issue, restore and remediate the waters of the United States at issue, and immediately take all necessary steps to come into permanent and consistent compliance with the CWA;
217. Award Plaintiffs reasonable attorneys' fees and expenses of litigation (including expert witness fees) under the CWA and/or O.C.G.A. § 13-6-11;
218. Award Plaintiffs punitive and compensatory damages in amounts proven at trial and determined by the enlightened conscience of a jury;
219. Enter an order stating that the Court shall maintain jurisdiction over this action until Defendants come into consistent and permanent compliance with the CWA and comply with every order of this Court in this action including any consent decree entered by this Court; and
220. Grant Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

Date: July 11, 2019

/s/ Tyler J. Sniff

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Lead Counsel for All Plaintiffs

Date: July 11, 2019

/s/ R. Hutton Brown

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Counsel for Plaintiff Flint Riverkeeper, Inc.

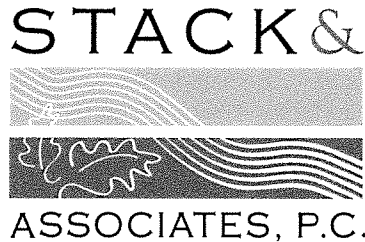
JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Cornwell McRee, Marjorie; Cornwell Webb, Emory; Cornwell Turpin, Linda; Cornwell-Williams, Claire; Israel, Mark W.; Israel, Charles L. Israel, Jr., Harold; Teaford, Jr., Henry S.; Powell Rogers, Mary Beth; Crisp, Jenny; J Crisp Enterprises, LLC; Cotten, Mary Linda; Verdura Land & Timber Co.; Flint Riverkeeper, Inc. (b) County of Residence of First Listed Plaintiff <u>Lee</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> (c) Attorneys (Firm Name, Address, and Telephone Number) Tyler J. Sniff & Donald D.J. Stack, Stack & Associates, P.C. 260 Peachtree Street, Suite 1200, Atlanta, GA 30303; 404-525-9205 Hutton Brown & April Lipscomb, Southern Environmental Law Center Ten 10th Street, NW, Suite 1050, Atlanta, GA 30309; 404-521-9900		DEFENDANTS Leatherbrook Holsteins, LLC; Leatherbrook Holsteins #3, LLC; Graft, Adam L. County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) _____																									
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <i>(For Diversity Cases Only)</i> <table style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>			PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>33 U.S.C. 1365(a) et seq. (Clean Water Act or "CWA")</u> Brief description of cause: <u>Pollution of local air/water by Concentrated Animal Feeding Operation in violation of CWA Sections 402 & 404</u>																											
VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ Civil Penalties, CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																											
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____																											
DATE <u>07/10/2019</u> SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Tyler J. Sniff</u>																											
FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____																											

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May 9, 2019

VIA U.S. MAIL, CERTIFIED MAIL, AND REGISTERED MAIL

Adam L. Graft, Manager/Registered Agent
Leatherbrook Holsteins
2620 South Lee Street Road
Americus, GA 31709

**NOTICE OF INTENT TO SUE UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. § 1365 AND THE
FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972**

Dear Dr. Graft and Site Owner/Manager:

This letter follows your recent conversation with our clients, which include local farmers, residents, and businesses, and Flint Riverkeeper, Inc. about pollution of local water and air resources by Leatherbrook Holsteins, the approximately 12,400-cow dairy/Concentrated Animal Feeding Operation (“CAFO”) that you own and operate in Sumter County, Georgia.

The purpose of this letter is to fulfill a promise made to you during one of these conversations by Gordon Rogers, the Flint Riverkeeper, on the shoulder of U.S. Route 19 to share some of our clients’ recent water quality sampling data with you. The purpose of this letter is also to notify you that our clients intend to file a citizen suit against you, Leatherbrook Holsteins LLC, Leatherbrook Holsteins #2, LLC, and Leatherbrook Holsteins #3, LLC (collectively, “Leatherbrook Holsteins”) for ongoing violations of the federal Clean Water Act (“CWA”) and the federal Resource Conservation and Recovery Act (“RCRA”) for allowing manure and other pollutants from the CAFO to pollute and degrade local streams and groundwater, endangering the health and well-being of the public and the environment.

Our clients lived happily next to Mr. Anthony’s small dairy for years until you purchased and greatly expanded it. Your dramatic expansion of the operation from less than 2,000 cows to more than 12,000 cows (approximately 18,000 Animal Units), while failing to implement adequate and appropriate water and air pollution controls, has negatively impacted our clients’ ability to use and enjoy their farms and properties. Many of our clients can no longer fish, hunt, wade, or swim in the streams and wetlands running through and around their properties because of the pollution from your operation. Odors and air quality concerns from the CAFO also prevent them from using and enjoying their farms and properties. The specific details of our clients’ claims against Leatherbrook Holsteins are described below.

Dr. Adam Graft
May 9, 2019
Page 2 of 18

INTRODUCTION

Leatherbrook Holsteins is polluting and degrading Bear Branch (a/k/a Oaheathla Creek), Muckalee Creek, Muckaloochee Creek, their tributaries and adjacent wetlands, and other “waters of the United States” (collectively, “Waters”) by unlawfully discharging solid and liquid animal excrement (“manure”), process wastewater, and Other Pollutants (defined below) from a Concentrated Animal Feeding Operation (“CAFO”), which the CWA defines as a “point source” into the Waters. Leatherbrook Holsteins is also discharging these pollutants into the Waters via other point sources identified below, including pipes, drains, ditches, and channels.

Leatherbrook Holsteins is therefore violating the CWA by discharging pollutants into these Waters via point sources without a valid National Pollutant Discharge Elimination System (“NPDES”) permit, and/or in violation of the terms and limitations of NPDES General Permit GAG930000, 40 C.F.R. § 122.42(e), and 40 C.F.R. § 412.¹ Leatherbrook Holsteins is also in violation of Section 404 of the CWA because it has filled in several wetland areas and constructed drainage structures that have drained or otherwise destroyed several wetland areas discussed below.

Leatherbrook Holsteins has also contributed and/or is contributing to the past or present handling, storage, treatment, transportation, and/or disposal of discarded manure, process wastewater, and other solid waste in such manner that constitutes “open dumping” and may, and indeed does, present an “imminent and substantial endangerment” to health and the local environment, in violation of RCRA. And, as mentioned above, the water and air pollution from Leatherbrook Holsteins continues to damage and interfere with the use and enjoyment of clients’ farms and properties next to and near Leatherbrook Holsteins and constitutes a trespass, nuisance, and violation of our clients’ riparian rights.

Thus, under the citizen suit provisions of the federal Clean Water Act, 33 U.S.C. § 1365(a)(1), and the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, our clients intend to file a citizen suit in the U.S. District Court for the Middle District of Georgia against Leatherbrook Holsteins on or after the 60th day (for the CWA) and the 90th day (for RCRA) from the date of this letter. Our clients include Emory Cornwell Webb, Marjorie Cornwell McRee, Linda Cornwell Turpin, Claire Cornwell Williams, the Estate of Sue Rawls Cornwell, the Estate of Woodie C. Cornwell, the Woodie C. Cornwell Marital Trust, the Woodie C. Cornwell Residuary Trust, Harold J. Israel, Jr., Charles L. Israel, Mark W. Israel, Jenny Crisp, J Crisp Enterprises, LLC, Dr. Henry S. Teaford, Jr., Mary Beth Rogers, Mary Linda Cotten, Verdura Land & Timber Co.; and Flint Riverkeeper, Inc.

¹ Leatherbrook Holsteins does not possess coverage under NPDES General Permit GAG930000. If Leatherbrook Holsteins obtains this coverage, the lawsuit will allege that Leatherbrook Holsteins is in violation of that permit for reasons discussed below.

Dr. Adam Graft
May 9, 2019
Page 3 of 18

**VIOLATIONS OF THE CLEAN WATER ACT:
ILLEGAL AND UNPERMITTED DISCHARGES OF POLLUTANTS**

The CWA prohibits any person from discharging pollutants from a point source into waters of the United States except in compliance with the terms and limitations of a valid NPDES permit. The CWA defines “point source” to include CAFOs. 33 U.S.C. § 1362(14). The CWA also defines “point source” to mean “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel [or] conduit . . . from which pollutants are or may be discharged.” *Id.* Leatherbrook Holsteins is responsible for the following past and ongoing illegal point source discharges from Leatherbrook Holsteins to Bear Branch, Muckalee Creek, Muckaloochee Creek, and the other Waters:

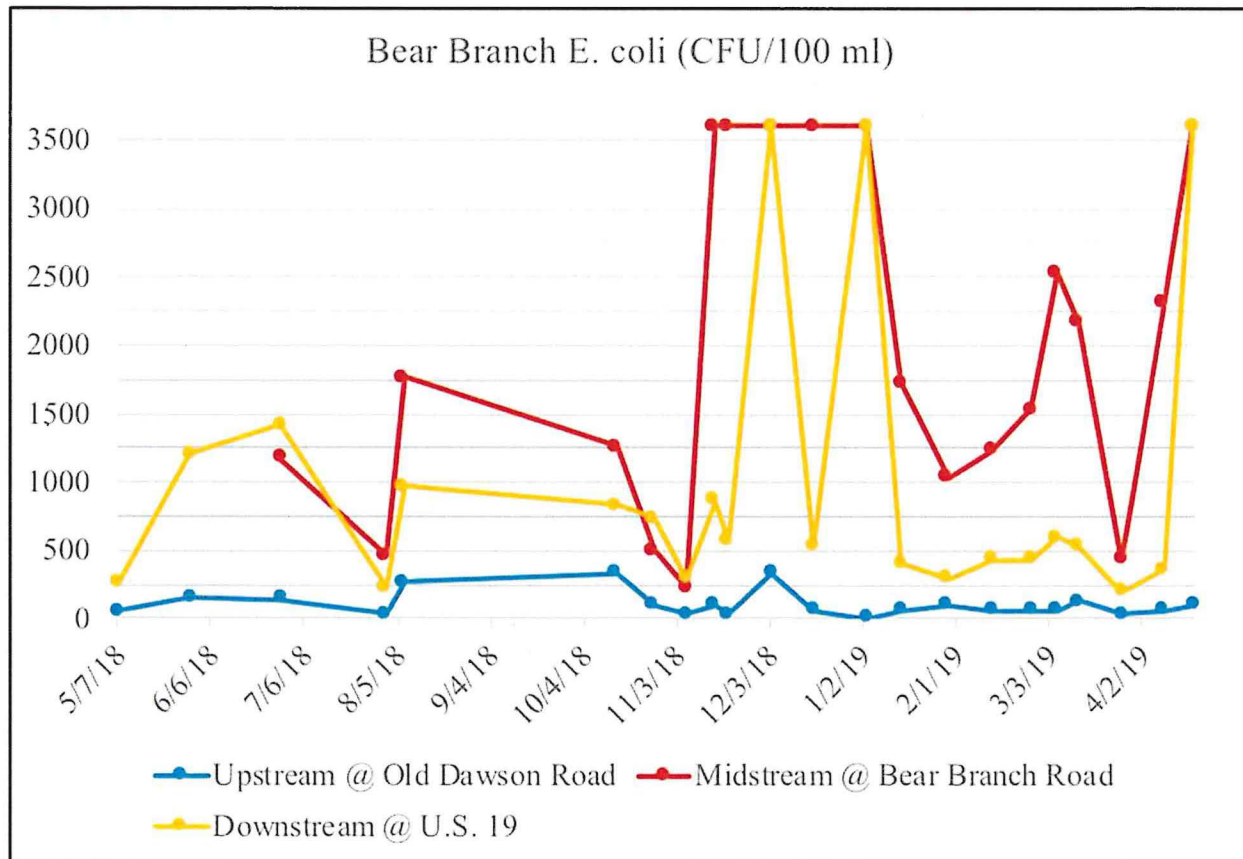
- Dry weather discharges of manure, process wastewater, and Other Pollutants (defined below) from open lots, feedlots, and other production areas, and land application areas to the Waters via pipes, drains, ditches, channels, conduits and other point sources.
- Discharges of stormwater containing manure, process wastewater, and Other Pollutants from open lots, feedlots, and other production (non-land application) areas to the Waters via pipes, drains, ditches, channels, conduits, and other point sources during storms up to and including the 25-year, 24-hour storm event.
- Discharges of manure, process wastewater, stormwater containing manure and process wastewater, and Other Pollutants from land application areas to the Waters where application of manure and/or process wastewater was not made, and is now not made, in accordance with a valid, current, and approved Nutrient Management Plan (“NMP”) and/or site-specific nutrient management practices that ensure appropriate agricultural and agronomic use of the nutrients in the manure and process wastewater.
- Discharges of manure, process wastewater, and Other Pollutants from the CAFO and pipes, drains, ditches, channels, conduits and other point sources to the Waters via groundwater with a direct hydrological connection between these point sources and the waters.

The “Other Pollutants” referred to above and below include but are not limited to the following: pathogens (including *E. coli*, salmonella, campylobacter, listeria, cryptosporidium, giardia, rotavirus, norovirus, and hepatitis E), ammonia nitrogen, total Kjeldahl nitrogen, nitrate, nitrite, total nitrogen, phosphorus, biochemical oxygen demand, chemical oxygen demand, total organic carbon, total suspended solids, total dissolved solids, chloride, sulfate, aluminum, arsenic, calcium, copper, iron, lead, magnesium, manganese, nickel, potassium, selenium, sodium, zinc, and antibiotics, hormones, and pharmaceuticals (including aminocyclitol, aminoglycosides, β -lactams, fluoroquinolones, ionophores, macrolides, sulfonamides, tetracyclines, estrogens, zeranol, androgens, trenbolone acetate, progesterone, and rBGH).

Dr. Adam Graft
 May 9, 2019
 Page 4 of 18

Below is some water quality sampling data that our clients said they would share with you:

Figure 1: Recent Bear Branch E. coli Sampling Data (3600 \approx TNTC)



The water quality standard for E. coli is 126 CFU/100 ml (geometric mean) for May to October and 630 CFU/100 ml (geometric mean) for November to April. Samples showing approximately 3,600 CFU/100 ml likely have far higher E. coli counts, as those readings are “too numerous to count.” As you can see from the chart, the water quality standard for E. coli in Bear Branch next to and downstream of Leatherbrook Holsteins was violated throughout the year (midstream at Bear Branch Road and downstream at U.S. Route 19). In contrast, Bear Branch upstream of the CAFO met or exceeded the water quality standard for E. coli throughout the year.

Dr. Adam Graft

May 9, 2019

Page 5 of 18

The violations of the CWA also include the past and ongoing operation of Leatherbrook Holsteins in a way that violates the terms and limitations of GAG930000, 40 C.F.R. § 122.42(e), and 40 C.F.R. § 412. These violations include but are not limited to the following:

- Failure to have retention structures on open lots and feedlots containing thousands of cows (including those on Parcel Nos. 1603221 and 1603591, and/or 16121501) and other production areas (including confinement structures constructed on Bear Branch Road) that prevent discharges of stormwater containing manure, process wastewater, and Other Pollutants caused by storms up to and including the 25-year, 24-hour storm.
- Failure of the NMP to comply with all requirements of Part IV.B of GAG930000 and 40 C.F.R. § 122.42(e)(1) & (5).
- Failure to timely notify EPD of changes to the operation that could increase the quantity of manure and process wastewater discharged.
- Failure to develop and implement all the Best Management Practices for land application of manure and/or process wastewater specified in 40 C.F.R. § 412.4.
- Failure to implement all the requirements of 40 C.F.R. § 412.37.
- Failure to ensure that discharges associated with the land application of process wastewater and/or manure comply with the Minimum Standards in Part II.H of GAG930000 and a current and approved NMP, including: failure to divert clean water and floodwaters from contact with manure and feedlots; failure to provide adequate storage capacity so that land application occurs only during periods when land or weather conditions are suitable for manure and wastewater application; failure to land apply manure and/or wastewater in accordance with proper agricultural practice and land application rates based on the most appropriate nutrient in the soil, type of crop, appropriate crop yields, soil type, and all nutrient inputs; and land application of manure and/or wastewater during rainfall events and within 24 hours of precipitation with the potential to create manure and/or wastewater runoff into Waters of the State.

The locations of the violations of the CWA include but are not limited to the open lots, feedlots, other production areas, and land application areas at Leatherbrook Holsteins that constitute the CAFO, as described in 33 U.S.C. § 1362(14). The locations of the violations and illegal point source discharges also include but are not limited to these pipes, drains, ditches, channels, conduits, and other point sources shown on the chart below and attached maps. The maps of the land application areas in Leatherbrook Holsteins' own NMP show point sources on these areas and areas of concentrated flow on these areas to/through many of these point sources.

Dr. Adam Graft
 May 9, 2019
 Page 6 of 18

Figure 2: GPS Locations of Known Point Source Discharges

Point Source Name on Attached Maps	Approximate Location
BB 1	31°58'21.98"N, 84°15'14.78"W
BB 2	31°58'29.12"N, 84°15'25.88"W
BB 3	31°58'51.80"N, 84°15'26.11"W
BB 4	31°58'53.45"N, 84°15'18.45"W
BB 5	31°59'2.86"N, 84°15'21.60"W
BB 6	31°59'12.58"N, 84°15'13.10"W
BB 7	31°59'23.76"N, 84°15'12.67"W
BB 8	31°59'27.77"N, 84°15'21.09"W
BB 9	31°59'31.15"N, 84°15'52.30"W
BB 10	31°59'37.35"N, 84°15'27.84"W
BB 11	31°59'41.01"N, 84°15'32.40"W
BB 12	31°59'47.15"N, 84°15'43.56"W
BB 13	31°59'53.29"N, 84°15'46.82"W
BB 14	32° 0'10.96"N, 84°16'13.28"W
BB 15	32° 0'46.70"N, 84°16'50.96"W
BB 16	32° 0'52.46"N, 84°16'50.50"W
BB 17	32° 0'57.25"N, 84°15'49.86"W
BB 18	32° 1'5.87"N, 84°15'53.09"W
BB 19	32° 1'21.41"N, 84°16'32.44"W
MLE 1	31°56'16.08"N, 84°13'16.30"W
MLE 2	31°58'23.32"N, 84°14'11.15"W
MLE 3	31°58'52.77"N, 84°13'57.15"W
MLE 4	32° 0'8.70"N, 84°14'32.90"W
MLE 5	32° 0'52.50"N, 84°15'8.83"W
MKLCHE 1	31°56'57.60"N, 84°18'44.59"W
MKLCHE 2	31°57'55.32"N, 84°16'35.50"W
MKLCHE 3	31°58'2.52"N, 84°17'1.92"W
MKLCHE 4	31°58'29.43"N, 84°16'38.17"W
MKLCHE 5	31°58'47.50"N, 84°16'24.57"W
MKLCHE 6	31°59'50.06"N, 84°19'12.67"W
Well	31°58'22.76"N, 84°14'26.87"W

Dr. Adam Graft
May 9, 2019
Page 7 of 18

Figure 3: Runoff of Manure and Pollutants from Feedlot into Bear Branch



Figure 4: BB 9 (Pipe) Discharging Manure and Pollutants from Feedlot into Bear Branch



Dr. Adam Graft

May 9, 2019

Page 8 of 18

The dates of the known violations and illegal discharges include but are not limited to the dates below plus dates of land application of manure and/or process wastewater and rain events greater than .75-inch in Leatherbrook Holsteins' records:

Figure 4: Dates of Known Violations and Illegal Discharges of Pollutants

2014	2015	2016	2017	2018	2019
5/14/2014	1/22/2015	1/15/2016	1/1/2017	2/7/2018	1/3/2019
7/10/2014	1/23/2015	2/3/2016	1/2/2017	2/11/2018	1/4/2019
7/15/2014	2/22/2015	2/15/2016	1/21/2017	3/11/2018	1/14/2019
7/20/2014	2/25/2015	4/1/2016	1/22/2017	4/15/2018	1/19/2019
7/25/2014	4/10/2015	5/19/2016	2/6/2017	4/22/2018	1/23/2019
9/3/2014	4/17/2015	6/14/2016	2/7/2017	5/7/2018	1/28/2019
9/7/2014	4/19/2015	6/26/2016	4/5/2017	5/21/2018	1/29/2019
9/22/2014	5/31/2015	7/19/2016	4/23/2017	5/27/2018	2/10/2019
10/14/2014	7/15/2015	8/2/2016	5/4/2017	5/30/2018	2/12/2019
11/16/2014	7/23/2015	8/10/2016	5/13/2017	6/2/2018	2/25/2019
11/17/2014	7/29/2015	8/23/2016	5/20/2017	6/9/2018	3/3/2019
11/22/2014	7/30/2015	9/11/2016	5/21/2017	6/11/2018	3/4/2019
11/23/2014	8/6/2015	12/4/2016	5/23/2017	6/28/2018	3/5/2019
11/25/2014	8/28/2015	12/5/2016	6/6/2017	6/30/2018	3/11/2019
12/23/2014	9/8/2015	12/18/2016	6/7/2017	7/19/2018	3/12/2019
12/24/2014	9/21/2015		6/11/2017	7/21/2018	3/26/2019
	9/22/2015		6/19/2017	7/23/2018	4/5/2019
	11/1/2015		6/20/2017	8/1/2018	4/9/2019
	11/8/2015		6/29/2017	8/2/2018	4/19/2019
	11/18/2015		6/30/2017	8/3/2018	
	12/16/2015		7/2/2017	8/7/2018	
	12/17/2015		7/12/2017	8/20/2018	
	12/21/2015		7/24/2017	9/26/2018	
	12/22/2015		7/25/2017	9/29/2018	
	12/23/2015		8/3/2017	10/10/2018	
	12/24/2015		9/11/2017	10/14/2018	
	12/28/2015		10/22/2017	10/26/2018	
	12/31/2015		10/23/2017	11/6/2018	
			10/28/2017	11/7/2018	
			12/7/2017	11/12/2018	
			12/8/2017	11/14/2018	
				11/15/2018	
				12/1/2018	
				12/2/2018	
				12/3/2018	
				12/8/2018	
				12/9/2018	
				12/13/2018	
				12/14/2018	
				12/17/2018	
				12/20/2018	
				12/28/2018	

Dr. Adam Graft

May 9, 2019

Page 9 of 18

**VIOLATIONS OF THE CLEAN WATER ACT:
ILLEGAL AND UNPERMITTED DISCHARGES OF DREDGED OR FILL MATERIAL**

Section 404 of the CWA, 33 U.S.C. § 1344 prohibits the “discharge of dredged or fill material” into waters of the United States without a permit issued by the U.S. Army Corps of Engineers. Section 404(f)(1)(A) of the CWA creates a narrow exception to this prohibition for “the discharge of dredged or fill material from normal farming . . . activities such as plowing, seeding, cultivating [and] minor drainage.” 33 U.S.C. § 1344(f)(1)(A).

To qualify as “normal farming” the activities “must be part of an established (i.e., ongoing) farming . . . operation and must be in accordance with definitions in § 323.4(a)(1)(iii).” 33 C.F.R. § 323.4(a)(1)(ii). “Activities that bring an area into farming . . . use are not part of an established operation.” 33 C.F.R. § 323.4(a)(1)(ii). The term plowing “does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land.” 33 C.F.R. § 323.4(a)(1)(iii)(D). For example, “the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing.” 33 U.S.C. § 323.4(a)(1)(iii)(D).

The term “minor drainage” does “not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland . . . or conversion from one wetland use to another (for example, silviculture to farming).” 33 C.F.R. § 323.4(a)(1)(iii)(C)(2). In addition, “minor drainage” does “not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies . . . any other wetland . . . constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.” 33 C.F.R. § 323.4(a)(1)(iii)(C)(2).

Where Section 404(f)(1) exempts a discharge from the permit requirement, the discharge is “recaptured” by the permit requirement under Section 404(f)(2). This section states that “any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.” 33 U.S.C. § 1344(f)(2). Under the “recapture” provision, “a permit will be required for . . . the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion.” 33 C.F.R. § 323.4(c).

Leatherbrook Holsteins is in violation of Section 404 of the CWA because it has filled several areas of wetlands by blading, grading, or other means, including those areas shown on the chart below and the attached maps, without a permit. It is also in violation of Section 404 of the CWA because it has constructed several drainage ditches and structures that have drained or otherwise significantly modified several areas of wetlands and discharged dredged or fill material into the Waters during such construction without a permit. These violations are ongoing as the dredged and fill material and drainage structures remain in the Waters.

Dr. Adam Graft
May 9, 2019
Page 10 of 18

Figure 5: GPS Locations of Known Discharges of Dredged or Fill Material

Fill or Drainage Structure	Approximate Location
A	31°58'50.18"N, 84°15'18.71"W
B	31°58'25.76"N, 84°15'33.52"W
C	31°58'6.58"N, 84°15'30.63"W
D	31°58'7.16"N, 84°16'24.74"W
E	31°57'3.02"N, 84°18'54.52"W

Figure 6: Illegal Discharges of Dredged and Fill Material into Bear Branch



Dr. Adam Graft

May 9, 2019

Page 11 of 18

**VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT:
IMMINENT AND SUBSTANTIAL ENDANGERMENT**

A violation of RCRA exists where any person has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any “solid waste” which “may” present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a). RCRA defines “solid waste” to include “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from agricultural operations.” 42 U.S.C. § 6902(27). Discarded material includes material that is cast aside, rejected, abandoned, or given up. Agricultural wastes are subject to RCRA if they are not “returned to the soil as fertilizers or soil conditioners.” 40 C.F.R. § 257.1(c)(1). Manure is discarded material where it is used or handled in a way that its otherwise useful purpose as a fertilizer is eliminated or disregarded. The manure and process wastewater at Leatherbrook Holsteins is handled, stored, treated, transported, and disposed of by Leatherbrook Holsteins in a way that makes it discarded and, as a result, a “solid waste” under RCRA for these reasons:

1. Based on public records, Leatherbrook Holsteins does not make agronomic use of its manure/process wastewater. It land applies manure and/or process wastewater based on a maximum crop nitrogen uptake rate/level each year without first heeding: (1) the amount of residual soil nitrate, ammonium, phosphorus, and potassium, organic matter, and other sources of fertilization before land application of manure/process wastewater; (2) the amount of nitrogen, ammonium, phosphorus, potassium, and other plant-fertilizing nutrients in its manure before application; and (3) crop yields, which must be varied based on prior years’ applications.

As an example, public records show that for several years Leatherbrook Holsteins has applied more than 1,000 pounds/acre of nitrogen and more than 350 pounds/acre of phosphorus to several of its application fields. They also show that these applications are based only on maximum crop nitrogen uptake/removal rates/levels of approximately 680 pounds/acre of plant available nitrogen (“PAN”). There is no evidence that the applications account for residual soil nitrate, ammonium, phosphorus, potassium, organic matter, and other sources of fertilization before the applications. The phosphorus indexes in the NMP are incorrectly calculated as “low” or “medium” rather than “very high” because they do not consider current soil, manure, and application data and the drainage structures and channelized flow in several application areas.

The result of such practices is over-applications of manure and process wastewater to Leatherbrook Holsteins’ application fields, overloading the soils with far more nutrients than the crop can effectively use as fertilizer (particularly nitrate and phosphorus). For example, large amounts of phosphorus have accumulated in several application fields (235 to 355 lb./acre). Such nutrients, especially nitrate, migrate downward through the soil with each subsequent application and precipitation event. The soils of Leatherbrook Holsteins are sandy, well drained, and have low cation exchange capacities (“CEC”) of about 4 to 6 meq/100g, which exacerbates such migration and leaching. Once the nutrients move past crop root zones, they can no longer be used by crops as fertilizer and are effectively lost to the environment. Once lost to the environment, the nutrients continue to move downward through the soil profile, where they are discharged into the aquifer, leading to contamination of groundwater and other resources.

Dr. Adam Graft

May 9, 2019

Page 12 of 18

Additionally, since at least 2010 Leatherbrook Holsteins has land applied approximately half a billion gallons (500,000,000) of liquid manure and process wastewater and more than 300,000 tons of solid manure without reference to a current, approved NMP, in violation of LAS General Permit GAG940000, and in a manner contrary to NRCS Conservation Practice Standard 590 (Nutrient Management). For example, from 2010 to the present, Leatherbrook Holsteins increased the number of cows from approximately 3,000 to more than 12,000, and land applied manure and process wastewater to several new land application areas but failed to prepare and submit an updated NMP to EPD for review and approval.

Further, Leatherbrook Holsteins discards its manure by applying it at times when the crops are unlikely to uptake the nutrients as fertilizer, as well as applying it during weather conditions that cause manure nutrients to percolate into soils or runoff application fields, where they cannot be used by the crop for fertilization. Leatherbrook Holsteins keeps hundreds of cows on or directly next to several land application areas which exacerbates the over-application of nutrients to these areas. For several years Leatherbrook Holsteins has also had limited storage capacity and only had a few feet of freeboard on the waste storage ponds forcing Leatherbrook Holsteins to apply manure/process wastewater more often and during periods of wet weather.

Figure 7: Buildup of Discarded/Overapplied Phosphorus (lbs./acre)

Area	2007	2010	2016	2018
Field 6	93	125	229	355
Field 7	119	190	213	280
Fields 3/4/5	150	188	206	239
Fields 1/2	130	149	202	235

2. The manure and process wastewater lagoons at Leatherbrook Holsteins are unlined earthen impoundments. Such impoundments were, at best, constructed with a specific discharge rate, meaning the lagoons leak thousands of gallons of manure per day. As a result, since the date the lagoons were brought into operation, large amounts of manure and/or process wastewater have leaked, seeped, and leached from Leatherbrook Holsteins' lagoons, causing vast quantities of nitrate, phosphorus, and Other Pollutants to enter the soils and aquifer. Nutrients that have leaked through the bottom of the lagoons are not used by Leatherbrook Holsteins for fertilization purposes, but rather are lost to the environment. Leatherbrook Holsteins is located in an area designated by EPD as having "high susceptibility" to groundwater pollution and an area of "most significant groundwater recharge" in the Claiborne aquifer.

Furthermore, based on information and belief, Leatherbrook Holsteins has failed to take proper care and maintenance of its lagoons, exacerbating the leakage rates. Indeed, around 2016, Leatherbrook Holsteins had to stop using Waste Storage Pond 1 because it was leaking large quantities of nitrate, phosphorus, and Other Pollutants. Additionally, as noted above, the soils of Leatherbrook Holsteins are sandy, well drained, and have low CECs. Such soils allow for the rapid transport of manure and process wastewater nutrients from the lagoons into the aquifer. This puts the local groundwater at high risk for contamination—contamination that, as explained below, is already near or above the Maximum Contaminant Level ("MCL") for nitrate.

Dr. Adam Graft

May 9, 2019

Page 13 of 18

3. Leatherbrook Holsteins fails to routinely clear its open pens and feedlots (containing up to 7,000 cows) of accumulated animal excrement. This has caused large amounts of manure to runoff into adjacent surface waters. It has also caused large amounts of nitrate, phosphorus, and Other Pollutants to leach into the soil and underlying aquifer. Leatherbrook Holsteins does not grow crops in its open pens and feedlots, meaning the nutrients lost to the environment are never used for fertilization purposes. The NMP does not account for the large volumes of waste produced by the thousands of cows on the open pens and feedlots.

Thus, Leatherbrook Holsteins has discarded its manure/process wastewater, making it a “solid waste” under RCRA. This discarded manure/process wastewater may, and indeed does, present an imminent and substantial endangerment to health or the environment in these ways:

- Exceedances in the Waters of EPA’s Aquatic Life Criteria and Georgia EPD’s Water Quality Standards for several pollutants including bacteria, dissolved oxygen, total phosphorus, and ammonia nitrogen.
- Pollution and eutrophication (overgrowth of plant life and decline of biological community) of the Waters with the pollutants listed above and degradation of streams not supporting their designated uses of fishing. The segment of Muckalee Creek downstream of Leatherbrook Holsteins is on the list of “impaired streams” for not supporting its designated use of fishing because of fecal coliform pollution. The segment of Muckaloochee Creek downstream of Leatherbrook Holsteins is also on the list of impaired streams for not supporting its designated use of fishing because of an impaired fish community from pollution.
- Contamination of the local aquifer and drinking water sources with high levels of nitrates (near and/or above the 10 mg/l MCL) and Other Pollutants including E. coli, phosphorus, and hormones, antibiotics, and pharmaceuticals used at Leatherbrook Holsteins. The MCL is the highest level of a pollutant that is allowed in drinking water. Human consumption of water at and even below 10 mg/l of nitrates can cause many serious health problems including methemoglobinemia (“blue baby syndrome”) a fatal condition that affects infants, certain cancers, thyroid disease, and birth defects/adverse pregnancy outcomes, among other health problems. The concentrations of nitrates in the wells next to the lagoons have been greater than 40 mg/l in recent years. The concentrations of nitrates in one or more wells on clients’ properties are near and/or above 10 mg/l.
- Contamination of local air resources with flies and noxious malodors that unreasonably interfere with use and enjoyment of clients’ properties.

These RCRA violations have been continual since Leatherbrook Holsteins began operations and continue unabated. The dates of surface water contamination include the dates identified above, as well as the dates of land disposal of manure and process wastewater.

Dr. Adam Graft
May 9, 2019
Page 14 of 18

Figure 8: Eutrophication of Local Waters Caused by Leatherbrook Holsteins



Dr. Adam Graft

May 9, 2019

Page 15 of 18

VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT: OPEN DUMPING

RCRA prohibits any solid waste management practice or disposal of solid waste that constitutes “open dumping.” 42 U.S.C. § 6945(a). Open dumping is defined at 40 C.F.R. § 257.3-1-8. Leatherbrook Holsteins disposal of manure and/or process wastewater at Leatherbrook Holsteins constitutes open dumping because it has:

- Introduced nitrates and Other Pollutants into underground drinking water sources that have caused an increase in the concentration of these pollutants in these sources and/or have caused the concentration of nitrates in these sources to exceed the MCL of 10 mg/l beyond the solid waste boundary.
- Adversely modified critical habitat of threatened and endangered species by polluting the segment of Muckalee Creek downstream of Leatherbrook Holsteins and critical habitat for the purple bankclimber, shinyrayed pocketbook, oval Pigtoe, and Gulf moccasinshell.
- Caused pollution of the Waters that violates legal requirements for Animal Feeding Operations implementing an areawide or Statewide water quality management plan that has been approved by EPA under Section 208 of the CWA including violations of General LAS Permit GAG940000.

These RCRA violations have been continual since Leatherbrook Holsteins began operations and continue unabated. They include all dates of land disposal of manure and process wastewater.

CIVIL PENALTIES AND INJUNCTIVE RELIEF

The lawsuit will allege that each of the separate failures identified above constitutes a discrete violation of the CWA and RCRA, subjecting Leatherbrook Holsteins to a daily penalty of up to **\$54,833** per day, per violation of the CWA, and a daily penalty of up to **\$74,552** per day, per violation of RCRA. In addition to civil penalties, we will seek an order requiring Leatherbrook Holsteins to abate all discharges and to come into full compliance with the CWA and RCRA and an injunction to force Leatherbrook Holsteins to clean up the pollution and contamination. Furthermore, our clients will seek an order from the Court requiring Leatherbrook Holsteins to pay clients’ attorneys’ fees and costs, which include expert witness fees and costs. The lawsuit will also seek damages, injunctive relief, and attorneys’ fees and expenses for violating state law including, but not limited to, trespass, nuisance, negligence, and violation of clients’ riparian rights.

Dr. Adam Graft

May 9, 2019

Page 16 of 18

PARTIES GIVING NOTICE

The names, addresses, and telephone numbers of the parties giving this Notice of Intent to Sue are (all these parties must be contacted through undersigned counsel):

Emory Cornwell Webb
Parcel Nos. 1602261, 1602266
1210 Sam Rodgers Road
Smithville, GA 31787
Telephone: (229) 942-8380

Harold J. Israel, Jr.
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Estate of Sue Rawls Cornwell
Parcel No. 1607762
c/o Emory Cornwell Webb, Executor
304 Cornwell Road
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Mark W. Israel
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Smithville, GA 31787
Telephone: (229) 938-8943

Linda Cornwell Turpin, Trustee
Claire Cornwell-Williams, Trustee
Estate of Woodie C. Cornwell
Woodie Cornwell Marital & Residuary Trusts
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1607971
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Charles L. Israel
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Dr. Henry S. Teaford, Jr.
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Mary Beth Powell Rogers
Parcel No. 160612610
212 Valley Drive
Americus, GA 31709
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Jenny Crisp
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Telephone: (229) 869-4160

Verdura Land & Timber Co.
Mary Linda Cotten
Parcel Nos. 16081321, 16091403
2608 Kenilworth Drive
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Telephone: (229) 347-0953

Flint Riverkeeper, Inc.
102 Pine Avenue
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Marjorie Cornwell McRee
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Dr. Adam Graft

May 8, 2019

Page 17 of 18

The names, addresses, and telephone numbers of counsel for the parties giving this Notice of Intent to Sue:

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dstack@stack-envirolaw.com

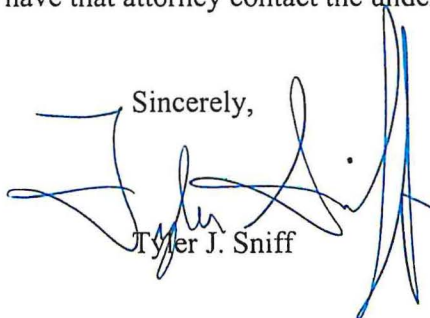
Daniel C. Snyder
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alipscomb@selcga.com

CONCLUSION

We will be available to discuss effective actions and remedies that will bring your dairy CAFO into compliance with the Clean Water Act, Resource Conservation and Recovery Act, and all other applicable local, state, and federal environmental laws. If you wish to avail yourself of this opportunity and avoid the need for costly and adversarial litigation, or if you have any questions about this letter, please contact the undersigned. If you are or will be represented by an attorney, please have that attorney contact the undersigned instead.

Sincerely,



Tyler J. Sniff

Attachments A through I

Dr. Adam Graft

May 9, 2019

Page 18 of 18

cc: **VIA CERTIFIED AND REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Andrew Wheeler, Administrator, U.S. EPA
Environmental Protection Agency
Office of the Administrator, MC 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

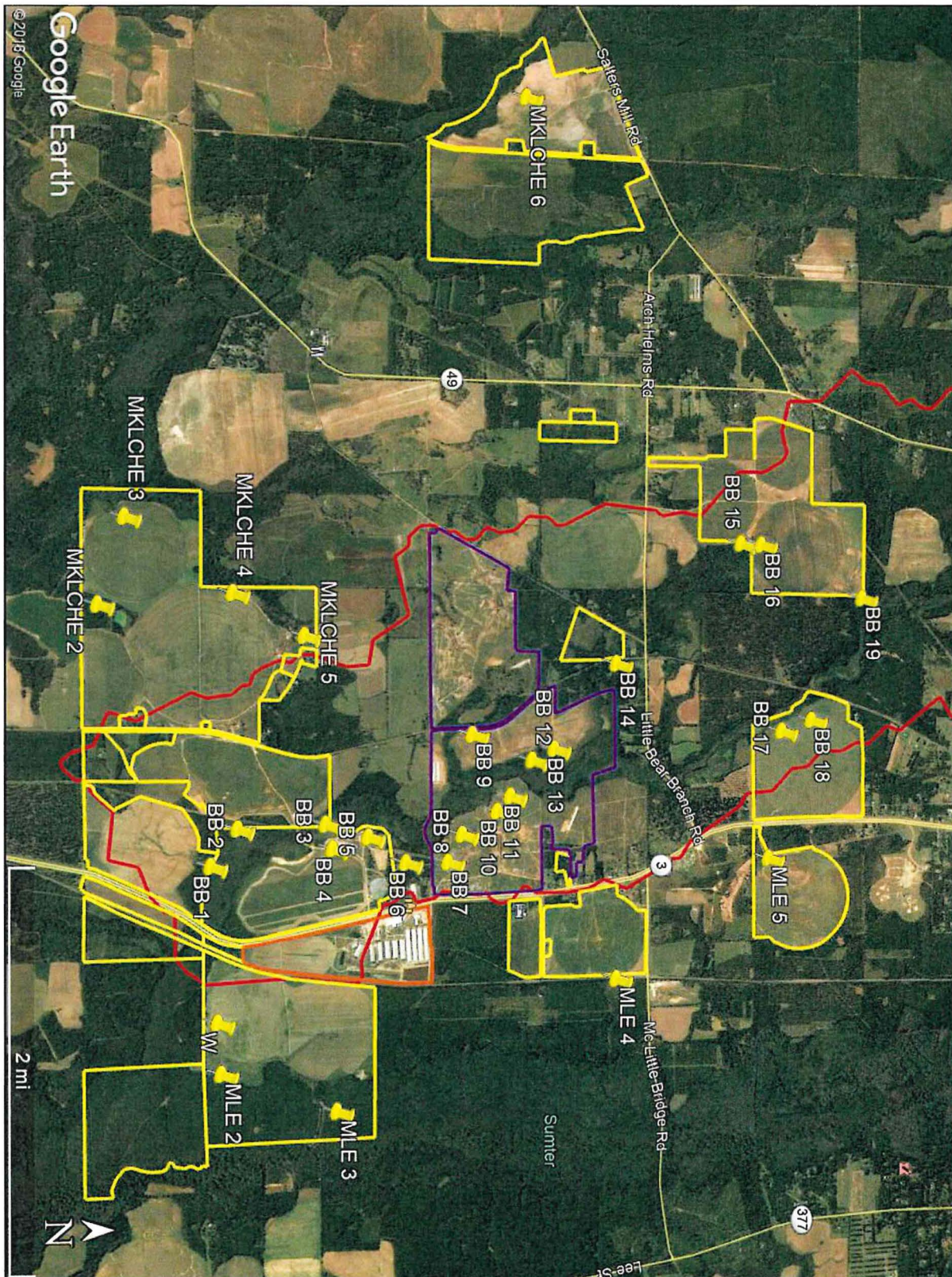
**VIA CERTIFIED AND REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Mary Walker, Regional Administrator
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104

**VIA CERTIFIED AND REGISTERED MAIL
RETURN RECEIPT REQUESTED**

Richard Dunn, Director
Georgia Environmental Protection Division
2 Martin Luther King, Jr. Drive, SE
Suite 1456, East Tower
Atlanta, Georgia 30334-9000

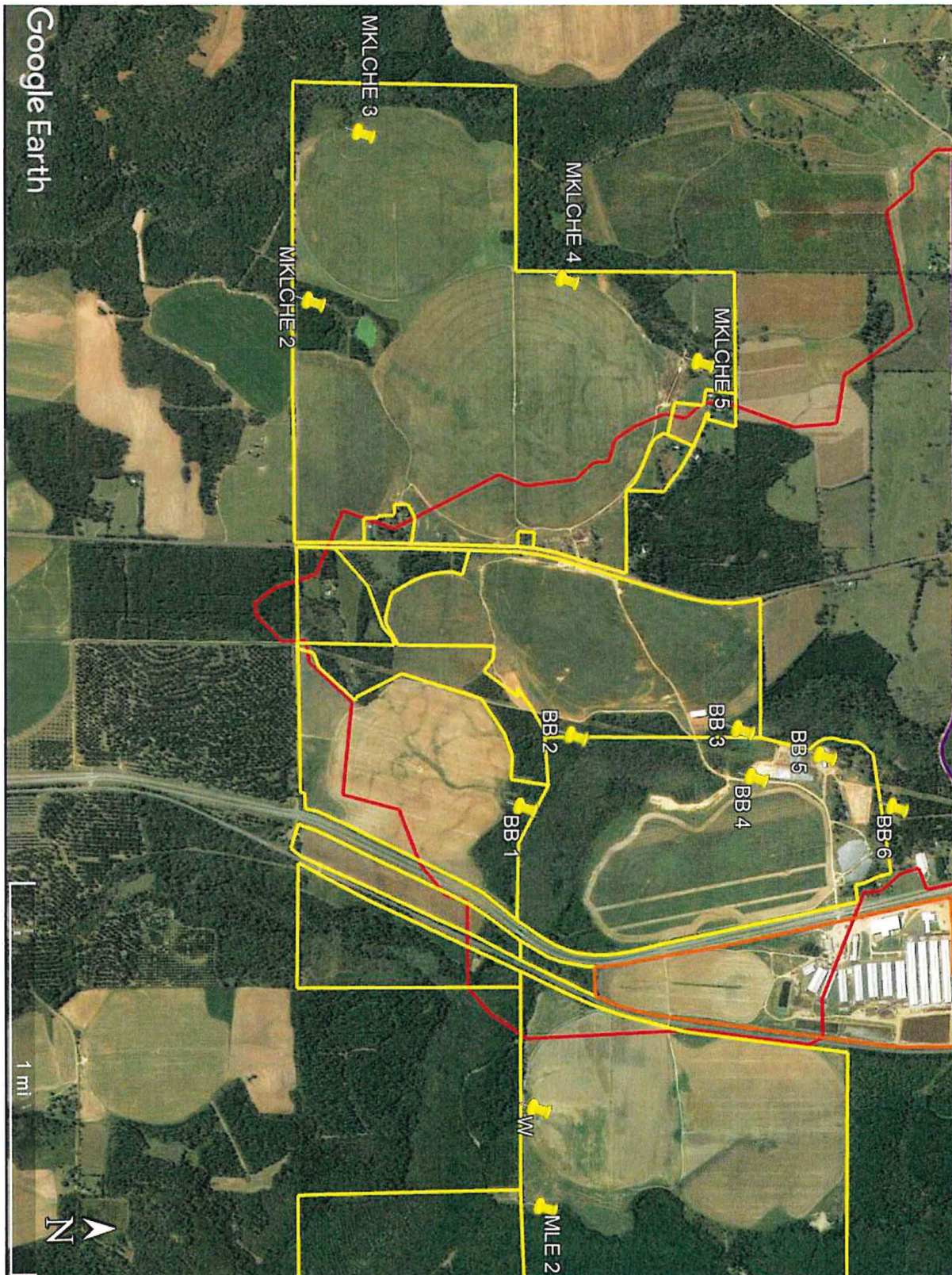
Attachment A: Locations of Known Violations of CWA/RCRA (Bear Branch Watershed (Red), Lagoons (Orange), Feedlots (Purple), LAS Areas (Yellow), Point Sources (Pins))



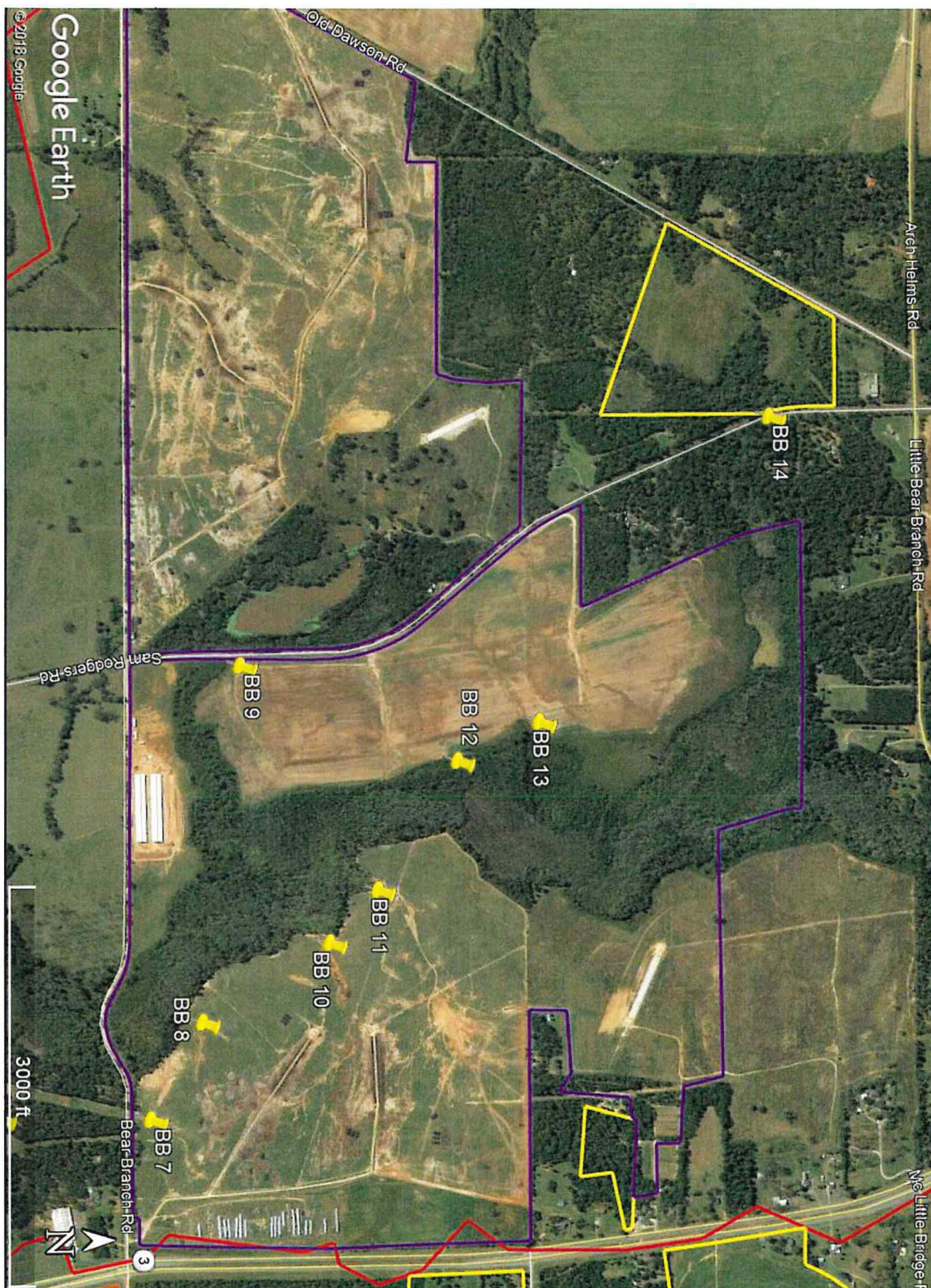
**Attachment B: Locations of Known Violations of RCRA
Leaking Manure and Process Wastewater Lagoons**



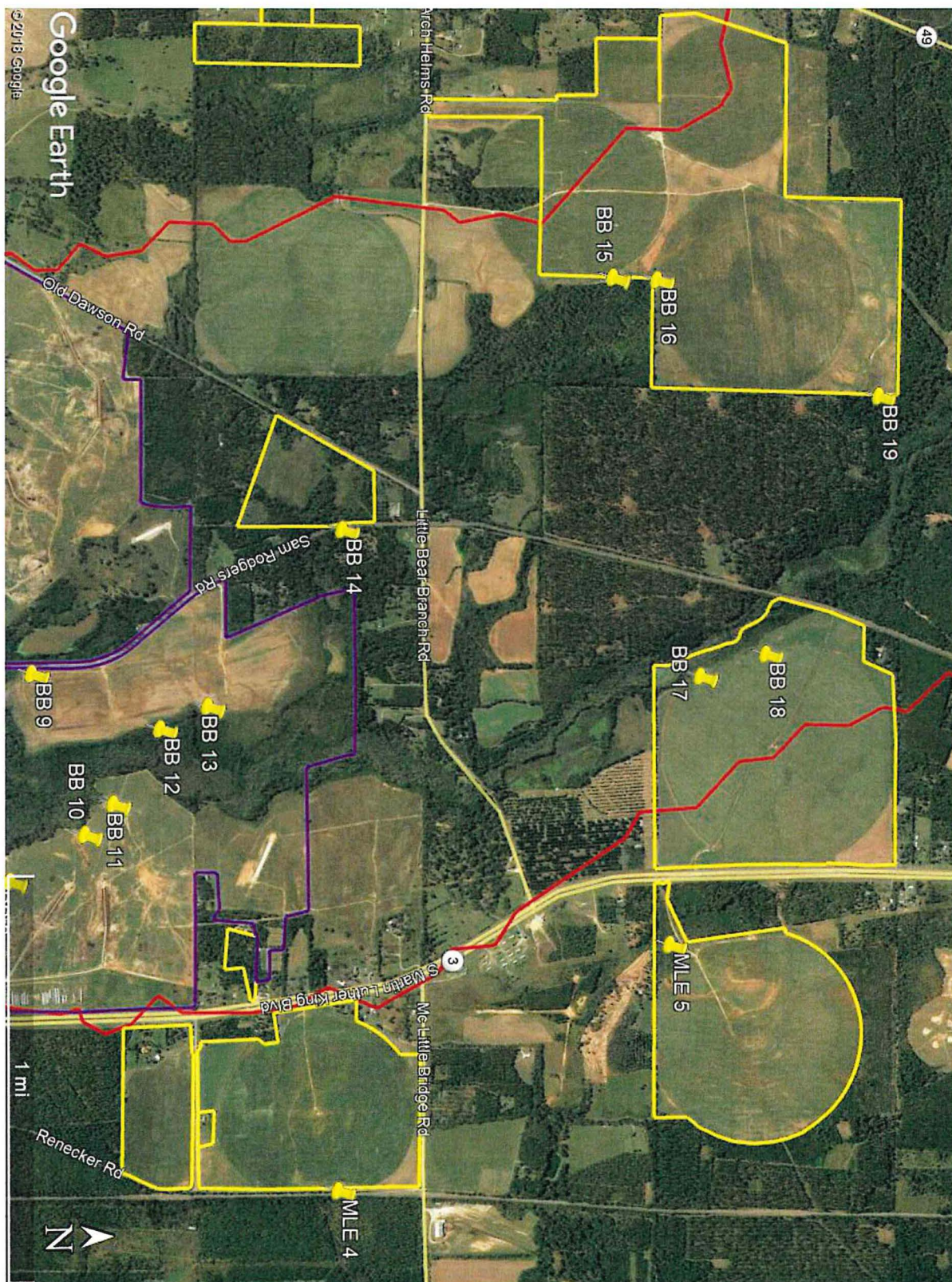
Attachment C: Locations of Known Violations of CWA/RCRA (Bear Branch Watershed (Red), Lagoons (Orange), LAS Areas (Yellow), Point Sources (Pins))



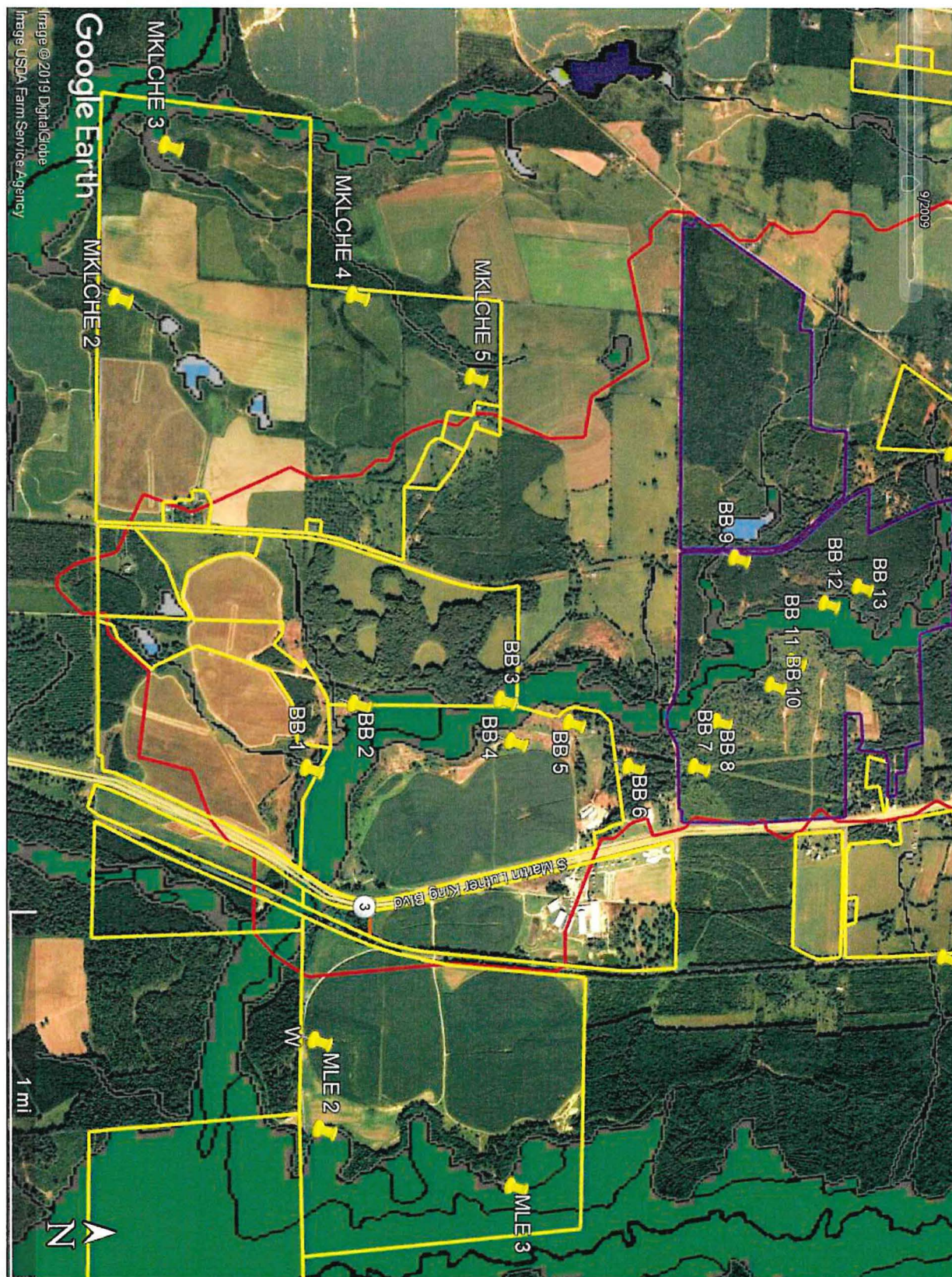
Attachment D: Locations of Known Violations of CWA/RCRA (Bear Branch Watershed (Red), Feedlots (Purple), LAS Areas (Yellow), Point Sources (Pins))



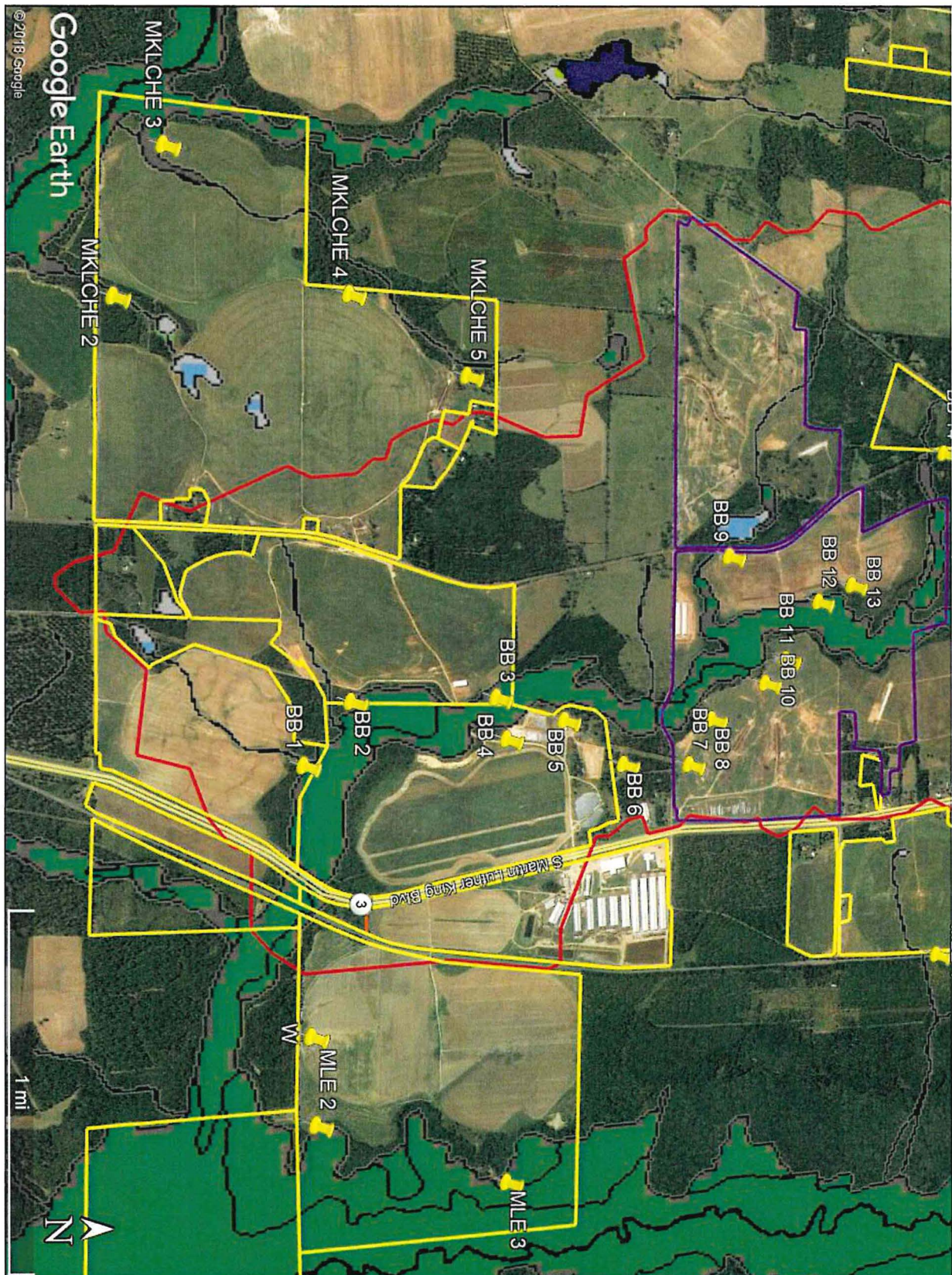
Attachment E: Locations of Known Violations of CWA/RCRA (Bear Branch Watershed (Red), Feedlots (Purple), LAS Areas (Yellow), Point Sources (Pins))



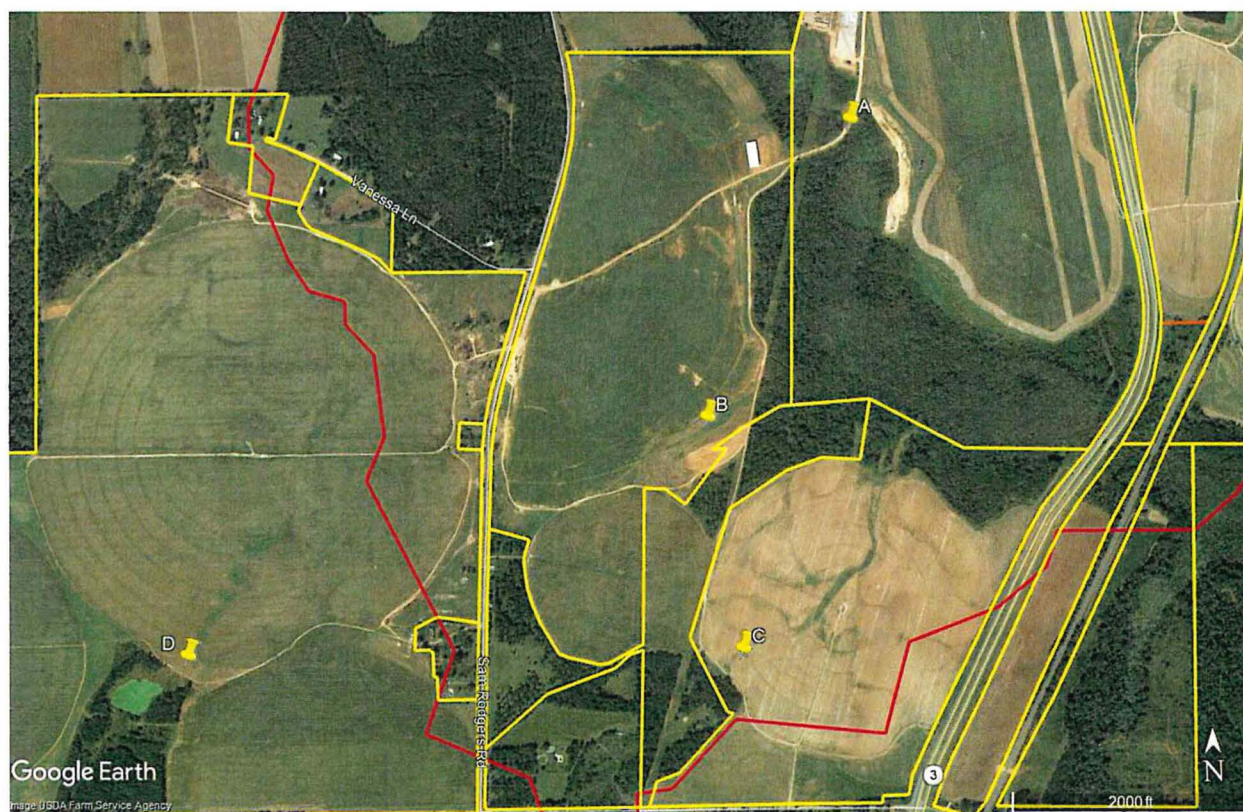
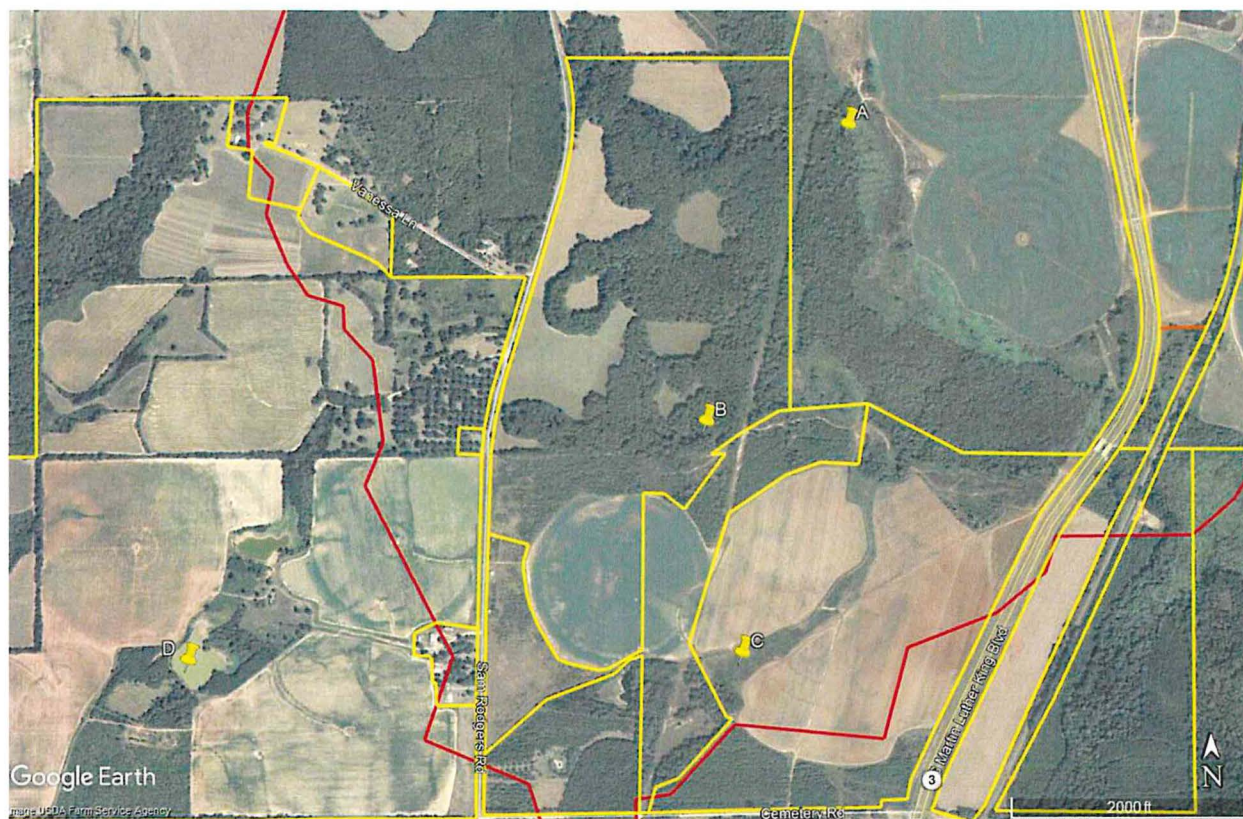
Attachment F: Extent of Waters of the United States Before Section 404 Violations (2009)



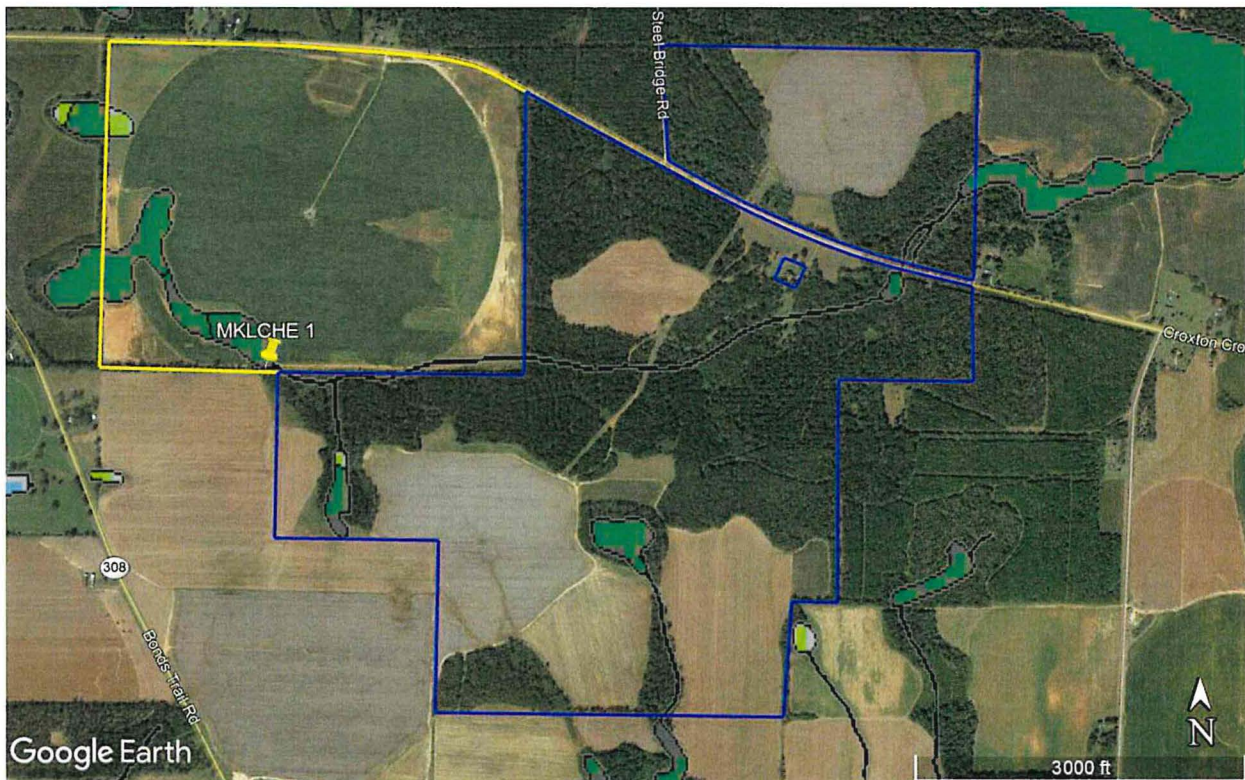
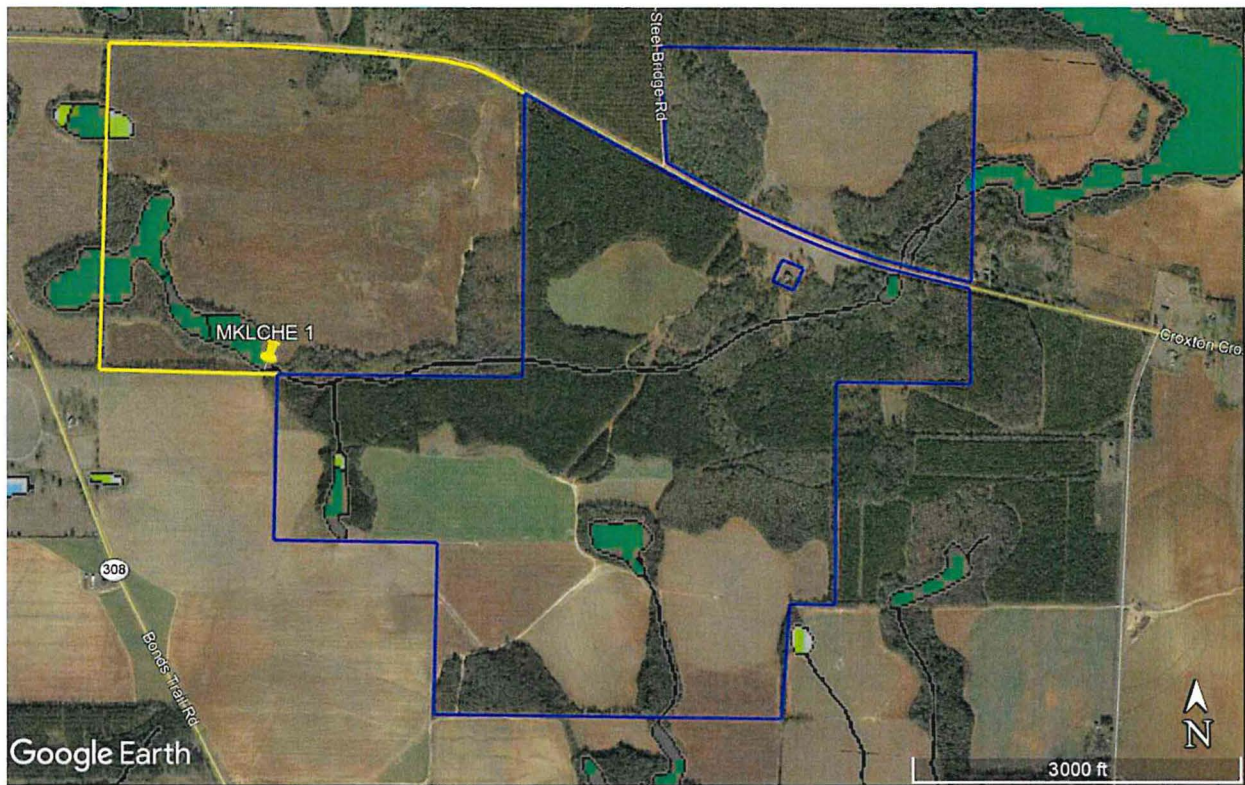
Attachment G: Waters of the United States Destroyed by Leatherbrook Holsteins (2018)



Attachment H: Known Discharges of Dredged/Fill Material 2010 (Top) v. 2018 (Bottom)



**Attachment I: Destruction of Wetlands on LAS Area (Yellow)
Adjacent to Mark Israel Property (Blue) 2012 (Top) v. 2018 (Bottom)**



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

Cornwell McRee, Marjorie, Cornwell Webb, Emory;
Cornwell Turpin, Linda; Cornwell-Williams, Claire;
Israel, Mark W.; Israel, Charles, L. Israel, Jr., Harold;
Teaford, Jr., Henry S.; Powell Rogers, Mary Beth;
Crisp, Jenny; J Crisp Enterprises, LLC; Cotten, Mary Linda;
Verdura Land & Timber Co.; Flint Riverkeeper, Inc.

Plaintiff(s)

v.

Leatherbrook Holsteins, LLC,
Leatherbrook Holsteins #3, LLC, and
Adam L. Graft

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Leatherbrook Holsteins, LLC
c/o Adam L. Graft, Manager/Registered Agent
2620 South Lee Street Road
Americus, GA 31709

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tyler J. Sniff
Donald D.J. Stack
Stack & Associates, P.C.
260 Peachtree Street, Suite 1200
Atlanta, GA 30303
Telephone: (404) 525-9205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

Cornwell McRee, Marjorie; Cornwell Webb, Emory;
Cornwell Turpin, Linda; Cornwell-Williams, Claire;
Israel, Mark W.; Israel, Charles, L. Israel, Jr., Harold;
Teaford, Jr., Henry S.; Powell Rogers, Mary Beth;
Crisp, Jenny; J Crisp Enterprises, LLC; Cotten, Mary Linda;
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To: *(Defendant's name and address)* Leatherbrook Holsteins #3, LLC
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Americus, GA 31709

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tyler J. Sniff
Donald D.J. Stack
Stack & Associates, P.C.
260 Peachtree Street, Suite 1200
Atlanta, GA 30303
Telephone: (404) 525-9205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

Cornwell McRee, Marjorie, Cornwell Webb, Emory;
Cornwell Turpin, Linda; Cornwell-Williams, Claire;
Israel, Mark W.; Israel, Charles, L. Israel, Jr., Harold;
Teaford, Jr., Henry S.; Powell Rogers, Mary Beth;
Crisp, Jenny; J Crisp Enterprises, LLC; Cotten, Mary Linda;
Verdura Land & Timber Co.; Flint Riverkeeper, Inc.

Plaintiff(s)

v.

Leatherbrook Holsteins, LLC,
Leatherbrook Holsteins #3, LLC, and
Adam L. Graft

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Adam L. Graft
2620 South Lee Street Road
Americus, GA 31709

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Tyler J. Sniff
Donald D.J. Stack
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260 Peachtree Street, Suite 1200
Atlanta, GA 30303
Telephone: (404) 525-9205

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CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk