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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 17, 2007

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 SEP 17 PM 4:45
CHIEF CLERKS OFFICE

**RE: TEXAS LONGHORN EQUITIES CORPORATION II
TCEQ DOCKET NO. 2007-1001-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Reconsideration and Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2007-1001-MWD

2007 SEP 17 PM 4:45

IN THE MATTER OF
THE APPLICATION OF
TEXAS LONGHORN
EQUITIES
CORPORATION II FOR
WATER QUALITY
PERMIT NO.
WQ0014681001

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BEFORE THE TEXAS
CHIEF CLERKS OFFICE
COMMISSION ON
ENVIRONMENTAL
QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUESTS FOR RECONSIDERATION AND
REQUESTS FOR HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas
Commission on Environmental Quality (the Commission or TCEQ) and files this
Response to Requests for Reconsideration and Requests for Hearing in the above-
referenced matter.

I. INTRODUCTION

Texas Longhorn Equities Corporation II (Applicant) has applied to TCEQ for new
Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014681001 for
a new permit that will authorize the discharge of treated domestic wastewater at a daily
average flow not to exceed 45,000 gallons per day (gpd). The treated effluent will be
discharged to an unnamed tributary; then to Quil Miller Creek; then to Village Creek;
then to Lake Arlington in Segment No. 0828 of the Trinity River Basin. The unclassified
receiving water uses are no significant aquatic life use for the unnamed tributary. The
designated uses for Segment No. 0828 are contact recreation, public water supply, and
high aquatic life use. The domestic wastewater treatment facility is proposed to be

located at 121 North Briaroaks Road, approximately 1/4 mile South of I-35W on Briaroaks Road in Johnson County, Texas and has not been built.

The application was received on December 28, 2005 and was declared administratively complete on February 16, 2006. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Amendment (NORI) was published in the *Cleburne Times-Review* on March 5, 2006. The Executive Director completed the technical review of the application and prepared a draft permit and the Notice of Application and Preliminary Decision (NAPD) was published in the *Cleburne Times-Review* on May 23, 2006. A public meeting was held on January 25, 2007 in the City of Briaroaks and the public comment period ended at the end of the public meeting. The chief clerk of the TCEQ mailed the Decision of the Executive Director and the Executive Director's Response to Comments (RTC) on May 24, 2007.

The TCEQ received comments and hearing requests on behalf of Clydene Gunnerson, Lorene Green, and the Ray Green Family Trust from attorney Eric Allmon.¹ Ms. Gunnerson also filed comments and a hearing request on November 27, 2006 on behalf of herself, Ms. Green, and the Ray Green Family Trust. Ella Dean filed a hearing request and a request for reconsideration with her comments on May 15, 2006. Philip Pope submitted a hearing request on March 9, 2006 and a request for reconsideration on April 28, 2006 (which incorporates the issues raised in the March 9, 2006 hearing

¹ Mr. Allmon filed initial comments and a hearing request on January 25, 2007; and filed a hearing request on June 25, 2007, after the Executive Director's Response to Public Comment was mailed by the chief clerk.

request). The TCEQ received a petition requesting a hearing on March 31, 2006 signed by 24 individuals.² All filings received were timely.

II. REQUESTS FOR RECONSIDERATION

A. Applicable law

A person may file a request for reconsideration no later than 30 days after the chief clerk's transmittal of the executive director's decision and response to comments.

TEXAS WATER CODE § 5.556; 30 TAC §55.201(a) and (e).

Any person may file a request for reconsideration of the ED's decision. 30 TAC § 55.201(e). The request for reconsideration must state the reasons why the decision should be reconsidered. 30 TAC § 55.201(e). Responses to requests for reconsideration should address the issues raised in the request. 30 TAC § 55.209(f).

B. Requests for Reconsideration filed on the Application

Ella Dean and Philip Pope filed requests for reconsideration. In Ms. Dean's request for reconsideration she raises concerns related to whether the discharge route is appropriate and will function adequately for the proposed discharge. Mr. Pope echoes Ms. Dean's concerns about the functioning of the discharge route and expresses additional flooding concerns. He states that the Applicant's representation of the 100 year flood plain is incorrect. Mr. Pope raises an issue about the impact of the discharge on the water quality in the public water supply. He raises an issue related to raw sewage and

²Keith Barnes, Beverly Beckman, Ted Beckman, Bernard G. Bowyer, Sr., Gene Bowyer, Rebecca Bowyer, Concerned Citizen (name illegible) at 1915 Tarver Road, Franklin Cooper, Linda Cooper, Chip Farrar, Virginia Farrar, Eric Fletcher, Jesse Garvin, Carlos Hamblen, James Harris, Sheryl Harris, Jamie Kellett, Richard Kellett, James McAldo, Carolyn Sigler, Jim Sigler, Chrisann Slusser, Lee Slusser, and Robert Wright.

odor. Finally, Mr. Pope is concerned about the high voltage transmission line running through the proposed development.

OPIC cannot recommend granting either request. The issues related to functioning of the discharge route and the accuracy of the description of the 100 year flood plain as they relate to protection of water quality and the environment are based on concerns which are governed by the law applicable to this permit. Likewise, the water quality and nuisance odor issues raised are governed by the law applicable to this permit. These concerns are within the jurisdiction of the Commission to address in the context of proceedings on this application. An evidentiary record, however, would be necessary for OPIC to make a recommendation to the Commission as to whether the permit should be denied based on these concerns.

Broader issues related to flooding are outside the Commission's jurisdiction to consider. Likewise, the TCEQ does not have jurisdiction over concerns related to the location of transmission lines and therefore OPIC cannot recommend reconsideration based upon this issue. However, OPIC recommends granting several protestants' hearing requests as discussed below.

III. REQUESTS FOR CONTESTED CASE HEARINGS

A. Applicable Law

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax

number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TEXAS ADMINISTRATIVE CODE (TAC) § 55.201(d). Under 30 TAC § 55.203(a), an affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Commission shall grant an affected person's timely filed hearing request if:

- (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

B. Determination of Affected Person Status

The Office of the Chief Clerk received hearing requests from Philip Pope, Ella Dean, Clydene Gunnerson, and Eric Allmon on behalf of Ms. Gunnerson, Lorene Green and the Ray Green Family Trust. In addition, TCEQ received a hearing request signed by the following individuals: Keith Barnes, Beverly Beckman, Ted Beckman, Bernard G. Bowyer, Sr., Gene Bowyer, Rebecca Bowyer, Concerned Citizen (name illegible) at 1915 Tarver Road, Franklin Cooper, Linda Cooper, Chip Farrar, Virginia Farrar, Eric Fletcher, Jesse Garvin, Carlos Hamblen, James Harris, Rex Harris, Jamie Kellett, Richard Kellett, James McAldo, Carolyn Sigler, Jim Sigler, Chrisann Slusser, Joe Slusser, and Robert Wright (Petitioners).

Philip Pope

Mr. Pope raises water quality and nuisance odor issues. Mr. Pope appears as an adjacent landowner, just downstream from the discharge point, on the Applicant's Affected Landowners Map submitted to the Executive Director (ED). Because of the proximity of Mr. Pope's property to the discharge point and facility and the

environmental concerns raised by Mr. Pope, there is a reasonable relationship between the interests claimed and the activity regulated. OPIC recommends the Commission find Philip Pope to be an affected person.

Ella Dean

Ms. Dean owns property well within one mile downstream of the discharge point, and appears on the Applicant's Affected Landowner's Map. She is concerned about the ability of the discharge route to function properly, as she states it is either completely dry or flooded. As the ED states in the Response to Public Comment³, the ED utilized the default QUAL-TX model to address the flow and modeling issues related to this discharge. Whether or not the discharge route will function as the Applicant suggests, or as the ED has modeled, is an issue which is relevant and material to the Commission's decision on the application. Since the ED must assess water quality and its relationship to the discharge route, OPIC finds this issue to be relevant and material. Because of the proximity of Ms. Dean's property to the discharge point and facility and the environmental concerns raised by Ms. Dean, there is a reasonable relationship between the interests claimed and the activity regulated. OPIC recommends the Commission find Ella Dean to be an affected person.

Clydene Gunnerson, Lorene Green, Ray Green Family Trust (Gunnerson, *et al*)

Ms. Gunnerson raises issues related to the water quality impacts of the proposed activities on the receiving waters and on groundwater supplies. She states that the discharge route will bisect her property. Gunnerson, *et al* appear on the Applicant's Affected Landowners Map as a downstream landowner well within a mile of the discharge point. Because of the proximity of the Gunnerson, *et al* property to the

³See ED's RTC to comments filed on Texas Longhorn Equities Corporation II, Page 14, Response 24.

discharge point and facility and the environmental concerns raised by Ms. Gunnerson, there is a reasonable relationship between the interests claimed and the activity regulated. OPIC recommends the Commission find Clydene Gunnerson, Lorene Green, and the Ray Green Family Trust to be affected persons.

Petitioners

The Petitioners raise an issue regarding the accuracy of the flood plain as presented in the application. Although the ED correctly states in his RTC that waste water facilities are not prohibited from being located in flood plains, the issue of proper demarcation of that flood plain is relevant because applicants are required to take precautions if so located.⁴ Therefore, the Petitioners have raised an issue which is relevant and material to the Commission's decision on the application. The ED has prepared a map⁵ which plots each Petitioner's address. Each Petitioner is located nearly adjacent to the proposed facility, although on the upstream side of the discharge route.

C. Issues Raised in the Hearing Requests

Gunnerson, *et al* request a hearing on *every* issue raised during the comment period.⁶ OPIC has recommended Gunnerson, *et al* to be affected persons. No comment has been withdrawn. Therefore, for ease of reference, OPIC will analyze and group the issues raised by hearing requesters using the Executive Director's Response to Comment (RTC) since each issue discussed in the RTC is a basis for the Gunnerson hearing request.

⁴ See ED's RTC to comments filed on Texas Longhorn Equities Corporation II, Page 2, Response 2.

⁵ See the Executive Director's prepared map, attached to the ED's Response to Hearing Request. The Protestants named on this map are all the Petitioners described above.

⁶ See June 25, 2007 hearing request from Mr. Allmon on behalf of Ms. Gunnerson, Ms. Green, and the Ray Green Family trust, page 1.

- 1) Has the flood plain near or surrounding the proposed facility been properly identified? (RTC comment 1).
- 2) Will the added discharge increase flooding in and along the discharge route? (RTC comment 2)
- 3) Will the proposed activities negatively affect surface water quality in the receiving waters? (RTC comment 3)
- 4) Will the proposed activities negatively affect groundwater quality? (RTC comment 3)
- 5) Will the proposed activities cause odor problems? (RTC comment 4)
- 6) Have all water wells in the vicinity have been taken into account in accordance with in 30 TAC § 309.13 (a) through (d)? (RTC comment 5)
- 7) Has the Applicant complied with the regionalization requirements? (RTC comment 6, 29)
- 8) Does the permit adequately protect against unauthorized discharges of raw or inadequately treated sewage? (RTC comment 7)
- 9) Will the owners and operators of the facility be financially be capable of maintaining the facility over a long period of time? (RTC comment 8)
- 10) Are the soils present at the proposed site appropriate to construct a wastewater facility? (RTC comment 10)
- 11) Will the proposed discharge create standing water which might serve as a breeding ground for mosquitoes? (RTC comment 11)
- 12) Will the proposed use of the stream as the discharge route impair the Gunnerson's ability to use her property for livestock? (RTC comment 12)
- 13) Have potential impacts on the underlying aquifer been properly considered? (RTC comment 13)
- 14) Have the existing characteristics of the receiving waters been accurately characterized with regards to the existence of additional ponds located downstream of the discharge point? (RTC comment 14)
- 15) Will the proposed activities exacerbate erosion from flooding along the discharge route? (RTC comment 15)
- 16) Will the facility have adequate storage of floodwaters and be able to prevent upsets in the event of heavy rains? (RTC comment 16)
- 17) Should the Applicant identify whether hazardous household chemicals will be allowed into the waste stream? (RTC comment 17)
- 18) Will the proposed activities impact potential endangered or threatened species? (RTC comment 18)
- 19) Will the facility be appropriately monitored and staffed? (RTC comment 19, 20)
- 20) Is the proposed location for the effluent monitoring samples adequately specific? (RTC comment 21)
- 21) Did the Applicant adequately comply with notice requirements for landowners downstream of the discharge point, considering that the discharge will flow undiluted for a significant distance from the facility,

- and the point that has been labeled as the “discharge point?” (RTC comment 22)
- 22) Should the Applicant demonstrate that the proposed treatment plant will meet the applicable design criteria, including those criteria contained in 30 TAC Chapter 317 at this time? (RTC comment 23)
 - 23) Is the proposed discharge route inappropriate because it will often contain no fluid other than the discharge from the wastewater treatment plant? (RTC comment 24)
 - 24) Are the lot sizes and density projections for the proposed development appropriate? (RTC comment 25)
 - 25) Will the proposed activity negatively impact water supply? (RTC comment 26)
 - 26) Will the impact of additional housing significantly increase traffic congestion or decrease property values? (RTC comment 27)
 - 27) Is the high voltage transmission line that runs through the middle of the proposed development appropriate? (RTC comment 28)

D. Issues raised in Comment Period

All of the issues raised in the hearing requests were raised in the comment period and have not been withdrawn. 30 TAC §§55.201(c) and (d)(4), 55.211(c)(2)(A).

E. Disputed Issues

There is no agreement between Protestant and the applicant or Executive Director on the issues raised in the hearing requests.

F. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy; it is appropriate for referral to hearing if it meets all other applicable requirements. All of the issues raised are issues of fact, except issues 17, 21 and 22 above. *See* 30 TAC §55.211(b)(3)(A) and (B). Issue 17 relates to whether TCEQ should add a prohibition in the permit to prevent the Applicant from accepting hazardous household chemicals. OPIC agrees this might be good policy to assist applicants in complying with permit limits, but is not required at this time. Issue 21 relates to a difference in legal interpretation related to where the “discharge point” is actually

located. Gunnerson suggests that the discharge point should be where the effluent reaches perennial waters. The ED states “there is no requirement to notify persons with land adjacent to the receiving streams within one mile where the effluent reaches perennial waters.” See RTC Response 22. In addition, Gunnerson received notice. Therefore, because this is an issue of law, OPIC does not recommend this issue be considered an issue of fact appropriate for referral to SOAH. Likewise, Issue 22 is an issue of law and or policy. Whether or not TCEQ should require applicants to submit all final plans to comply with 30 TAC Chapter 317 at time the application is submitted is certainly contested, but is not an issue of fact. The ED clearly argues “The rules in 30 TAC Chapter 317, Design Criteria for Sewage Systems, provide for permit issuance before final design of the facility.” See RTC Response 23.⁷

G. Relevant and Material Issues

The hearing requests raise issues relevant and material to the Commission’s decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission’s decision to issue or deny this permit.⁸ Relevant and material issues are those that are governed by the substantive law under which this permit

⁷ OPIC notes TCEQ rules often do not make the timing of design and construction approvals clear. 30 TAC section 309.12 requires the Commission to evaluate a proposed site’s minimization of possible contamination of surface water and groundwater in light of any *proposed* design, construction or operational features. 30 TAC section 309.12 does not give any indication that a proposed design, no matter how detailed or final, should or should not be considered as part of the wastewater permitting approval process. Texas Water Code (hereinafter “TWC”) section 26.034 requires submission of completed plans and specifications of disposal systems only “before beginning construction,” and directs the Commission to develop rules for the review and approval of plans and specifications of such facilities. 30 TAC section 317.1 implements the mandate in TWC section 26.034, and is equally vague in the necessary timing for submission of final plans.

⁸ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251(1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs.”)

is to be issued.⁹ However the following issues are not relevant and material to the Commission decision on this application:

Issue 2 OPIC agrees with the ED's response to this comment (Response 2) and finds that TCEQ does not address flooding issues in the wastewater permitting process.

Issue 9 OPIC agrees with the ED's response to this comment (response 8) and finds that the Commission's jurisdiction over water quality issues does not provide authorization for TCEQ to consider issues such as the long term financial stability of the Applicant.

Issue 12 OPIC finds that TCEQ does not adjudicate property right issues and agrees that the permit would not "limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property."¹⁰

Issue 15 OPIC agrees that TCEQ typically does not address concerns about erosion as part of the wastewater permitting process, unless it has potential impact to water quality. Erosion caused by the discharge should be addressed in the context of property rights.

Issue 16 OPIC notes that there are no regulatory requirements related to storage of floodwaters, but finds that the part of the issue related to prevention of upsets is relevant and material.

⁹ *Id.*

¹⁰ See Executive Director's Response to Public Comment, Response 12, page 8.

Issues 24-27 TCEQ has no authority to address issues such as development or zoning, water supply, traffic congestion, property values, or locations of transmission lines in the context of a wastewater discharge permit.

The remaining issues are all relevant and material. Issues concerning the permitted activity's effect on surface and ground water quality are relevant and material to the Commission's decision. Issues 3,4,6,8,13, and 14 relate directly to water quality concerns. Likewise, the proper functioning of the discharge route as modeled by the ED is relevant to assessing the potential water quality and environmental impacts of the proposed activities. TCEQ models the discharge route to assess potential impacts to water quality and the uses of the water body¹¹, and therefore an issue related to the actual functioning of the discharge route compared to the modeled functioning is relevant to the Commission's determination on the application. See issues 11, and 23. In addition, issues related to proper maintenance, monitoring, or protection against upsets are relevant as they relate to prevent water quality issues. See issues 19, and 20.

Proper siting of the proposed facility is relevant and material to the commission decision on the application. The Applicant must provide protection if the facility is located in a flood plain. Issue 1. Issue 10 is relevant as it relates to the requirements in 30 TAC 309.12 (c) for the Commission to consider "soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water."

Protection against nuisance odors is required by 30 TAC § 309.13. Issue 5.

¹¹ See ED's RTC to comments filed on Texas Longhorn Equities Corporation II, Page 14, Response 24.

An issue concerning the need for the facility and the permitted activity's consistency with the Commission's regionalization policy is relevant and material to the Commission's decision. Issue 7.

Endangered Species Act issues are relevant because TCEQ rules require facilities to meet applicable local, state, or federal laws. Issue 18.

H. Issues Recommended for Referral

OPIC recommends that the following disputed issues of fact be referred to the State Office of Administrative Hearings for a contested case hearing:

- 1) Has the flood plain near or surrounding the proposed facility been properly identified? (RTC comment 1).^{12 13}
- 2) Will the proposed activities negatively affect surface water quality in the receiving waters? (RTC comment 3)¹⁴
- 3) Will the proposed activities negatively affect groundwater quality? (RTC comment 3)
- 4) Will the proposed activities cause odor problems? (RTC comment 4)¹⁵
- 5) Have all water wells in the vicinity have been taken into account in accordance with in 30 TAC § 309.13 (a) thru (d)? (RTC comment 5)
- 6) Has the Applicant complied with the regionalization requirements? (RTC comment 6, 29)
- 7) Does the permit adequately protect against unauthorized discharges of raw or inadequately treated sewage? (RTC comment 7)¹⁶
- 8) Are the soils present at the proposed site appropriate to construct a wastewater facility? (RTC comment 10)
- 9) Will the proposed discharge create standing water which might serve as a breeding ground for mosquitoes? (RTC comment 11)
- 10) Have potential impacts on the underlying aquifer been properly considered? (RTC comment 13)
- 11) Have the existing characteristics of the receiving waters been accurately characterized with regards to the existence of additional ponds located downstream of the discharge point? (RTC comment 14)
- 12) Will the facility be able to prevent upsets in the event of heavy rains? (RTC comment 16)

¹² Petitioners raise this issue in their hearing request dates March 31, 1006, received by the Chief Clerk on April 6, 2006.

¹³ Philip Pope requests a hearing on this issue, as well. See Mr. Pope's hearing request dated March 9, 2006, date stamped by the Office of Public Assistance on March 17, 2006.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

- 13) Will the proposed activities impact potential endangered or threatened species? (RTC comment 18)
- 14) Will the facility be appropriately monitored and staffed? (RTC comment 19, 20)
- 15) Is the proposed location for the effluent monitoring samples is adequately specific? (RTC comment 21)
- 16) Is the proposed discharge route inappropriate because it will often contain no fluid other than the discharge from the wastewater treatment plant? (RTC comment 24)¹⁷

I. Maximum Expected Duration of Hearing

Commission Rule 30 TEX. ADMIN. CODE § 55.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TEX. ADMIN. CODE §55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

¹⁷ Ella Dean requests raises this issue in her hearing request, as she states that the proposed discharge route is a dry creek approximately 80 percent of the time.

IV. CONCLUSION

OPIC recommends referring the matter to SOAH for an evidentiary hearing on the issues recommended above. OPIC recommends finding each of the hearing requesters to be affected persons. OPIC further recommends a hearing duration of nine months.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By Christina Mann
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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007 the original and eleven true and correct copies of the Office of the Public Interest Counsel's Response to Requests for Reconsideration and Requests for Hearing and were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail

Christina Mann

Christina Mann

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TCEQ DOCKET NO. 2007-1001-MWD

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