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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Blas I. Coy, Jr. *Public Interest Counsel*  
2008 FEB -1 PM 4:09

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 1, 2008

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

Re: **SEADRIFT RANCH PARTNERS, LTD.**  
**TCEQ DOCKET NO. 2007-1052-MWD**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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SEADRIFT RANCH PARTNERS, LTD.  
TPDES PERMIT NO. WQ0014716001  
CALHOUN COUNTY

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§

BEFORE THE CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or "Commission") files this response to the requests for hearing and reconsideration.

**I. Introduction**

Seadrift Ranch Partners, Ltd. ("Seadrift Ranch") has applied to the TCEQ for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The proposed location for the Falcon Point wastewater treatment facility is 3,600 feet southeast of the intersection of Swan Point and Falcon Point Roads in Calhoun County. The treated effluent will be discharged to a storm water detention/retention pond; then to an unnamed lake; then to an unnamed drainage ditch; then to San Antonio Bay/Hynes Bay/Guadalupe Bay in Segment No. 2462 of Bays and Estuaries. According to the Executive Director's (ED) technical summary, the storm water detention/retention pond and the unnamed lake are unclassified receiving waters with limited aquatic life use. The designated uses for Segment No. 2462 are contact recreation, oyster waters, and exceptional aquatic life uses.

The agency received Seadrift Ranch's application on May 12, 2006, and the application was declared administratively complete on July 10, 2006. The first notice (Notice of Receipt of Application and Intent to Obtain Water Quality Permit) was published August 2, 2006 in *The Port Lavaca Wave*. On November 15, 2006, the second notice (Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater) was published in *The Port Lavaca Wave*. The public comment period closed December 15, 2006. The ED's Response to Comments (RTC) was filed June 1, 2007, and the hearing request/request for reconsideration period closed July 5, 2007. The ED has made a decision that this application meets the requirements of applicable law.

The agency received hearing requests from Daniel Cervenka, Virginia Cervenka, Rick Dierlam, Dudley and Patsy Garrett, Carol Garriott, Jeffrey and Terri Kubena, Franklin Pierce, and Greg and Christie Waida. Additionally, Daniel Cervenka, Virginia Cervenka, and Dudley and Patsy Garrett submitted requests for reconsideration. OPIC recommends that the Commission deny Carol Garriott's hearing request, grant all other hearing requests, and deny the requests for reconsideration.

## **II. Requests for Reconsideration**

### **A. Applicable Law**

Section 55.201(e) of the TCEQ procedural rules states that any person may file a request for reconsideration of the ED's decision, and the request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

The requests for reconsideration submitted by Daniel Cervenka, Virginia Cervenka, and the Garretts do not give reasons which are distinct from the issues raised in support of their

hearing requests. OPIC cannot support these issues as the basis for a request for reconsideration. An evidentiary record would be necessary for this office to make a recommendation to the Commission as to whether the permit should be denied based on these issues. As discussed below, OPIC is recommending a hearing to develop such a record.

### **III. Hearing Requests**

#### **A. Applicable Law**

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under 30 TEX. ADMIN. CODE (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

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. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to 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 restriction 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.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

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. Affected Persons**

### **1. Daniel Cervenka**

Mr. Cervenka states that he is an adjoining property owner to the proposed discharge, and the proposed drainage ditch flows across his property. He additionally states that his property is approximately 400 feet from the outflow ditch, and his waterfront property is right on San Antonio Bay. Mr. Cervenka is concerned about the effect of the proposed discharge on the water quality of San Antonio Bay. Mr. Cervenka's proximity to the proposed discharge point and his interest in the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Mr. Cervenka does qualify as an affected person.

### **2. Virginia Cervenka**

Ms. Cervenka states that she is an adjoining property owner to the proposed discharge, and the proposed drainage ditch flows across her property. She additionally states that her property is approximately 400 feet from the outflow ditch, and her waterfront property is right on San Antonio Bay. Ms. Cervenka is concerned about the effect of the proposed discharge on the water quality of San Antonio Bay. Ms. Cervenka's proximity to the proposed discharge point and her interest in the impacted natural resource provide a personal justiciable interest which is

not common to members of the general public. OPIC therefore concludes that Ms. Cervenka does qualify as an affected person.

### **3. Rick Dierlam**

Mr. Dierlam states that the proposed location of the plant is one mile or less from his house, depending on where the actual discharge is to be made into the Bay. The attached map supplied by the ED (Exhibit 1) shows that Mr. Dierlam's property is within 3,000 feet of the proposed discharge point. His waterfront property is located on Swan Point, and he is concerned that the proposed discharge will have a negative effect on water quality in the Bay. Mr. Dierlam's proximity to the proposed discharge route and his interest in the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Mr. Dierlam does qualify as an affected person.

### **4. Dudley and Patsy Garrett**

The Garretts state that they own two tracts of land at Swan Point. According to Exhibit 1, these waterfront properties are within 1,500 feet of the proposed discharge point. The Garretts use their property for fishing and believe that the proposed discharge into San Antonio Bay will negatively impact fishing. The Garretts' proximity to the proposed discharge point and their use of the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Dudley and Patsy Garrett qualify as affected persons.

### **5. Carol Garriott**

According to Exhibit 1, Ms. Garriott resides approximately 2.7 miles from the proposed plant site. Her hearing request does not state whether her property is on San Antonio Bay, and OPIC is unable to determine her location relative to the proposed discharge point. Given the

intervening distance between Ms. Garriott and the proposed facility, OPIC finds it unlikely that her health, safety, or use of property will be negatively impacted by the facility. OPIC therefore cannot support affected person status for Carol Garriott.

#### **6. Jeffrey and Terri Kubena**

The Kubenas own waterfront property on Swan Point and state that the proposed plant site is 600 feet from their home. Also, Exhibit 1 shows the Kubenas' property is within 1,500 feet of the proposed discharge point. They swim in San Antonio Bay and are worried that the proposed discharge will decrease water quality in the Bay. The Kubenas' proximity to the proposed discharge point and their use of the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Jeffrey and Terri Kubena qualify as affected persons.

#### **7. Franklin Pierce**

Mr. Pierce states that his residence is 3/8 of a mile from the discharge, and he is concerned that the proposed discharge will make the water unsafe for water sports. Exhibit 1 indicates that Mr. Pierce's waterfront property is within 3,000 feet of the proposed discharge point. Mr. Pierce's proximity to the proposed discharge and his interest in the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Mr. Pierce does qualify as an affected person.

#### **8. Greg and Christie Waida**

The Waidas state that they own bay front property, and their home is located near the proposed discharge. Exhibit 1 shows their property is within 3,000 feet of the proposed discharge point. They swim and fish in the Bay and are concerned that the proposed discharge will decrease water quality and negatively impact these activities. The Waidas' proximity to the

proposed discharge and their use of the impacted natural resource provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Greg and Christie Waida qualify as affected persons.

### **C. Relevant and Material Issues**

The hearing requesters dispute the following issues, which were raised during the public comment period and have not been withdrawn:

- (1) The proposed discharge will adversely affect wildlife in and around San Antonio Bay, including fish, whooping cranes, and blue crabs. This issue involves the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (2) The proposed discharge point should be moved. This issue concerns location standards found in 30 TAC Chapter 309 and is therefore relevant and material to the Commission's decision on this application.
- (3) The proposed discharge will adversely affect sea grasses. This issue concerns the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (4) The proposed discharge will adversely affect oyster reefs. This issue concerns the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (5) The proposed discharge will change the salinity of San Antonio Bay. This issue relates to the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.

- (6) Because of depth, wind, and tidal influences, the effluent will not leave the bay and will stagnate. This issue relates to the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (7) Flooding could cause sewage from the proposed facility and effluent from the discharge route to overflow onto residential property and into San Antonio Bay. This issue concerns 30 TAC Chapter 309 and is therefore relevant and material to the Commission's decision on this application.
- (8) The proposed discharge will adversely affect the water quality of San Antonio Bay. This issue concerns the responsibility of the TCEQ for water quality under Texas Water Code (TWC) Chapter 26 and is therefore relevant and material to the Commission's decision on the application.
- (9) The proposed discharge will cause health hazards. This issue concerns the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (10) The proposed discharge will adversely affect recreational uses of San Antonio Bay such as fishing, shrimping, oystering, waterfowl hunting, swimming, and water sports. This issue concerns the Texas Surface Water Quality Standards found in 30 TAC Chapter 307 and is therefore relevant and material to the Commission's decision on this application.
- (11) The proposed facility will cause nuisance odors. This issue concerns the nuisance odor prevention requirements in 30 TAC § 309.13(e) and is therefore relevant and material to the Commission's decision on this application.

The hearing requesters additionally raise the issue of decreased property values. The Commission does not have jurisdiction to address this issue, and it is therefore not relevant and material to the Commission's decision on this application.

#### **IV. Conclusion**

For the reasons set forth above, OPIC respectfully recommends that the Commission deny Carol Garriott's hearing request, grant all remaining hearing requests, and deny the requests for reconsideration.

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

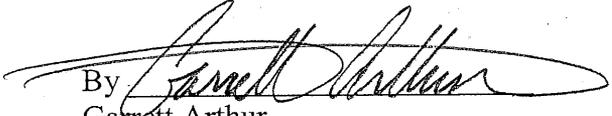
- (1) Will the proposed discharge adversely affect wildlife in and around San Antonio Bay, including fish, whooping cranes, and blue crabs?
- (2) Should the proposed discharge point be moved?
- (3) Will the proposed discharge adversely affect sea grasses?
- (4) Will the proposed discharge adversely affect oyster reefs?
- (5) Will the proposed discharge change the salinity of San Antonio Bay?
- (6) Will depth, wind, and tidal influences cause the effluent to stagnate and not leave the bay?
- (7) Could flooding cause sewage from the proposed facility and effluent from the discharge route to overflow onto residential property and into San Antonio Bay?
- (8) Will the proposed discharge adversely affect the water quality of San Antonio Bay?
- (9) Will the proposed discharge cause health hazards?

- (10) Will the proposed discharge adversely affect recreational uses of San Antonio Bay such as fishing, shrimping, oystering, waterfowl hunting, swimming, and water sports?
- (11) Will the proposed facility cause nuisance odors?

OPIC recommends a maximum duration of 9 months for the contested case hearing.

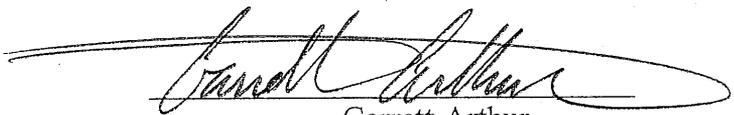
Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2008, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

  
Garrett Arthur

**MAILING LIST**  
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**TCEQ DOCKET NO. 2007-1052-MWD**

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