Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*

Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 12, 2016

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

RE: **633-4S RANCH, LTD./STAHL LANE, LTD.**
TCEQ DOCKET NO. 2016-1402-MWD

Dear Ms. Bohac:

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

Sincerely,

Isabel Segarra

Isabel G. Segarra Treviño, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2016-1402-MWD

IN THE MATTER OF THE APPLICATION BY 633-4S RANCH, LTD. AND STAHL LANE, LTD. FOR A NEW TPDES PERMIT NO. WQ0015095001	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Background of Facility

633-4S Ranch, Ltd./Stahl Lane, Ltd. (633-4S Ranch or Applicant) has applied to the TCEQ for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015095001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.090 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.270 MGD in the Interim II phase, and a daily average flow not to exceed 0.480 MGD in the Final phase. This application amends an existing land application permit held by 633-4S Ranch. The draft permit also authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The proposed wastewater treatment facility (Facility) will serve a portion of the Comal County Water Control and Improvement District No. 6.

The Facility will be located approximately 6,500 feet north-northeast of the intersection of Smithson Valley Road and Farm-to-Market Road 1863, approximately 1,200 feet north of the

confluence of Lewis Creek and Dripping Springs Creek, in Comal County, Texas 78163. The Facility has not been constructed.

The treated effluent will be discharged to an unnamed tributary to Lewis Creek; thence to Lewis Creek; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary to Lewis Creek and limited aquatic life use for Lewis Creek. Nutrients are listed as a screening concern in Segment No. 1908 in the 2012 Texas Water Quality Inventory. Based on Segment No. 1908 screening concerns for nutrients and nutrient screening results, a permit limit of 0.5 mg/L total phosphorous is recommended to help preclude degradation to Lewis Creek and Upper Cibolo Creek. The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The use of aquifer protection applies to the contributing, recharge, and transition zones of the Edwards Aquifer for Segment No. 1908.

Pursuant to 30 Texas Administrative Code (TAC) § 307.5 and TCEQ policy implementing the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review performed by the Executive Director's (ED) staff has preliminarily determined that existing water quality uses will not be impaired by this permit action. A Tier 2 review conducted by the ED's staff has preliminarily determined that no significant degradation of water quality is expected for the Upper Cibolo Creek, which has been identified as having high aquatic life use. The preliminary determinations made by the ED can be reexamined and may be modified if new information is received.

The Facility will be a moving bed biofilm reactor, including an activated sludge process plant operated in the extended aeration mode. Interim I phase treatment units will include a lift station, one primary side-hill screen, one flow equalization basin, one aerated sludge holding tank,

one aerated moving bed biofilm reactor, one extended aeration basin, one final clarifier with mechanical scrapers, coagulation alum dosing tank, one duplex filtration, and one chlorine contact chamber. Interim II phase treatment units will include a lift station, two primary side hill screens, two flow equalization basins, two aerated sludge holding tanks, two aerated moving bed biofilm reactors, two extended aeration basins, two final clarifiers with mechanical scrapers, two coagulation alum dosing tanks, two duplex filtrations, and two chlorine contact chambers. The Final phase treatment units will include a lift station, three primary side hill screens, three flow equalization basins, three aerated sludge holding tanks, three aerated moving bed biofilm reactors, three extended aeration basins, three final clarifiers with mechanical scrapers, three coagulation alum dosing tanks, three duplex filtrations, and three chlorine contact chambers.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand ($CBOD_5$), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH_3-N), 0.5 mg/l total phosphorus, 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

B. Procedural Background

The TCEQ received 633-4S Ranch's application on August 12, 2014, and declared it administratively complete on October 21, 2014. The Notice of Receipt and Intent to Obtain a Water Quality Permit Amendment (NORI) was published in English on October 24, 2014, in Comal County in the *New Braunfels Herald-Zeitung* newspaper. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment (NAPD) was published in English on March 6, 2015 in the *New Braunfels Herald-Zeitung* newspaper. The ED

approved a public meeting request and notice for the meeting was published on October 6, 2015. A public meeting was held at the Bulverde Spring Branch Emergency Services building on November 19, 2015. The public meeting marked the end of the public comment period. The Chief Clerk mailed the ED's Decision and Response to Public Comment on March 30, 2016 and the deadline for filing requests for a contested case hearing was April 29, 2016.

Alternate language publication in Spanish was required for this application. While the Applicant initially indicated no Spanish-language newspaper could be found in the area, a Spanish-language newspaper was found after the publication of the NORI and NAPD in English. The NAPD was published in Spanish on August 5, 2015 in the *La Voz* newspaper. The NORI was published in Spanish on January 1, 2016 in the *La Voz* newspaper. It is unclear from the affidavits provided by the Applicant whether the *La Voz* newspaper circulates in Bexar County, Comal County, or both.

The TCEQ Chief Clerk's office received hearing requests from the following individuals: Maranda Alexandre, Kenneth and Leslie Brothers, Erin Cantu, Carl F. Chapman, Yvonne L. Chapman, William C. Coe, Judith Dunn, Janice Fishlock, Michael Heersche, Jeanne Howe, Melissa Laster, Michael L. Maurer, Sr., Theresa McClung, Alan Montemayor, Sonia L. Moore, David S. Moulton, Sara Ranzau, Nancy Sandoval, Emily Sauls, Caryl Swann, Cheryl Watson, Francesca Watson, and Benjamin Youngblood, III. Hearing requests were also received from the following entities and groups: SouthWest Water Company, Bexar Audubon Society, Bulverde Neighborhood Alliance, and Greater Edwards Aquifer Alliance.

As discussed below, OPIC recommends granting the hearing requests of: Kenneth and Leslie Brothers, William C. Coe, Michael Heersche, Jeanne Howe, Melissa Laster, Theresa McClung, Emily Sauls, Francesca Watson, SouthWest Water Company, and the Bulverde

Neighborhood Alliance. OPIC also recommends referring Cheryl Watson to SOAH for an affected person status determination. OPIC recommends denying the remaining hearing requests.

II. APPLICABLE LAW

A person may request the TCEQ reconsider the ED's decision on an application or hold a contested case hearing on an application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEX. WATER CODE (TWC) § 5.556). The requirements of House Bill 801 only apply to applications declared administratively complete on or after September 1, 1999. The TCEQ declared the 633-4S Ranch's application administratively complete on October 21, 2014. Therefore, 633-4S Ranch's application is subject to the procedural requirements of House Bill 801.

TCEQ rules require that a person seeking a hearing must substantially comply with the following: (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who filed the request, (2) identify the requestor's personal justiciable interest affected by the application, including a written statement describing the requestor's location or distance in relation to the proposed facility or activity, and, how or why the requestor believes he or she will be 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 comment period and that are the basis of the hearing request, and (5) provide any other information specified in the public notice of the application. 30 TAC § 55.201(d).

Only affected persons are granted contested case hearings. TWC § 5.556(c). 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." 30 TAC § 55.203(a). This justiciable interest

does not include an interest common to the general public. *Id.* Relevant factors considered in determining whether a person is affected 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 and safety of the person, and on the 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.

30 TAC § 55.203(c).

The Commission shall grant an affected person's timely filed contested case hearing request if the request: (1) 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, (2) is timely filed with the Chief Clerk, (3) is made pursuant to a right to hearing authorized by law, and (4) complies with the request for reconsideration and contested case hearing requirements. 30 TAC § 55.211(c). 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 of 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.

30 TAC § 55.209(e).

A group or association may request a contested case hearing if:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
(2) the interests the group or association seeks to protect are germane to the organization's purpose; and
(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

III. DISCUSSION

Sonia L. Moore did not identify a personal justiciable interest in her hearing request; therefore, her hearing request does not comply with the procedural requirements set forth in 30 TAC § 55.201(d). Janice Fishlock submitted an untimely hearing request. All of the remaining individuals listed in § I.B. above submitted timely hearing requests, that were not withdrawn, that substantially comply with the procedural requirements of 30 TAC § 55.201(d).

A. Determination of Affected Person Status

For a hearing requester to be an affected person, the request must be based on an interest that is protected under the law governing the permit application. 30 TAC § 55.203(a). The TCEQ administers wastewater discharge permit applications pursuant to its authority under TWC § 26.027(a). As further explained below, OPIC finds that the following individuals, groups, and entities are affected persons: Kenneth and Leslie Brothers, William C. Coe, Michael Heersche, Jeanne Howe, Melissa Laster, Theresa McClung, Emily Sauls, Francesca Watson, SouthWest Water Company, and the Bulverde Neighborhood Alliance. OPIC also recommends referring Cheryl Watson to SOAH for an affected person status determination.

1. Hearing Requests by Individuals

Maranda Alexandre

Maranda Alexandre is concerned about the discharge route's proximity to the Edwards Aquifer Recharge Zone. Specifically, Mrs. Alexandre is concerned that the treated effluent will impair drinking water quality in her area. A map prepared by the ED shows Mrs. Alexandre's residence is over a mile from the Facility. Mrs. Alexandre's concern is common to the general public; therefore, OPIC finds that Maranda Alexandre is not an affected person.

Kenneth and Leslie Brothers

Kenneth and Leslie Brothers are concerned about their drinking water quality, catastrophic failures at the Facility, property values, stagnant water attracting vectors, and the long-term health effects of discharged effluent on their groundwater wells. The ED's map appears to show that the Brothers reside slightly over a mile from the Facility. Because of the Brothers' groundwater use, OPIC finds that a reasonable relationship exists between their concern and the Applicant's proposed activity. OPIC finds Kenneth and Leslie Brothers are affected persons.

Erin Cantu

Erin Cantu is concerned that the discharged effluent will exacerbate flooding issues in her neighborhood, whether the City of Bulverde plans to take measures to ameliorate flooding issues in her neighborhood, and whether the discharged effluent will impair drinking water quality at the Canyon Lake Water Service Company and private wells. A search of Mrs. Cantu's address appears to show that she resides over 5 miles from the Facility. Because Mrs. Cantu raises issues that are common to the general public and does not relate specific issues to a personal justiciable interest, OPIC finds that Mrs. Cantu is not an affected person.

Carl F. Chapman

Carl F. Chapman is concerned about the characterization of the discharge route, whether the discharged effluent will contaminate public and private wells, the cumulative effects of wastewater treatment facilities in his area, future development in his community, catastrophic failures at the Facility, and whether the Facility and discharged effluent will affect health and safety of persons in the area. The ED's map shows Mr. Chapman resides slightly over 1 mile from the Facility. Mr. Chapman raises issues that are common to the general public; therefore, OPIC finds that Carl F. Chapman is not an affected person.

Yvonne L. Chapman

Yvonne L. Chapman is concerned that discharged effluent may contaminate drinking water sources including wells and the Edwards Aquifer, cleanup after catastrophic failures at the Facility, flooding in the area, and whether the discharged effluent will change the characteristics of the discharge route. The ED's map shows Yvonne Chapman resides slightly over 1 mile from the Facility. Mrs. Chapman raises issues that are common to the general public; therefore, OPIC finds that Yvonne L. Chapman is not an affected person.

William C. Coe

William C. Coe is concerned about the discharged effluent's potential to exacerbate existing flooding and water impoundment issues on his property, impounded water attracting vectors, the use of his property, property values, erosion of his property, groundwater contamination, and his quality of life. The ED's map appears to show that Mr. Coe resides along the discharge route and within .5 mile of the Facility. Given Mr. Coe's proximity to the Facility and the discharge route, OPIC finds that a reasonable relationship exists between the issues raised

by Mr. Coe and the Applicant's proposed activity. OPIC finds William C. Coe is an affected person.

Judith Dunn, Alan Montemayor, Davis S. Moulton, Sara Ranzau, Nancy Sandoval, Caryl Swann, and Benjamin Youngblood, III

This group of requesters submitted individual, but substantially similar hearing requests. These individuals are concerned about the discharged effluent's potential to enter the Edwards Aquifer. This issue is common to the general public; therefore, OPIC finds that Judith Dunn, Alan Montemayor, Davis S. Moulton, Sara Ranzau, Nancy Sandoval, Caryl Swann, and Benjamin Youngblood, III are not affected persons.

Michael Heersche

Michael Heersche is concerned about existing flooding issues in his neighborhood, odors, contamination of drinking water, and property values. The ED's map appears to show that Mr. Heersche resides within 1 mile from the Facility and discharge route. Given Mr. Heersche's proximity to the Facility and discharge route, OPIC finds that a reasonable relationship exists between the issues raised by Mr. Heersche and the Applicant's proposed activity. OPIC finds that Mr. Heersche is an affected person.

Jeanne Howe

Jeanne Howe is concerned about contamination of wells which provide her drinking water, flooding, and air contamination. The ED's map shows that Jeanne Howe resides slightly over a mile from the Facility. Jeanne Howe's concern over wells used for her drinking water is not common to the general public. Therefore, OPIC finds that Jeanne Howe is an affected person.

Melissa Laster

Melissa Laster is concerned about the discharged effluent potential to contaminate wells from which her family's drinking water is sourced, that impounded water will attract vectors and cause odors, and property values. The ED's map shows Melissa Laster resides slightly over a mile from the Facility. Melissa Laster's concern over wells used for her drinking water is not common to the general public. Therefore, OPIC finds that Melissa Laster is an affected person.

Michael L. Maurer, Sr.

Michael L. Maurer, Sr. is concerned about the cumulative effects to humans and wildlife from the wastewater treatment facilities in his area, the quality of the effluent to be discharged, whether the homes the Applicant plans to build will be occupied prior to the construction of the Facility. The ED's map states that Mr. Maurer resides 2.75 miles from the discharge outfall. The issues raised by Mr. Maurer are common to the general public; therefore, OPIC finds that Michael L. Maurer, Sr. is not an affected person.

Theresa McClung

Theresa McClung is concerned about the discharged effluent's potential to contaminate her drinking water, which is drawn from wells in her area. Theresa McClung is also concerned about property values and quality of life. The ED's map shows that Theresa McClung resides slightly over a mile from the Facility. Theresa McClung's concern over wells used for her drinking water is not common to the general public. Therefore, OPIC finds that Theresa McClung is an affected person.

Emily Sauls

Emily Sauls is concerned about the discharged effluent's potential to contaminate her groundwater well, which is also over the Lewis Creek watershed. Emily Sauls is also concerned

about catastrophic failures at the Facility, existing flooding issues in the area, contamination of fresh water sources, and the potential for the discharged effluent to attract vectors. The ED's map shows Emily Sauls resides within 1 mile from the Facility. OPIC finds that Emily Sauls' concerns about her well and nuisance conditions are not common to the general public; therefore, Emily Sauls is an affected person.

Cheryl Watson

Cheryl Watson is concerned about the potential for the discharged effluent to contaminate the drinking water she receives from the Oak Village North wells. Cheryl Watson is also concerned about catastrophic failures at the Facility, and, sensitive members of her family, including persons with allergies and COPD. Cheryl Watson provides a P. O. Box as her address on her hearing request. Without more information about her place of residence, OPIC cannot find that Cheryl Watson is an affected person. However, given the nature of her concerns and the fact that her family uses water from Oak Village North, OPIC recommends that the Commissioners refer Cheryl Watson to SOAH for an affecter person determination.

Francesca Watson

Francesca Watson is concerned about the safety of her drinking water, property values, and her quality of life. The ED's map shows that Francesca Watson resides slightly over 1 mile from the Facility. OPIC finds that Francesca Watson's concerns about her drinking water and quality of life are not common to the general public; therefore Francesca Watson is an affected person.

2. Hearing Requests by Entities and Groups

SouthWest Water Company

SouthWest Water Company (SWC) states that it operates the Oak Village North water system which produces groundwater from the Lewis Creek watershed via 8 groundwater wells

over the Middle Trinity Aquifer, downstream from the Facility. The ED's map shows the location of Oak Village North wells within 1 mile of the Facility and downstream from the Facility and the discharge route. SWC is concerned that discharged effluent will enter the Middle Trinity Aquifer and contaminate the groundwater produced by SWC to be used as drinking water. Because SWC is a drinking water supplier, OPIC finds that SWC's concern regarding the integrity of the groundwater it produces is a health and safety issue that is reasonably related to the Applicant's proposed activity. OPIC finds that the SouthWest Water Company is an affected person.

Bexar Audubon Society

The Bexar Audubon Society (BAS) submitted a hearing request in which BAS states that it is a member of the Greater Edwards Aquifer Alliance. Without identifying a group purpose or naming an individual affected in their own right, OPIC can conclude that neither BAS nor the Greater Edwards Aquifer Alliance has satisfied the requirements for group standing in 30 TAC § 55.205(a). Pursuant to 30 TAC § 55.205(b), OPIC invites the Bexar Audubon Society to provide information about its purpose and members.

Bulverde Neighborhood Alliance

The Bulverde Neighborhood Alliance (BNA) states its purpose as including the "...protection of the health and safety of residents and landowners in the greater Bulverde area..." and "...protection of the air, land and water of the Bulverde area." BNA states that its membership includes the following individuals: Denis McInerney, William and Joy Coe, Tom and Jeri Blacklock, Keith Markey, and Patricia Haney. All BNA members listed reside or hold an interest in property within 1 mile of the Facility, with the exception of Patricia Haney who is slightly over 1 mile from the Facility. As discussed above, OPIC found that William C. Coe is an affected person. Dennis McInerney, Keith Markey, and Patricia Haney state that they have water wells on

their property. Based on this issue, OPIC finds that there is a reasonable relationship between groundwater quality and the Applicant's proposed activity. Tom and Jeri Blacklock reside approximately .5 mile from the Facility and state that they are concerned about odors, their ability to use and enjoy their property, and existing flooding issues in the area. Based on their location and issues raised, OPIC finds that Tom and Jeri Blacklock are affected persons. Further, it does not appear that any issue raised requires the participation of an individual group member. OPIC finds that the Bulverde Neighborhood Association has satisfied the requirements for group standing found in 30 TAC § 55.205(a).

Greater Edwards Aquifer Alliance

The Greater Edwards Aquifer Alliance (GEAA) states that its purpose as "...a non-profit organization dedicated to protecting and preserving the Edwards and Trinity [A]quifers, their springs and watersheds, and the Texas Hill Country." Further, that the GEAA seeks to protect these interest through participation in administrative processes. While the GEAA states that it has 51 member organizations and individual members, GEAA does not specifically identify a member that has standing in their own right. OPIC cannot find that the Greater Edwards Aquifer Alliance has satisfied the requirements for group standing in 30 TAC § 55.205(a). Pursuant to 30 TAC § 55.205(b), OPIC invites the GEAA to provide information showing how the group satisfies 30 TAC § 55.205(a).

B. Issues Raised in the Hearing Requests of Affected Persons

The hearing requesters who are affected persons raise the following issues:

1. Whether the draft permit is protective of groundwater, including the Edwards Aquifer, groundwater wells used for drinking water, and monitoring requirements.
2. Whether the draft permit is protective of surface water, including the Upper Cibolo Creek and monitoring requirements.

3. Whether the Facility is sited pursuant to TCEQ rules, including floodplain restrictions.
4. Whether the discharge route is properly characterized.
5. Whether the discharged effluent will cause water stagnation and attract vectors.
6. Whether the Facility will emit nuisance odors.
7. Whether the Facility design elements are sufficient to meet permit conditions.
8. Whether the draft permit is protective of human health and safety, including catastrophic failures at the Facility.
9. Whether the draft permit is protective of neighboring property owners' use and enjoyment of their property.
10. Whether the Commission has considered the cumulative effects of wastewater treatment facilities in the area.
11. Whether the Applicant's compliance history precludes it from obtaining this permit.
12. Whether the need for the Facility has been demonstrated.
13. Whether the discharged effluent will exacerbate existing flooding issues in the area.
14. Whether the City of Bulverde will take measures to ameliorate flooding issues in the area.
15. Whether the Commission has considered future development in the area.
16. Whether the Commission has considered the effect on property values as a result of the construction of this facility.
17. Whether homes to be serviced by the Facility will be occupied prior to the issuance of this permit.

C. Issues Raised in the Comment Period

Issues must be raised during the comment period and must have not been withdrawn. 30 TAC §§ 55.201(c) & (d)(4), 55.211(c)(2)(A). All the issues raised by the requesters were raised during the comment period and not withdrawn.

D. Disputed Issues

There is no agreement between the requesters and the ED on the issues raised in the hearing requests.

E. 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. 30 TAC § 55.211(c)(2)(A). All of the issues raised are issues of fact.

F. Relevant and Material Issues

Issues No. 1–3, and 5–9 relating to health, siting, and environmental degradation are relevant and material to the Commission's decision under the requirements of 30 TAC § 55.211(c)(2). TCEQ rules provide that "[i]t is the policy of this state....to maintain the quality of water in the state consistent with public health..." 30 TAC § 307.1. The rules prescribe specific distances between wastewater treatment facilities, and, private and public wells. 30 TAC § 309.13(c). Siting requirements also include floodplain restrictions and abatement procedures. 30 TAC § 309.13(a). Further, TCEQ rules provide that a wastewater treatment facility "abate and control a nuisance of odor prior to construction." 30 TAC § 309.13(e). Chapter 309 of Title 30 of the Texas Administrative Code provides for numerous additional effluent limitations and standards.

Issue No. 4 concerning the characterization of the discharge route is relevant and material to the Commission's decision on this application because the TCEQ is charged with applying the State's water quality management program. 30 TAC § 309.1(e). Further, the TCEQ has been delegated authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to *water in the state*. TWC § 26.027 (emphasis added).

Issues No. 10 and 11 are relevant and material to the Commission's decision on this application because compliance history is part of the application review process and the Commission has authority to consider cumulative risks in areas of concentrated operations. TWC § 5.130.

Issues No. 12–17 are not relevant and material because they are beyond the Commission's jurisdiction on this water quality application. OPIC recommends referring Issues No. 1–11 in § III. B to SOAH for a contested case hearing.

G. Issue Recommended for Referral

1. Whether the draft permit is protective of groundwater, including the Edwards Aquifer, groundwater wells used for drinking water, and monitoring requirements.
2. Whether the draft permit is protective of surface water, including the Upper Cibolo Creek and monitoring requirements.
3. Whether the Facility is sited pursuant to TCEQ rules, including floodplain restrictions.
4. Whether the discharge route is properly characterized.
5. Whether the discharged effluent will cause water stagnation and attract vectors.
6. Whether the Facility will emit nuisance odors.
7. Whether the Facility design elements are sufficient to meet permit conditions.
8. Whether the draft permit is protective of human health and safety, including catastrophic failures at the Facility.
9. Whether the draft permit is protective of neighboring property owners' use and enjoyment of their property.
10. Whether the Commission has considered the cumulative effects of wastewater treatment facilities in the area.
11. Whether the Applicant's compliance history precludes it from obtaining this permit.

H. Maximum Expected Duration of Hearing

Commission Rule 30 TAC § 80.6(b)(5) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing. 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 TAC § 55.209(e)(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.

IV. CONCLUSION

For the reasons set forth above, OPIC recommends granting the hearing requests of: Kenneth and Leslie Brothers, William C. Coe, Michael Heersche, Jeanne Howe, Melissa Laster, Theresa McClung, Emily Sauls, Francesca Watson, SouthWest Water Company, and the Bulverde Neighborhood Alliance and referring to SOAH the issues specified in Section III. G for a hearing lasting no longer than nine months. OPIC also recommends referring Cheryl Watson to SOAH for an affected person status determination. OPIC recommends denying the remaining hearing requests.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: _____
Isabel G. Segarra Treviño
Staff Attorney
Public Interest Counsel
State Bar No. 24075857
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
isabelsegarra.trevino@tceq.texas.gov
(512) 239-4014 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2016 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing was 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, electronic mail, or by deposit in the U.S. Mail.

Isabel G. Segarra Treviño

MAILING LIST
633-4S RANCH, LTD./STAHL LANE, LTD.
TCEQ DOCKET NO. 2016-1402-MWD

FOR THE APPLICANT:
Andrew Barrett
Andy Barrett & Associates, PLLC
3300 Bee Cave Road
Suite 650, Number 189
Austin, Texas 78746
Tel: (512) 600-3800

Kenneth P. Wolf
633-4S Ranch, Ltd.
1826 North Loop 1604 West
Suite 250
San Antonio, Texas 78248-4531
Tel: (210) 524-4000 Fax: (210) 524-4029

Bonnie Billquist
South Texas Wastewater Treatment
P.O. Box 1284
Boerne, Texas 78006-1284
Tel (830) 249-8098 Fax: (830) 249-4791

Oscar D. Graham, P.E.
South Texas Wastewater Treatment
P.O. Box 1284
Boerne, Texas 78006-1284
Tel (210) 317-1293 Fax: (830) 249-4791

FOR THE EXECUTIVE DIRECTOR:
Kathy Humphreys, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

Hollis Henley, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

John Onyenobi, Technical Staff
TCEQ Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-6707 Fax: 512/239-4430

Brian Christian, Director
TCEQ Environmental Assistance Division, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678

FOR ALTERNATIVE DISPUTE RESOLUTION:
Kyle Lucas
TCEQ Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4010 Fax: 512/239-4015

FOR THE CHIEF CLERK:
Bridget Bohac
TCEQ Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTERS:
Maranda Alexandre
30812 Sunlight Dr.
Bulverde, Texas 78163-2771

Eric Allmon
Frederick Perales Allmon & Rockwell
707 Rio Grande St., Ste.. 200
Austin, Texas 78701-2733

Kenneth & Leslie Brothers
30803 Sunlight Dr.
Bulverde, Texas 78163-2772

Erin P Cantu
2595 Casey Rd.
Bulverde, Texas 78163-1842

Carl F Chapman
30809 Sunlight Dr.
Bulverde, Texas 78163-2772

Yvonne L Chapman
30809 Sunlight Dr.
Bulverde, Texas 78163-2772

William C Coe
31434 Sunlight Dr.
Bulverde, Texas 78163-2786

Judith Dunn
24335 Cibolo View
San Antonio, Texas 78266-1790

Janice Fishlock
5020 Hawk Eye Dr.
Bulverde, Texas 78163-2246

Michael Heersche
5188 Meadow Lark Dr.
Bulverde, Texas 78163-2310

Jeanne Howe
30722 Onion Creek
Bulverde, Texas 78163-2723

Melissa Laster
4845 Spreading Oak Dr.
Bulverde, Texas 78163-2764

Michael L Maurer, Sr.
PO Box 700606
San Antonio, Texas 78270-0606

Theresa Mcclung
30584 Onion Creek
Bulverde, Texas 78163-2718

Alan Montemayor
2186 Jackson Keller Rd. Ste. 432
San Antonio, Texas 78213-2723

Sonia L Moore
31109 Smithson Valley Rd.
Bulverde, Texas 78163-2753

David S Moulton
PO Box 103
Hondo, Texas 78861-0103

Gregory Pasztor
Bexar Audubon Society
PO Box 6084
San Antonio, Texas 78209-0084

Annalisa Peace
Greater Edwards Aquifer Alliance
PO Box 15618
San Antonio, Texas 78212-8818

Sara Ranzau
325 N Plant Ave.
Boerne, Texas 78006-1730

Gary Rose
1620 Grand Avenue Pkwy., Ste. 140
Pflugerville, Texas 78660-2185

Nancy Sandoval
1931 Silver Mountain
San Antonio, Texas 78264-3730

Emily Sauls
5374 Fallen Oak Dr.
Bulverde, Texas 78163-2304

Caryl Swann
16546 Hunting Glen St
San Antonio, Texas 78247-1130

Cheryl Watson
PO Box 184
Bulverde, Texas 78163-0184

Francesca Watson
7264 Circle Oak Dr.
Bulverde, Texas 78163-2433

Benjamin Youngblood,
8207 Callaghan Rd. Ste. 100
San Antonio, Texas 78230-4736