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Gilbert Wilburn, PLLC  
ATTORNEYS AT LAW

Randall B. Wilburn, P.E.  
rbw@gwtxlaw.com

November 24, 2020

*Via Electronic Filing and First Class Mail*

Ms. Laurie Gharis  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

REVIEWED

DEC 01 2020 H  
By GW

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2020 NOV 30 PM 3:02  
CHIEF CLERKS OFFICE

**Re: Wilbow-Fairway Development Corporation; Application for Water Use Permit  
No. 13475**

Dear Ms. Gharis:

On behalf of the City of Dallas, Dallas Water Utilities (“Dallas”), please consider this a request for a contested case hearing on Wilbow-Fairway Development Corporation’s (“Wilbow”) Application for Water Use Permit No. 13475 in the Trinity River Basin filed initially with the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) on January 11, 2018 and amended or supplemented thereafter. As set out more fully below, Dallas is an affected person with a justiciable interest in Wilbow’s application in accordance with Texas Water Code § 5.115 and Title 30 Texas Administrative Code (“TAC”) §§ 55.251, 295.153, and 295.171.

**I. Contact Information**

For purposes of this hearing request and all other correspondence, these persons represent Dallas and may be contacted as follows:

Mr. Terry Lowery, Director  
City of Dallas – Dallas Water Utilities  
1500 Marilla Street  
Dallas, Texas 75201  
214/670-3144

Mr. Randall Wilburn  
Gilbert Wilburn, PLLC  
7000 N. MoPac Expressway, Suite 200  
Austin, Texas 78731  
512/431-8442  
[rbw@gwtxlaw.com](mailto:rbw@gwtxlaw.com)

## **2. Application Information**

Dallas requests a contested case hearing on Wilbow's Application for Water Use Permit No. 13475, which seeks authorization to: 1) maintain a previously exempt or unauthorized dam and reservoir on an unnamed tributary of Elizabeth Creek, tributary of Denton Creek, tributary of Elm Fork Trinity River in the Trinity River Basin; 2) impound 30.18 acre-feet of water therein for recreational purposes; and, 3) convey 26.22 acre-feet of groundwater to the reservoir and an additional diversion of 5.71 acre-feet using the bed and banks of the Elm Fork Trinity River in Denton County for recreational purposes associated with a new single-family residential development, Perry Homes-Fairway Ranch upstream from Grapevine Lake.

## **3. Request for Contested Case Hearing**

Dallas hereby requests a contested case hearing on Wilbow's Application because the water use permit would affect Dallas in a manner not common to members of the general public.

## **4. Description of Affected Person Status**

Pursuant to Texas Water Code § 5.115 and 30 TAC § 55.256, 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.<sup>1</sup> Additionally, governmental entities may be considered affected persons.<sup>2</sup> Among other things, in assessing affected person status, the Commission may consider relevant factors including, 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.<sup>3</sup>

Dallas is a senior water right holder in the Trinity River Basin and a regional water supplier to millions of Texans through numerous senior water rights to an area approximately 700 square miles, including rights to use water directly from the Elm Fork of the Trinity River ("Elm Fork"). Dallas also is the senior water right holder in Grapevine Lake, a municipal water supply, which is downstream from Wilbow's proposed impoundment and conveyance on Elizabeth Creek and Denton Creek.<sup>4</sup> As a senior water right holder and public utility downstream from Wilbow's proposed dam and reservoir, Dallas not only has an interest protected by law under its water right

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<sup>2</sup> *Id.* 30 TAC § 55.256(b).

<sup>3</sup> *Id.* 30 TAC § 55.256(c).

<sup>4</sup> Certificate of Adjudication No. 08-2457 and amendments.

permits and certificates of adjudication, but it has an interest in protecting its water resources from impairment by other water users to the detriment of its customers and the public welfare.<sup>5</sup>

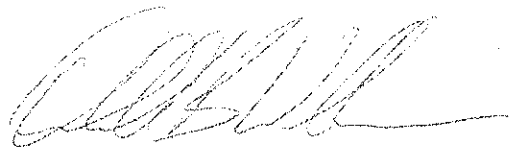
Additionally, Wilbow's application does not appear to conform to applicable State requirements. Specifically, Dallas is concerned that the draft permit's special provisions do not provide sufficient assurance that inflows of state water will be passed, the proposed measuring requirements are appropriate, and the water quality of the alternate source meets the applicable surface water quality standards of Grapevine Lake. This bed and banks conveyance for an amenity pond upstream from Grapevine Lake is in an already over-appropriated segment, which will result in evaporative losses impacting downstream water rights. To protect its senior water rights, Dallas must be named and remain a party to this proceeding.

Dallas is an affected person with a justiciable interest, because Wilbow's water use permit will impair the health and safety of Dallas' customers, its senior water rights, downstream environmental flows, its WTP operations, and the Elm Fork of the Trinity River.

An evidentiary hearing with sworn testimony is essential to ensure that Wilbow's application conforms to State law and does not impact Dallas. Dallas reserves the right to supplement this hearing request after public newspaper notice is provided.

Thank you for your consideration.

Sincerely,



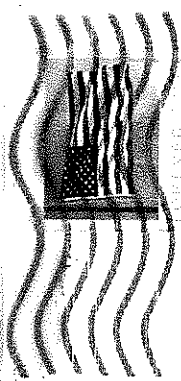
Randall B. Wilburn

Attorneys for City of Dallas, Dallas Water Utilities

cc: Mr. Denis W. Qualls, P.E.

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<sup>5</sup> See Tex. Water Code Ann. § 11.134.



TEXAS  
COMMISSION  
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QUALITY

2020 NOV 30 PM 3:02

CHIEF CLERKS OFFICE

AUSTIN TX 787  
RIO GRANDE DISTRICT

NOV 24 2020 PM 2 L

NOV 30 2020

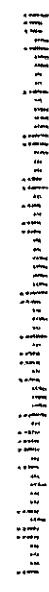
REC MAIL CENTER

**Gilbert Wilburn, PLLC**  
ATTORNEYS AT LAW

Helen S. Gilbert  
7000 N. MoPac Expwy, Ste. 200  
Austin, Texas 78731



Ms. Laurie Gharis  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



78711-308767

## Elisa Guerra

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, November 30, 2020 3:43 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-  
WWW-WRAS  
**Subject:** FW: TCEQ Confirmation: Your public comment on Permit Number WRPERM 13475 was received.  
**Attachments:** Wilbow-Fairway Hearing Request 11-24-202.pdf

H

**From:** CHIEFCLK <chiefclk@tceq.texas.gov>  
**Sent:** Tuesday, November 24, 2020 4:19 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** FW: TCEQ Confirmation: Your public comment on Permit Number WRPERM 13475 was received.

**From:** Helen Gilbert <hgilbert@gwtxlaw.com>  
**Sent:** Tuesday, November 24, 2020 4:17 PM  
**To:** CHIEFCLK <chiefclk@tceq.texas.gov>  
**Cc:** Mehgan Taack <Mehgan.Taack@tceq.texas.gov>; Randall Wilburn <rbw@gwtxlaw.com>  
**Subject:** Fwd: TCEQ Confirmation: Your public comment on Permit Number WRPERM 13475 was received.

Please see below for filing, the City of Dallas' Hearing request in the above-referenced docket for Wilbow-Fairway Development Corporation Application for Water Use Permit No. 13475.

Thanks,

Helen



Gilbert Wilburn, PLLC

### Helen S. Gilbert

Gilbert Wilburn, PLLC  
7000 N. MoPac Expwy, Suite 200  
Austin, Texas 78731  
(C) 512.565.4995  
(O) 512.494.5341  
(F) 512.472.4014  
www.gwtxlaw.com  
hgilbert@gwtxlaw.com

Confidentiality notice: Unless otherwise indicated or obvious from the nature of the transmittal, this email message is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged and confidential or that constitutes work product and is exempt from disclosure under applicable law.

Begin forwarded message:

**From:** [donotreply@tceq.texas.gov](mailto:donotreply@tceq.texas.gov)

**Subject:** TCEQ Confirmation: Your public comment on Permit Number WRPERM 13475 was received.

**Date:** November 24, 2020 at 4:10:34 PM CST

**To:** [hgilbert@gwtlaw.com](mailto:hgilbert@gwtlaw.com)

**REGULATED ENTITY NAME** WRPERM 13475

**RN NUMBER:** RN110103520

**PERMIT NUMBER:** WRPERM 13475

**DOCKET NUMBER:**

**COUNTY:** DENTON

**PRINCIPAL NAME:** WILBOW-FAIRWAY DEVELOPMENT CORPORATION

**CN NUMBER:** CN604238667

**FROM**

**NAME:** Helen Gilbert

**E-MAIL:** [hgilbert@gwtlaw.com](mailto:hgilbert@gwtlaw.com)

**COMPANY:** City of Dallas

**ADDRESS:** 7000 N. Mopac Suite 200  
Austin TX 78731

**PHONE:** 5124945341

**FAX:**

**COMMENTS:** Request for Hearing

*Based on TCEQ rule Section 1.10(h), the TCEQ General Counsel has waived the filing requirements of Section 1.10(c) to allow the filing of comments, requests, or withdrawals using this online system. The General Counsel also has waived the requirements of Section 1.10(e) so that the time of filing your electronic comments or requests is the time this online system receives your comments or requests. Comments or requests are considered timely if received by 5:00 p.m. CST on the due date.*

Helen S. Gilbert



Gilbert Wilburn, PLLC

Randall B. Wilburn, P.E.

November 24, 2020

*Via Electronic Filing and First Class Mail*

Ms. Laurie Gharis  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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## 2. Application Information

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Ms. Gharis  
November 24, 2020  
Page 3 of 3

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**Elisa Guerra**

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, November 30, 2020 3:42 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WWW-WRAS  
**Subject:** FW: Public comment on Permit Number WRPERM 13475  
**Attachments:** Wilbow-Fairway Hearing Request 11-24-202.pdf

H

**From:** hgilbert@gwtlaw.com <hgilbert@gwtlaw.com>  
**Sent:** Tuesday, November 24, 2020 4:11 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WRPERM 13475

**REGULATED ENTY NAME** WRPERM 13475

**RN NUMBER:** RN110103520

**PERMIT NUMBER:** WRPERM 13475

**DOCKET NUMBER:**

**COUNTY:** DENTON

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**ADDRESS:** 7000 N. Mopac Suite 200  
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**PHONE:** 5124945341

**FAX:**

**COMMENTS:** Request for Hearing

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hsgilbert@wilburn.com



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Attorneys for City of Dallas, Dallas Water Utilities

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