

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 30, 2021

TO: Persons on the attached mailing list.

RE: Kendall West Utility, LLC
TPDES Permit No. WQ0015787001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central Office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Patrick Heath Public Library, 451 North Main Street, Boerne, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director’s decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/mo

Enclosure

MAILING LIST
for
Kendall West Utility, LLC
TPDES Permit No. WQ0015787001

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INTERESTED PERSONS:

See attached list.

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TPDES Permit No. WQ0015787001

APPLICATION FROM KENDALL WEST	§	BEFORE THE TEXAS
UTILITY, LLC FOR NEW TEXAS	§	
POLLUTANT DISCHARGE	§	COMMISSION ON
ELIMINATION SYSTEM PERMIT NO.	§	
WQ0015787001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on Kendall West Utility, LLC’s application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015787001 and the ED’s preliminary decision. As required by title 30, section 55.156 of the Texas Administrative Code, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk received timely comments from Bruce Abrams, Nannete Abrams, Craig Adams, Hunter G. Beaton, Kevin H. Beaton, Paula Rae Beaton, Ashley Bents, Krista Marie Bermejillo-Vasquez, Sheila Bode, Robert Walton Boerner, Linda Mercer Bohls, Michael Bowie, Stephen Burkhart, Helen Buttrill, Paula Cairns, Javier Cavazos, Laura Cebe, Cal Chapman, Joann Chapman, Gerald D. Cheeseman, Barry N. Christman, Carrie Combs, Joseph Corcoran, Janette H. Couch, Zebb L. Crofut, Diane Czar, Phillip Czar, Lisa Del Puerto, Denise Dever, Michael Dillinger, Jane Doe, Gloria Patricia Arguelles Domenzain, Peter Drew, Charlene Marie Gause, Maggie Gentry, Wanda Goldberg, Robert Graves, Jimmy Guillot, Michael W. Hail, David E. Hall, Joseph Hanson, Willis Jay Harpole, John Hemmick, Donna J. Hilsmeier, Jessica Holzman, Chris W. Hyvonen, Robert Lee Imler, Patti Jetter, Von A. Jones, Dennis Juren, Kay Kelley, Miriam R. King, Robert Kozub, Lance Bryan Kyle, Martha LaRoque, Susan Denise Lindemann, David W. Locke, Franklin Lyons, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, Shellie N. Mccoy, LaShay McKeel, Clint McNew, Heather McNew, John Meador, Whitney Meadows, Mary B. Mellard, Sam Mensch, Deborah Miller, Michael John Miller, Derek Moellendorf, Charles S. Monroe, Eric Muehlhausen, Hermanus A. Nel, John D. Perry, Jason A. Rand, A. J. Reed, Richard R. Rohrbaugh, Pauline Royer, Darla Rucka, Jim Sampson, Chris Sanford, Lance Schladoer, Janie Sellers, Ray Sevonty, Lori Silva, Rita J. Smith, Jonathan Stuart, Virginia Rose Talerico, Chelsea Tieken, Aaron Michael Vasquez, Michelle Viro, Steven Viro, Susan Walker, William Walker, Jeffrey White, William Arthur Wilson, Suzanne Wyker, Margaret Zaccaro, Warren J. Zaccaro, and an unidentified person. This response addresses all such timely public comments received, whether or not withdrawn. For more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ’s web site at <http://www.tceq.texas.gov>.

I. BACKGROUND

(A) Facility Description

Kendall West Utility has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater via Outfalls 001 and 002 at a

combined daily average flow not to exceed 167,000 gallons per day (gpd) in the Interim I phase, 333,000 gpd in the Interim II phase, and 490,000 gpd in the Final phase. The Tapatío Wastewater Treatment Facility (WWTF) will be an activated sludge process plant with membrane bioreactors (MBRs). Treatment units in the Interim I phase will include one bar screen, one equalization tank, one pre-aeration basin, one chemical feed system, one anoxic basin, one MBR basin, one process basin, one chlorine contact chamber, one sludge holding tank, and one sludge filter press tank. Treatment units in the Interim II phase will include one bar screen, one equalization tank, two pre-aeration basins, one chemical feed system, two anoxic basins, two MBR basins, two process basins, one chlorine contact chamber, one sludge holding tank, and one sludge filter press. Treatment units in the Final phase will include one bar screen, one equalization tank, three pre-aeration basins, one chemical feed system, three anoxic basins, three MBR basins, three process basins, two chlorine contact chambers, one sludge holding tank, and one sludge filter press. The facility has not been constructed.

Effluent limits in the draft permit, based on a thirty-day average, are in the table below. The limits are expressed in milligrams per liter (mg/L), colony-forming units or most probable number per 100 milliliters (CFU or MPN/100 mL), or standard units (SU).

Parameter	Interim I Phase	Interim II Phase	Final Phase
Five-day carbonaceous biochemical oxygen demand	10 mg/L	7 mg/L	5 mg/L
Total suspended solids	15 mg/L		5 mg/L
Ammonia nitrogen	2 mg/L		1.9 mg/L
Total phosphorus	0.5 mg/L		
<i>E. coli</i>	126 CFU or MPN/100 mL		
Chlorine residual	1-4 mg/L		
pH	6-9 SU		
Dissolved oxygen	4 mg/L		6 mg/L

The WWTF will be located approximately 500 feet north of Eagle Drive, 1,375 feet east-southeast of the intersection of Eagle Drive and Tapatío Drive East, in Kendall County, Texas 78006. The treated effluent will be discharged via Outfall 001 to an unnamed tributary, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick Creek, thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin and via Outfall 002 to an unnamed tributary, thence to Smith Investment Co. Lake No. 1, thence to Smith Investment Co. Lake No. 3, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick 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 (Outfall 002), limited aquatic life use for the unnamed tributary (Outfall 001), and high aquatic life use for Masters Lake and Frederick Creek. The designated uses for Segment No. 1908 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation.

(B) Procedural Background

The TCEQ received the application on April 17, 2019, and declared it administratively complete on May 22, 2019. ED staff completed the technical review of the application on October 24, 2019, and prepared a draft permit. The combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) was published on August 21, 2020, in *The Boerne Star*. A public meeting was held, and the public comment period ended, on September 21, 2020. This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

(C) Access to Rules, Statutes, and Records

- Secretary of State website for all Texas administrative rules: <http://www.sos.state.tx.us/texreg/index.shtml>
- TCEQ rules in title 30 of the Texas Administrative Code: <http://www.sos.state.tx.us/tac/index.shtml> (select “View the current *Texas Administrative Code*,” then “Title 30 Environmental Quality”)
- Texas statutes: <https://statutes.capitol.texas.gov/>
- TCEQ website: <http://www.tceq.texas.gov> (for downloadable rules in portable document format, select “Rules and Rulemaking,” then “Download TCEQ Rules”)
- Federal rules in title 40 of the Code of Federal Regulations: <http://www.ecfr.gov>
- Federal environmental laws: <https://www.epa.gov/laws-regulations>

TCEQ records for this application are available at the TCEQ’s Office of the Chief Clerk until the TCEQ takes final action on the application. In light of directives to protect public health, documents can be obtained from the Office of the Chief Clerk by leaving a voice mail at (512) 239-3300; someone will return your call the same day. Some documents located at the Office of the Chief Clerk may also be located in the Commissioners’ Integrated Database at <https://www14.tceq.texas.gov/epic/eCID/>. The application, draft permit, and Statement of Basis/Technical Summary and ED’s Preliminary Decision are also available for viewing and copying at the Patrick Heath Public Library, 451 North Main Street, Boerne, Texas.

If you would like to file a complaint about the facility concerning its compliance with provisions of its permit or TCEQ rules, you may call the TCEQ Environmental Complaints Hot Line at 1-888-777-3186 or the TCEQ Region 13 Office directly at 1-210-490-3096. Citizen complaints may also be filed by sending an email to complaint@tceq.texas.gov or online at the TCEQ web site (select “Reporting,” then “Make

an Environmental Complaint”). If the facility is found to be out of compliance, it may be subject to an enforcement action.

II. COMMENTS AND RESPONSES

Comment 1

Nannete Abrams, Joann Chapman, Gerald D. Cheeseman, Carrie Combs, Robert Lee Imler, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that the facility site is located over a critical aquifer recharge zone. Nannete Abrams, Gerald D. Cheeseman, Janette H. Couch, Mary B. Mellard, and Darla Rucka commented that the facility or its site will not minimize the contamination of groundwater. Paula Cairns commented that the draft permit could impact a sensitive priority groundwater management area. Cal Chapman commented that the facility site lies on the recharge zone for the Upper and Lower Glen Rose Limestone portions of the Middle Trinity Aquifer. Joann Chapman, Gerald D. Cheeseman, Michael Dillinger, Mary B. Mellard, Darla Rucka, Chris Sanford, and Suzanne Wyker commented that the facility should be required to install sewage seepage monitors and alarms. Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the facility will be located above a critical aquifer, leaking sewage could degrade the aquifer, and the WWTF’s site will violate chapter 309 of the TCEQ’s rules¹ because it is over an aquifer recharge zone. Joseph Corcoran commented that the facility should not be built over a recharge zone. Lisa Del Puerto commented that she uses well water and is concerned about the potential impacts to aquifers and groundwater. Gloria Patricia Arguelles Domenzain commented that the facility could potentially cause significant damage to the aquifer. Willis Jay Harpole expressed concern that the WWTF could negatively impact local groundwater. Heather McNew commented that the facility will contaminate groundwater.

Response 1

According to section 26.401(b) of the Texas Water Code, the Texas Legislature has determined that “it is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge.” In subsection (c), the legislature further stated that “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard.” The TCEQ has been tasked with the responsibility of regulating discharges of pollutants into water in the state. The agency’s Water Quality Division, which is responsible for reviewing discharge permit applications and drafting permits that will be protective of human health and the environment, has determined that if surface water quality will be protected under a draft permit, then groundwater quality in the vicinity will not be impacted by the discharge.

¹ All TCEQ rules are in title 30 of the Texas Administrative Code. For information about accessing the rules online, please see section I(C) above.

When someone files a permit application for a wastewater discharge to surface water, the technical review is conducted by the Water Quality Division's Standards Implementation Team reviewers, Water Quality Assessment Team surface water modelers, and Municipal Permits Team permit writers. Following their review of Kendall West Utility's application, Water Quality Division staff drafted a permit with effluent limits that will meet the requirements of the Texas Surface Water Quality Standards (Standards), found in chapter 307 of the TCEQ's rules, by maintaining the receiving waters' existing uses. This ensures the discharge will be protective of aquatic life, human health, and the environment. Because the effluent limits in the draft permit will maintain the existing uses of the surface waters along the discharge route and preclude degradation, they will also protect groundwater.

Chapter 309, subchapter B of the TCEQ's rules contains the location standards for domestic WWTFs. Section 309.12 says the TCEQ may not issue a permit for a new facility unless it finds the proposed facility site, when evaluated in light of the proposed design, construction, or operational features, minimizes possible contamination of water in the state. All vessels and treatment units where wastewater will be contained while receiving treatment at the proposed facility will be evaluated by the Water Quality Division's Plans and Specifications Team prior to construction to ensure the facility and its location will meet the design requirements located in chapter 217 of the TCEQ's rules, which includes the siting requirements in section 309.13. The plans and specifications for domestic sewage collection and treatment works associated with any domestic wastewater permit must be approved by the TCEQ. Failure to secure the TCEQ's approval before starting construction of a WWTF is a violation of the TCEQ rules and may result in an enforcement action.

Section 309.13(d) of the TCEQ's rules does contain requirements regarding WWTF surface impoundments in areas overlying the recharge zones of major or minor aquifers. However, the proposed WWTF will not have a surface impoundment as a treatment unit. Therefore, the aquifer requirements do not apply to the facility.

The draft permit contains multiple requirements related to preventing unauthorized discharges at the facility. For example, Permit Condition No. 2.g prohibits unauthorized discharges, Operational Requirement No. 1 requires the permittee to properly operate and maintain the facility at all times, and Operational Requirement No. 4 requires the permittee to install safeguards that will prevent the discharge of untreated wastewater during a power failure. If an unauthorized discharge that endangers human health or the environment does occur, Kendall West Utility will be required to report it to the TCEQ within twenty-four hours under Monitoring and Reporting Requirement No. 7. Failure to comply with TCEQ rules or the permit may subject Kendall West Utility to a TCEQ enforcement action.

The TCEQ does not require sewage seepage monitors and alarms for municipal WWTFs.

Comment 2

Nannete Abrams, Gerald D. Cheeseman, and Janette H. Couch commented that the facility or its site will not minimize the contamination of surface water. Kevin H. Beaton, Paula Rae Beaton, Robert Walton Boerner, Linda Mercer Bohls, Jane Doe, Peter

Drew, Maggie Gentry, Robert Graves, John Hemmick, Patti Jetter, Von A. Jones, Miriam R. King, David W. Locke, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, Richard R. Rohrbaugh, Pauline Royer, Janie Sellers, Virginia Rose Talerico, Michelle Viro, and Steven Viro commented that the facility could negatively impact area water quality due to its poorly chosen location. Paula Rae Beaton expressed concern that the WWTF will be constructed on a sensitive watershed on land that slopes towards the City of Boerne's water supply and is adjacent to the City's water treatment plant. Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the WWTF's site will violate chapter 309 of the TCEQ's rules because it does not minimize possible water contamination.

Response 2

Chapter 309, subchapter B of the TCEQ's rules contains the location standards for domestic WWTFs. Section 309.12 says the TCEQ may not issue a permit for a new facility unless it finds the proposed facility site, when evaluated in light of the proposed design, construction, or operational features, minimizes possible contamination of water in the state. All vessels and treatment units where wastewater will be contained while receiving treatment at this facility will be evaluated by the Water Quality Division's Plans and Specifications Team prior to construction to ensure the facility and its location will meet the design requirements located in chapter 217 of the TCEQ's rules, which includes meeting the siting requirements of section 309.13. The plans and specifications for domestic sewage collection and treatment works associated with any domestic wastewater permit must be approved by the TCEQ. Failure to secure the TCEQ's approval before starting construction of a WWTF is a violation of the TCEQ rules and may result in an enforcement action.

The draft permit contains multiple requirements related to preventing unauthorized discharges at the facility. For example, Permit Condition No. 2.g prohibits unauthorized discharges, Operational Requirement No. 1 requires the permittee to properly operate and maintain the facility at all times, and Operational Requirement No. 4 requires the permittee to install safeguards that will prevent the discharge of untreated wastewater during a power failure. If an unauthorized discharge that endangers human health or the environment does occur, Kendall West Utility will be required to report it to the TCEQ within twenty-four hours under Monitoring and Reporting Requirement No. 7. Failure to comply with TCEQ rules or the permit may subject Kendall West Utility to a TCEQ enforcement action.

The proposed facility site is not located in, nor will the WWTF discharge into, the watershed of Boerne Lake, which serves as the City of Boerne's water supply. For more information about the WWTF's proposed discharges, please see Response 20.

Comment 3

Cal Chapman commented that the facility will not meet the section 309.13 requirements because someone is installing a water well within 250 feet and potable water storage tank within 500 feet of the facility site. Gerald D. Cheeseman, Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Mary B. Mellard, Deborah Miller, Michael John Miller, Darla Rucka, and Rita J. Smith commented that the

WWTF's site will violate title 30, chapter 309 of the Texas Administrative Code because it does not minimize exposure of the public to nuisance conditions. Michael Dillinger commented that Kendall West Utility should be required to submit a scale drawing of the buffer zones around all the wastewater treatment plant units, a map that shows the distance between all wells and the facility, discharge route, and disposal site at the Tapatio golf course, and an independent third-party study under section 309.13(c) of all the areas where the golf course will be irrigated with effluent; the TCEQ should require 500-foot buffer zones rather than 150 feet due to the unique environmental and other receptors in the area; Kendall West Utility does not satisfy the buffer zone requirements by ownership because it does not own the facility site; and the facility does not meet the section 309.13(a)-(d) requirements because there are wetlands and landowners in the buffer zones that have water wells, water tanks, or septic systems. Michael Dillinger also commented that the TCEQ should conduct an analysis under section 309.13(a)-(c) for all off-site wastewater treatment plant units, including all pipelines leading to and from the facility; and the facility would violate section 309.13(b) because of the ephemeral wetlands in the swale area on the facility's property. Michael Dillinger also commented that Kendall West Utility should be required to create a nuisance mitigation plan. Michael Dillinger also suggested that a condition be added to the draft permit titled Mitigation or Minimization from Kendall West Utility or Landowner (Resort) that contains twenty-one requirements Kendall West Utility would agree to comply with to ensure the permit meets the section 309.10 requirements. Michael Dillinger also commented that the TCEQ should require Kendall West Utility to conduct an independent third-party study of all the factors in section 309.12 of the TCEQ's rules. Willis Jay Harpole and Clint McNew commented that the facility will violate section 309.13 of the TCEQ's rules because they are constructing private water wells and elevated or ground potable-water storage tanks within the required buffer zone distances. Willis Jay Harpole expressed concern that the water wells and potable water storage tanks located on his neighboring property are closer to the WWTF than required by section 309.13 of the TCEQ's rules. Stephanie Lyons commented that the facility site does not minimize the possible contamination of groundwater and surface water under section 309.10.

Response 3

Under section 309.13(b)-(d) of the TCEQ's rules, a wastewater discharge permit applicant must demonstrate that the wastewater treatment plant units at its facility will meet the siting and buffer zone requirements. By definition in section 309.11(9), a wastewater treatment plant unit is any apparatus that is needed to treat wastewater but does not include units that are located off-site, i.e., that are not part of the WWTF. ED staff review the application to determine if the facility will meet the siting and buffer zone requirements. Section 3.C of Domestic Administrative Report 1.1 asks applicants whether the facility will meet the requirements of section 309.13(a)-(d). In its application, Kendall West Utility selected "yes" for its answer.

The application also asks for other information in relation to the section 309.13(b)-(d) requirements. For subsection (b), a wastewater treatment plant unit may not be built in wetlands. Section 5.A of Domestic Technical Report 1.1 asks applicants whether a wetland will need to be filled in to build the facility. In its application, Kendall West Utility indicated it will not have to fill in a wetland for this facility. According to subsection (c) of the rule, a wastewater treatment plant unit may not be

constructed within certain distances of wells, bodies of water, storage tanks, and water treatment plants. For section 13 of Domestic Administrative Report 1.0, the application instructions require applicants to provide the locations of those items on a United States Geological Survey map, which Kendall West Utility provided as part of its application. It also provided water well reports from the Texas Water Development Board that identify those wells. Subsection (d) of the rule, which applies to WWTF surface impoundments, does not apply to this application because there will be no such impoundments at the facility.

There are no legal requirements that an applicant have its proposed facility site studied by an independent third party. However, section 217.6(d) of the TCEQ's rules and Other Requirement No. 6 of the draft permit will require Kendall West Utility to submit a summary transmittal letter, and plans and specifications if requested by the ED, that demonstrate the WWTF will meet, among other things, the requirements in section 309.13. The letter must be signed by the engineer who designed the facility.

Kendall West Utility is proposing to perform irrigation at the golf course under a beneficial reuse authorization under chapter 210 of the TCEQ's rules, which is a separate authorization from the draft permit. Once the draft permit is issued, Kendall West Utility will need to apply for a beneficial reuse authorization for irrigation, and that application will undergo a separate review by ED staff.

For more information about the section 309.13(e) requirements, please see the next response. For more information about the flood plain requirements in section 309.13(a), please see Response 11.

Comment 4

Joann Chapman, Gerald D. Cheeseman, Michael Dillinger, Mary B. Mellard, Darla Rucka, Chris Sanford, and Suzanne Wyker commented that the facility should be required to install odor monitors and alarms. Joann Chapman, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that Kendall West Utility should have to conduct a study regarding how to minimize odors at the facility site due to how the site's environmental characteristics carry odor to the adjacent neighborhood. Barry N. Christman, Michael Dillinger, Gloria Patricia Arguelles Domenzain, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the WWTF will cause nuisance odor issues. Michael Dillinger commented that Kendall West Utility should be required to provide a detailed odor and wind study because the canyon's unique wind characteristics cause odors to move quickly to residential areas; the effluent that will be applied to the Tapatío golf course or discharged to water bodies used for fishing and kayaking will have odor impacts; and the special warranty deed does not meet the legal and technical requirements for siting the facility with regard to odor, including the section 309.13 requirements. Willis Jay Harpole commented that Kendall West Utility has not shown the WWTF will have the best odor avoidance and minimization technology. Clint McNew commented that the proposed facility will have odor issues since Kendall West Utility does not control odor at its current facility. Heather McNew commented that WWTFs give off odors that cannot be contained. Shellie Mccoy expressed concern about the public's exposure to nuisance odor.

Response 4

All WWTFs have the potential to generate odors. To control and abate odors, the TCEQ rules in section 309.13(e) require domestic WWTFs to meet buffer zone requirements for the abatement and control of nuisance odor. Subsection (e) provides three options for applicants to satisfy the nuisance odor abatement and control requirements. Kendall West Utility has demonstrated in the application that the facility can comply with the requirements in subsection (e)(1) through ownership of the buffer zone area. This demonstration included a copy of the buffer zone map, which Kendall West Utility submitted to the TCEQ in attachment 3 to Administrative Report 1.1. The applicant also provided additional buffer zone maps on January 4, 2021 that depict the buffer zone for all three phases of the draft permit. At this point in time, the applicant is not required to provide additional controls for odor from its proposed WWTF.

Further, Kendall West Utility stated in its application that the Tapatio WWTF will be an activated sludge process plant with MBRs. The activated sludge process is the most frequently used biological wastewater treatment process for treating domestic wastewater, and the use of aeration with MBRs has been known to produce highly treated effluent with low biosolids production. When properly treated by the proposed wastewater treatment process, the effluent is not expected to have an offensive odor.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may report it to the TCEQ by using the contact information listed above in section I(C). The TCEQ will inspect the facility, and depending on the results of that inspection, Kendall West Utility may be subject to an enforcement action, which could include a requirement to install additional odor controls. Moreover, the draft permit does not limit the ability of an individual to seek legal remedies against Kendall West Utility regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 5

Joann Chapman, Gerald D. Cheeseman, Michael Dillinger, Mary B. Mellard, Darla Rucka, Chris Sanford, and Suzanne Wyker commented that the facility should be required to install air pollution monitors and alarms.

Response 5

TCEQ rules, including the air permit-by-rule requirements in chapter 106 that apply to domestic WWTFs and the WWTF design requirements in chapter 217, do not require a permittee to install air pollution monitors or alarms at a domestic WWTF.

Comment 6

Stephen Burkhart expressed concern that the facility will contaminate surface water and the watershed that recharges springs and aquifers in the area that serve as water supplies. Joann Chapman, Gerald D. Cheeseman, Michael Dillinger, Mary B.

Mellard, Darla Rucka, Chris Sanford, and Suzanne Wyker commented that studies have shown that people living near a WWTF can experience significant physical and mental health impacts, and Kendall West should be required to develop a plan to minimize such risks. Michael Dillinger commented that the TCEQ should use its discretion under section 309.14(b) to deny the permit due to the presence of children and senior citizens in nearby homes. Gloria Patricia Arguelles Domenzain commented that the facility could negatively impact human health, such as through chemicals or bacteria that escape the facility.

Response 6

The draft permit prohibits unauthorized discharges of wastewater or any other waste through various requirements. For example, Operational Requirement No. 1 states, “The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.” Under Operational Requirement No. 4, Kendall West Utility must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures through alternate power sources, standby generators, or the retention of inadequately treated wastewater.² Other Requirement No. 6 requires Kendall West Utility to submit a summary transmittal letter, and plans and specifications if requested by the ED, that demonstrate the WWTF will meet the permit’s effluent limits for each phase of the facility.³ These and other related permit provisions are designed to prevent unauthorized discharges of raw sewage.

Kendall West Utility’s acceptance of the draft permit constitutes acknowledgement of and an agreement to comply with all terms and conditions embodied in the draft permit as well as the rules and orders of the Commission. In accordance with section 305.125(9) of the TCEQ’s rules and Monitoring and Reporting Requirement No. 7 of the draft permit, the applicant must report to the TCEQ any noncompliance that may endanger human health or safety or the environment. This information must be reported orally or by facsimile transmission to TCEQ’s Region 13 Office within twenty-four hours of knowledge of the noncompliance. The applicant must also submit this information in writing to the Region 13 Office and TCEQ’s Enforcement Division within five working days of knowledge of the noncompliance.

Kendall West Utility’s compliance with the draft permit and TCEQ’s rules regarding WWTF design and operation will protect human health. However, if any unauthorized discharge or other permit violation is observed, the violation can be reported to the TCEQ’s Region 13 Office using the contact information listed in section I(C) above. Citizens may also gather data to show that Kendall West Utility is not in compliance with TCEQ rules. For more information regarding citizen-collected

² See *also* TEX. ADMIN. CODE § 217.36(i) (West 2021).

³ See *also id.* § 217.6(d).

evidence, please visit the TCEQ's web page on the subject at <https://www.tceq.texas.gov/compliance/complaints/protocols>. Furthermore, the draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 7

Kevin H. Beaton, Paula Rae Beaton, Robert Walton Boerner, Linda Mercer Bohls, Jane Doe, Peter Drew, Maggie Gentry, Robert Graves, John Hemmick, Patti Jetter, Miriam R. King, David W. Locke, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, Richard R. Rohrbaugh, Pauline Royer, Janie Sellers, Virginia Rose Talerico, Michelle Viro, and Steven Viro commented that the facility could negatively impact area water quality due to its discharges into recreational areas. Sheila Bode, Barry N. Christman, Michael Dillinger, Willis Jay Harpole, Chris W. Hyvonen, Dennis Juren, John Meador, Mary B. Mellard, Deborah Miller, Michael John Miller, John D. Perry, Rita J. Smith, Margaret Zaccaro, and Warren J. Zaccaro commented that the facility will impact their ability to recreate in the area around the facility. Cal Chapman commented that the facility will negatively affect groundwater and surface waters in areas where he recreates, such as near the facility and around Boerne Lake. Willis Jay Harpole commented that the discharge will impact his neighboring property's recreational uses, such as using the walking, biking, and bird watching trails surrounding surface waters and wetlands, and downstream property's recreational uses, such as boating, human and pet swimming, fishing, and bird watching. Heather McNew commented that she owns property next to the facility site, and the facility will impact her family's ability to recreate. An unidentified person commented that Boerne Sustainable Development Coalition members Kevin Beaton's, Laura Davis's, and Michael Dillinger's ability to recreate will be negatively impacted because they hike near the golf course, use the golf course, or live near the facility and will have to see, hear, or smell the facility.

Response 7

Effluent discharged in Texas into water in the state is required to meet the Standards. According to section 307.6(b)(3) of the Standards, "Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three." As part of the permit application review process, the TCEQ determines the uses of the receiving waters, including any recreational uses, and establishes effluent limits that are protective of those uses. The designated recreational use for Segment No. 1908 is primary contact recreation, which consists of activities that involve a significant risk of ingesting water, such as wading and swimming.⁴ Under section 307.4(j)(3) of the Standards, this is also the presumed recreational use for the other water bodies along the discharge routes. The effluent limits and monitoring requirements in the draft permit were designed to protect and maintain this recreational use. ED staff, including the Water Quality Assessment Section, took Kendall West Utility's proposed flow of 490,000 gpd into consideration

⁴ *Id.* § 307.3(47).

when screening the discharges for compliance with the Standards. This included the antidegradation review of the receiving waters, which was performed in accordance with the Standards and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (IPs). A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Masters Lake, Smith Investment Co. Lake Nos. 1 and 3, and Frederick Creek, which have been identified as having high aquatic life use. Existing uses will be maintained and protected.

Based on the results of the review process, treated effluent discharged in accordance with the requirements of the draft permit will protect human health. This includes the effluent limits for *E. coli* that will require Kendall West Utility to disinfect the treated wastewater in a manner that will maintain the receiving waters' primary contact recreation use. The ED also notes that conventional domestic wastewater does not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving water bodies unless there are significant industrial users contributing to the waste stream. This WWTF will receive wastewater from residential subdivisions and will not be accepting industrial wastewater.

The TCEQ does not have the authority to address issues relating to recreation outside the water as part of the wastewater permitting process. However, if contact recreational uses will be protected, recreational uses near the water should be protected as well.

The treated effluent will be discharged via Outfall 001 to an unnamed tributary, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick Creek, thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin and via Outfall 002 to an unnamed tributary, thence to Smith Investment Co. Lake No. 1, thence to Smith Investment Co. Lake No. 3, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick Creek, thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. Both discharge routes enter the watershed of Upper Cibolo Creek below Boerne Lake. Therefore, the effluent does not have the potential to impact Boerne Lake.

Comment 8

Willis Jay Harpole and Heather McNew commented that they own property adjacent to the facility site, and the facility will impact their families' enjoyment of their properties.

Response 8

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes impacts on groundwater and surface water and certain nuisance conditions. Here, the draft permit is protective of

groundwater and surface water and provides protection against certain nuisance conditions, such as odor. The normal use and enjoyment of the neighboring properties should not be affected if Kendall West Utility operates its WWTF in accordance with TCEQ rules and the draft permit.

The draft permit would not limit anyone's ability to seek legal remedies from Kendall West Utility regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility's activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property. Furthermore, if members of the public experience nuisance conditions from the facility, they may use the contact information listed in section I(C) above to notify the TCEQ of any problems. If the TCEQ found that the facility was out of compliance with applicable laws or the draft permit, the facility may be subject to an enforcement action. The TCEQ's periodic facility inspections and reviews of the applicant's annual reports will also help identify potential violations.

Comment 9

Cal Chapman commented that Kendall West Utility has not evaluated its regionalization options. Michael Dillinger commented that Kendall West Utility has violated the regionalization policy because attachment 4a of the Technical Report does not depict its existing facility. Willis Jay Harpole commented that he owns a WWTF located within three miles of the facility site, and the proposed facility would violate the regionalization policy because his facility has the capacity to serve the proposed service area and could be expanded or upgraded if necessary. Willis Jay Harpole asked whether the purpose of the regionalization law was to keep new plants from running old plants out of business.

Response 9

The TCEQ's regionalization policy comes from section 26.081 of the Texas Water Code, which implements "the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." The idea of encouraging and promoting regional systems is also found in section 26.003 of the Texas Water Code. Section 26.0282 of the Texas Water Code further provides that, "[i]n considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater."

To exercise this policy, section 1.B in Domestic Technical Report 1.1 of the TCEQ's domestic wastewater discharge permit application requires the applicant for a new permit to provide information concerning other WWTFs that exist near the applicant's proposed facility. The applicant is required to state whether any portion of the applicant's proposed service area is located in an incorporated city, whether its

proposed service area is located within another utility's certificate of convenience and necessity area, and whether there is a WWTF or any sewer collection lines located within the three-mile area surrounding the proposed facility site.

Kendall West Utility complied with the regionalization requirements in the application. It stated that no portion of its service area will be in a city or overlap the certificate of convenience and necessity area of another utility. It did state there is another WWTF located within three miles of the proposed facility site, which it identified in attachment 1 to Technical Report 1.1 as belonging to Lerin Hills Municipal Utility District. Correspondence between the two utilities shows that Lerin Hills Municipal Utility District is not interested in providing the applicant with service. The applicant did not need to provide information regarding its current facility because the purpose of the regionalization policy is to encourage the formation of regional systems, not prevent utilities from replacing their existing facilities. The ED notes that Other Requirement No. 9 in the draft permit will require Kendall West Utility to submit and execute a clean closure plan for its current facility, which the ED understands is the facility that belongs to Mr. Harpole.

Comment 10

Cal Chapman submitted documentation he said shows that Kendall West Utility does not own the facility site as it claims in the application. Joann Chapman, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that the deed does not give Kendall West Utility sufficient ownership to build the facility and maintain the buffer zones. Michael Dillinger commented that Kendall West Utility is not the owner of the proposed facility site and should be required to submit any agreement it has with the landowner, the Tapatio Springs Hill Country Resort, including any that relate to property boundaries or buffer zones.

Response 10

The applicant provided a copy of a Special Warranty Deed dated April 29, 2020 between Tapatio Property Owner, LLC and Kendall West Utility, LLC for the purchase of the proposed facility site. The ED is unaware of anything that would prevent Kendall West Utility from building the facility and maintaining the necessary buffer zones in relation to the warranty deed.

Comment 11

Nannete Abrams, Cal Chapman, Gerald D. Cheeseman, Carrie Combs, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that the facility site is subject to severe flooding and sits below and next to surface water ponds and wetlands. Nannete Abrams, Joann Chapman, Gerald D. Cheeseman, Carrie Combs, Robert Lee Imler, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that treated sewage would flow into nearby townhomes if there were a facility breach due to flooding. Stephen Burkhart commented that frequent rainfalls in the area of four to five inches could cause untreated sewage to be released from the facility. Stephen Burkhart also expressed concern that heavy rains could cause sewage overflows at the facility. Cal Chapman commented that the proposed facility site lies in the floodway of a small drainage with three dams and tanks located within 500 feet above the site, making the

site susceptible to flooding. Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the facility will be located in an area that has experienced significant flooding, and if the facility were flooded, untreated sewage could flow into a neighboring development. Michael Dillinger commented that the WWTF should include all the wastewater treatment plant units and other connected parts, as Kendall West Utility only included part of the plant. Michael Dillinger also commented that if the dam upstream were to break during a storm event, stormwater could inundate the facility and expose downgradient residences to untreated wastewater, and Kendall West Utility should be required to conduct a formal survey to eliminate the possibility that the facility and discharge route are in the floodplain. Gloria Patricia Arguelles Domenzain commented that the facility site is in a flood-prone area. Michael W. Hail and John D. Perry expressed concern about the facility site being located in an environmentally sensitive area and the potential for the facility to flood, causing wastewater overflows. Jonathan Stuart asked whether the facility will have to meet best available control technology standards so the effluent does not have a negative effect on wildlife and plant life, and what components the facility will have to prevent accidental wastewater releases during a rain event of four to ten inches per hour.

Response 11

The application submitted by Kendall West Utility went through a technical review during the permit drafting process. The application was technically complete and contained detailed schematics and lists of the facility's treatment units in attachment 1 to Technical Report 1.0. Upon issuance of the draft permit, the applicant will be required to submit a summary transmittal letter under section 217.6(d) of the TCEQ's rules that must include, among other things, a statement certifying that the WWTF's plans and specifications substantially complying with the domestic WWTF design requirements in chapter 217. If requested by ED staff, the applicant must also submit the plans and specifications to the TCEQ Water Quality Plans and Specifications Team for an engineering review of the treatment units. Any deficiencies in the design and specifications will be addressed at that time. Under Other Requirement No. 6 in the draft permit, this process must be repeated for each phase of the permit.

Under section 217.35 of the TCEQ's rules, WWTFs must be protected from inundation during a 100-year flood event. For this application, this requirement is reinforced by Other Requirement No. 4 in the draft permit. According to section 5.A in Technical Report 1.1 of Kendall West Utility's application, the proposed facility will be located above the 100-year flood plain. The ED notes that even during storm events, Kendall West Utility will be required to comply with all the numeric and narrative effluent limits and conditions in the draft permit.

The control levels discussed in section 304(b) of the Clean Water Act, such as best practicable control technology currently available, apply to industrial WWTFs. As discussed above, domestic WWTFs in Texas are subject to the extensive requirements of chapter 217 of the TCEQ's rules.

Comment 12

Cal Chapman and Michael Dillinger quoted section 291.95 of the TCEQ's rules

and commented that the facility site or design violate the codes and standards because of the possibility of flooding at the site, location of townhomes nearby, and presence of an aquifer recharge zone under the site.

Response 12

The TCEQ has incorporated specific requirements to comply with American Water Works Association and other codes and standards into chapter 217 of the TCEQ's rules. As discussed in the previous response, the WWTF must meet the requirements of chapter 217 before it can be constructed. As long as Kendall West Utility complies with chapter 217, it will be complying with the necessary codes and standards.

Comment 13

Michael Dillinger commented that Kendall West Utility should be required to post plant malfunctions on its website and send text alerts, and there should be a report and continuous monitoring like a discharge monitoring report.

Response 13

The TCEQ issues discharge permits that describe the conditions under which WWTFs must operate, which includes complying with the permit's reporting requirements. These requirements are described in the Monitoring and Reporting Requirements section of the draft permit. They include filing a monthly discharge monitoring report with the TCEQ's Office of Compliance and Enforcement and submitting noncompliance reports to the Compliance Monitoring Team (and the Region 13 Office if the noncompliance threatens human health or the environment). There are no legal requirements that this information be provided to anyone other than the TCEQ. Therefore, requirements for reporting plant malfunctions or providing reports directly to the public as requested by the commenter would need to be arranged in a separate agreement with Kendall West Utility.

Records of non-compliance by a permittee, TCEQ investigation reports, and monthly discharge monitoring reports can be obtained by contacting the Office of Compliance and Enforcement or Region 13 Office. Discharge monitoring report records can also be obtained from the United States Environmental Protection Agency's (EPA's) Enforcement and Compliance History Online webpage at <https://echo.epa.gov/>. Additional permittee information is available from the TCEQ's Central Registry webpage.⁵ For more TCEQ contact information, please see section II above.

Comment 14

Michael Dillinger commented that the proposed facility site's owner, Tapatio Springs Hill Country Resort, does not have permission to use the private roads to the site.

⁵ The TCEQ's Central Registry is available at <https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=home.welcome>.

Response 14

According to the application and the Special Warranty Deed dated April 29, 2020 submitted by the applicant, Kendall West Utility owns the proposed facility site. Having said that, the ED notes that the draft permit does not grant the applicant the right to use private or public property to access the facility, nor does it authorize any invasion of personal rights or violation of federal, state, or local laws or regulations. It is the responsibility of the applicant to acquire all property rights necessary to access the facility.

Comment 15

Cal Chapman commented that under section 309.14 of the TCEQ's rules, the TCEQ is not obligated to issue a permit even if the applicant satisfies the requirements of sections 309.12-.13, which Kendall West Utility has not done due to the site's many unsuitable characteristics. Joann Chapman, Michael Dillinger, Mary B. Mellard, Darla Rucka, Chris Sanford, and Suzanne Wyker commented that Kendall West Utility should be required to consider other sites for the WWTF and analyze them, such as determining which one would minimize groundwater and surface water contamination or nuisance conditions. Joseph Corcoran commented that Kendall West Utility should find a more appropriate site for the facility. Michael Dillinger commented that Tapatio Springs Hill Country Resort can withdraw from the sale of the proposed site and offer a different location for the facility that is not located near children and senior citizens and will avoid environmental risks. Gloria Patricia Arguelles Domenzain, Dennis Juren, and Heather McNew commented that there are other location options. Dennis Juren commented that the area floods and will get worse as the neighboring Miralomas development is built out. Ray Sevonty commented that it does not make sense to ruin the proposed site for the next thirty years, and the new facility should be placed in a more commercial area or next to the existing one instead.

Response 15

The TCEQ does not have the authority to mandate a different outfall or wastewater treatment plant location if the applicant's proposed facility site and discharge route comply with chapter 26 of the Texas Water Code and chapter 309 of the TCEQ's rules. Based on their review of the application, ED staff concluded that the proposed facility site and discharge routes comply with those requirements. As the application also complies with all other applicable rules and statutes, the ED has no basis for recommending denial of the application under section 309.14.

Comment 16

Joann Chapman, Michael Dillinger, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that Kendall West Utility should have to conduct a study regarding how to minimize noise at the facility site due to how the site's environmental characteristics carry noise to the adjacent neighborhood. Barry N. Christman, Michael Dillinger, Gloria Patricia Arguelles Domenzain, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the WWTF will cause nuisance noise issues. Willis Jay Harpole commented that Kendall West Utility has not shown the WWTF will have the best noise avoidance and

minimization technology. Shellie Mccoy expressed concern about the public's exposure to nuisance noise.

Response 16

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes certain nuisance conditions. However, the TCEQ does not have the authority to address concerns about noise when determining whether to grant a discharge permit application. The draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 17

Clint McNew and Heather McNew commented that the proposed facility will have vector control issues since Kendall West Utility's current facility attracts horse flies that bite their children and pets.

Response 17

The WWTF's design must comply with chapter 217 of the TCEQ's rules, Design Criteria for Domestic Wastewater Systems. As stated in section 217.3, one of the chapter's purposes is to ensure WWTFs are designed, installed, operated, and maintained to protect public health and safety. This purpose is reflected in Operational Requirement No. 1 in the draft permit, which requires Kendall West Utility to ensure at all times that the facility and all its collection, treatment, and disposal systems are properly operated and maintained. Consequently, a health hazard because of pests should not occur at the WWTF.

If any permit violation is observed, the violation can be reported to the TCEQ's Region 13 Office using the contact information listed above in section I(C). Citizens may also gather data to show that Kendall West Utility is not in compliance with TCEQ rules. For more information regarding citizen-collected evidence, please visit the TCEQ's webpage on the subject at <https://www.tceq.texas.gov/compliance/complaints/protocols>. Also, the draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 18

Gloria Patricia Arguelles Domenzain commented that the proposed facility could cause nuisance industrial lighting issues. Shellie Mccoy expressed concern about the public's exposure to nuisance industrial lighting.

Response 18

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes certain nuisance conditions. However, the TCEQ does not have the authority to address concerns about industrial lighting when determining whether to grant a discharge permit application. The draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 19

Bruce Abrams commented that the permit puts wells at risk. Gloria Patricia Arguelles Domenzain commented that possible water contamination could endanger people's health. Steven Viro commented that the facility's discharge will have a negative impact because it will discharge into his municipal drinking water supply.

Response 19

Effluent discharged into water in the state from a facility regulated under the TPDES is required to meet the Standards. The TCEQ sets and implements the Standards to maintain, and improve where necessary, the quality of water in the state. According to section 307.6(b)(3) of the Standards, "Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three." Additionally, section 307.6(b)(4) states, "Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three." The ED uses the Standards' narrative and numerical requirements when drafting a discharge permit to ensure the permit will protect the receiving waters.

As part of the permit application process, the ED uses the Standards to identify the receiving waters' uses and set effluent limits in the permit that are protective of those uses. The designated uses for Segment No. 1908 are high aquatic life use, public water supply, aquifer protection, and primary contact recreation. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary (Outfall 002), limited aquatic life use for the unnamed tributary (Outfall 001), and high aquatic life use for Masters Lake and Frederick Creek; these water bodies' presumed recreational use is primary contact recreation. The effluent limits in the draft permit, including the thirty-day average limits described in section I(A) above, are limits for the pollutants that are expected to be present in Kendall West Utility's effluent. They have been designed to maintain and protect Segment No. 1908's uses as well as ensure the applicant's discharges will not violate the Standards. Additionally, the applicant is required to submit test results for total dissolved solids, sulfate, and chloride within 120 days of when one of the outfalls begins discharging (see Other Requirement No. 8

of the draft permit). The ED will screen the results of this submission to determine if any effluent reporting requirements or limits need to be added based on the procedure discussed on pages 174-186 of the IPs.

Based on the ED's technical review of the application and drafting of the permit, the ED has determined that the draft permit meets the requirements of the Standards and other applicable TCEQ rules and will protect human health, whether directly or by consuming aquatic organisms, if Kendall West Utility operates and maintains its facility as required by the draft permit and applicable rules. Discharging effluent outside the permit's parameters would be a permit violation and may subject the applicant to an enforcement action. This includes unauthorized discharges, which Permit Condition No. 2.g in the draft permit defines as "any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit." Under Monitoring and Reporting Requirement No. 7.a and b of the draft permit, the applicant will be required to report any unauthorized discharge that endangers human health to the TCEQ within twenty-four hours. If it fails to do so, it may be subject to a potential enforcement action for failure to comply with the permit. Once the TCEQ learns of an unauthorized discharge, it and other local governmental entities determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

Kendall West Utility will be required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement No. 4 of the draft permit requires the applicant to maintain "adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater." The applicant is also required to comply with the requirements for emergency backup power found in section 217.36 of the TCEQ's rules. To ensure proper facility design, the applicant must comply with the TCEQ's design submittal requirements for its wastewater collection system and treatment facility in accordance with section 217.6 of the TCEQ's rules. Also, Operational Requirement No. 8.a of the draft permit states that when the flow reaches 75% of the permitted daily or annual average flow for three consecutive months, the applicant must initiate engineering and financial planning for any expansion or upgrade of the treatment and collection facilities needed to provide sufficient capacity. When the flow reaches 90% of the permitted daily or annual average flow for three consecutive months, the applicant must obtain authorization from the TCEQ to begin constructing the necessary additional treatment and collection facilities.

If any unauthorized discharge or other permit violation is observed, the violation can be reported to the TCEQ's Region 13 Office using the contact information listed in section I(C) above. Also, the draft permit does not limit the ability of an individual to seek legal remedies against Kendall West Utility regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 20

Bruce Abrams commented that the permit puts creeks at risk. Stephen Burkhart commented that the effluent will contaminate Frederick Creek. Janette H. Couch commented that downstream watersheds will be disrupted and damaged. Denise Dever commented that the effluent endangers Frederick Creek and downstream waters. Willis Jay Harpole expressed concern that the discharge will further degrade the receiving waters, which already have issues regarding fishable and swimmable quality, odor, oxygen levels, and negative impacts from uncontrolled and unpermitted stormwater and other discharges. Whitney Meadows commented that the additional 490,000 gallons of effluent being discharged will cause algal blooms. Charles S. Monroe expressed concern that the discharge will have negative impacts on water quality, such as algae growth. Virginia Rose Talerico commented that the effluent will cause algal blooms on Cibolo Creek when it hits the dam downtown.

Response 20

For domestic wastewater discharges, the TCEQ protects water quality primarily through the implementation of the Standards, as described in the IPs. The Standards enable the TCEQ to protect surface water quality, groundwater, human health, aquatic life, and the receiving waters' designated uses. They include numeric and narrative water quality criteria used to protect the designated and assigned uses of receiving waters. For example, based on the determined aquatic life use, classified segments are assigned a numeric dissolved oxygen criterion that must be met to support the aquatic life use. The TCEQ's Water Quality Assessment Team then performs a dissolved oxygen modeling analysis to ensure the permit's effluent limits and other requirements will support the dissolved oxygen criterion and, therefore, protect the aquatic life use. For this application, a dissolved oxygen modeling analysis was performed for the two unnamed tributaries, Masters Lake, and Smith Investment County Lake Nos. 1 and 3, and the effluent limits in the draft permit reflect the treatment levels necessary to comply with the water bodies' applicable dissolved oxygen criteria.⁶

Phosphorus is a key nutrient in the regulation of algae. In freshwater systems, phosphorus is usually the nutrient in lowest supply, so algal growth tends to be sensitive to its availability. When a stream is already sensitive to algal growth from other environmental factors, maintaining low phosphorus in treated wastewater reduces the likelihood of a wastewater discharge stimulating an excessive growth of algae or other aquatic vegetation. To ensure the effluent from the Tapatio WWTF will not cause an excessive accumulation of algae, the ED performed a nutrient screening, which indicated that because of the high clarity of the water column, lack of shade along the banks, and minimal dilution, a total phosphorus limit is needed in the draft permit. The ED included a daily average total phosphorus limit of 0.5 mg/L in all phases to preclude the excessive accumulation of algae.

In accordance with section 303(d) of the Clean Water Act, the TCEQ provides a list every two years of water bodies that are impaired for a particular pollutant. This

⁶ The dissolved oxygen criteria are 2 mg/L for the Outfall 002 unnamed tributary, 3 mg/L for the Outfall 001 unnamed tributary, and 5 mg/L for Masters Lake and Smith Investment Co. Lake Nos. 1 and 3.

list is known as the 303(d) list. In the version that applies to this application, the 2014 303(d) list, Segment No. 1908 is listed as impaired for bacteria from approximately two miles upstream of State Highway 87 in the City of Boerne to the upper end of the segment and for chloride throughout the entire segment. For the bacteria impairment, ED staff have determined that between the WWTF's disinfection processes and its compliance with the draft permit's *E. coli* limits, the proposed discharge will not contribute to the impairment. For the chloride impairment, ED staff need more information regarding actual pollutant levels in the effluent before it can determine if the draft permit needs any additional reporting requirements or effluent limits. To that end, Other Requirement No. 8 requires Kendall West Utility to have its effluent tested for total dissolved solids, chloride, and sulfate and submit the results within 120 days of when one of the outfalls starts discharging. ED staff will then determine whether any permit amendments are needed based on the test results.

Under section 307.5 of the Standards, ED staff must conduct an antidegradation review for new discharge permit applications. The review is conducted as prescribed by the IPs. All water bodies are subject to a Tier 1 review, in which ED staff determine if existing water quality uses will be impaired by a permit action. For this application, ED staff determined that the water bodies' uses will not be impaired if the draft permit is issued. Numerical and narrative criteria to protect existing uses will be maintained. Water bodies that have an intermediate, high, or exceptional aquatic life use are subject to a Tier 2 review, in which ED staff determine if water quality will be degraded, i.e., lowered by more than a de minimis extent. Here, ED staff concluded that no significant degradation of water quality is expected in Masters Lake, Smith Investment Co. Lake Nos. 1 and 3, and Frederick Creek, which have high aquatic life use. Existing uses will be maintained and protected. These determinations are preliminary and may be modified if new information is received.

As described in the 2014 Texas Integrated Report of Surface Water Quality - Water Bodies Evaluated, there are at least eight surface water quality monitoring stations on Upper Cibolo Creek. Water quality monitoring results reported in the Integrated Report include stations that are monitored by the TCEQ and partner agencies. The TCEQ performs periodic water quality monitoring in Upper Cibolo Creek to assess water quality trends and the creek's general health. This data can be obtained from the TCEQ or accessed online at <http://www.tceq.texas.gov/waterquality/monitoring/index.html>.⁷

Comment 21

Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the golden-cheeked warbler has been spotted in the area and could be affected by noise, smells, and lights, but there has been no known involvement of the U.S. Fish and Wildlife Service (FWS) or Texas Parks and Wildlife Department (TPWD). Michael Dillinger commented that the TCEQ should send the FWS and TPWD the Supplemental Permit Information Form due

⁷ The link to the Surface Water Quality Data Viewer is at the bottom of the webpage. To properly view the data, the ED recommends saving the .txt file and then importing it into an Excel spreadsheet. For more information, clicking on the Help icon on the Surface Water Quality Web Reporting Tool webpage leads to a user guide.

to the golden-cheeked warbler's presence in the area and its habitat near the proposed facility site; and involving them and the U.S. National Marine Fisheries Service is required under federal and state law and the TCEQ's memorandum of agreement with EPA. Donna J. Hilsmeier commented that the FWS, U.S. National Marine Fisheries Service, and TPWD must address endangered species issues, as the facility site may be located in critical habitat for the golden-cheeked warbler. Jessica Holzman commented that chemicals in the discharge will negatively impact federal threatened and endangered species that live in caverns along Cibolo Creek.

Response 21

The TCEQ reviews wastewater discharge permit applications to determine whether the discharge could potentially have any adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species, including proposed species. For this review, the TCEQ considers the memorandum of agreement between the TCEQ and EPA concerning the TPDES program, FWS's biological opinion associated with the TCEQ assuming the TPDES program dated September 14, 1998, and the update to the biological opinion dated October 21, 1998. During the review for this application, the TCEQ did not identify any aquatic or aquatic-dependent species that would be affected by the draft permit. Therefore, the draft permit does not require EPA review with respect to the presence of endangered or threatened species. As the golden-cheeked warbler is not an aquatic or aquatic-dependent species, it is not subject to the TCEQ's review. Please see Response 24 for more information about terrestrial species.

The ED notes that if the draft permit did require EPA review, EPA would make sure the federal government provided a response for endangered species issues. Also, TPWD and the FWS were provided with notice of the application and did not file any comments.

Comment 22

Michael Dillinger commented that Kendall West Utility should be limited to certain dates and times when it can haul away solids and sludge, as the area contains affected residences.

Response 22

The TCEQ does not have any requirements that limit the dates and times when a permittee can haul away solids and sludge from its WWTF. WWTFs haul away produced sludge as needed, which may or may not be on a regular or prescribed basis. Therefore, the limits requested by the commenter would need to be arranged in a separate agreement with Kendall West Utility.

Comment 23

Paula Rae Beaton commented that Kendall West Utility has multiple stormwater drainage violations and disasters. Lance Bryan Kyle commented that Kendall West Utility and a sister company, M5 Utilities, have at least eight violations listed in the TCEQ's complaints database, which leads to concern about the infrastructure they are

building at Shoreline Park, and expressed concern regarding Kendall West Utility's engineering capabilities. Franklin Lyons expressed concern regarding Kendall West Utility's ability to protect the environment and put the community first.

Response 23

During the technical review of an application, the TCEQ reviews the applicant's compliance history according to the TCEQ's rules in chapter 60. The compliance history is reviewed for the applicant and facility site for a five-year period prior to the date the permit application was received by the ED. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violation, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

Under section 60.2, an applicant and facility site may have one of the following classifications and ratings:

- A high performer has a rating of fewer than 0.10 points and is considered to have an above-satisfactory compliance record.
- A satisfactory performer has a rating between 0.10 and 55 points and is considered to generally comply with environmental regulations.
- An unsatisfactory performer has a rating above 55 points and is considered to perform below minimal acceptable performance standards established by the Commission.
- A facility site that does not yet exist is deemed unclassified.

The results of the compliance history query for this application, dated October 10, 2019, indicate the proposed facility site does not yet have a rating number, so the classification for the facility site is unclassified. Kendall West Utility's rating, which is the average of the ratings for all sites the company owns, and classification are 0.00 and high. The query did not locate any of the compliance-related components discussed above.

The TCEQ issues permits that describe the conditions under which wastewater facilities must operate. This includes Operational Requirement No. 1, which requires the permittee to properly operate and maintain its facility at all times. Furthermore, all facilities must be designed, operated, and maintained consistent with applicable TCEQ rules, such as complying with the domestic WWTF design criteria in chapter 217.

The TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The Region 13 Office is required to conduct a mandatory comprehensive compliance investigation at minor facilities (facilities with a permitted flow less than 1,000,000 gpd) once every five fiscal years. Additional mandatory investigations can be required if the facility is considered to be in significant noncompliance with its permit, which is determined by the TCEQ's

Compliance Monitoring Section and is based on self-reported effluent violations. If this facility is found to be out of compliance with the draft permit, the applicant may be subject to an enforcement action.

Comment 24

Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the facility will result in a take or harassment of migratory birds in the facility's immediate area, but there has been no known involvement of the FWS under the Migratory Bird Treaty Act. Lisa Del Puerto expressed concern that there were no mammals that would be protected. Michael Dillinger commented that the TCEQ should send the FWS and TPWD the Supplemental Permit Information Form due to the migratory birds' presence in the area.

Response 24

The draft permit was composed in accordance with the Standards and IPs. Under section 307.6(b)(4) of the Standards, discharged effluent cannot make water in the state toxic to aquatic or terrestrial organisms. While the Standards and IPs do not specifically designate criteria for the protection of terrestrial wildlife, such as birds, they do designate criteria for the protection of aquatic life and human health. As discussed in Response 19, Segment No. 1908, Masters Lake, and Frederick Creek have high aquatic life use; the Outfall 001 unnamed tributary has limited aquatic life use; and the Outfall 002 unnamed tributary has minimal aquatic life use. All these water bodies either have or are presumed to have primary contact recreation. The effluent limits in the draft permit have been calculated to maintain and protect these existing instream uses. The limits and enhanced secondary treatment levels with nitrification that apply to the proposed discharge are expected to provide water quality that is safe for aquatic wildlife and human health, the latter of which was discussed in Response 19. If the draft permit will protect aquatic life and human health, it should also protect terrestrial wildlife that drink water or consume aquatic organisms along the discharge route. Therefore, the TCEQ does not expect the treated effluent to adversely affect terrestrial wildlife.

Enforcement of the Migratory Bird Treaty Act is not part of the TCEQ's wastewater discharge permit application review process. Any concerns related to the Act would need to be directed to its enforcing agencies. As noted in Response 21, TPWD and the FWS were provided with notice of the application and did not file any comments.

Comment 25

Stephen Burkhart commented that it is well documented that municipal wastewater treatment plants have adverse impacts on the quality of life of people living near them. Gloria Patricia Arguelles Domenzain commented that the facility could reduce the quality of life, which could reduce tax revenues. Robert Kozub commented that the draft permit will have a negative impact on current and downstream residents' quality of life.

Response 25

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. The TCEQ does not have the authority to address concerns about quality of life when determining whether to grant a discharge permit application. However, as discussed in other responses, the TCEQ does seek to protect human health and the environment when reviewing discharge permit applications and composing draft permits. Human health, surface water and groundwater quality, aquatic and terrestrial wildlife, and the receiving waters' uses will all be protected under the terms of the draft permit.

The draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

For more information, please see Response 1 regarding groundwater quality, Response 7 regarding recreational use, Response 19 regarding human health, Response 20 regarding surface water quality, and Response 24 regarding terrestrial wildlife.

Comment 26

Sheila Bode, Michael Dillinger, Willis Jay Harpole, Dennis Juren, Mary B. Mellard, John D. Perry, Margaret Zaccaro, and Warren J. Zaccaro commented that they live in the neighborhood adjacent to the proposed facility site but did not receive mailed notice. Janette H. Couch commented that many affected parties have not been notified. Michael Dillinger commented that all homes in the Ridge neighborhood and surrounding the discharge route and Tapatío Golf Course should have been included on the landowner map and received the NORI, and the map should have also included the effluent disposal site boundaries at the golf course. LaShay McKeel commented that she wanted to receive notice.

Response 26

The TCEQ's notice rules for a new permit require that the NORI and NAPD be mailed to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk.⁸ Under section 1 of Domestic Administrative Report 1.1, the applicant is required to submit a landowner map as part of the application materials. The landowner map must include the properties that share a boundary with the applicant's property and that border the discharge route for one full stream mile downstream from the discharge point. The applicant must also provide a list that identifies the properties' owners. The landowners map and list provided by the applicant meet those requirements, and the Office of the Chief Clerk used the list when mailing out the notices.

As discussed above in Response 3, any reuse of the WWTF's effluent will be authorized in a separate TCEQ application process.

⁸ 30 TEX. ADMIN. CODE §§ 39.413, 39.418, 39.419, and 39.551.

Comment 27

Hunter G. Beaton expressed concern that data in the application is inaccurate because it was collected during the 2020 pandemic, especially as Kendall West Utility has a history of providing inaccurate information in their stormwater reports. Cal Chapman commented that the application does not address the possible threats to groundwater and surface water quality, as required by chapter 309 of the TCEQ's rules, and the two new lift stations and force mains must be evaluated as part of the application, such as evaluating surface water and aquifer exposures. Michael Dillinger commented that the following issues exist with the application: 1) Section 5 of the Supplemental Permit Information Form was completed incorrectly because it says the project does not include vibration effects or the disturbance of vegetation or wetlands. 2) In Domestic Technical Report 1.0, section 3 does not include the fact that effluent will be used to irrigate the Tapatio golf course, there will be several storage/holding ponds used with the facility, and section 6 incorrectly states that the buffer zone requirements have been met. 3) In Domestic Worksheet 2.0, section 4 does not identify the surface waters and wetlands that will receive effluent or state that the receiving waters are intermittent with perennial pools and support recreational fishing, and section 5 does not identify contact recreation and fishing despite there being kayaking and fishing or park activities despite there being horseshoe and other parks next to the water body. 4) The application should also contain the following information: maximum noise level allowed by the facility; continuous noise monitoring; on-site odor control besides the buffer zones; continuous odor monitoring; an explanation of the light pollution screening that will be at the facility; and a description of the contract Kendall West Utility has with the Tapatio Springs Hill Country Resort regarding the facility site. Michael Dillinger also commented that the piping and other appurtenances that will serve the future developments must be reviewed as part of this application under sections 309.12-.14 of the TCEQ's rules. Steven Viro commented that the requested flow volume and facility design do not take the increased usage during the pandemic into account, which is a permanent trend; this increased usage will impact things like flow volume, facility size, buffer zones, and odor control.

Response 27

In section 5 of the Supplemental Permit Information Form, Kendall West Utility did not select vibration effects during construction or operation of its facility or wetland disturbances as something its project will involve. If someone does encounter significant vibration effects during the WWTF's construction or operation or wetland disturbances, they can report the incident to the TCEQ Region 13 Office using the contact information in section I(C) above. As for disturbing vegetation, the applicant appears to have addressed that issue in section 7, where it indicated there will be minimal disturbances of vegetation, and remediation of any adversely affected areas will occur.

As discussed in Response 3, the applicant is not seeking authorization to dispose of effluent via irrigation in the draft permit. Therefore, the information and materials that would be needed to authorize this method of disposal were not included in the application.

As discussed in Response 4, based on information and scaled maps provided by the applicant, Kendall West Utility will meet the buffer zone requirements of section 309.13(e) by ownership of the buffer zone area.

During the technical review, part of the responsibility of the TCEQ Standards Implementation Team is to review the discharge route information in the application and make sure it is accurate. When it is not accurate, ED staff make the necessary changes to the discharge route information so the correct water bodies, and their correct characteristics, are analyzed and included in the draft permit. Here, the Standards Implementation Team reviewed the application and identified all the surface waters along the discharge routes. It also reclassified the Outfall 001 unnamed tributary as intermittent with perennial pools. The rest of the technical review process and the development of the draft permit were performed in light of the team's corrections.

As discussed in Response 7, all the water bodies along the discharge route have either been designated as having or are presumed to have primary contact recreation. This means the draft permit was written to protect water quality for primary contact recreation. If the discharge will not have a negative impact on people who recreate in the water, it will not have a negative impact on people who recreate near the water.

As discussed in Response 9, the draft permit was written to protect human health, which includes eating fish from water bodies along the discharge route.

As discussed in Responses 16 and 18, chapter 26 of the Texas Water Code and applicable wastewater regulations do not authorize the TCEQ to consider noise and light pollution as part of the wastewater permitting process. However, the draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

The application does not require an applicant who owns the proposed facility site to submit any documentation regarding that ownership. Please see Response 14 for more information about the special warranty deed for the proposed site.

Based on TCEQ rules, any new or additional piping and other appurtenances that will serve future developments by routing raw wastewater to the proposed facility must be reviewed by the Water Quality Plans and Specifications Team under section 217.6 of the TCEQ's rules. The design and specifications for new or additional piping and other appurtenances must meet TCEQ rules and requirements and be approved by the team before construction can commence.

The TCEQ only requires an applicant for a new facility to calculate the proposed flow volumes using the table located in section 217.32(a)(3) of the TCEQ's rules. The ED notes this is a phased permit, so the draft permit already has the potential for growth built into it.

As discussed in Responses 1 and 20, the draft permit will protect groundwater and surface water quality, and as discussed in Response 3, the application contains

information that shows the applicant will comply with section 309.13(a)-(d).

As stated in Monitoring and Reporting Requirement No. 1 in the draft permit, the applicant will be subject to administrative, civil, and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, chapter 26 of the Texas Water Code, and chapter 361 of the Texas Health and Safety Code, including, but not limited to, knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the draft permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required by the draft permit or violating any other requirement imposed by state or federal regulations.

Comment 28

Joann Chapman, Michael Dillinger, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that the TCEQ should impose strict requirements due to the unique environmental risks, such as the same requirements it would have imposed if Kendall West Utility had not lowered its requested discharge volume from 500,000 gpd to 490,000 gpd. Lisa Del Puerto asked about what weekly testing is required due to her concern about algal growth and cyanobacteria, and whether immunology testing is conducted.

Response 28

The effluent limitations and monitoring requirements, as well as the narrative requirements, in the draft permit meet the applicable requirements in chapter 26 of the Texas Water Code and TCEQ rules. The applicant's decision to reduce its authorized discharge volume from 500,000 gpd to 490,000 gpd did allow the applicant to avoid de-chlorination of the effluent. The mass-based effluent limits and two-hour peak flow may have also decreased slightly, as those amounts are directly tied to the flow volume. However, all the other draft permit requirements stayed the same, including the concentration-based effluent limits that were discussed above in section I(A). Those limits include the effluent limits for total phosphorus, which will help prevent algal growth, including cyanobacteria. The TCEQ does not have any requirements regarding immunology testing.

For more information regarding how the draft permit will protect surface water quality, please see Response 20.

Comment 29

Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented there will be pollutants added to water bodies protected by sections 401, 402, and 404 of the Clean Water Act, but there has been no known involvement of the U.S. Army Corps of Engineers. Michael Dillinger commented that the TCEQ should send the U.S. Army Corps of Engineers the Supplemental Permit Information Form due to wetlands in the area and the need for a section 404 permit.

Response 29

Questions or concerns about the need for Kendall West Utility to obtain a section 404 permit are not part of the TPDES permitting process and should be addressed with the U.S. Army Corps of Engineers. The ED notes that, as discussed in Response 3, the applicant indicated in the application that it will not need to fill in a wetland to construct the WWTF.

Comment 30

Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, and Rita J. Smith commented that the WWTF and proposed discharge should be studied under the National Environmental Policy Act (NEPA), and the TCEQ should request an environmental impact study from the federal government. Michael Dillinger commented that the TCEQ or federal government should conduct an environmental assessment under NEPA or its equivalent; the TCEQ should require an environmental and alternatives assessment similar to NEPA under section 309.10 of the TCEQ's rules to determine if the minimum standards will be met at the proposed facility site; and the TCEQ should coordinate with the Texas Water Development Board to require Kendall West Utility to perform mitigation consistent with the Clean Water State Revolving Fund, including conducting a NEPA-type environmental review. Donna J. Hilsmeier commented that EPA should determine whether issuing the permit would be a major federal action significantly affecting the human environment under NEPA.

Response 30

NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements that include an Environmental Assessment and either a Finding of No Significant Impact or an Environmental Impact Statement. However, these requirements only pertain to a major federal action. Under section 511(c) of the Clean Water Act, the issuance of a TPDES permit to a private domestic WWTF is not a major federal action. Therefore, compliance with NEPA, including an environmental impact statement, is not required for this permit action. The ED notes it has determined the application meets all applicable requirements.

Comment 31

Krista Marie Bermejillo-Vasquez, Joann Chapman, Gerald D. Cheeseman, Michael Dillinger, Robert Lee Imler, Mary B. Mellard, Eric Muehlhausen, Hermanus A. Nel, Darla Rucka, Chris Sanford, and Aaron Michael Vasquez commented that an engineering study must be done regarding land applying effluent at the golf course, and people living around and playing at the golf course where the effluent will be applied were not provided with notice of the application. Cal Chapman and Michael Dillinger commented that Kendall West Utility must comply with chapter 210 or section 309.20 of the TCEQ's rules before the application can be approved because the discharged effluent will eventually be land applied. Michael Dillinger commented that the TCEQ should coordinate with the Public Utility Commission of Texas to ensure the sale of

effluent to the Tapatio Springs Hill Country Resort golf course is not prohibited, as Kendall West Utility's use of the facility site is contingent on the provision of treated effluent for irrigation at the golf course.

Response 31

As discussed in Response 3, any beneficial reuse of wastewater to be performed by the applicant will not be authorized under the draft permit, and a reuse authorization will be processed in a separate proceeding if the applicant applies for it. There is no legal requirement that an applicant apply for a chapter 210 reuse authorization before applying for a TPDES permit.

Comment 32

Gloria Patricia Arguelles Domenzain commented that the facility could reduce property values, which could reduce tax revenues. Michael W. Hail commented that the WWTF will release odors and cause light and noise pollution that will decrease property values for contiguous homes like his. Chris W. Hyvonen and Ray Sevonty commented that the homeowners will suffer lower property values because of the WWTF.

Response 32

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes certain nuisance conditions. However, the TCEQ does not have the authority to address concerns about property values when determining whether to grant a discharge permit application. The draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 33

Barry N. Christman, Michael Dillinger, Chris W. Hyvonen, John Meador, Deborah Miller, Michael John Miller, Rita J. Smith, Margaret Zaccaro, and Warren J. Zaccaro commented that the facility will detrimentally affect the view from their neighborhood. Willis Jay Harpole commented that the existing facility could be screened from view as easily as the proposed facility could be.

Response 33

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes certain nuisance conditions. However,

the TCEQ does not have the authority to address concerns about aesthetics when determining whether to grant a discharge permit application. The draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

Comment 34

Bruce Abrams expressed concern that the new facility will attract high-density development, which could lead to traffic and environmental issues. Craig Adams commented that the Shoreline Park subdivision and its stormwater runoff into Boerne Lake are ill advised. Kevin H. Beaton, Paula Rae Beaton, Robert Walton Boerner, Linda Mercer Bohls, Jane Doe, Peter Drew, Maggie Gentry, Robert Graves, John Hemmick, Patti Jetter, Miriam R. King, David W. Locke, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, Richard R. Rohrbaugh, Pauline Royer, Janie Sellers, Virginia Rose Talerico, Michelle Viro, and Steven Viro commented that developments could not be built without the proposed facility, and Kendall West Utility should be required to study the antidegradation and other impacts of the developments. Robert Walton Boerner commented that, because of the Shoreline Park development, Boerne Lake faces risks from pesticides, fertilizers, and road and vehicle chemicals, which will degrade the lake's purity, clarity, and overall physical and chemical characteristics. Linda Mercer Bohls expressed concern regarding the overburdened lake and surrounding land and how the machinations of the system create a danger of accidents and flooding rains. Michael Bowie commented that Ranger Creek Road could not handle the additional traffic from high-density subdivisions the WWTF would allow, and Shoreline Park will have negative impacts on Boerne Lake due to stormwater runoff that contains pollutants like pesticides. Michael Bowie also commented that he is opposed to dense growth in the area, and the Shoreline homeowners will have to be responsible for not using products like Roundup or phosphate fertilizer that would pollute the lake when there is more than 1.6-.7 inches of rain. Helen Buttrill expressed concern that the subdivision's density will affect the lake's water quality, wildlife, groundwater, and stormwater runoff. Paula Cairns, Laura Cebe, and Franklin Lyons commented that the proposed development could have a negative impact on the environment. Paula Cairns commented that the draft permit could lead to contamination of Boerne Lake. Laura Cebe commented that high-density development will have a negative impact on natural habitat, animals, plants, and the local water supply. Janette H. Couch commented that the WWTF will foster high-density development in an area that cannot support it. Zebb L. Crofut commented that the Boerne Lake project will have a negative impact on the local environment. Diane Czar and Joseph Hanson commented that the subdivision threatens Boerne Lake. Charlene Marie Gause objected to the subdivision's construction because it threatens Boerne Lake's public water supply, recreational activities, appearance, and wildlife. Wanda Goldberg commented that the development will ruin the lake and environment and their inhabitants. David E. Hall commented that the area is becoming overdeveloped and crowded. John Hemmick commented that the subdivision will affect Boerne Lake and the purity of the city's drinking water. Lance Bryan Kyle expressed concern regarding the subdivision's location next to the lake. Martha LaRoque commented that the high-density home building should be stopped. LaShay McKeel commented that developers should build smaller developments rather than

adding to the unsustainable growth. Charles S. Monroe commented that the subdivision is a bad idea for the lake and does not follow State of Texas guidelines for developments adjacent to public bodies of water. Lance Schladoer commented that the traffic infrastructure needed to provide new and existing residents with good service does not exist. Virginia Rose Talerico expressed concern regarding the subdivision's impact on area water bodies with regard to odor, noise, industrial lighting, herbicides, pesticides, and stormwater runoff. Chelsea Tieken commented that the proposed facility will encourage the development of Shoreline Park and expressed concern regarding the subdivision's potential negative impacts, such as pollution in Boerne Lake, insufficient water supplies, and wildlife habitat destruction. Steven Viro commented that nitrogen and phosphorus could enter the lake through runoff, causing pollution and algal blooms that would threaten the public water supply, fish, wildlife, and public health and safety; creating health risks; and lowering property values and residents' quality of life. An unidentified person stated the Boerne Sustainable Development Coalition's entire membership will be impacted by and is opposed to the Shoreline Park development.

Response 34

The TCEQ's jurisdiction over the permitting process is established by the Texas Legislature and is limited to controlling the discharge of pollutants into and protecting the quality of water in the state. Pursuant to chapter 309, subchapter B of the TCEQ's rules, the TCEQ has the authority to condition the issuance of a wastewater discharge permit on the selection of a site that minimizes impacts on groundwater and surface water and certain nuisance conditions. However, the TCEQ does not have the authority to address concerns about properties that will be served by the WWTF when determining whether to grant a discharge permit application.

Comment 35

Kevin H. Beaton, Paula Rae Beaton, Sheila Bode, Robert Walton Boerner, Cal Chapman, Michael Dillinger, Jane Doe, Peter Drew, Maggie Gentry, Robert Graves, Willis Jay Harpole, John Hemmick, Von A. Jones, Patti Jetter, Dennis Juren, Miriam R. King, David W. Locke, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, LaShay McKeel, Mary B. Mellard, John D. Perry, Jason A. Rand, Richard R. Rohrbaugh, Pauline Royer, Darla Rucka, Janie Sellers, Virginia Rose Talerico, Michelle Viro, Steven Viro, Margaret Zaccaro, and Warren J. Zaccaro commented that the virtual public meeting scheduled for September 21, 2020 should be held in person, or a second public meeting should be held in person. Joann Chapman, Michael Dillinger, Mary B. Mellard, Darla Rucka, and Chris Sanford commented that they were prevented from providing photos, PowerPoint presentations, and other visual aids because of the virtual meeting format.

Response 35

In the interest of protecting the health of TCEQ staff and the public during the COVID-19 pandemic, the TCEQ has been conducting all public meetings related to permit applications virtually since May 2020. This was after postponing all public meetings starting in March 2020. The TCEQ has also held all other types of public meetings virtually, such as rulemaking public meetings, the Commissioners' Agenda

meetings, and evidentiary hearings at the State Office of Administrative Hearings. The TCEQ will not be repeating any meetings held virtually in person.

In addition to the public meeting, members of the public had the option of providing written comments, which could have included photos or other attachments. The ED will note that over 100 people attended the public meeting, where fifteen people provided oral comments. The TCEQ also received over 200 written comments, some of which included attachments.

Comment 36

Cal Chapman and Steven Viro questioned how cost effective the new collection system will be, especially for the ratepayers. Cal Chapman commented that Kendall West Utility is using substandard engineering economic evaluations, which will punish its customer base with high operating costs. Cal Chapman also commented that Kendall West Utility has not evaluated using gravity to control operating costs more effectively. Joann Chapman commented that the Public Utility Commission may set the rate, but a particular utility requests the rate, and here, Kendall West Utility requested it. Willis Jay Harpole asked that the TCEQ protect the ratepayers from a \$6,000,000 rate hike. LaShay McKeel commented that costs incurred by the applicant that only serve one development should be paid by that development, and an already pending rate increase could make rates difficult for her and other people in the area to pay. Whitney Meadows commented that the permit could negatively impact landowners' and taxpayers' standards of living. Derek Moellendorf objected to the fact that Kendall West Utility is increasing the water charges in his neighborhood to make up the cost of serving the Tapatío Springs homes. Jim Sampson said the residents do not need more tax increases or costs; they just had a water rate increase.

Response 36

Questions or concerns about the cost of sewer and water service are not part of the TPDES permitting process. The Public Utility Commission regulates sewer and water service rates, so any questions or concerns regarding rates would need to be addressed with that agency.

Comment 37

Michael Dillinger commented that EPA should review the draft permit under the TCEQ's memorandum of agreement with EPA.

Response 37

EPA reviewed the draft permit and sent an email to the TCEQ Water Quality Division approving the draft permit on August 25, 2020.

Comment 38

Bruce Abrams asked if there had ever been a hearing on the uphill pipeline. Peter Ammerman commented that trucks should not be used to transport effluent from Shoreline Park to the facility because they will increase the rate of road

destruction. Kevin H. Beaton, Paula Rae Beaton, Robert Walton Boerner, Linda Mercer Bohls, Jane Doe, Peter Drew, Maggie Gentry, Robert Graves, John Hemmick, Patti Jetter, Miriam R. King, David W. Locke, Lilah Lyons, Stephanie Lyons, Michael Malley, Alexandra Malone, Hayley Malone, Krista Malone, Richard R. Rohrbaugh, Pauline Royer, Janie Sellers, Virginia Rose Talerico, Michelle Viro, and Steven Viro commented that Kendall West Utility should be required to study the antidegradation and other impacts of sewage lines that will connect developments. Michael Bowie commented that pumping the effluent under pressure overland poses a danger to the environment, especially Boerne Lake and Cibolo Creek. Michael Bowie also commented that if something like a backhoe hit the five-mile collection line that goes uphill to Tapatio Springs, millions of gallons of wastewater would flow right next to Boerne Lake. Stephen Burkhart commented that trucking effluent from Shoreline Park to the facility could result in raw sewage being spilled every time the wastewater is collected. Stephen Burkhart also commented that the hydrostatic pressure in the uphill pipeline will be high, and the pipeline could contaminate the Shoreline Park area, which drains into Boerne Lake, if it were breached. Cal Chapman commented that other solutions should be evaluated in place of the ill-conceived collection system design. Joseph Corcoran commented that the pipe that will pump effluent uphill through a recharge zone will eventually leak. Denise Dever commented that the effluent endangers Boerne Lake, which is a water supply and recreational area. Steven Viro commented that nitrogen-rich wastewater could enter Boerne Lake and impact people's drinking water supply, ability to consume the lake's fish, and ability to swim and participate in other recreational activities in the lake. Steven Viro also commented that the long-distance transport of wastewater is not economically sustainable, will cross environmentally sensitive areas, and will increase the potential for sewer line breaks. William Arthur Wilson expressed concern about the damage that could be caused by the infrastructure that will serve the Shoreline Park Subdivision, such as leakage into Cibolo, Frederick, and Ranger creeks, failing lift stations, and risks to Boerne Lake.

Response 38

Issues related to the collection system that will serve a WWTF are not reviewed as part of the TPDES permit application review process. Rather, they are considered when the system is reviewed by the TCEQ Water Quality Plans and Specifications Team. Under section 217.5 of the TCEQ's rules, the collection system owner must have an engineer design a system that meets the chapter 217 requirements, which are either found in subchapter C for conventional collection systems or subchapter D for alternative collection systems. The collection system cannot be constructed prior to receiving approval from the TCEQ. To seek approval, the owner must submit a summary transmittal letter under section 217.6(d) that contains the information described in that section, including a statement certifying the design substantially meets the chapter 217 requirements. If requested under subsection (e), the owner must also submit the plans and specifications for review. There is no right to a hearing for this review process. Also, regulating the transportation of effluent by vehicle is outside the scope of this permit action.

Comment 39

Michael Dillinger commented that he and others received a response email to submitted comments that contained the wrong public meeting information.

Response 39

After receiving this comment from Mr. Dillinger, Office of the Chief Clerk staff used its records to identify which individuals had received the incorrect public meeting information and provided them with the correct information.

Comment 40

Bruce Abrams asked why a larger facility is needed if the existing one can serve Kendall West Utility's current customers and the Shoreline Park development. Michael Bowie commented that the existing facility still has capacity, so the proposed facility is not needed. Citing to section 26.0282 of the Texas Water Code, Cal Chapman commented that there is no need for a new WWTF because Kendall West Utility can continue using the existing facility and argued the applicant is just trying to make the expansion project financially viable. Lisa Del Puerto asked how many subdivisions could be served by the existing facility and drinking water that is available in the area. Michael Dillinger commented that the owner of the current facility has offered to extend the facility's lease, the facility has never had a violation based on the available information, and the facility can offer any benefit the proposed facility would offer plus avoid the proposed facility's negative impacts on the golden-cheeked warbler. Michael Dillinger also commented that the existing facility could be expanded, which would avoid the siting issues with the proposed site. Michael Dillinger also commented that the application violates section 26.0282 of the Texas Water Code because Kendall West Utility's lease at its current facility does not end until 2023, so Kendall West Utility should be required to wait until 2022 to apply for a new permit. Clint McNew commented that the existing facility's owner is willing to upgrade the facility or sell land to expand it, so the new facility is not necessary, especially considering the possible environmental and human health impacts of having two facilities in a small area. Heather McNew asked why the current facility cannot be updated so it has the benefits of the proposed facility without the human, tax, and environmental impacts the proposed facility will have.

Response 40

Section I.A of Domestic Technical Report 1.0 requires an applicant to describe why it needs a discharge permit for each unbuilt phase of the WWTF. This includes demonstrating how the applicant developed the proposed flow rates. In its response for section I.A, which it supplemented in a submission dated May 7, 2019, Kendall West Utility explained that it will abandon its current facility and construct a facility at a new location that will be expanded to accommodate a larger flow volume. The need to treat a larger flow volume is based on new residential home developments that Kendall West Utility will be serving. The applicant drew a map of its service area and used that to calculate the number of equivalent dwelling units it will serve in each phase of the WWTF. It then assumed a use of 200 gpd for each equivalent dwelling unit to calculate the design flow needed for each phase. Based on this information, ED staff concluded the applicant had demonstrated a need for all three phases requested in the application.

Any questions regarding how many subdivisions the current facility can serve will need to be addressed to Kendall West Utility.

Comment 41

Cal Chapman commented that the facility site is susceptible to dam failure. Citing to sections 299.3, 299.14, and 299.61 of the TCEQ's rules, Michael Dillinger commented that the road between the facility location and water body is a dam whose emergency action plan, including the dam's hazard classification, needs to be reviewed by an independent engineering firm before the draft permit should be approved. Steven Viro asked what studies had been done to ensure the dam can handle the increased flow.

Response 41

Dam safety studies or other dam reviews are not required as part of the TPDES permit application process. For more information about the TCEQ's regulation of dams, please contact the TCEQ Dam Safety Program at (512) 239-0326 or access its webpage at <http://www.tceq.texas.gov/compliance/investigation/damsafetyprog.html>.

Comment 42

Michael Dillinger commented that the facility will cause unnecessary risks to wildlife. Heather McNew commented that the facility will have short- and long-term effects on birds and butterflies.

Response 42

The draft permit was composed in accordance with the Standards and IPs. Under section 307.6(b)(4) of the Standards, discharged effluent cannot make water in the state toxic to aquatic or terrestrial organisms. While the Standards and IPs do not specifically designate criteria for the protection of terrestrial wildlife, such as birds, they do designate criteria for the protection of aquatic life and human health. As discussed in Response 19, Segment No. 1908, Masters Lake, and Frederick Creek have high aquatic life use; the Outfall 001 unnamed tributary has limited aquatic life use; and the Outfall 002 unnamed tributary has minimal aquatic life use. All these water bodies either have or are presumed to have primary contact recreation. The effluent limits in the draft permit have been calculated to maintain and protect these existing instream uses. The limits and enhanced secondary treatment levels with nitrification that apply to the proposed discharge are expected to provide water quality that is safe for aquatic wildlife and human health, the latter of which was discussed in Response 19. If the draft permit will protect aquatic life and human health, it should also protect terrestrial wildlife that drink water or consume aquatic organisms along the discharge route. Therefore, the TCEQ does not expect the treated effluent to adversely affect terrestrial wildlife.

Comment 43

Heather McNew commented that the facility will have short- and long-term effects on wildflowers, native grasses, and big tooth maples.

Response 43

The only portion of the application review process that relates to vegetation is the endangered and threatened species review. As discussed in Response 21, that review only applies to aquatic and aquatic-dependent species.

Comment 44

Paula Rae Beaton asked whether the people who sold the property to Kendall West Utility were fully aware of what the property would be used for, that pipelines would carry effluent from an environmentally sensitive ridge to the proposed facility, and what the impacts would be on the Tapatio residents. Lisa Del Puerto asked whether the City of Boerne council members have any say in the development or could do anything to stop it. Jimmy Guillot questioned why the City of Boerne is turning a blind eye to the fact that wastewater will be treated so close to its main water supply and aquifer recharge zone.

Response 44

The ED is only able to provide responses on the TCEQ's behalf. For questions for other people or entities, those questions will need to be asked of them directly.

Comment 45

Bruce Abrams stated that the expansion could have a lasting negative impact on Kendall County and the environment and is inconsistent with the county's rural nature. Craig Adams commented that the WWTF is ill advised. Linda Mercer Bohls commented that Hill Country water bodies and aquifers need to be protected. Javier Cavazos asked that the residents be listened to because this is their home. Cal Chapman commented that Kendall West Utility's expansion project will subject the entire area to water quality and other environmental damage. Cal Chapman also commented that he is a professional engineer, and the facility will affect his occupation and profession. Janette H. Couch commented that the WWTF will serve an environmentally sensitive area. Janette H. Couch also commented that the facility will not minimize public nuisance or set minimum standards. Phillip Czar commented that Boerne Lake needs to be preserved and protected. Lisa Del Puerto commented that it is important that projects get on a website so the public is more aware. Peter Drew commented that he does not want this. Michael W. Hail and Chris W. Hyvonen commented that Kendall West Utility is getting the facility site for free. David E. Hall commented that water quality has deteriorated at his and his neighbors' homes. Kay Kelley commented that she is a property owner in Kendall County. Robert Kozub commented that this is part of the aquifer recharge zone. Lance Bryan Kyle commented that the area is too environmentally sensitive for the facility and expressed concerns regarding Kendall West Utility's local reputation and past bankruptcy. Susan Denise Lindemann commented that there are issues that reach further than the facility. Clint McNew commented that the WWTF should not be allowed to obtain a new water well permit. Heather McNew commented that the facility will have short- and long-term effects on people. Heather McNew also commented that she is the president of The Ridge homeowners association, and she disagreed with the fact that they were not asked for a comment. Sam Mensch expressed his opposition to the permit because it would harm

Boerne Lake. A. J. Reed expressed concern that the project will negatively impact the lake aesthetically and environmentally. Lori Silva expressed concern about the lake's future. Susan Walker opposed the proposed facility location due to the fragile ecosystem. William Walker asked that the lake not be messed with. Jeffrey White commented that the facility is moving to a different part of the golf course but will still be 300-400 feet below the houses above it; there have not been any environmental issues or issues with children or older adults with the current facility; growth in the area is inevitable; and property values took a hit about nine years ago when there was a severe drought and water wells dried up. William Arthur Wilson asked that this not happen due to all the potential negative events that could occur, such as flooding, collection line breaks, and polluted runoff from roads, and that there was a fraudulent land purchase. An unidentified person stated that the facility's proposed location runs contrary to the interests the Boerne Sustainable Development Coalition seeks to protect by encouraging sustainable development.

Response 45

The ED acknowledges these comments.

Comment 46

Michael Dillinger provided photos of the proposed facility site, a list of people who could testify about flooding in the area, links to online materials regarding flooding and the golden-cheeked warbler, two newspaper articles, a Google Earth image, and a special warranty deed dated April 29, 2020.

Response 46

The ED acknowledges receipt of this information.

III. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

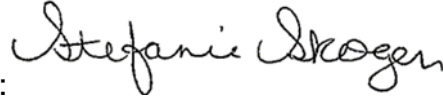
The ED did not make any changes to the draft permit in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Toby Baker
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