

TCEQ DOCKET NO. 2021-1216-MWD

APPLICATION BY § **BEFORE THE TEXAS**
STUDIO ESTATES, LLC § **COMMISSION ON**
TPDES PERMIT NO. 15933001 § **ENVIRONMENTAL QUALITY**

**GUADALUPE-BLANCO RIVER AUTHORITY’S REPLY TO
RESPONSES TO HEARING REQUEST
AND LIST OF ISSUES TO BE REFERRED**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ):

The Guadalupe-Blanco River Authority (GBRA) files this Reply to the Executive Director (ED) of the Texas Commission on Environmental Quality’s (TCEQ) and the Office of Public Interest Counsel’s (OPIC) Responses to GBRA’s Hearing Request on the Application by Studio Estates, LLC for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. 15933001.

I. INTRODUCTION

Studio Estates, LLC (Applicant) applied to the TCEQ for a new TPDES Permit No. 15933001 (Application) that would authorize in its final phase the discharge of up to 0.15 million gallons per day (MGD) of wastewater into Brushy Creek and Plum Creek. By letter dated December 1, 2021, the TCEQ set a deadline of January 3, 2022 for GBRA to file a formal written reply to any responses to hearing requests filed by the Applicant, the ED, and OPIC. This reply is therefore timely filed.

As noted by both the ED and OPIC in their respective responses, GBRA timely requested a contested case hearing regarding the issues raised in its June 4, 2021 Request for Public Meeting, Request for Contested Case Hearing, and Comments on New Permit TCEQ Domestic Wastewater Permit No. WQ0015933001 Studio Estates, LLC. The Applicant did not file a response. OPIC concludes that GBRA is an “affected person” entitled to a contested case hearing on the issues it

has raised in its hearing request. The ED concludes, however, that GBRA is not an “affected person.”

GBRA respectfully submits that it is an “affected person” entitled to a contested case hearing on issues raised in its hearing request pursuant to 30 Tex. Admin. Code § 55.256.

II. REPLY TO ED’S RESPONSE TO HEARING REQUEST

GBRA is an affected person as it has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application that is not common to the general public. And, as a governmental entity, GBRA has statutory authority over and an interest in the issues relevant to this Application. 30 Tex. Admin. Code § 55.203. GBRA disagrees with the ED’s interpretation that GBRA’s statutory authority “is not specific enough” to confer a personal justiciable interest, that Texas Water Code § 26.171 does not qualify a local entity as an affected party, and that GBRA’s own wastewater treatment facility’s discharge into the same segment does not demonstrate affected party status. ED’s Response to Hearing Request at 7-8.

GBRA is an affected person for the purposes of the Application because it has statutory authority over and an interest in the issues relevant to the Application. The proposed wastewater discharge and treatment plant will be located within GBRA’s ten-county statutory district. GBRA’s enabling legislation grants GBRA the authority to preserve the water of any river or stream within its boundaries. *See* Act Approved October 23, 1933, 43d Leg., 1st C.S., ch. 75, § 1, 1933 Tex. Gen. Laws 198; Act of October 17, 1935, 44th Leg., 1st C.S., ch. 410, § 1, 1935 Tex. Gen. Laws 1615; Act of June 2, 1969, 61st Leg., R.S., ch. 432, § 1, 1969 Tex. Gen. Laws 1465; Act of June 19, 1975, 64th Leg., R.S., ch. 433, §§ 1 and 2, 1975 Tex. Gen. Laws 1149. Moreover, as a “local government,” as that term is defined by Texas Water Code § 26.001, GBRA has specific statutory authority to inspect the public water in its area to assess whether the quality of the water

meets water quality standards, and to determine whether wastewater dischargers are discharging in compliance with the requirements of a TCEQ-issued permit. Texas Water Code § 26.171. GBRA also has authority to enter property to make inspections and investigations of conditions relating to water quality and the right to bring a civil suit against any person that violates or threatens to violate Chapter 26 of the Texas Water Code, or any permit issued thereunder. Texas Water Code §§ 7.351 and 26.173. As an inspector, investigator, and potential enforcer of a TCEQ-issued permit, GBRA is affected by the issuance of this permit and has a personal interest in ensuring that any permit issued by the TCEQ in this matter meets the state law requirements, is protective of water quality, and is enforceable. This interest in Applicant's proposed discharge within GRBA's statutorily-defined territory is therefore unique to GBRA and is not common to the general public.

Additionally, GBRA has a personal judiciable interest in this Application as the river authority project manager of the Clean Rivers Program and a Partner in the Plum Creek Watershed Partnership that implements the Plum Creek Watershed Protection Plan. Under the Clean Rivers Program, GBRA serves as the project manager per its contract with the TCEQ and is responsible for the program within the basin. The Guadalupe River Basin Steering Committee, of which GBRA leads, assists the TCEQ in its management of water quality issues in a holistic manner, works to identify and evaluate water quality issues, and recommends management strategies. Tex. Water Code § 26.0135. The Steering Committee is charged with development of water quality objectives and priorities that are achievable considering available technology. As the Clean River Program Project Manager, GBRA has an interest in the permits issued by the TCEQ and the discharge limits set by the TCEQ as those actions impact GBRA's implementation of the water quality objectives and priorities set by the Steering Committee.

GBRA's membership in the Plum Creek Watershed Partnership also confers a personal judiciable interest in the Application. The Partnership implements the Plum Creek Watershed Protection Plan that recommends management strategies to reduce pollution in Plum Creek. Permits issued by the TCEQ that are inconsistent with the management strategies established by the Plan affect GBRA's ability to implement the Plan as a member of the Plum Creek Watershed Partnership. This interest is unique to GBRA and is not common to the general public.

For these reasons, GBRA is an affected person and its hearing request should be granted.

III. LIST OF ISSUES TO BE REFERRED

In its request for hearing, GBRA raises the concern that the proposed permit is inconsistent with the goals of the Plum Creek Watershed Protection Plan. That Plan was developed using federal Clean Water Act § 319(h) grant money in partnership with many stakeholders in the Plum Creek basin, and with the help of the Technical Advisory Group, which includes the Texas Commission on Environmental Quality. The TCEQ's seal is affixed to the Plan's cover page. *See* <https://plumcreekwatershed.org/protection-plan/>. The Plan recommends management measures that are intended to help eliminate and prevent water quality impairments in Plum Creek. One of those recommended management strategies is to have new wastewater treatment plants treat wastewater to the 5-5-2-1 (BOD/TSS/NH₃/TP) levels. As noted by the Executive Director in the Response to Comments, there are several small wastewater facilities and two major facilities that discharge to the Plum Creek basin with phosphorus limits in their respective permits. This draft permit proposed is not even consistent with these other permits issued by the TCEQ in this watershed.

The issuance of permits by the TCEQ that do not meet these standards undermines the goals the Plum Creek Watershed Protection Plan and thwarts the Plum Creek Watershed

Partnership's recommended actions to address the potential causes of impairment of water quality in Plum Creek. As the agency with the primary responsibility from the implementation of water quality management, the TCEQ has the authority to use all reasonable methods to maintain the quality of water in the state consistent with public health and enjoyment and the protection of terrestrial and aquatic life, which includes issuing permits that meet certain treatment levels consistent with the goals of the watershed protection plans. *See* Tex. Water Code § 26.01361; 30 Tex. Admin. Code § 307.1.

GBRA respectfully requests that the TCEQ include in its referral whether the proposed permit is consistent with the Plum Creek Watershed Protection Plan and its best management practices and with other permits issued in the basin.

IV. CONCLUSION

GBRA urges the Commission to find that GBRA is an affected person and grant its request for a contested case hearing, and include in the referred list of issues the Executive Director's Issues 1 and 2, as well as whether the proposed permit is consistent with the Plum Creek Watershed Protection Plan and its best management practices and with other permits issued in the basin.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on December 30, 2021 a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.

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