

**Melissa Schmidt**

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, June 21, 2021 2:17 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0015932001  
**Attachments:** Public Comments - Draft TPDES Permit No. WQ0015932001.pdf

eComment – H

Attachment = H

**From:** dbailey@waxahachie.com <dbailey@waxahachie.com>  
**Sent:** Thursday, June 17, 2021 4:44 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0015932001

**REGULATED ENTY NAME** WAXAHACHIE 530 WWTP

**RN NUMBER:** RN111109971

**PERMIT NUMBER:** WQ0015932001

**DOCKET NUMBER:**

**COUNTY:** ELLIS

**PRINCIPAL NAME:** SELINGER, STEPHEN

**CN NUMBER:** CN605818129

**FROM**

**NAME:** MR David Bailey

**E-MAIL:** [dbailey@waxahachie.com](mailto:dbailey@waxahachie.com)

**COMPANY:** City of Waxahachie

**ADDRESS:** 401 S ROGERS ST  
WAXAHACHIE TX 75165-3651

**PHONE:** 4693094321

**FAX:**

**COMMENTS:** Please see the uploaded PDF Letter - Public Comments in response to Draft TPDES Permit No. WQ0015932001 - Requesting a Contested Case Hearing



June 17, 2021

Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

**RE: Public Comments in response to Draft TPDES Permit No. WQ0015932001**

Dear Chief Clerk:

The City of Waxahachie (City) appreciates the opportunity to comment to the Texas Commission on Environmental Quality (TCEQ) on the Draft Texas Pollutant Discharge System Elimination (TPDES) Permit No. WQ0015932001 prepared for Stephen Richard Sellinger for the Waxahachie 530 WWTP. These comments and a request for a contested case hearing are being submitted by the City in response to the TCEQ issued *Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater* (Notice) for Draft TPDES Permit No. WQ0015932001 (Waxahachie 530 WWTP) on May 20, 2021.

The City requests a Contested Case Hearing. As an affected entity, the City requests a contested case hearing in accordance with 30 TAC 55.201 and as provided for in the Notice. In addition to the request for a contest case hearing, the City provides comments to the Draft TPDES Permit for the concerns identified at this time.

The City of Waxahachie has an interest in the outcome of this Draft TPDES Permit because the City owns and operates a wastewater treatment facility (TPDES Permit No. WQ0010379001) that discharges to Waxahachie Creek thence to Bardwell Lake, which are also receiving waterbodies for the proposed facility. The City of Waxahachie WWTP discharges to Waxahachie Creek upstream of where the proposed Waxahachie 530 WWTP discharge enters the waterbody and is located less than three miles from the proposed Waxahachie 530 WWTP.

**Comment 1: Lake Bardwell's listing on the 303(d) list prohibits issuance of a TPDES Permit that causes or contributes to the impairment**

Prior to completing a TMDL or otherwise addressing the 303(d) listing, new sulfate loads that cause or contribute to the impairment in Lake Bardwell cannot be permitted because they do not comply with 40 CFR § 122.4(i) of the Clean Water Act (CWA). The CWA requires that a new permit cannot be issued if the discharge will cause or contribute to a water quality standard violation, in this case the permittee cannot demonstrate that a load allocation is available and that the discharge will not contribute to a violation of the sulfate water quality standard for Lake Bardwell.

The City requests that TCEQ provide the assessment demonstrating that the proposed discharge does not further cause or contribute to the sulfate impairment in Lake Bardwell. Until such an assessment is completed, the Waxahachie 530 WWTP cannot be permitted to discharge to Lake Bardwell. While the City understands that the facility is not yet in operation and cannot be directly monitored, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

**Comment 2: Antidegradation requires that a new discharge to Lake Bardwell not contribute to the violation of water quality standards**

Antidegradation reviews for impaired water bodies must ensure that uses are not impaired due to increased loading of the listed constituent. TCEQ's rules, 30 TAC 307.5, and implementation procedures, *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010; RG-194), require that a discharge to a listed waterbody not allow an increase in the loading of a listed constituent (*i.e.*, sulfate in Lake Bardwell) that will cause or contribute to the violation of water quality standards. The City requests TCEQ provide the City with evidence that the proposed discharge complies with applicable antidegradation rules. The TCEQ must consider tools, such as TCEQ's "Screening Procedures and Permit Limits for Total Dissolved Solids," integrated watershed-scale modeling, and continued monitoring (refer also to Comment #1 and #4) prior to taking further action toward permitting the facility. While the City understands that this facility is not yet in operation, source water and the types of proposed treatment should be considered to approximate effluent water quality for making a determination.

**Comment 3: Consider 30 TAC 307.1 to emphasize the importance of regionalization of wastewater treatment systems**

TCEQ policy is to encourage and promote the regionalization of wastewater collection and treatment systems when other systems are reasonably close to a planned system and the regionalization is reliable and affordable. TCEQ includes this policy in 30 TAC 307.1 and guidance/policy documentation, *The Feasibility of Regionalizing Water and Wastewater Utilities* (January 2003; RG-357).

The City requests that the TCEQ require the applicant to evaluate the potential of regional wastewater treatment options with the City consistent with rule and guidance and to withhold any permitting action unless the applicant can demonstrate that that regionalized wastewater service is not feasible.

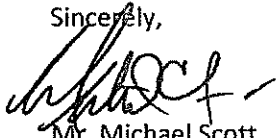
**Comment 4: Require provisions related to sulfate in an issued TPDES Permit**

If the TCEQ can demonstrate that the Waxahachie 530 WWTP does not contribute to the Lake Bardwell sulfate impairment (Comments #1 and #2) and regionalization is not feasible (Comment #3), the City requests that a revised TPDES permit be drafted with permit provisions that are protective of Lake Bardwell:

- Total Dissolved Solids (TDS) and sulfate permit limits must be included in Waxahachie 530 WWTP's TPDES Permit. These limits in the permit are important to protect Lake Bardwell from further impairment.
- The permit must have a provision that allows TCEQ to amend the permit if TCEQ's continued monitoring of Lake Bardwell warrant the need to modify the effluent limits, with an explicit provision that TDS and/or sulfate limits may become more stringent.
- If the applicant's sulfate or TDS concentrations demonstrate treatment is needed, the Waxahachie 530 WWTP must be required to adequately treat effluent.

Thank you for the opportunity to comment on this proposed permitting action. If you have any questions on the City's comments or request for a contested case hearing, please contact David Bailey at (dbailey@waxahachie.com or 469-309-4321 or the address below).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Scott", with a horizontal line extending to the right.

Mr. Michael Scott  
City Manager  
City of Waxahachie  
P.O. Box 757  
Waxahachie, TX 75168

Cc: David Bailey, Senior Director of Utilities

June 15, 2021

MWD  
121997

REQUEST FOR CONTESTED CASE HEARING

Office of the Chief Clerk

Texas Commission on Environmental Quality

CHIEF CLERKS OFFICE

2021 JUN 21 AM 10:32

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

By Gregory Burdette

103 Cattail Ct.

Waxahachie, TX 75165

972-935-9800

Ref:

Mr. Stephen Richard Selinger's

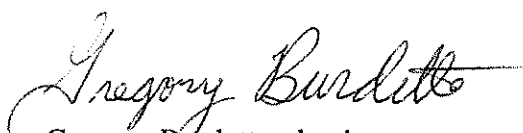
Proposed Permit No. WQ0015932001

Located within 200 Feet and directly entering the South property line of Burdette's property.

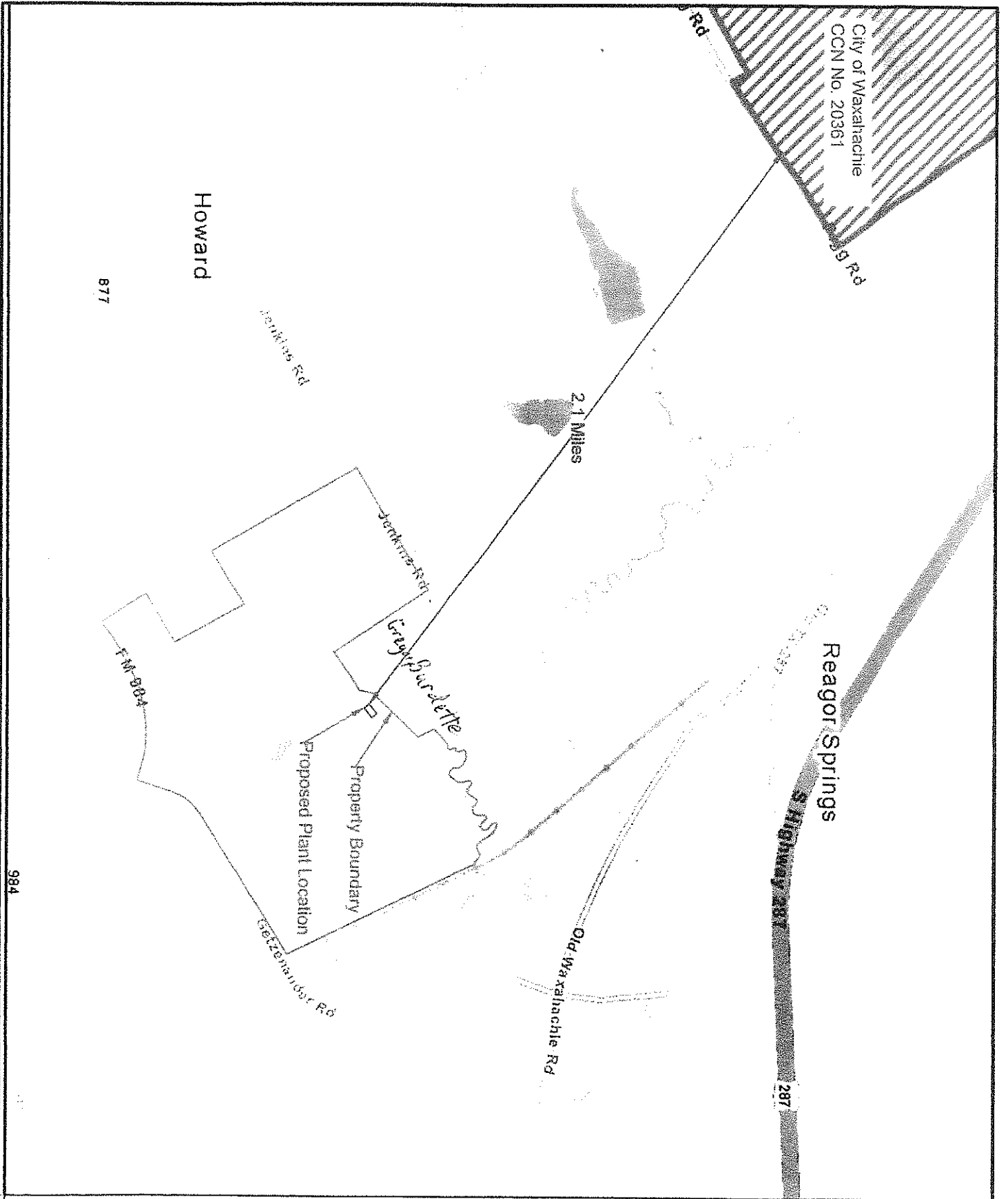
The unnamed tributary appears to already be eroding and meandering into my 75 acre tract. According to USDA Natural Resources Conservation Services mapping, the tributary currently sees from 100 acres to 168 acres of watershed (exhibits enclosed). Introducing an additional 400,000 gallons per day of treated water would create accelerated erosion and the physical location of the treatment plant will cause a negative financial impact on futured best and highest use of my property. I would greatly appreciate the consideration of alternative methods to carry the treated water to from the proposed plant to Waxahachie Creek.

REVIEWED  
JUN 22 2021  
By Gaw H

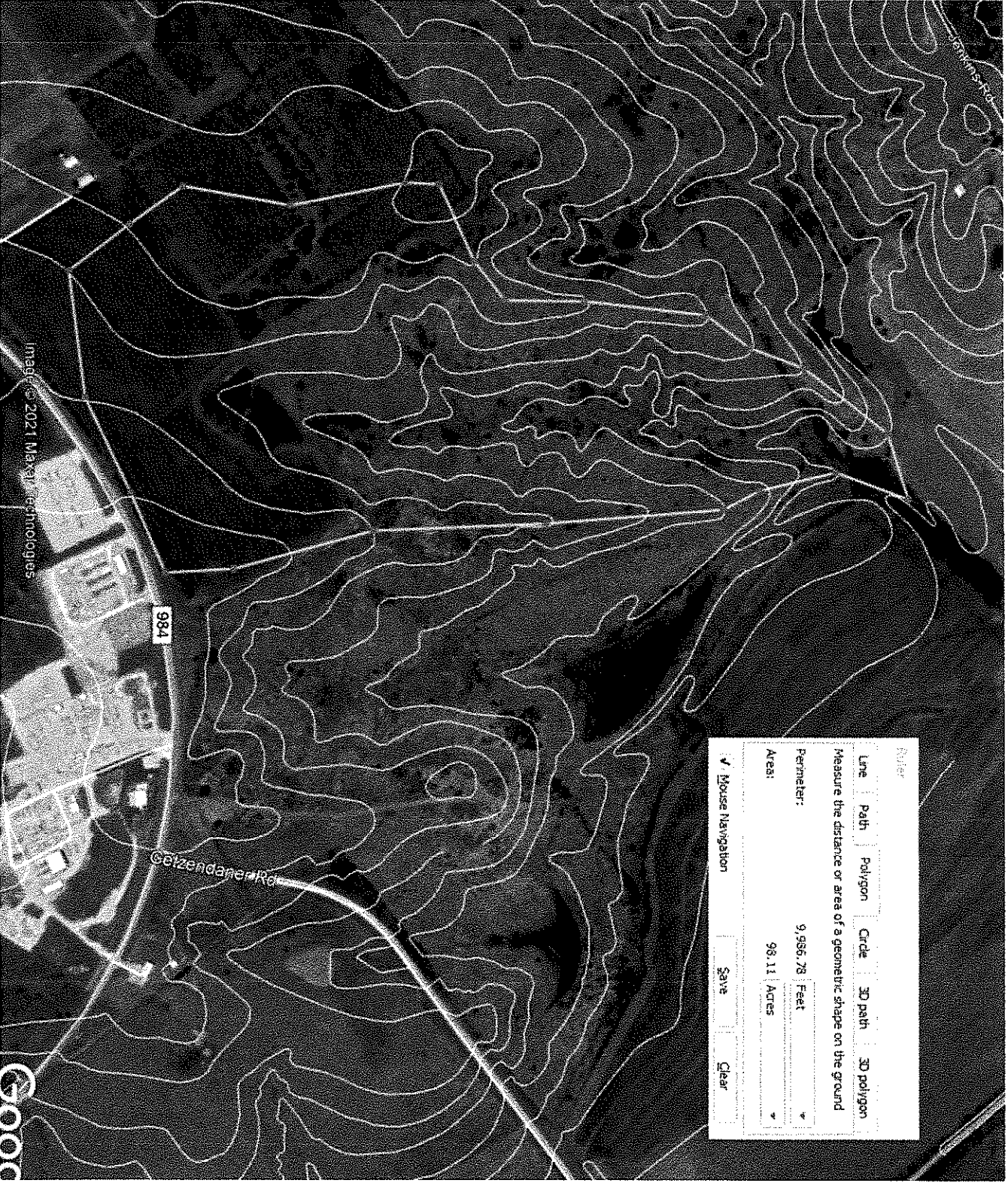
Respectfully,



Gregory Burdette - land owner



<p>Date: <b>August 20, 2020</b></p> <p>Drawn By: <b>CE</b></p> <p>Scale: <b>1"=2000'</b></p>	<p><b>consulting environmental engineers, inc.</b></p> <p>150 W. North Street - Suite 400 - Elphinstone, La 70440</p> <p>(225) 866-9304 Fax: (225) 866-9304 Email: ceo@ceeinc.org</p> <p>Registered Firm #7-2222</p>	<p><b>Waxahachie 530</b></p> <p><b>Stephen Selinger</b></p> <p><b>Waxahachie, Texas</b></p> <p><b>NEARBY WWTP</b></p>	<p><b>Exhibit XI</b></p>
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Notes

Line Path Polygon Circle 3D path 3D polygon

Measure the distance or area of a geometric shape on the ground

Perimeter: 9,936.78 Feet

Area: 98.11 Acres

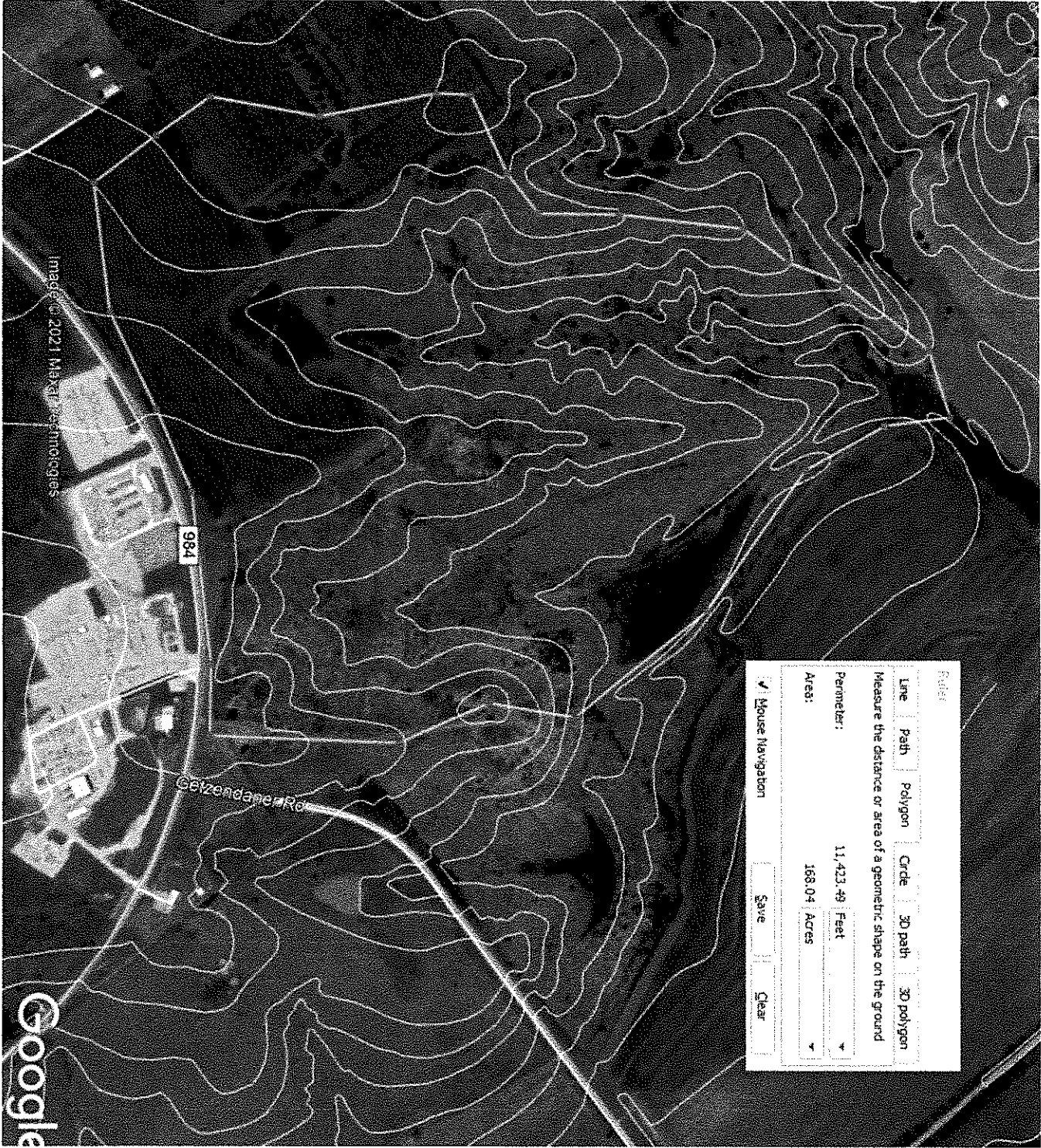
Mouse Navigation

Save

Clear

Image © 2021 Maxar Technologies

Google



Radius

Line

Path

Polygon

Circle

3D path

3D polygon

Measure the distance or area of a geometric shape on the ground

Perimeter:

11,423.49 Feet

Area:

168.04 Acres

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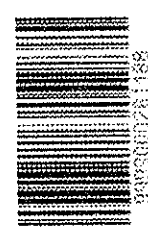
**UNITED STATES**

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TRK#: 9505511008331167656363  
RCVD: 6/21/2021 0828

CLRK: WILLIAMS TAYLOR  
TO: GUERRA, ELISA  
BDG: F  
PKG: 1  
PCS: 1

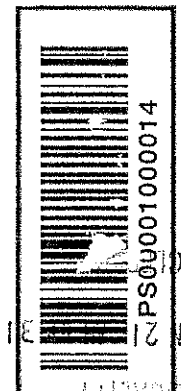
Gregory Burdette  
103 Cattail Ct.  
Waxahachie, TX 75165

RTE: MSC: 105  
GUERRA, ELISA



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

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ENVIRONMENTAL QUALITY

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**Melissa Schmidt**

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, June 21, 2021 2:48 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0015932001  
**Attachments:** County of Ellis Comments on Sellinger TPDES Permit No. WQ00159320012.PDF

H

**From:** rfburk@bickerstaff.com <rfburk@bickerstaff.com>  
**Sent:** Friday, June 18, 2021 1:22 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0015932001

**REGULATED ENTY NAME** WAXAHACHIE 530 WWTP

**RN NUMBER:** RN111109971

**PERMIT NUMBER:** WQ0015932001

**DOCKET NUMBER:**

**COUNTY:** ELLIS

**PRINCIPAL NAME:** SELINGER, STEPHEN

**CN NUMBER:** CN605818129

**FROM**

**NAME:** Emily Rogers

**E-MAIL:** [rfburk@bickerstaff.com](mailto:rfburk@bickerstaff.com)

**COMPANY:** Bickerstaff Heath Delgado Acosta LLP

**ADDRESS:** 3711 S MOPAC EXPWY  
AUSTIN TX 78746

**PHONE:** 5124728021

**FAX:**

**COMMENTS:** Please see attached letter.



June 18, 2021

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

Re: Application by Stephen Richard Selinger to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015932001

Dear Chief Clerk Gharis:

The County of Ellis, Texas (the "County") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to the County's attorneys, Emily Rogers and Joshua Katz, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Stephen Richard Selinger ("Selinger" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015932001 (the "Application"), to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day. The County is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

**I. The County is an Affected Person**

The County is an "affected person" entitled to a contested case hearing on the issues raised in this hearing request under 30 TEX. ADMIN. CODE § 55.203 because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. Local governmental entities, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203. The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the proposed wastewater treatment plants and associated discharge into a tributary of Lake Bardwell, that the Application fails to properly address. Potential contamination of surface water within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

## **II. Comments**

### **A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization. See TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.**

#### **i. Purpose of the regionalization policy.**

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*<sup>1</sup> The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City of Ennis (the "City"), tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

#### **ii. Overview of Selinger's proposed plant.**

Selinger, a subdivision developer, has represented to the City that he intends to ultimately build five package wastewater plants to serve his new development, Waxahachie 530 Subdivision, at full buildout. The County understands that the overall development will comprise approximately 2,000 homes,<sup>2</sup> and each proposed package wastewater plant can serve approximately 400 homes. Constructing and operating five small plants when the County understands that the City has a larger, centralized, professionally operated plant nearby, with available capacity to serve the development, and with which the City has extensive operational experience, is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the County's citizens. Further, the County understands that the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Waxahachie 530 Subdivision.

#### **iii. Requiring regionalization is a broader policy issue.**

The State's regionalization policy goes beyond Selinger's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no

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<sup>1</sup> See also *In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

<sup>2</sup> The Application states 1,800 homes in the full buildout, but a site plan submitted to the City of Ennis by the Applicant calls for 1,969 homes.

practical effect and that entities like the City of Ennis that provide service to citizens of the County should not plan for and invest in their regional systems. If the TCEQ refuses to seriously consider regionalization in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, Ellis County could see a dramatic increase in the number of small package plants within the County. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

**iv. The Applicant has not demonstrated that he should be excepted from the State's regionalization policy.**

Selinger has not demonstrated that his plan to serve the wastewater needs of the development through small package plants should be granted an exception to the State's regionalization policy. As previously mentioned, the County understands that the City of Ennis has nearby facilities and the capacity to provide service to the proposed area. Selinger has failed to show that the connecting to the City's wastewater system is too costly, thereby making service from the City unavailable. Rather, he simply stated in the Application that "[t]he property does not have access to a municipal treatment system . . ." See Domestic Wastewater Permit Application, Technical Reports, page 21. To the contrary, the County understands that the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development, and has provided its preliminary engineering and cost estimates for the City to provide wastewater service to Applicant.

The County therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas policy regarding regionalization.

**B. Issuance of the Permit could negatively affect the Lake Bardwell, a sole source drinking water supply lake that serves the County.**

The proposed discharge point is an unnamed tributary that feeds into Waxahachie Creek, located 2.8 miles upstream of Lake Bardwell, which is the City's water supply lake. Lake Bardwell has been designated as a sole-source drinking water supply lake. See 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. See 2020 Clean Water Act Section 303(d). The Application reflects that Selinger's proposed facilities will discharge more of that pollutant of concern into Segment 0815. See Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist.

Selinger proposes to discharge treated effluent of up to 405,000 more gallons per day into a direct tributary of the City's sole source drinking water supply lake. Selinger's proposed discharge may negatively affect the water quality standards for Lake Bardwell, and therefore the City's ability to meet its citizens' drinking supply needs. The County therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Lake Bardwell.

**C. Issuance of the Permit could negatively affect the water quality in Lake Bardwell.**

The designated uses of Lake Bardwell include use as a public water supply, a source of primary contact recreation, and high aquatic life use. Lake Bardwell is the source of the City's drinking water supply. Aside from the County's water quality standard concerns for its public water supply, detailed above, the County is concerned that the application and the proposed permit do not comply with the state's water quality standards and that the discharge limits are not sufficiently stringent to protect the water quality in the receiving stream and Lake Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the drinking water supply of County residents. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

**D. The Applicant is not an experienced facility and system operator.**

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City of Ennis has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 mgd, planned expansion of its wastewater treatment plant to 5 mgd in the near future, and capacity for significantly more capacity expansion as needed. The County trusts the City to provide safe wastewater treatment services for the County's residents. Further, the County understands that the City has the capacity to provide service to the area proposed as the Waxahachie 530 Subdivision and is willing to provide that service. This, in conjunction with the County's regionalization arguments above, demonstrates that the TCEQ should deny the permit for Selinger to individually operate five package plants in favor of a larger, more experienced provider serving the Waxahachie 530 Development.

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers  
Joshua D. Katz  
Attorneys for County of Ellis

**Melissa Schmidt**

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**From:** PUBCOMMENT-OCC  
**Sent:** Monday, June 21, 2021 2:47 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
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H

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**CN NUMBER:** CN605818129

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**NAME:** Emily Rogers

**E-MAIL:** [rfburk@bickerstaff.com](mailto:rfburk@bickerstaff.com)

**COMPANY:** Bickerstaff Heath Delgado Acosta LLP

**ADDRESS:** 3711 S MOPAC  
AUSTIN TX 78746

**PHONE:** 5124728021

**FAX:**

**COMMENTS:** Please see attached letter.



June 18, 2021

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

Re: Application by Stephen Richard Selinger to the Texas Commission on Environmental Quality for new Texas Commission Elimination System ("TPDES") Permit No. WQ0015932001

Dear Chief Clerk Gharis:

The City of Ennis, Texas (the "City") offers the below comments and formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to either Emily Rogers or Joshua Katz, attorneys for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. Our daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Stephen Richard Selinger ("Selinger" or "Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for new TPDES Permit No. WQ0015932001 (the "Application"), seeking to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day. The City of Ennis is an affected person within the definition of that term by the Texas Administrative Code and opposes the issuance of the permit for the following reasons.

**I. The City is an Affected Person**

The City is an "affected person" entitled to a contested case hearing on issues raised in this hearing request pursuant to 30 TEX. ADMIN. CODE § 55.203 because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public. The Applicant's proposed wastewater plants and associated discharge will be located entirely within the extraterritorial jurisdiction ("ETJ") of the City. Local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. *See, e.g.*, TEX. LOC. GOV'T CODE §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the proposed discharge and are not adequately addressed by the Application. Additionally, the proposed discharge is upstream of the City's sole-source drinking water lake, Lake Bardwell. This discharge could



negatively affect the water quality of Lake Bardwell. The City has an interest in protecting the water quality of its drinking water supply.

Further, the City has nearby water and sewer facilities and infrastructure that would be impacted by the Application. As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalize with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* TEXAS WATER CODE § 26.081(a). The City therefore has an interest in ensuring that the creation and operation of the proposed wastewater treatment plant and associated discharge is protective of the public health and safety within its ETJ. Thus, the City has authority under state law over the issues contemplated by this Application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.203.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

## **II. Comments**

### **A. Granting this Application would be contrary to the State of Texas' policy regarding regionalization of wastewater systems. *See* TEX. WATER CODE §§ 26.003, 26.081, and 26.0282.**

#### **i. Purpose of the regionalization policy.**

The Texas Legislature has directed the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. TEX. WATER CODE §§ 26.0282, 26.081. The TCEQ has the authority to deny the issuance of a wastewater discharge permit if there is an existing, available regional wastewater collection, treatment, and disposal system. *Id.*<sup>1</sup> The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Moreover, regional providers, like the City, tend to have greater expertise in operating and maintaining wastewater systems and treatment facilities.

#### **ii. Overview of the City's wastewater systems and Selinger's proposed plant.**

The City has professionally operated its wastewater treatment plants for over 60 years, with current capacity of 4 mgd, planned expansion to 5 mgd, and the capacity for significantly more capacity expansion as needed. The City has an existing wastewater treatment plant located approximately 7.2 miles from the Applicant's proposed discharge point, as well as wastewater

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<sup>1</sup> *See also In Re: Application of MidTex Partners, LTD., for Water Quality Permit No. 14472-001, Authorizing the Disposal of Treated Domestic Wastewater*, SOAH Docket No. 582-06-1581, TCEQ Docket No. 2005-1720-MWD.

lines located approximately 6.6 miles from the Applicant's proposed discharge point. Selinger, a subdivision developer, has represented to the City that he intends to ultimately build five package wastewater plants to serve his new development, Waxahachie 530 Subdivision, at full buildout. The City understands that the overall development will comprise approximately 2,000 homes,<sup>2</sup> and each proposed package wastewater plant can serve approximately 400 homes. Constructing and operating five small plants when the City has a larger, centralized, professionally operated and managed plant nearby, with available capacity to serve the development, and with which the City has extensive operational experience, is counter to the goals of regionalization and will likely have a detrimental effect on the public health, safety, and welfare of the City's citizens. Further, the City has informed the Applicant that the City is willing and able to provide that service to the area proposed as the Waxahachie 530 Subdivision.

**iii. Requiring regionalization is a broader policy issue.**

To the City, the State's regionalization policy goes beyond Selinger's Application. If the TCEQ grants the Application, the TCEQ signals that the Texas Legislature's regionalization policy has no practical effect and that entities like the City cannot safely plan for and invest in their regional systems. If the TCEQ does not implement the State's regionalization policy in its review and approval process and allows entities that are inexperienced in the operation of wastewater treatment systems to move forward with multiple redundant facilities, the City could see many small package plants appear within its ETJ and in the vicinity of City's regional plant. The TCEQ has an opportunity with this Application to reassert the validity of the regionalization policy and to send a message that developers and other entities should connect to existing systems when those regional systems are able and willing to serve.

**iv. The Applicant has not demonstrated that he should be excepted from the State's regionalization policy.**

Selinger has not demonstrated that his plan to serve the wastewater needs of the development through small package plants should be granted an exception to the State's regionalization policy. As previously mentioned, the City has nearby facilities and the capacity to provide service to the proposed area. Selinger has failed to show that the connecting to the City is too costly, thereby making service from the City unavailable. Rather, he simply stated in the Application that "[t]he property does not have access to a municipal treatment system . . ." See Domestic Wastewater Permit Application, Technical Reports, page 21. To the contrary, the City indicated to Applicant that the City has the capacity, and is willing, to provide continuous and adequate wastewater service to the development, and has provided its preliminary engineering and cost estimates for the City to provide wastewater service to Applicant.

The City therefore requests that the TCEQ deny the Application on the basis that it would be contrary to the State of Texas' policy regarding regionalization.

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<sup>2</sup> The Application states 1,800 homes in the full buildout, but a site plan submitted to the City by the Applicant calls for 1,969 homes.

**B. Issuance of the Permit could negatively affect the City's sole source drinking water supply lake.**

The proposed discharge point is an unnamed tributary that feeds into Waxahachie Creek, located 2.8 miles upstream of Lake Bardwell, which is the City's water supply lake. Lake Bardwell has been designated as a sole-source drinking water supply lake. *See* 30 TEX. ADMIN. CODE § 307.10, Appendix B. Lake Bardwell, which is in Segment 0815 of the Trinity River Basin, is included in the State's inventory of impaired or threatened waters for the amount of sulfate in the segment. *See* 2020 Clean Water Act Section 303(d). The Application reflects that Selinger's proposed facilities will discharge more of that pollutant of concern into Segment 0815. *See* Draft Proposed Permit, Attachment 1, EPA – Region 6 NPDES Permit Certification Checklist.

Selinger proposes to discharge treated effluent of up to 405,000 more gallons per day into a direct tributary of the City's sole source drinking water supply lake. Selinger's proposed discharge may negatively affect the water quality standards for Lake Bardwell, and therefore the City's ability to meet its citizens' drinking supply needs. The City therefore requests that the TCEQ require a full study on the Application's effect on the water quality in the eventual disposal point and the sole source drinking water supply lake, Lake Bardwell.

**C. Issuance of the Permit could negatively affect the water quality in Lake Bardwell.**

The designated uses of Lake Bardwell include use as a public water supply, a source of primary contact recreation, and high aquatic life use. Lake Bardwell is the source of the City's drinking water supply. Aside from the City's water quality standard concerns for its public water supply, detailed above, the City is concerned that the application and the proposed permit do not comply with the state's water quality standards and that the discharge limits are not sufficiently stringent to protect the water quality in the receiving stream and Lake Bardwell. The proposed permit does not fully contemplate the potential impacts of the direct discharge to the receiving stream and Lake Bardwell, including on the lake's use as a primary contact recreation source and as a healthy ecosystem for aquatic life. Additionally, emerging contaminants that are often present in treated effluent – including pharmaceuticals, hormones, antibiotic, steroids viruses, health care products, and many more – that are refractory during wastewater treatments, tend to persist in an aquatic environment and could end up in the City's drinking water supply. Small package wastewater plants of the kind proposed by Applicant typically do not remove such contaminants.

**D. The Applicant is not an experienced facility and system operator.**

The Applicant is a residential property developer who has not demonstrated any experience or expertise in operating and maintaining wastewater systems and treatment facilities. In contrast, as detailed above, the City has been professionally operating wastewater treatment plants for over 60 years, with current wastewater capacity of 4 mgd, planned expansion of the City's wastewater treatment plant to 5 mgd in the near future and capacity for significantly more capacity expansion as needed. Further, the City has the capacity to provide service to the area proposed as the Waxahachie 530 Subdivision and is willing to provide that service. This, in conjunction with the City's regionalization arguments above, demonstrates that the TCEQ should deny the permit for

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Selinger to individually operate five package plants in favor of a larger, more experienced provider serving the Waxahachie 530 Development.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing on the Application in order to address the concerns raised herein.

Sincerely,

A handwritten signature in cursive script that reads "Emily W. Rogers".

Emily W. Rogers

Joshua D. Katz

Attorneys for City of Ennis

EWR/rfb