

**TCEQ DOCKET NO. 2022-0091-MWD**

<b>APPLICATION BY GREEN VALLEY</b>	§	<b>BEFORE THE</b>
<b>SPECIAL UTILITY DISTRICT FOR</b>	§	<b>TEXAS COMMISSION ON</b>
<b>TPDES PERMIT NO. WQ0015917001</b>	§	<b>ENVIRONMENTAL QUALITY</b>

**CIBOLO CREEK MUNICIPAL AUTHORITY’S REPLY TO RESPONSES TO  
REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

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

COMES NOW, the Cibolo Creek Municipal Authority (“*CCMA*”) and, pursuant to 30 Texas Administrative Code (“*TAC*”) § 55.209(g), hereby submits this reply (“*Reply*”) to the Response to Hearing Requests and Requests for Reconsideration filed by the Executive Director (“*ED*”) and the Response to Requests for Hearing and Requests for Reconsideration filed by the Office of Public Interest Counsel (“*OPIC*”) (each a “*Response*” and collectively the “*Responses*”) in the above-referenced Docket concerning the application (“*Application*”) by Green Valley Special Utility District (“*GVSUD*”) for a new Texas Pollutant Discharge Elimination System (“*TPDES*”) permit and draft TPDES Permit No. WQ0015917001 (the “*Draft Permit*”).

**I. SUMMARY**

The Texas Commission on Environmental Quality (“*Commission*”) should grant CCMA’s timely-filed request for a contested case hearing and/or reconsideration of the ED’s decision regarding the Application and Draft Permit (“*Request*”) because it satisfies all criteria warranting that the Commission do so: the Request complies with the form and procedural requirements set forth in 30 TAC § 55.201, which none of the parties to this proceeding dispute;<sup>1</sup> and CCMA is an

---

<sup>1</sup> Pursuant to 30 TAC § 55.209(d), the only parties authorized to respond to the requests for reconsideration or contested case hearing filed in this proceeding are the ED, OPIC, and GVSUD. Though GVSUD opted not to do so, the Responses filed by the ED and OPIC both conclude that CCMA’s Request complies with the form and procedural requirements set forth in 30 TAC § 55.201. *TCEQ Commissioners’ Integrated Database*, <https://www14.tceq.texas.gov/epic/eCID/> (use “Search One: Status of Matter(s);” under the heading titled “Step One,” “Open Items” and “Applicant/Respondent” should be selected by default; under the heading titled “Step Two,” enter

“affected person” as such term is defined in Texas Water Code (“*TWC*”) § 5.115 and 30 TAC § 55.203. Having come to the same conclusion, OPIC also recommends that the Commission find that CCMA is an “affected person” and grant the Request.<sup>2</sup> CCMA supports such recommendations. GVSUD did not respond to the requests for reconsideration or contested case hearing filed in this Docket.<sup>3</sup> Therefore, because the ED is the only party to this proceeding who contends that CCMA’s Request should be denied,<sup>4</sup> this Reply addresses only the ED’s Response.

## II. REPLY

Contrary to the conclusion reached by the ED, the Commission should grant CCMA’s Request, as recommended by OPIC and CCMA, because it satisfies all of the regulatory prerequisites applicable to a contested case hearing request regarding a TPDES permit application. First, none of the parties to this proceeding dispute that the Request complies with the form and procedural requirements set forth in 30 TAC § 55.201.<sup>5</sup> Second, CCMA is an “affected person” within the meaning of *TWC* § 5.115 and 30 TAC § 55.203 because, in light of (1) the law under which TPDES applications are considered, (2) distance restrictions, (3) other limitations related thereto, (4) CCMA’s relationship to and statutory authority over the discharge of wastewater, and (5) the impact of the proposed Clearwater Creek Wastewater Treatment Plant (“*CCWWTP*”) on CCMA’s use of the proposed receiving water, CCMA has personal justiciable interests related to legal rights and powers affected by the Application that are unique from the rest of the general

---

“WQ0015917001” into the text box labeled “TCEQ ID Number;” under the heading titled “Step Three,” select “Include Filings on this Item,” and click “Search;” all filings submitted in this Docket are listed at the bottom of the page titled “Search Results for TCEQ Commissioners’ Integrated Database”) [hereinafter *TCEQ CID*]; Executive Director’s Resp. to Hr’g Reqs. and Reqs. for Reconsid. 9 – 10 [hereinafter *ED’s Response*]; The Office of Public Interest Counsel’s Resp. to Reqs. for Hr’g and Reqs. for Reconsid. 6 [hereinafter *OPIC’s Response*].

<sup>2</sup> OPIC’s Response 1, 8, 19.

<sup>3</sup> TCEQ CID.

<sup>4</sup> TCEQ CID; OPIC’s Response 1, 19; ED’s Response 1, 10, 18.

<sup>5</sup> TCEQ CID; OPIC’s Response 6; ED’s Response 9 – 10.

public. While the ED's Response contends that CCMA is not an "affected person" because its Request did not identify any such personal justiciable interests,<sup>6</sup> this Reply provides the factual bases to refute such contention and demonstrate that CCMA is entitled to a contested case hearing in this matter.

As detailed in CCMA's Request and recognized by OPIC, CCMA qualifies as an "affected person" under the definition set forth in TWC § 5.115 and 30 TAC § 55.203 because it has personal justiciable interests in (1) the proper implementation of the Commission's mandate that "[a]ll" permits authorizing "discharges of domestic wastewater effluent within [that area of Cibolo Creek Watershed, in the vicinity of the cities of Cibolo, Schertz, Universal City, Selma, Bracken, and Randolph Air Force Base (the "**Regional Area**")]) be issued only to [CCMA];"<sup>7</sup> (2) the enforcement of the three-mile distance restriction violated by the Draft Permit's authorization of the construction of the proposed CCWWTP less than 2.5 miles from CCMA's regional sewerage system; and (3) the protection of CCMA's already-permitted use of the proposed discharge route and receiving waters.

**A. As the Commission-designated regional wastewater treatment service provider under 30 TAC, Chapter 351, Subchapter F for the service area of the proposed CCWWTP, CCMA is uniquely impacted by the Application.**

As recognized by OPIC, "CCMA has a personal justiciable interest in this matter and qualifies as an affected person under 30 TAC § 55.203(c)."<sup>8</sup> This is because (1) "the location of the proposed regulated activity, (2) the ambiguous provisions of Chapter 351, Subchapter F, and (3) the resulting uncertainty about the exact confines of th[e Regional Area designated therein affect] CCMA's 'statutory authority over or interest in' regionalization."<sup>9</sup> Specifically, and as

---

<sup>6</sup> ED's Response 9 – 10.

<sup>7</sup> 30 TAC § 351.65.

<sup>8</sup> OPIC's Response 8.

<sup>9</sup> OPIC's Response 7.

noted in CCMA’s Request and OPIC’s Response, TWC, Chapter 26, Subchapter C, Regional and Area-Wide Systems, sets out a statutory scheme intended to further the State’s interest in regionalization via the designation of regional or area-wide waste collection, treatment, and disposal providers.<sup>10</sup> Promulgated in accordance with that scheme, Commission regulations in TAC, Title 30, Chapter 351, Subchapter F designate CCMA as the singular governmental entity with authority “to develop a regional sewerage system in [the Regional Area].”<sup>11</sup> Further, in keeping with that designation, and, again, as noted in both CCMA’s Request and OPIC’s Response,<sup>12</sup> Chapter 351 mandates that “[a]ll” future TPDES permits and amendments thereto that authorize “discharges of domestic wastewater effluent within [Regional Area] shall be issued only to [CCMA].”<sup>13</sup> The Application contradicts these regulations.

The ED’s Response, however, fails to provide any factual basis to refute the applicability of these Commission rules, stating only that:

[CCMA] did not demonstrate a personal justiciable interest that would be affected by the [A]pplication. According to its hearing request, the proposed [CCWWTP] will sever [sic] areas within the Regional Area of [CCMA]. This issue does not demonstrate that [CCMA] has a personal justiciable interest not in common to members of the general public, and therefore, [CCMA]’s hearing request should be denied.<sup>14</sup>

Even if the ED’s conclusory statement is based on the misinterpretation of the scope of the Regional Area set forth in the ED’s Response to Public Comment (“*RTC*”), CCMA’s Request explains why that interpretation is flawed, as follows:

[A]s stated in the *RTC*, the ED interprets 30 TAC, Chapter 351, Subchapter F as indicating that “the location of the discharge point . . . determines if 30 TAC Chapter 351 applies, not the location of the proposed service area.” In applying that interpretation, the ED draws a distinction between the Mid Cibolo Creek

---

<sup>10</sup> Request 4, 8; OPIC’s Response 6 – 8.

<sup>11</sup> 30 TAC § 351.62.

<sup>12</sup> Request 4, 6; OPIC’s Response 7.

<sup>13</sup> 30 TAC § 351.65.

<sup>14</sup> ED’s Response 10.

watershed and the Lower Cibolo Creek watershed. He concludes that all of the areas used to define the scope of the Regional Area “discharge to the watershed of Mid Cibolo Creek,” whereas Woman Hollering Creek, the proposed receiving water for the discharges contemplated by the Application, “is in the watershed of Lower Cibolo Creek.” It is unclear what the ED means by his statement that all of the areas within the Regional Area discharge into the Mid Cibolo Creek watershed as he does not provide any indication of the boundaries of the areas he refers to or of the Regional Area as a whole. Without a clear understanding as to the limits of the Regional Area, there is no way to determine whether the ED’s assertion that “[a]ll these areas discharge to the watershed of Mid Cibolo Creek” is accurate. Further, there is no reason to believe that the Mid Cibolo Creek watershed should be distinguished from the Lower Cibolo Creek watershed, and the ED does not provide one in the RTC. On the contrary, TCEQ’s regulations define the Regional Area by reference to the “Cibolo Creek Watershed” as a whole. Therefore, because the ED expressly states that the proposed discharge is in the Lower Cibolo Creek watershed, which is a part of the overall Cibolo Creek watershed defined as the Regional Area, he has implicitly acknowledged that the proposed discharge is in the Regional Area. Consequently, 30 TAC § 351.65 precludes TCEQ from issuing the Draft Permit to GVSUD because it “pertain[s] to discharges of domestic wastewater effluent within the [Regional Area],” and permits pertaining to such discharges may only be issued to CCMA.<sup>15</sup>

Simply put, the Commission’s Chapter 351, Subchapter F regulations clearly describe CCMA’s unique interest in the discharge of wastewater into the portion of the Cibolo Creek watershed within its Regional Area, whether it be said watershed’s Lower or Mid component, expressly identifying CCMA as the sole entity to whom the Commission has mandated that “[a]ll” TPDES permits and amendments thereto that authorize “discharges of domestic wastewater effluent within the [Regional Area] shall be issued.”<sup>16</sup> OPIC’s Response acknowledges the existence of this factual dispute, stating that “CCMA’s [R]equest challenges the ED’s contention that the Lower Cibolo Creek watershed should be distinguished from the Mid Cibolo Creek Watershed for purposes of Chapter 351.”<sup>17</sup> Also, as noted by OPIC, “[t]he Chapter 351 rules do not tie the designated [R]egional [A]rea to specific stream segment numbers” or even “refer to ‘the Mid

---

<sup>15</sup> Request 7.

<sup>16</sup> 30 TAC § 351.65.

<sup>17</sup> OPIC’s Response 7.

Cibolo Creek watershed’ or ‘Lower Cibolo Creek watershed.’”<sup>18</sup>

Despite the dispute outlined above, the ED recommends that the Commission not refer to the State Office of Administrative Hearings (“*SOAH*”) the issue of “[w]hether GVSUD’s service area is within CCMA’s service area.”<sup>19</sup> According to the ED’s Response, this is because the issue “is not relevant and material to the issuance of the [D]raft [P]ermit” and “was raised by CCMA who the [ED] recommends the Commission find is not an affected person.”<sup>20</sup> On the contrary, the issue of whether the service area of the proposed CCWWTP overlaps with portions of its Regional Area is central to determining whether the Application and Draft Permit comply with the State’s statutory regionalization policy, an issue which the ED *does* recommend the Commission refer to SOAH.<sup>21</sup> Accordingly, as the designated regional entity, CCMA is the entity most uniquely impacted by this aspect of the Application and Draft Permit and, therefore, the entity best suited to raise this issue. As such, CCMA contends that the Commission should refer to SOAH the issue of whether any portion of the service area of the proposed CCWWTP extends into CCMA’s Commission-designated Regional Area.

**B. CCMA has a wastewater treatment plant within three miles of the CCWWTP, a benchmark used by the Commission in determining affected person status for contested case hearings regarding TPDES permit applications.**

While the ED’s RTC correctly states that “[the Commission] uses the threshold of three miles to determine if there is another entity in the vicinity that is willing and able to accept wastewater from a proposed facility,”<sup>22</sup> the ED’s Response fails to address the fact that the intended location of the proposed CCWWTP is within less than 2.5 miles of CCMA’s existing

---

<sup>18</sup> *Id.*

<sup>19</sup> ED’s Response 15.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> ED’s RTC 19.

regional wastewater treatment plant. This personal justiciable interest is, however, appropriately acknowledged by OPIC, whose Response states:

CCMA has an interest in regionalization that is not common to the general public based on the operation of its South Regional Water Reclamation Plant less than 2.5 miles from [GVSUD]'s proposed [CCWWTP]. As acknowledged by all parties, [the Commission] uses a threshold of three miles to determine if there is another entity in the vicinity that is willing and able to accept waste from a proposed facility. Separate and apart from its status [as] a designated regional service provider, CCMA also has standing as an affected person based on regionalization interests because of the location of CCMA's South Regional Water Reclamation Plant.<sup>23</sup>

**C. As the holder of a TPDES permit for a wastewater treatment plant that discharges into the same receiving waters as the proposed CCWWTP, CCMA is uniquely impacted by the Application.**

The ED's Response neglects to address the unique impact of the proposed CCWWTP on CCMA's interest in the continued use of the proposed discharge route authorized by the Draft Permit, which significantly overlaps with the discharge route/receiving waters used by CCMA to discharge treated wastewater effluent from the Woman Hollering Wastewater Treatment Plant ("**WHWWTP**," jointly owned with the City of Schertz ("**Schertz**")). Specifically, both CCMA's existing TPDES permit and the Draft Permit authorize the discharge of wastewater to Woman Hollering Creek, thence to Martinez Creek in Segment No. 1902A of the San Antonio River Basin, thence to the Lower Cibolo Creek in Segment No. 1902 of the San Antonio River Basin. Because Classified Segment Nos. 1902 and 1902A are already listed on the 2020 Texas Integrated Report – Texas 303(d) List of impaired and threatened waters for bacteria in the water, the authorization of an additional, unnecessary discharge into these Segments could degrade water quality therein. OPIC's Response also recognizes that this interest qualifies CCMA as an "affected person," stating that "OPIC finds that CCMA's water quality concerns and interest in continued use of the discharge route permitted for the [WHWWTP] are issues relevant to this [A]pplication

---

<sup>23</sup> OPIC's Response 8.

and provide a further basis for CCMA's affected person status."<sup>24</sup>

The Application also affects CCMA's interest in the operation of the WHWWTP, which, as expressly acknowledged by GVSUD,<sup>25</sup> is within Schertz's corporate boundaries. As noted by OPIC, "[m]unicipalities have statutory authority over certain wastewater issues under TWC Chapter 26, Subchapter E," including the authority to "determine compliance with permit requirements" and "protect public health."<sup>26</sup> In addition, the Texas Local Government Code vests municipalities, like Schertz, with the authority to "operate a [wastewater] utility system inside or outside" its boundaries and "regulate the system in a manner that protects [its] interests."<sup>27</sup> Here, those very same interests are shared by CCMA because of its partnership with Schertz in the ownership and operation of the WHWWTP. In other words, even though the WHWWTP is located outside of the three-mile radius typically used by the Commission to determine "affected person" status, CCMA qualifies as an "affected person" because of its unique interest in the enforcement of Schertz's statutory authority to regulate the provision of wastewater services within its corporate boundaries.

### III. CONCLUSION

For the foregoing reasons, and as recommended by OPIC, CCMA requests that the Commission find that CCMA is an affected person whose Request complies with the procedural prerequisites set forth in 30 TAC § 55.201 and grant it a contested case hearing on the relevant and material issues raised in its Request. In the alternative, CCMA requests that the Commission deny the Application or remand it for reconsideration by the ED. Further, in the event of a contested

---

<sup>24</sup> *Id.*

<sup>25</sup> Request 4 (citing Domestic Wastewater Permit Appl., Tech. Reports, Domestic Tech. Report 1.1, Section 1.B.I., Aug. 31, 2020).

<sup>26</sup> OPIC's Response 9.

<sup>27</sup> Tex. Loc. Gov't Code § 552.001; *accord id.* §§ 552.002, .906.



case hearing, CCMA reserves the right to raise and pursue any and all issues that may be relevant to its interest.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)



---

MARIS M. CHAMBERS  
State Bar No. 24101607  
[mchambers@lglawfirm.com](mailto:mchambers@lglawfirm.com)

**ATTORNEY FOR THE CIBOLO CREEK  
MUNICIPAL AUTHORITY**

**CERTIFICATE OF SERVICE**

I certify that on February 14, 2022, the foregoing Reply to Responses to Requests for Hearing and Requests for Reconsideration was filed with the Commission's Office of the Chief Clerk, and a true and correct copy was served to the ED, OPIC, and GVSUD via hand delivery, facsimile transmission, electronic submittal, or by deposit in the U.S. Mail pursuant to 30 TAC § 55.209(g).



---

Maris M. Chambers