

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



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 21, 2022

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

RE: **CITY OF WICHITA FALLS**
TCEQ DOCKET NO. 2022-0125-WR

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2022-0125-WR

APPLICATION OF CITY OF WICHITA FALLS FOR WATER RIGHTS PERMIT NO. WRPERM 13404 § **BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING REQUESTS

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files this Response to Hearing Requests in the above-referenced matter. OPIC recommends granting the hearing requests of Emry Birdwell, Deborah Clark, Tim Burch, Shane and Casey Cody, Joshua Don Ferguson, Sharon Fitts, Mark Hill, Lonnie, Larry and Stan Horwod, Darlene and Luther Lyde, Mary Ellen Maddox, Randi M. Maddox, Jason Obermier, Jimmy Dale Obermier, Pamela Maddox Payne, Jake Roberson, Johnnie Shaw, Joe, Phil, and Gil Staley, William (Chris) Wellborn, Clay County Farm Bureau, Henrietty & Clay County Chamber of Commerce, National Wildlife Federation, Texas Conservation Alliance, Texoma Stewardship Coalition, Texas Wildlife Association, City of Henrietta, and Clay County. OPIC further recommends the Commission deny the remaining hearing requests.

In support of its recommendation, OPIC respectfully submits the following:

I. INTRODUCTION

The City of Wichita Falls (Applicant) seeks authorization to construct and maintain a 275,000 acre-foot capacity reservoir, Lake Ringgold, on the Little Wichita River, Red River

Basin. Applicant also seeks to divert 65,000 acre-feet of water per year from Lake Ringgold for multiple purposes within its service area. Applicant further seeks to use the bed and banks of the Little Wichita River (Lake Arrowhead) to convey return flows and the 65,000 acre-feet of water for subsequent diversion and use.

Applicant indicates water diverted from Lake Ringgold may be delivered via pipeline and discharged, at a maximum discharge rate of 139.79 cfs (62,770 gpm), anywhere along the perimeter of Lake Arrowhead in Archer and Clay counties, Zip Code 76379. Applicant indicates the water diverted from Lake Ringgold and discharged into Lake Arrowhead will be subsequently diverted, at a maximum diversion rate of 139.79 cfs (62,770 gpm), from anywhere along the perimeter of Lake Arrowhead in Archer and Clay counties and from an existing point on Lake Arrowhead, at a maximum diversion rate of 93 cfs (41,850 gpm), being at Latitude 33.763707°N, Longitude 98.370091°W in Clay County, Zip Code 76379.

Applicant indicates that diversions from Lake Ringgold may overdraft the firm yield of the reservoir as part of a system operation with Applicant's existing water supplies.

The application and partial fees were received on June 27, 2017. Additional information and fees were received on July 7, July 10, and August 7, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 10, 2017. Additional information was received on October 13, October 16, 2017, October 23, November 16, 2018 and June 4, 2019.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. On January 24, 2020, the TCEQ Chief Clerk mailed notice to all

water rights holders of record in the Red River Basin.¹ Applicant published its Notice of an Application of a Water Use Permit on February 6, 2020 in the *Clay County Leader*. The deadline to request a contested case hearing was March 9, 2020, thirty days after publication of the notice.² The Commission received 82 requests for a contested case hearing.

II. REQUIREMENTS OF APPLICABLE LAW

A. Requirements to Obtain Affected Person Status

This application was declared administratively complete after September 1, 1999, and is subject to Chapter 55, Subchapter G, sections 55.250 - 55.256. According to these rules, an “affected person” must submit a timely contested case hearing request in writing and in compliance with Commission requirements for making a request.³ In addition, the request must identify the person’s personal justiciable interest affected by the application, including a brief, specific explanation regarding “the requestor’s location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to the members of the general public.”⁴

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” in a manner not

¹ See 30 TEX. ADMIN. CODE (TAC) § 295.151.

² 30 TEX. ADMIN. CODE (TAC) § 295.171: A request for contested case hearing on an application for a water use permit or amendment made by the applicant, the executive director, or an affected person who objects to the application must be made in writing, must comply with the requirements of Chapter 55, Subchapter G, of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), and specifically §55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment), and must be filed with the chief clerk within the time period specified in the notice. The chief clerk shall accept a hearing request...that is filed after the deadline but the chief clerk shall not process it.

³ 30 TAC §§ 55.251 *et seq.* and 30 TAC § 295.171.

⁴ 30 TAC § 55.251(c)(2).

common to members of the general public.⁵ Relevant factors considered in determining a person's affected person status include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of the property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁶

A group or association may request a contested case hearing only if the group or association meets all of the following requirements: (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁷ In addition, governmental entities with authority under state law over issues contemplated by the application may be considered affected persons.⁸

A contested case hearing should be granted if an affected person's hearing request meets all requirements of applicable law. A request for hearing shall be granted if the request is made by the applicant or the executive director.⁹ The Commission may also refer an application to the State Office of Administrative Hearings if the Commission determines that a hearing would be in

⁵ 30 TAC § 55.256(a). "This standard does not require parties to show that they will ultimately prevail on the merits; it simply requires them to show that they will potentially suffer harm or have a justiciable interest that will be affected." *United Copper v. TNRCC*, 17 S.W.3d 797, 803 (Tex.App. - Austin 2000).

⁶ 30 TAC § 55.256(c).

⁷ 30 TAC § 55.252(a).

⁸ 30 TAC § 55.256(b).

⁹ 30 TAC § 55.255(b)1

the public interest.¹⁰

B. Requirements for Amendment of a Water Use Permit

No person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.¹¹ The commission shall approve the application and issue the permit as applied for in whole or part if it determines that: (1) there is unappropriated water in the source of supply; (2) the applicant has met the requirements of this section; (3) the water is to be used for a beneficial purpose; (4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and (5) the proposed use will not impair existing water rights.¹²

Anyone proposing to use the bed and banks of any flowing natural stream within the state for the purpose of conveying stored water from a place of permitted storage to a place of permitted use must first comply with the Texas Water Code, §11.042, and the rules of the commission.¹³ The owner or controller of stored water shall not permit the same to overflow the banks of any stream, nor shall he or she interfere with those having a lawful right to the use of that rate of flow of the stream which would prevail in the absence of the water in transit. The rate of flow shall be determined by the executive director, and all interested parties will be notified of

¹⁰ 30 TAC § 55.255(c).

¹¹ Tex. Water Code § 11.121.

¹² Tex. Water Code § 11.134(b).

¹³ 30 TAC §297.91.

the rate. Water, when released for downstream use, must be of a quality that will not affect adversely or harmfully the quality of water in the stream or in storage below.¹⁴

III. DISCUSSION

A. Untimely Requests

Frances Essler and Edna May Klein submitted hearing requests in this matter describing inundation of their property by the proposed Lake Rigginhold reservoir. While each of these requests reflect a postmark of March 3, 2020, the requests were not received until March 16, 2020, and are untimely. OPIC therefore cannot consider these requests or recommend that they be referred for a contested case hearing.

B. Unaffected Individuals and Entities

Timey hearing requests were received by the commission from Clay County Rural Development, John A. Cox, Laura Del Murray, Dr. Thomas David Greer, Haley Greer, John M. Greer, Katie Greer, Lea Ann Greer, Luke Halsell, Sherri Halsell, Kildavanet Castle, LLC., Lively Ranch, Ltd., Adeline McDonnell, Caroline McDonnell, Jan Greer McDonnell, Carol Staley Morrow, Joe J. Parker Jr., Ken Scott, Clint Staley, Umhail Valley, LLC., and Kelly Dean Yandell.

The ED has prepared a map in this case that could not plot the location of these requestors because their address could not be found, only a PO Box was included in their request, or their residence was too distant from the footprint of the proposed reservoir. OPIC therefore cannot determine that a reasonable relationship exists between the interests claimed in

¹⁴ 30 TAC §297.93.

their requests and the activity regulated, as required by 30 TAC § 55.256(c). OPIC therefore recommends that their requests be denied.

C. Affected Individuals and Entities

Timely hearing requests were received by the Commission from non-governmental individuals and entities that provided sufficient location information to be plotted on the ED's map, and who lie in close proximity to the proposed reservoir.

a. Emry Birdwell and Deborah Clark

Emry Birdwell and Deborah Clark timely requested a contested case hearing. These requestors state that their property would be inundated by the proposed reservoir and additional acreage would be subject to 100-year flood elevation as a result of its construction. These changes would interfere with ranching activities, necessitate construction of a new road, divide the ranch, deplete wildlife, and compromise hunting leases. The requestors also state the proposed reservoir is not needed, not cost efficient, and would negatively impact the tax base—which in turn would negatively impact law enforcement and educational services.

The ED has prepared a map in this case demonstrating that these requestors are located within or near the footprint of the proposed facility. Due to the location of their property and the concerns raised, the requestors have demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Emry Birdwell and Deborah Clark are affected persons.

b. Tim Burch

Tim Burch timely requested a contested case hearing. Mr. Burch states that he has a hunting lease in the footprint of the lake.

The ED has prepared a map in this case demonstrating that Mr. Burch's property is

within or near the footprint of the proposed facility. Due to the location of the property and the concern raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Tim Burch is an affected person.

c. Shane and Casey Cody

Shane and Casey Cody timely requested a contested case hearing. These requestors state that their property would be inundated by the proposed reservoir and flooding may result from its construction. These changes would also interfere with egress and ingress to their property, deplete wildlife, diminish hunting, destroy historical sites, and negatively impact the tax base.

The ED has prepared a map in this case demonstrating that the location of the requestors' property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestors have demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Shane and Casey Cody are affected persons.

d. Joshua Don Ferguson

Joshua Don Ferguson timely requested a contested case hearing. Mr. Ferguson states that he has a hunting lease in the footprint of the lake and is concerned about potential impacts on whooping cranes and other wildlife.

The ED has prepared a map in this case demonstrating that Mr. Ferguson's property is within or near the footprint of the proposed facility. Due to the location of the property and the concern raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Joshua Don Ferguson is an affected person.

e. Sharon Fitts

Sharon Fitts timely requested a contested case hearing. Sharon Fitts states that she owns land that would be inundated by the proposed reservoir and that it would have negative impacts on her hay production and cattle feeding operations as well as hunting activities.

The ED has prepared a map in this case demonstrating that Sharon Fitts's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Sharon Fitts is an affected person.

f. Henrietta Independent School District

Henrietta ISD timely requested a contested case hearing. The requestor states that the proposed reservoir would decrease tax revenues, which in turn would decrease school funding. Additionally, impacts on family properties in the area may result in decreased enrollment and attendance, and even force some families out of the district.

The ED has prepared a map in this case demonstrating that Henrietta ISD's property is within or near the footprint of the proposed facility. However, the concerns expressed by the requestor relating to tax revenue decreases and the possibilities of families moving from the area are interests common to the general public and not personally justiciable. For this reason, OPIC finds that Henrietta ISD is not affected.

g. Mark Hill

Mark Hill timely requested a contested case hearing. Mr. Hill states that he owns land located in the 100-year flood plain that could potentially be negatively impacted by construction of the reservoir.

The ED has prepared a map in this case demonstrating that Mr. Hill's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Mark Hill is an affected person.

h. Larry, Lonnie, and Stan Horwood

Larry, Lonnie, and Stan Horwood timely requested a contested case hearing through their attorney James C. Skinner. These requestors state that their water rights would be negatively impacted by the proposed reservoir, and a significant portion of their land would have to be condemned if it were constructed.

The ED has prepared a map in this case demonstrating that the location of the requestors' property and water rights are within or near the footprint of the proposed facility. Due to the location of the property, water rights, and the concerns raised, the requestors have demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Larry, Lonnie, and Stan Horwood are affected persons.

i. Darlene and Luther Lyde

Darlene and Luther Lyde timely requested a contested case hearing. These requestors state that their home and livelihood would be negatively impacted by the proposed reservoir. Additionally, the Lydes are concerned about negative impacts on wildlife, recreational activities, law enforcement, fire prevention, and archeological artifacts.

The ED has prepared a map in this case demonstrating that the location of the requestors' property is within or near the footprint of the proposed facility. Due to the location of the

property and the concerns raised, the requestors have demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Darlene and Luther Lyde are affected persons.

j. Mary Ellen Maddox

Mary Ellen Maddox timely requested a contested case hearing. Mrs. Maddox states that she owns land that would be inundated by the proposed reservoir and that the project would have negative impacts on wildlife, crime, and traffic. Further, the proposed lake is not needed.

The ED has prepared a map in this case demonstrating that Mrs. Maddox's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Mary Ellen Maddox is an affected person.

k. Randi M. Maddox

Randi M. Maddox timely requested a contested case hearing. Mr. Maddox states that he owns land that would be inundated by the proposed reservoir and that it would have negative impacts on wildlife, including endangered species, historical sites, hunting activities, and recreation.

The ED has prepared a map in this case demonstrating that Mr. Maddox's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Randi M. Maddox is an affected person.

l. Jason Obermier

Jason Obermier timely requested a contested case hearing. Mr. Obermier states that he owns land that would be inundated by the proposed reservoir and that the project would have negative impacts on his machine shop, grain storage facility, and farming activities. Further, the proposed Lake Riginhold would negatively impact wildlife, hunting activities, and recreation.

The ED has prepared a map in this case demonstrating that Mr. Obermier's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Jason Obermier is an affected person.

m. Jimmy Dale Obermier

Jimmy Dale Obermier timely requested a contested case hearing. Mr. Obermier states that he owns land that would be inundated by the proposed reservoir and that the project would have negative impacts on his agricultural and recreational interests, fishing, housing development, the tax base, and local law enforcement services.

The ED has prepared a map in this case demonstrating that Mr. Obermier's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Jimmy Dale Obermier is an affected person.

n. Pamela Maddox Payne

Pamela Maddox Payne timely requested a contested case hearing. Pamela Maddox Payne states that the proposed reservoir would have negative impacts on wildlife, tax revenue, law

enforcement, the fire department, ranching operations, and road expenses.

The ED has prepared a map in this case demonstrating that Pamela Maddox Payne's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds Pamela Maddox Payne is an affected person.

o. Jake Roberson

Jake Roberson timely requested a contested case hearing. Mr. Roberson states that he has a hunting lease in the footprint of the lake.

The ED has prepared a map in this case demonstrating that Mr. Roberson's property is within or near the footprint of the proposed facility. Due to the location of the property and the concern raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Jake Roberson is an affected person.

p. Johnnie Shaw

Johnnie Shaw timely requested a contested case hearing stating that his property would be inundated by the proposed reservoir.

The ED has prepared a map in this case demonstrating that Mr. Shaw's property is within or near the footprint of the proposed facility. Due to the location of the property and the concern raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Johnnie Shaw is an affected person.

q. Joe, Phil, and Gil Staley

Joe, Phil, and Gil Staley timely requested a contested case hearing, stating that their family property—the Staley Two Rivers Ranch—would be inundated by the proposed reservoir. The Staleys are concerned that proposed Lake Rigginhold would negatively impact their recreational activities as well as cattle production, wheat, and hay operations.

The ED has prepared a map in this case demonstrating that the location of the requestors' property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestors have demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that Joe, Phil, and Gil Staley are affected persons

r. William (Chris) Wellborn

William (Chris) Wellborn timely requested a contested case hearing. Mr. Wellborn states that his property would be inundated by the proposed reservoir. Additionally, the reservoir would effectively split his ranch into multiple parcels, limit access to the property, compromise ranch operations, negatively impact recreation, wildlife, tax revenues, law enforcement, and road maintenance. Further, the reservoir is not needed.

The ED has prepared a map in this case demonstrating that Mr. Wellborn's property is within or near the footprint of the proposed facility. Due to the location of the property and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds that William (Chris) Wellborn is an affected person.

D. Groups and Associations Requesting a Hearing

The Commission also received timely requests from groups or associations seeking a

hearing.

a. Clay County Farm Bureau (CCFB)

A timely hearing request was submitted by the CCFB. CCFB is concerned that the proposed reservoir would negatively impact their members by reducing revenue from hunting and ranching enterprises and reducing county tax revenue. The request lists Randi Maddox as an affected member of the group. As discussed above, Randi Maddox is listed on the ED's map as residing within or near the footprint of the proposed facility and has standing to request a hearing in his own right.

Although the request does not specify the purpose of the group, a review of the Texas Farm Bureau's main web site includes a mission statement advocating "a prosperous agriculture...to ensure your family a viable, domestic source of food, fiber and fuel. We believe private property rights are worth protecting, water should be used wisely and government should be responsive and responsible." OPIC finds the interests CCFB seeks to protect are germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that CCFB is affected.

b. Henrietty & Clay County Chamber of Commerce (HCCCOC)

A timely hearing request was submitted by the HCCCOC. HCCCOC is concerned that the proposed reservoir would adversely impact members who derive their livelihood from ranching and hunting operations, eliminate ranch land, eliminate the annual Turkey Fest fund drive, and compromise sites of historical significance. The request lists Deborah Clark and Emry Birdwell, amongst others, as affected members of the group. As discussed above, Deborah Clark and Emry Birdwell are listed on the ED's map as residing within or near the footprint of the proposed facility and have standing to request a hearing in their own right.

Although the request does not specify the purpose of the group, a review of the HCCCOC web site states the organization seeks to “develop and promote programs that provide services and support, specifically oriented to the small business sector of the Chamber membership.” OPIC finds the interests HCCCOC seeks to protect are germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that HCCCOC is affected.

c. National Wildlife Federation (NWF)

A timely hearing request was submitted by NWF raising concerns related to potential adverse impacts on the Little Wichita River, Red River Basin, the fish and wildlife the resources the river supports, and ecologically fragile native prairie. NWF asserts the proposed permit would permanently inundate wooded river and creek bottoms and native tallgrass prairie, while reducing flows in the Little Wichita River in the Red River Basin and Lake Texoma.

The request lists Deborah Clark as an affected member of the group. As discussed above, Deborah Clark is listed on the ED’s map as residing within or near the footprint of the proposed facility and has standing to request a hearing in her own right.

NWF states that the purpose of the organization is to “protect natural resources and the right of the people to use and enjoy them.” Further, NWF works to “ensure adequate protection of stream and river flows to support fish and wildlife resources in Texas.” OPIC finds the interests NWF seeks to protect are germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that NWF is affected.

d. Texas Conservation Alliance (TCA)

A timely hearing request was submitted by TCA raising concerns related to the proposed project’s lack of need, high cost, and potential negative economic impacts on its members. Further, the request identifies potential adverse impacts on native prairie, inundation and loss of

wildlife habitat, loss of tax revenue, and loss of hunting grounds.

The request lists Emry Birdwell and Deborah Clark as affected members of the group. As discussed above, Emry Birdwell and Deborah Clark are listed on the ED's map as residing within or near the footprint of the proposed facility and have standing to request a hearing in their own right.

TCA states that the purpose of the organization is to "protect wildlife habitat and water resources." OPIC finds the interests TCA seeks to protect are germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that TCA is affected.

e. Texoma Stewardship Coalition (TSC)

A timely hearing request was submitted by TSC raising concerns related to the proposed project's lack of need, high cost, and potential negative economic impacts on its members. Further, the request identifies potential adverse impacts on native prairie, inundation and loss of wildlife habitat, loss of tax revenue, and impacts on emergency services.

The request lists Shane Cody, Gil Staley, Phil Staley, Joe Staley, Chris Wellborn, amongst others, as affected members of the group. As discussed above, these requestors are listed on the ED's map as residing within or near the footprint of the proposed facility and have standing to request a hearing in their own right.

TSC states that it is a group of "affected property owners whose land is in the footprint of proposed Lake Rigginhold." Presumably, the purpose of the organization is to protect this property and its ordinary environment. OPIC finds the interests TSC seeks to protect are therefore germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that TSC is affected.

f. Texas and Southwestern Cattle Raisers Association (TSCRA)

A timely hearing request was submitted by the TSCRA. The request raises the concern that 16,000 acres, including pastures used to feed cattle and nurture wildlife, will be gone forever to the detriment of all Texans if the proposed permit is granted. The brief states that negative impacts will be felt by farmers, ranchers, the many businesses that supply their agricultural operations, and the consumers who rely on their outputs.

TSCRA states that it is a 143-year-old trade association—the largest and oldest livestock organization based in Texas. Their 55,000 members are directly involved in ranching and beef production. Presumably, the organization's purpose is to protect those operational interests. OPIC therefore finds the interests TSCRA seeks to protect are germane to the organization's purpose.

However, the request does not identify one or more members of the group or association would otherwise have standing to request a hearing in their own right in accordance with 30 TAC § 55.252.(a)(1). For this reason, OPIC cannot recommend that the Commission find TSCRA is affected and must recommend that the Commission deny their request.

g. Texas Wildlife Association (TWA)

A timely hearing request was submitted by the TWA raising concerns that construction of the proposed reservoir would have negative impacts on their members, the ranching economy of Clay County, wildlife and wildlife habitat, fishing, hunting, and other recreational activities in the region.

The request lists Emry Birdwell and Deborah Clark as affected members of the group. As discussed above, Emry Birdwell and Deborah Clark are listed on the ED's map as residing within or near the footprint of the proposed facility and have standing to request a hearing in

their own right.

Although the request does not specify the purpose of the group, a review of the TWA web site states that the organization “serves Texas wildlife and its habitat, while protecting property rights, hunting heritage, and the conservation efforts of those who value and steward wildlife resources.” OPIC finds the interests TWA seeks to protect are germane to the organization's purpose.

For these reasons, OPIC recommends the Commission find that TWA is affected.

h. Quail Coalition

A timely hearing request was submitted by the Quail Coalition. The request raises the concern that the proposed permit could negatively impact quail populations and their native habitat.

Although the request does not specify the purpose of the group, a review of the Quail Coalition’s web site states the organization seeks “to sustain and restore huntable wild quail populations, to encourage and educate interested youth, and to celebrate our quail hunting heritage in this region”. OPIC therefore finds the interests the Quail Coalition seeks to protect are germane to the organization's purpose.

However, the request does not identify one or more members of the group or association who would otherwise have standing to request a hearing in their own right in accordance with 30 TAC § 55.252.(a)(1). For this reason, OPIC cannot recommend that the Commission find the Quail Coalition is affected and must recommend that the Commission deny their request.

E. Governmental Entities Requesting a Hearing

The Commission received two requests from governmental entities seeking a hearing.

a. City of Henrietta

The City of Henrietta submitted a hearing request in this matter, asserting that the point of diversion and intake structures for water rights Nos. 276, 913, and 1678 may be negatively impacted by the proposed reservoir. Additionally, the proposed permit may produce conditions necessitating tertiary treatment at their two wastewater plants, which would significantly increase costs.

The ED has prepared a map in this case demonstrating that the City of Henrietta's property and water rights are within or near the footprint of the proposed facility. Due to the location of the property, water rights, and the concerns raised, the requestor has demonstrated a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. Therefore, OPIC finds the City of Henrietta is affected and recommends that the Commission grant their request.

b. Clay County

Clay County submitted a hearing request in this matter through their attorney, Frank J. Douthitt. The request raises concerns that proposed Lake Rigginhold will deplete the county tax base, burden law enforcement services, require additional road maintenance, negatively impact wildlife, threaten endangered species and cultural resources, and flood upstream areas, including county roads.

The ED has prepared a map in this case confirming that the proposed reservoir and bed and banks route partly lie in Clay County. Clay County is a governmental entity that would be affected under 30 TAC § 55.256(b) and (c)(6). The county is presumably responsible for public safety, maintenance of roads and bridges, providing emergency services, and protecting wildlife within its jurisdiction. Ultimately, the proposed reservoir could impact county property,

services, and wildlife. OPIC therefore finds that Clay County is affected and recommends that the Commission grant their request.

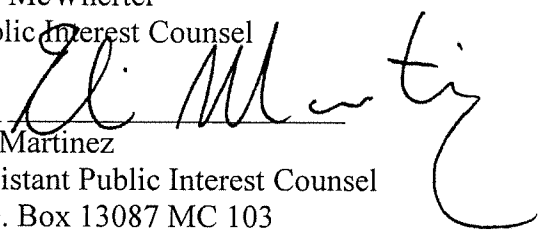
IV. CONCLUSION

OPIC recommends that the Commission grant the hearing requests of Emry Birdwell, Deborah Clark, Tim Burch, Shane and Casey Cody, Joshua Don Ferguson, Sharon Fitts, Mark Hill, Lonnie, Larry and Stan Horwod, Darlene and Luther Lyde, Mary Ellen Maddox, Randi M. Maddox, Jason Obermier, Jimmy Dale Obermier, Pamela Maddox Payne, Jake Roberson, Johnnie Shaw, Joe, Phil, and Gil Staley, William (Chris) Wellborn, Clay County Farm Bureau, Henrietty & Clay County Chamber of Commerce, National Wildlife Federation, Texas Conservation Alliance, Texoma Stewardship Coalition, Texas Wildlife Association, City of Henrietta, and Clay County.

OPIC recommends the Commission deny the remaining hearing requests.

Respectfully submitted,

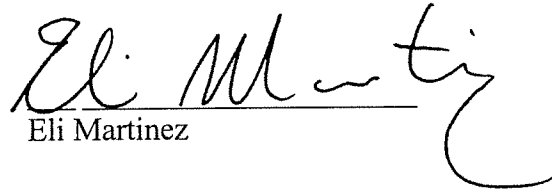
Vic McWherter
Public Interest Counsel



Eli Martinez
Assistant Public Interest Counsel
P.O. Box 13087 MC 103
Austin, Texas 78711
(512)239-3974 PHONE
(512)239-6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, and/or by deposit in the U.S. Mail.


Eli Martinez

**MAILING LIST
CITY OF WICHITA FALLS
TCEQ DOCKET NO. 2022-0125-WR**

FOR THE APPLICANT:

Sara R. Thornton
Lloyd Gosselink Rochelle &
Townsend PC
816 Congress Ave., Ste. 1900
Austin, Texas 78701-2478

FOR THE EXECUTIVE DIRECTOR:

Ruth Takeda, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

Sarah Henderson, Technical Staff
TCEQ Water Availability Division
MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-2535 Fax: 512/239-2214

Ryan Vise, Director
TCEQ External Relations Division
Public Education Program, MC 108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Kyle Lucas
TCEQ Alternative Dispute
Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4010 Fax: 512/239-4015

FOR THE CHIEF CLERK:

Laurie Gharis
TCEQ Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTERS:

Janice C. Bezanson
Texas Conservation Alliance
745 County Road 1537
Avinger, Texas 75630

Janice C. Bezanson
Texas Conservation Alliance
PO Box 822554
Dallas, Texas 75382-2554

Margaret Bivens
3618 Vineyard Dr.
Houston, Texas 77082-2802

Kelley Bloodworth
City of Henrietta
PO Box 409
Henrietta, Texas 76365-0409

Timothy Burch
901 N. Graham St.
Henrietta, Texas 76365-1733

Lynda Cannedy
PO Box 75
Henrietta, Texas 76365-0075

R. Leonard Phillips & Ross Cantrell
The Clay County Farm Bureau
PO Box 97
Henrietta, Texas 76365-0097

Danielle Louise Goshen &
Michael Choate
505 E. Huntland Dr., Ste. 485
Austin, Texas 78752-3717

Deborah Clark & Emry Birdwell
Texas Conservation Alliance
PO Box 90
Henrietta, Texas 76365-0090

Betty Ellsworth & Scot Clayton
Henrietta ISD
1801 E. Crafton St.
Henrietta, Texas 76365-2414

Scott Cleveland
PO Box 97
Henrietta, Texas 76365-0097

Casey & Shane Cody
375 N. Lucille Dr.
Henrietta, Texas 76365-5616

John A. Cox
PO Box 464
Nocona, Texas 76255-0464

Dwayne Davis & E. C. Crump
The Clay County Farm Bureau
PO Box 97
Henrietta, Texas 76365-0097

Frank J Douthitt
Frank J Douthitt Lawyer
102 S. Fannin St.
Henrietta, Texas 76365-2713

Frances Essler
13501 FM 172
Henrietta, Texas 76365-6706

Joshua Don Ferguson
614 W. Gilbert St.
Henrietta, Texas 76365-2719

Sharon Fitts
402 Kay St.
Henrietta, Texas 76365-2416

Donna Wines & Steve Forester
The Clay County Farm Bureau
PO Box 97
Henrietta, Texas 76365-0097

Grayson Gaither
3558 Waldorf Dr.
Dallas, Texas 75229-3826

Haley Greer
7506 Marquette St.
Dallas, Texas 75225-4521

John M Greer
7506 Marquette St.
Dallas, Texas 75225-4521

Katie Greer
7506 Marquette St.
Dallas, Texas 75225-4521

Lea Ann Greer
PO Box 360
Henrietta, Texas 76365-0360

Dr. Thomas David Greer
PO Box 360
Henrietta, Texas 76365-0360

Luke Halsell
9426 FM 2606
Henrietta, Texas 76365-6401

Sherri Halsell
9426 FM 2606
Henrietta, Texas 76365-6401

Bob Howard & L C Harrison
The Clay County Farm Bureau
PO Box 97
Henrietta, Texas 76365-0097

Tommy Henderson
PO Box 97
Henrietta, Texas 76365-0097

Mark Hill
2404 N. Lucille St.
Henrietta, Texas 76365-5619

Edna Mae Klein
1178 Edna Dr.
Henrietta, Texas 76365-5519

Jennica Lambert
1338 T Bone Rd.
Wichita Falls, Texas 76310-0491

Darlene Lyde
18255 FM 2332
Henrietta, Texas 76365-5305

Mary Ellen Maddox
18758 FM 2332
Henrietta, Texas 76365-5303

Randi M. Maddox
18758 FM 2332
Henrietta, Texas 76365-5303

Adeline McDonnell
PO Box 547
Henrietta, Texas 76365-0547

Caroline McDonnell
PO Box 547
Henrietta, Texas 76365-0547

Jan Greer McDonnell
PO Box 547
Henrietta, Texas 76365-0547

Robert E McKnight, Jr.
Texas & Southwestern Cattle Raisers
Association
1005 Congress Ave., Ste 1050
Austin, Texas 78701-2463

Carol Staley Morrow
311 9th St.
Nocona, Texas 76255-2908

Jason P. Obermier
12655 State Highway 148 N.
Henrietta, Texas 76365-5556

Jimmy Dale Obermier
12107 State Highway 148 N.
Henrietta, Texas 76365-5560

William O'Malley
Umhaill Valley LLC
PO Box 114
Henrietta, Texas 76365-0114

Joe J. Parker, Jr.
PO Box 245
Byers, Texas 76357-0245

Pamela Maddox Payne
2328 Jim Maddox Rd.
Henrietta, Texas 76365-5314

Patricia E. Reynosa Nava
1500 Jackson St., Apt 611
Dallas, Texas 75201-4923

Jake Roberson
903 E. Ikard St.
Henrietta, Texas 76365-3012

Taiwan Tremayne Savage, Jr.
1500 Jackson St., Apt 611
Dallas, Texas 75201-4923

Cecil Sparkman & Sam Scaling
The Clay County Farm Bureau
PO Box 97
Henrietta, Texas 76365-0097

Ken Scott
PO Box 1592
Bowie, Texas 76230-1592

Johnnie Shaw
1378 FM 1197
Henrietta, Texas 76365-5503

James C. Skinner
PO Box 2540
San Angelo, Texas 76902-2540

Clint Staley
1509 New Castle Rd.
Southlake, Texas 76092-4227

Gil Staley
303 Park Rd.
Nocona, Texas 76255-3626

Joe A. & Phil Staley
303 Park Rd.
Nocona, Texas 76255-3626

Daniel W. Stansbury, Jr.
Lively Ranch Ltd.
25 Highland Park Vlg., Ste. 100-364
Dallas, Texas 75205-2789

James Dell Stine, III
Quail Coalition
2410 County Road 394
Princeton, Texas 75407-4204

Catherine J. Webking
303 Colorado St., Ste. 2400
Austin, Texas 78701-4653

Chris Wellborn
1410 Eagle Bnd.
Southlake, Texas 76092-9426

Kelly Dean Yandell
4413 Wildwood Rd.
Dallas, Texas 75209-2801

Richard David Yeates
Texas Wildlife Association
3660 Thousand Oaks Dr., Ste. 126
San Antonio, Texas 78247-3123