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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 9, 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: **CRYSTAL SPRINGS WATER CO., INC.**
TCEQ DOCKET NO. 2022-0324-MWD

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2022-0324-MWD

**APPLICATION BY CRYSTAL
SPRINGS WATER CO., INC.
FOR TPDES PERMIT NO.
WQ0016005001**

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**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing and a Request for Reconsideration in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Based on the information submitted in the hearing requests and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing requests of Luke Budd and Brent Liedtke. OPIC further recommends the Commission refer the issues specified in Section III.I for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. OPIC also recommends the Commission deny the request for reconsideration submitted by Luke Budd and Brent Liedtke.

B. Background of Facility

Crystal Springs Water Co., Inc. (Applicant) applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016005001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The draft

permit authorizes a discharge of treated domestic wastewater at an Interim I volume not to exceed a daily average flow of 0.25 MGD, an Interim II volume not to exceed a daily average flow of 0.50 MGD and a Final volume not to exceed a daily average flow of 0.75 MGD.

The facility will be located approximately 0.25 mile north of the intersection of Crockett Martin Road and Farm-to-Market Road 2090, in Montgomery County, Texas 77306. The treated effluent will be discharged to an unnamed tributary of Caney Creek, thence to Caney Creek in Segment No. 1010 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary and high aquatic life use for Caney Creek. The designated uses for Segment No. 1010 are primary contact recreation, public water supply, and high aquatic life use.

The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l five-day carbonaceous biochemical oxygen demand (CBOD₅), 15 mg/l total suspended solids (TSS), 3 mg/l ammonia-nitrogen (NH₃- N), 63 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). In the Interim I phase, the effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow. In the Interim II and Final phases, the effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow) and be dechlorinated to a level less than 0.1 mg/l total chlorine residual.

C. Procedural Background

The TCEQ received the application on June 18, 2021, and declared it administratively complete on July 26, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English on July 30, 2021, in the *Houston Chronicle dba Conroe Courier*,

and in Spanish on August 3, 2021 in the *Buena Suerte Newspaper*. The Executive Director (ED) completed the technical review of the application on September 17, 2021 and prepared the proposed draft permit, which if approved, would establish the conditions under which the Facility must operate. The Notice of Application and Preliminary Decision (NAPD) was published in English on November 11, 2021, in the *Houston Chronicle dba Conroe Courier*, and in Spanish on November 16, 2021 in the *Buena Suerte Newspaper*. The public comment period for this application closed on December 16, 2021. The Chief Clerk mailed the ED's Decision and Response to Comments on February 2, 2022. The deadline for filing requests for a contested case hearing was March 4, 2022. The Commission received timely filed hearing requests and a request for reconsideration from Luke Budd and Brent Liedtke.

II. APPLICABLE LAW

A. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's Decision and Response to Comments. The request must expressly state that the person is requesting reconsideration of the decision and give reasons why the decision should be reconsidered.

B. Requests for Hearing

The application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for

applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be considered in determining whether a person is affected 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 and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

As provided by 30 TAC § 55.205(a), 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.

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the RTC, and that are relevant and material to the Commission's decision on the application. Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

III. DISCUSSION

A. Determination of Affected Person Status

Luke Budd and Brent Liedtke

Luke Budd and Brent Liedtke (Requestors) submitted their first hearing request on December 8, 2021 during the public comment period. Requestors also submitted a second hearing request on March 4, 2022. The hearing requests state that Luke Budd owns a property approximately one third mile from the plant. The hearing requests also state that Mr. Liedtke resides on the Budd property. The address provided in the hearing requests is included as tract no. 14 in the Adjacent & Downstream Land Ownership Table submitted along with the application. The ED's GIS map confirms that this address is located within close proximity of the proposed discharge route.

The owner of tract no. 14 is shown as Kline Budd in the Adjacent & Downstream Landowners information in the application. OPIC's understanding is that the deed to this property is now held by Luke Budd's brother, Steven Budd. A timely-filed reply by the Requestors could clarify details; however, from the information available in the hearing requests, the Adjacent & Downstream Landowners information in the application, and the ED's map, it appears that both Requestors reside on this property, which is very close to the facility and even closer to the proposed outfalls and the discharge route.

Requestors' concerns regarding the wastewater treatment plant's location are addressed by the Commission's rules at 30 TAC Chapter 309, subchapter B, relating to domestic wastewater plant siting. Based on the Requestors' concerns regarding the unsuitability of the site location and given their proximity to the facility and discharge route, OPIC finds that Requestors have a personal justiciable interest in this matter that is not common to the members of the general public.

Therefore, OPIC recommends the Commission find the Requestors are affected persons in this matter.

A. Issues Raised in the Hearing Request of the Affected Persons

Requestors raised the following issues:¹

1. Whether the facility site location is in a flood plain or is otherwise unsuitable under the criteria of 30 TAC Chapter 309, Subchapter B;
2. Whether the draft permit is adequately protective of water quality;
3. Whether the facility's location or the discharge route would have an adverse impact on Requestors' access to property or use and enjoyment of property; and
4. Whether the proposed discharge route has been properly characterized.

D. Issues Raised in the Hearing Requests Remain Disputed

There is no agreement between the hearing requestors and the ED on the issues raised in the hearing requests; therefore, they remain disputed.

E. Whether the Disputed Issues Are Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

¹ Requestors filed lengthy comments and requests. However, they raised few issues that could be interpreted as being within the Commission's jurisdiction. OPIC's response will not address any of the varied topics raised regarding the intent of the applicant or the customers to be served by the proposed plant.

F. Issues Raised by the Affected Persons During the Comment Period

Issues 1-3 in Section III. C. above were raised by the Requestors during the public comment period. Issue No. 4 was not raised during the comment period. Because Issue No. 4 was raised only in the hearing request filed on March 4, 2022, OPIC cannot recommend this issue be referred to hearing.

G. The Hearing Requests are Based on Issues Raised in Public Comments Which Have Not Been Withdrawn

Issue Nos. 1-3 were raised in comments that have not been withdrawn.

H. Issues That are Relevant and Material to the Decision on the Application

To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission’s decision to issue or deny a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986). Issue Nos. 1-3 are relevant material to the Commission’s decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A).

The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapter 307 and 309. These responsibilities include ensuring compliance with the Texas Surface Water Quality Standards. The purpose of these standards is to “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.” 30 TAC § 307.1. Also, the wastewater permit does not allow the permit holder to create or maintain a nuisance that interferes with the use and enjoyment of property. Furthermore, the standards for the location of domestic wastewater treatment facilities are covered under the 30

TAC Chapter 309, Subchapter B, relating to domestic wastewater effluent limitations and plant siting. Therefore, Issue Nos. 1 - 3 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

I. Issues Recommended for Referral

For the reasons discussed above, OPIC recommends referral of the following issues to SOAH for a contested case hearing:

1. Whether the facility site location is in a flood plain or is otherwise unsuitable under the criteria of 30 TAC Chapter 309, Subchapter B;
2. Whether the draft permit is adequately protective of water quality; and
3. Whether the facility's location or the discharge route would have an adverse impact on Requestors' access to property or use and enjoyment of property.

J. Maximum Expected Duration of Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

K. Request for Reconsideration

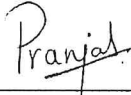
The Commission received timely-filed request for reconsideration from Luke Budd and Brent Liedtke. Their request for reconsideration is based on the same concerns as their hearing request. As discussed earlier, the concerns regarding the wastewater treatment plant site's suitability are relevant to this application. However, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the application should be denied on the basis these concerns. OPIC is recommending a contested case hearing on this, and other issues as discussed in Section III.I. Therefore, OPIC recommends denial of the request for reconsideration.

IV. CONCLUSION

OPIC recommends the Commission grant the hearing requests of Luke Budd and Brent Liedtke. OPIC further recommends the Commission refer the issues specified in Section III.I for a contested case hearing at the SOAH with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny the request for reconsideration.

Respectfully submitted,

Vic McWherter
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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2022, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and a Request for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Pranjal M. Mehta

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DOCKET NO. 2022-0324-MWD; PERMIT NO. WQ0016005001

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