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Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 25, 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: HARRINGTON TURNER ENTERPRISES LP and RESTORE THE
GRASSLANDS LLC
TCEQ DOCKET NO. 2022-0326-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda D. Pesonen", with a long horizontal flourish extending to the right.

Amanda D. Pesonen
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2022-0326-MWD

APPLICATION BY	§	BEFORE THE
HARRINGTON TURNER	§	TEXAS COMMISSION ON
ENTERPRISES LP and RESTORE	§	ENVIRONMENTAL
THE GRASSLANDS LLC FOR	§	QUALITY
TPDES PERMIT NO.	§	
WQ0016003001	§	

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

To the Members of the Texas Commission on Environmental Quality:

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

I. INTRODUCTION

A. Summary of Position

Before the Commission is the application by Harrington Turner Enterprises LP and Restore the Grasslands LLC (Applicants) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016003001. The Commission received timely comments and requests for a contested case hearing from approximately 180 individual requestors, Rolling Ridge Estates Homeowners Association, the City of Murphy, the City of Parker, and North Texas Municipal Water District. The Commission also received requests for reconsideration from 31 individual requestors and the City of Parker. For the reasons stated herein, OPIC recommends denying all requests for reconsideration but granting many of the hearing requests. OPIC also recommends referring several individuals to SOAH for an affectedness hearing. OPIC further acknowledges that a person whose request for a contested case hearing is denied may still seek to be admitted as a party if any hearing request is granted on this application, in accordance with Title 30, Texas Administrative Code (TAC) § 55.211(e). *See also* 30 TAC § 80.109(a).

B. Background of Facility

On May 26, 2021, Applicants applied to the TCEQ for new TPDES Permit No. WQ0016003001. If issued, this permit would authorize the disposal of treated domestic wastewater at the proposed Collin County MUD No. 7 Wastewater Treatment Plant at an annual average flow not to exceed 0.2 million gallons per day (MGD).

The facility is proposed to be located approximately 0.4 miles northwest of the intersection of North Murphy Road and Rolling Ridge Drive, in Collin County, Texas 75002. The treated effluent will be discharged to Maxwell Creek, then to Muddy Creek, then to Lake Ray Hubbard in Segment No. 0820 of the Trinity River Basin.

During the period beginning on the date of issuance and lasting through the completion of expansion to the 0.2 MGD facility, the permittee is authorized to discharge subject to the following effluent limitations: The daily average flow of effluent shall not exceed 0.1 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 278 gallons per minute (GPM).

Effluent Characteristic	Discharge Limitations				Min. Self-Monitoring Requirements	
	Daily Avg.	7-day Avg.	Daily Max.	Single Grab	Report Daily Avg. & Max. Single Grab	
	mg/l (lbs/day)	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (8.3)	15	25	35	One/week	Grab
Total Suspended Solids	15 (13)	25	40	60	One/week	Grab
Ammonia Nitrogen	3 (2.5)	6	10	15	One/week	Grab
Total Phosphorus	0.5 (0.4)	1	2	3	One/week	Grab
<i>E. coli</i> colony-forming units or most probable number per 100 ml	126	N/A	N/A	399	One/month	Grab

During the period beginning on the completion of expansion to the 0.2 MGD facility and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations: The daily average flow of effluent shall not exceed 0.2 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 556 GPM.

Effluent Characteristic	Discharge Limitations				Min. Self-Monitoring Requirements	
	Daily Avg.	7-day Avg.	Daily Max.	Single Grab	Report Daily Avg. & Max. Single Grab	
	mg/l (lbs/day)	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	10 (17)	15	25	35	One/week	Grab
Total Suspended Solids	15 (25)	25	40	60	One/week	Grab
Ammonia Nitrogen	3 (5)	6	10	15	One/week	Grab
Total Phosphorus	0.5 (0.8)	1	2	3	One/week	Grab
<i>E. coli</i> colony-forming units or most probable number per 100 ml	126	N/A	N/A	399	One/month	Grab

C. Procedural Background

The TCEQ received the permit application on May 26, 2021, and declared it administratively complete on August 25, 2021. Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Collin County Commercial Record* on September 2, 2021, and in Spanish in the *Al Día* on September 1, 2021. Applicant published the combined Notice of Application and Preliminary Decision (NAPD) and Public Meeting in English in the *Collin County Commercial Record* on October 28, 2021, and in Spanish in the *Al Día* on November 3, 2021. A public meeting was held on December 6, 2021, via webcast, and the public comment period for the application closed on that date. The Chief Clerk mailed the

ED's Decision and Response to Comments (RTC) on February 11, 2022. The deadline for filing requests for a contested case hearing was March 14, 2022.

The Commission received timely comments and requests for a contested case hearing from approximately 180 individual requestors, Rolling Ridge Estates Homeowners Association, the City of Murphy, the City of Parker, and North Texas Municipal Water District (NTMWD). The Commission also received requests for reconsideration from 31 individual requestors and the City of Parker. For the reasons stated herein, OPIC recommends denying all requests for reconsideration but granting many of the hearing requests. OPIC also recommends referring several individuals to SOAH for an affectedness hearing. OPIC notes that a person whose request for a contested case hearing is denied may still seek to be admitted as a party at the State Office of Administrative Hearings (SOAH) if any hearing request is granted on this application. 30 TAC § 55.211(e); *see* 30 TAC § 80.109(a).

II. APPLICABLE LAW

A. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30 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 RTC. The request must expressly state that the person is requesting reconsideration of the ED's 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 requestor'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.

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.

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.

30 TAC § 55.205(b).

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 ED's 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. Requests for Reconsideration

The Commission received timely requests for reconsideration from the following persons: Brenda Bement, Greg Blakey, Seth Carroll, Wendy Clark, Don & Scheri Cloud, Maya Dalal, Carrie Davis, Amy Deans, Harry Donaghy, Angel Greely, Andrea Hanson, Michael Haynes, Dustin Henson, Tony Hernandez, Adam Lalami, Angelique Loncar, Amy Lopez, April Miller, Carolyn Moebius, Jonathan Phelps, Lucy Powell, RC RCHE, Mary Sanders, Frank Sarris, Marcus Stephens, Sabrina Syed, Hiralben Vora, Tarang Vora, Lisa Walker, Anniece Ward, Jim Wharton, and the City of Parker. The requests raise many concerns including, among others, water quality, nuisance odors, regionalization, health effects, flooding, and property values. As more fully discussed below, OPIC finds many issues raised in the requests are relevant and material to the decision on this application. However, an evidentiary record would be necessary for OPIC to make

a recommendation to the Commission as to whether the ED's decision should be reconsidered. At this time, an evidentiary record does not exist, and therefore OPIC cannot recommend that the requests for reconsideration be granted.

B. Determination of Affected Person Status

The Commission received timely public comments and hearing requests from the North Texas Municipal Water District (NTMWD), the City of Murphy, the City of Parker, Rolling Ridge Estates HOA, and many individual requestors.

Governmental Entities

North Texas Municipal Water District

NTMWD's hearing requests are based on its concerns about the application's inconsistency with the State's regionalization policy due to NTMWD's status as the designated entity to design, construct, and be the operating agency for a regional sewerage system in the Collin County region. This interest is protected by the law under which this application will be considered.

In accordance with 30 TAC § 55.203(c)(7), governmental entities may be affected persons based on their statutory authority over or interest in the issues relevant to the application. Article XVI, section 59, of the Texas Constitution states that “[t]he conservation and development of all of the natural resources of this State, ... including the control, storing, preservation and distribution of ... the waters of its rivers and streams ... are each and all hereby declared public rights and duties.” Tex. Const. art. XVI, § 59(a). In accordance with this declaration, the Legislature is authorized to create “conservation and reclamation districts..., which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this

amendment....” *Id.* § 59(b). NTMWD is a conservation and reclamation district created pursuant to this constitutional directive.

As discussed in its hearing requests, the Texas Legislature created NTMWD in 1951 to serve regional water and wastewater needs in the area north and east of Dallas. In 1972, the Texas Water Quality Board designated NTMWD as the regional wastewater service provider for the watershed area of the East Fork Trinity River. This designation is memorialized in Subchapter C of 30 TAC, Section 351. Specifically, NTWMD is designated as the governmental entity to design, construct, and be the operating agency for a regional sewerage system in the watershed area of the East Fork of the Trinity River that lies in Collin County and to provide the services therefor. 30 TAC §§ 351.32 and 351.33.

OPIC finds that NTMWD has statutory authority over or interest in the issues raised by its hearing requests which are relevant to the application and further finds that NTMWD has unique justiciable interests related to a legal right, duty, privilege, power, or economic interest affected by the application. NTMWD asserts that it operates two existing wastewater treatment facilities, and is currently constructing a third, in order to provide wastewater service to an area inclusive of Applicants’ proposed development. NTMWD further states that granting Applicants’ application would undermine significant resources and planning efforts it has devoted to developing a regional wastewater management system. For these reasons, OPIC finds TRWD has successfully demonstrated that it is an affected person in this matter.

City of Murphy

Generally, the City of Murphy’s requests raise concerns related to the design of the proposed facility, water quality and existing uses, human health and local flora and fauna, completeness of the application, inconsistency with the State’s regionalization policy, nuisance

conditions, flooding, and the legal status of Harrington / Turner Enterprises LP. Many of these interests are protected by the law under which this application will be considered.

The municipalities of Texas have general authority to promote and protect the health and welfare of persons residing within their borders and within their extraterritorial jurisdiction. Texas Health & Safety Code § 121.003; Texas Local Gov't Code § 42.001. Furthermore, Texas Water Code, Chapter 26, Subchapter E authorizes cities to carry out specific duties, functions, and programs for purposes of water pollution prevention. For these reasons, OPIC finds that the City of Murphy is a governmental entity with statutory authority over its stated issues of concern and, therefore, an affected person pursuant to 30 TAC § 55.203(c)(6).

Moreover, the City of Murphy, through a connection with NTMWD, is a wastewater treatment service provider contending it has available capacity to provide service in this region. OPIC therefore finds that the City of Murphy has a unique justiciable interest under Texas Water Code (TWC) § 26.0282 related to a legal right, duty, privilege, power, or economic interest affected by the application on this basis as well. Because the facility would provide service the City of Murphy contends it has the ability to provide, these interests are not common to the general public. The City of Murphy's stated desire to continue to operate as a regional wastewater treatment service provider is reasonably related to its concerns about the application, including the application's potential conflicts with the State's policies on regionalization and need.

For all these reasons, OPIC finds that the City of Murphy has demonstrated that it is an affected person in this matter.

City of Parker

Generally, the City of Parker raises concerns related to design of the proposed facility, water quality and existing uses, human health and local flora and fauna, completeness of the

application, inconsistency with the State's regionalization policy, nuisance conditions, and Applicants' compliance history. Each of these interests are protected by the law under which this application will be considered.

The municipalities of Texas have general authority to promote and protect the health and welfare of persons residing within their borders and within their extraterritorial jurisdiction. Texas Health & Safety Code § 121.003; Texas Local Gov't Code § 42.001. Furthermore, Texas Water Code, Chapter 26, Subchapter E authorizes cities to carry out specific duties, functions, and programs for purposes of water pollution prevention. For these reasons, OPIC finds that the City of Murphy is a governmental entity with statutory authority over its stated issues of concern and, therefore, an affected person pursuant to 30 TAC § 55.203(c)(6).

Moreover, the City of Parker, through a contractual arrangement with NTMWD, is a wastewater treatment service provider contending it has available capacity to provide service in this region. OPIC therefore finds that the City of Parker has a unique justiciable interest under Texas Water Code (TWC) § 26.0282 related to a legal right, duty, privilege, power, or economic interest affected by the application on this basis as well. Because the facility would provide service the City of Parker contends it has the ability to provide, these interests are not common to the general public. The City of Parker's stated desire to continue to operate as a regional wastewater treatment service provider is reasonably related to its concerns about the application, including the application's potential conflicts with the State's policies on regionalization and need.

For all these reasons, OPIC finds that the City of Parker has demonstrated that it is an affected person in this matter.

Rolling Ridge Estates Homeowners Association

The Commission received one request from Tom Marshall on behalf of Rolling Ridge Estates Homeowners Association (HOA). To establish standing under 30 TAC § 55.205, a group or association must timely submit comments; show the interests the group seeks to protect are germane to its purpose; show that neither the claim asserted nor the relief requested requires the participation of individual members; and identify, by name and residential address, one or more members of the group who would otherwise have standing to request a hearing in their own right.

Rolling Ridge Estates HOA submitted a timely comment and hearing request and identified Mr. Tom Marshall as a member who would have standing to request a hearing in his own right. As further detailed below, OPIC finds Mr. Marshall is an affected person in this matter and does have standing to request a hearing. The request states that the HOA's purpose is to protect members' home values including through the protection of air and water quality and the prevention of nuisance conditions. OPIC finds the interests the HOA seeks to protect are germane to its purpose; moreover, although consideration of financial interests falls outside TCEQ's jurisdiction, to the extent the HOA raises issues related to water quality and nuisance odors, these interests are protected under the law under which this application will be considered. Finally, OPIC finds that neither the claim asserted nor the relief requested requires the participation of individual members. Thus, OPIC finds that Rolling Ridge Estates HOA qualifies as an affected person in this matter.

Individual Requestors

Requestors Residing Within One Mile of the Facility

According to the map prepared by the ED, the following hearing requestors reside within one mile of the facility: Mir Abidi, Elizabeth Abraham, Tracy Allen, Roxanne Bogdan, Amber Boley, Linda Braswell, Patrick Calabria, Kim Caldwell, Harold Camp, Lance Caughtfield, Wendy

Clark, Don & Scheri Cloud, Ashley Conner, Meerna Dalal, Cyndi Daugherty, Rick Debus, Tami DeWeese, Jeffry Dwight, Alicia Evans, Amanda Ferrara, Karen Fey, Linda Fletcher, Ronald Friedline, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Laura Hernandez, Charles Ho, Jena Holton, John Holton, Deborah Ison, Mary Nell Jackson, Mary Trudy Jackson, Brian Jones, Rico Jones & Ariel Tonnu, Kay Learned, Greg Ligon, Susan Ligon, Angelique Loncar, Linda & Steve Loop, Amy Lopez, Rudy Lopez, Dianne Lundberg, Edwin Lundberg, Andrew Malczewski, Mayela Malczewski Jessica Marshall, Tom Marshall (individually and for Rolling Ridge Estates HOA), Teral McDowell, Carrolyn Moebius, James Moebius, Amit Nangia, Ludwig Orozco, Lynne Orozco (individually and for Orozco Family Living Trust), Lee Perttle, Emily Plummer, Heather Powell, Juli Richards, Soumit Roy, Sylvia Roy, Kim Ryan, Rhonda Salas¹, Frank Sarris, Dan Shoop, Helena Thompson, Leticia Trevino, Sunil Unnikrishnan, Ranjani Venkataraman, Diane Viere, Gordy Viere, Alexander Vinyukov, Ashley Wilson, Matthew Wilson, and Robert Wunderlich. These requestors raised many concerns including, among others, water quality, protection of human health and safety, domestic animals and wildlife; nuisance odors; regionalization and need; accuracy of the application; and notice and public participation. These interests are protected by the law under which this application will be considered.

Each of these requestors has a personal justiciable interest based on their proximity to the facility and their concerns regarding water quality, human health and safety, and nuisance odors,

¹ Ms. Salas submitted a hearing request on September 24, 2021, but identified no issues in her request. She then submitted a public comment September 27, 2021, identifying nuisance odors as a justiciable issue. OPIC acknowledges that the hearing request filed by Ms. Salas raises a referable issue only if considered in combination with her public comment. OPIC finds it reasonable to consider her request as incorporating her comment. At the November 3, 2021, Commissioners' Agenda meeting, a hearing requestor on TCEQ Docket No. 2021-1003-AGR was found to be an affected person and granted a hearing when the Commission considered the totality of the circumstances of her separately-filed comments and hearing request. *See* Tex. Comm'n on Env't'l Qual., November 3, 2021, Commissioners' Agenda, New Business Agenda Item 1, <https://www.youtube.com/watch?v=qH4RllogjfQ>, at 2:58-3:43. OPIC therefore recommends that Ms. Salas likewise be considered an affected person.

among others. Each requestor's proximity shows that they could be impacted in a manner not common to the general public and distinguishes their personal justiciable interests from an interest common to the general public. The § 55.203 affected person determination factors indicate that each requestor qualifies as an affected person. First, their concerns are interests protected by the law under which this application is being considered. Second, a reasonable relationship exists between those interests and the regulation of water quality. Finally, their proximity to the facility and the activities to be regulated under this permit increases the likelihood of impacts to requestors' stated interests. OPIC therefore finds that each of these requestors qualifies as an affected person in this matter.

Gregory Lane and Ranchview Lane Residents

The Commission received comments and a request for a contested case hearing in the form of a petition signed by many residents of Gregory Lane and Ranchview Lane. In their comments, the residents raised issues concerning wildlife protection, notice and public participation, property values, increased population density, and traffic. The residents did not identify any issues in their hearing request filed December 5, 2021, but did refer to their previously-filed comments and noted that their comments invoked the words "contest" and "oppose." OPIC recommends finding that by referencing previously-filed comments demonstrating an intent to contest the permit application, the hearing request substantially complies with TCEQ rules and incorporates the issues raised in public comments into the hearing request. *See* Tex. Comm'n on Env't'l Qual., November 3, 2021, Commissioners' Agenda, New Business Agenda Item 1, <https://www.youtube.com/watch?v=qH4RllogjfQ>, at 2:58-3:43 (granting a hearing request to a requestor in TCEQ Docket No. 2021-1003-AGR after considering the totality of the circumstances related to the requestor's filing of comments and a hearing request).

Some hearing requestors joining in the petition filed a hearing request only by signing the petition, while others also filed their own individual comments and hearing requests. Requestors appearing only on the petition include: Dave Cooper, Elizabeth Cross, Frank Jackson, Ed Standridge, Hilary Sturges, Patrick Taylor, Mayra Trejo, and Carol Wolniewicz. Tim Daugherty, Margaret Henry, James Spivey and Brendan Sturges appear on the petition and also filed their own comments and hearing requests; however, their individual hearing requests do not raise any justiciable issues and therefore these requestors can only be considered affected persons by their participation on the Gregory Lane and Ranchview Lane petition. Requestors appearing on the petition who also filed their own comments and hearing requests and may independently be considered affected persons include: Harold Camp, Wendy Clark, Katherine Harvey, Laura Hernandez (for Hernandez Family Living Trust), Mary Nell Jackson, Mary Trudy Jackson, Linda & Steve Loop, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, and Diane Viere.

According to the map prepared by the ED, all requestors appearing on the Gregory Lane and Ranchview Lane petition reside within one mile of the facility. As noted above, these requestors raised issues concerning wildlife protection, notice and public participation, property values, increased population density, and traffic. Some of these interests are protected by the law under which this application will be considered.

Each of these requestors has a personal justiciable interest based on their proximity to the facility and their concerns regarding wildlife protection and notice and public participation. Each requestor's proximity shows that they could be impacted in a manner not common to the general public and distinguishes their personal justiciable interests from an interest common to the general public. The § 55.203 affected person determination factors indicate that each requestor qualifies

as an affected person. First, their concerns are interests protected by the law under which this application is being considered. Second, a reasonable relationship exists between those interests and the regulation of water quality. Finally, their proximity to the facility and the activities to be regulated under this permit increases the likelihood of impacts to requestors' stated interests. OPIC therefore finds that Harold Camp, Wendy Clark, Dave Cooper, Elizabeth Cross, Tim Daugherty, Katherine Harvey, Margaret Henry, Laura Hernandez (for Hernandez Family Living Trust), Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Linda & Steve Loop, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Mayra Trejo, Diane Viere and Carol Wolniewicz qualify as affected persons in this matter.

Requestors Residing in Relatively Close Proximity to the Facility and the Discharge Route

According to the map prepared by the ED, the following hearing requestors reside over one mile but within approximately two miles of the facility and reside in close proximity to the discharge route: Ellen Davis, Timothy Davis, Laura Deel, Shawna Fastnaught, Rebecca Fernandez, Robert Fernandez, Mary Henshaw, William Henshaw, Patrick Hoare, Alex Jaczak, Lauren Jaczak, and Melinda Kellerman. Although these requestors' interests may be more attenuated than the interests of requestors residing nearer to the facility, OPIC finds these requestors have identified many personal interests which increase the likelihood they will be impacted in a manner not common to the general public, including concerns regarding effects on water quality and whether existing uses will be impaired, effects on human health and local flora and fauna, and nuisance odors. OPIC therefore recommends these requestors be referred to SOAH for an affectedness hearing.

Requestors Residing Farther from the Facility and the Discharge Route

According to the map prepared by the ED, the following hearing requestors reside over one mile from the facility and do not reside in close proximity to the discharge route: Ashvin Amin, Lynette Ammar, David Angeles, Jennifer Berthiaume, Kristen Bewley, Robert Bucci, Zdenka Bucci, Jene Butler, Julian Calabria, Kathleen Calabria, Arvind Chokhani, Vivian Dang, Dominique Duncan, Zachary Eddy, Judi Evans, Shannon Frost, Boyd Geiger, Dan Gould, Mary Gould, Suzan Grabow, Colleen Halbert, William Harvey, Ray Hemmig, Ruth Hemmig, Tye Holmes, Deborah Hyatt, Robert Jaczak, Scott Jeffries, Nicole Jennings, Lisa Kester, Theodore Lane, Joseph Lozano, Susan Lozano, Ellen Marshall, Melinda Marshall, Kevin McGillis, Heidi Meixelsperger, Ken Meixelsperger, James Morris, Mary Morris, Sami Munassar, Margaret Palmer, Elise Peek, Jonathan Phelps, Thomas Powell, Srinath Ramaswamy, RC RCHE, Asit Shankar, David Spriggs, Jessica Steel, Travis Steel, Ray Stelcheck, Helen Stephens, Carolyn Terando, Bethany Ulteig, Jana Waller, and Rachel Weeks.

While there are no statutory distance limitations on requestors that may be considered affected persons for this application, OPIC cannot find that these requestors, located more than one mile from the facility and not along the discharge route, have shown a personal justiciable interest which is distinct from the entire community's interest in protecting Maxwell Creek as a vital resource. Also, based on the location of these requestors relative to the facility, OPIC cannot find that the regulated activity likely will impact their health, safety, or use of property. OPIC therefore finds that none of these hearing requestors qualify as an affected person in this matter.

Requestors Whose Hearing Requests Should be Denied for Other Reasons

Although the following requestors reside within one mile of the facility, OPIC finds their hearing requests should be denied for other reasons. The following requestors raised no issues in

their hearing requests: Harrison Daugherty, Judith Friedline, Jose Victor Muller, Raymond Proctor, Steven Trieu, and Greg Williams. The following requestors only raised non-justiciable issues such as effects on property values, flooding, or location of the facility: Hal Camp, Scott Clark, Barbara Dube, Tony Hernandez, Jason Lampier, Ashley Sekimoto, Ryan Sekimoto, and Katherine Wunderlich. The following requestors only raised issues in their hearing requests that were not based on their public comments: Michael Dalal, Moncy George, Jani Jasadiredja, and Lucy Powell. OPIC therefore finds that none of these hearing requestors qualify as an affected person in this matter.

Representative Candy Noble

In her capacity as State Representative of District 89, Candy Noble states that she would like to formally contest this application. As a member of the legislature who represents the area in which the facility is located, Representative Noble may request a public meeting, and the TCEQ did conduct such a meeting on December 6, 2021. However, the law does not provide for a State Representative to have standing based solely on their capacity as a legislator, or to request a contested case hearing on behalf of constituents; therefore, if Representative Noble is requesting a contested case hearing, her hearing request must be considered on an individual basis. Representative Noble has provided no information regarding the location of her residence and its distance relative to the proposed facility and no assertion of a personal justiciable interest. Therefore, to the extent that Representative Noble is requesting a hearing in her individual capacity, OPIC cannot find that she is an affected person.

C. Issues Raised in the Hearing Requests of Affected Persons

The affected persons raised the following issues in both timely comments and hearing requests:

1. Whether the draft permit complies with applicable effluent guidelines for TPDES permits and adequately provides for protection of surface water quality. (Raised by Tracy Jo Allen, Amber Boley, Kim Caldwell, Lance Caughfield, Don & Scheri Cloud, Ashley Conner, Cyndi Daugherty, Laura Deel, Katherine Harvey, Alesha Haynes, Michael Haynes, John Holton, Mary Trudy Jackson, Alex Jaczak, Rico Jones & Ariel Tonnu, Kay Learned, Angelique Loncar, Dianne Lundberg, Edwin Lundberg, Andrew Malczewski, Mayela Malczewski, Tom Marshall, Carrolyn Moebius, James Moebius, Lynne Orozco, Orozco Family Living Trust, Lee Perttle, Emily Plummer, Heather Powell, Juli Richards, Sylvia Roy, Dan Shoop, Helena Thompson, Sunil Unnikrishnan, Alexander Vinyukov, Matthew Wilson, City of Murphy, Rolling Ridge Estates HOA)
2. Whether the design of the proposed facility is adequate to ensure required water quality will be achieved. (Raised by Linda Fletcher, Jessica Marshall, City of Murphy, City of Parker)
3. Whether the draft permit and the operation of the proposed facility will be adequately protective of groundwater quality. (Raised by Don & Scheri Cloud, Tami DeWeese, Alex Jaczak, Mayela Malczewski, Jessica Marshall, Carrolyn Moebius, Ludwig Orozco, Orozco Family Living Trust, Kimberly Ryan, City of Murphy, City of Parker)
4. Whether the draft permit and the operation of the proposed facility will be adequately protective of human health and safety. (Raised by Elizabeth Abraham, Tracy Jo Allen, Linda Braswell, Lance Caughfield, Wendy Clark, Don & Scheri Cloud, Meerna Dalal, Cyndi Daugherty, Ellen Davis, Timothy Davis, Rick Debus, Laura Deel, Tami DeWeese, Jeffrey Dwight, Alicia Evans, Shawna Fastnaught, Rebecca Fernandez, Robert Fernandez, Amanda Ferrara, Robert Friedline, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Mary Henshaw, William Henshaw, Laura Hernandez, Mary Trudy Jackson, Lauren Jaczak, Rico Jones & Ariel Tonnu, Melinda Kellerman, Kay Learned, Dianne Lundberg, Edwin Lundberg, Andrew Malczewski, Mayela Malczewski, Teral McDowell, Carrolyn Moebius, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, Sylvia Roy, Kimberly Ryan, Dan Shoop, Helena Thompson, Leticia Trevino, Sunil Unnikrishnan, Ranjani Venkataraman & Amit Nangia, Diane Viere, Gordy Viere, Ashley Wilson, City of Murphy, City of Parker)
5. Whether the draft permit and the operation of the proposed facility will be adequately protective of local flora and fauna. (Raised by Tracy Jo Allen, Linda Braswell, Patrick Calabria, Kim Caldwell, Harold Camp, Lance Caughfield, Wendy Clark, Don & Scheri Cloud, Ashley Conner, Dave Cooper, Elizabeth Cross, Cyndi Daugherty, Tim Daugherty, Laura Deel, Tami DeWeese, Jeffrey Dwight, Alicia Evans, Shawna Fastnaught, Rebecca Fernandez, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Margaret Henry, Laura Hernandez, Charles Ho, Patrick Hoare, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Alex Jaczak, Lauren Jaczak, Rico Jones & Ariel Tonnu, Melinda Kellerman, Kay Learned, Linda & Steve Loop, Amy Lopez, Rudy Lopez, Dianne Lundberg, Edwin Lundberg, Andrew Malczewski, Carrolyn Moebius, James Moebius, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Lee Perttle, Emily Plummer, Juli Richards, Soumit Roy, Sylvia Roy, Kimberly Ryan, Dan Shoop, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Helena Thompson, Mayra Trejo, Leticia Trevino, Sunil Unnikrishnan, Ranjani Venkataraman & Amit Nangia, Diane

Viere, Gordy Viere, Alexander Vinyukov, Ashley Wilson, Carol Wolniewicz, City of Murphy, City of Parker)

6. Whether proposed effluent limits within the draft permit are adequate to maintain existing uses of receiving waters in accordance with TCEQ's antidegradation policy. (Raised by Kim Caldwell, Lance Caughfield, Don & Scheri Cloud, Jeffrey Dwight, Shawna Fastnaught, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Laura Hernandez, Patrick Hoare, Brian Jones, Andrew Malczewski, Jessica Marshall, Carolyn Moebius, Orozco Family Living Trust, Emily Plummer, Soumit Roy, Sylvia Roy, Ranjani Venkataraman & Amit Nangia, Ashley Wilson, City of Murphy, City of Parker)
7. Whether the draft permit contains siting, operations, maintenance, or other conditions that adequately ensure the proposed facility will not produce nuisance odors. (Raised by Mir Abidi, Linda Braswell, Harold Camp, Lance Caughfield, Don & Scheri Cloud, Tami DeWeese, Jeffrey Dwight, Alicia Evans, Shawna Fastnaught, Amanda Ferrara, Karen Fey, Alesha Haynes, Michael Haynes, Laura Hernandez, Jena Holton, Deborah Ison, Alex Jaczak, Kay Learned, Angelique Loncar, Dianne Lundberg, Andrew Malczewski, Mayela Malczewski, Jessica Marshall, Tom Marshall, Carolyn Moebius, Orozco Family Living Trust, Emily Plummer, Kimberly Ryan, Rhonda Salas, Frank Sarris, Dan Shoop, Sunil Unnikrishnan, Ranjani Venkataraman & Amit Nangia, Matthew Wilson, Robert Wunderlich, City of Murphy, City of Parker, Rolling Ridge Estates HOA)
8. Whether issuance of the draft permit is contrary to the State's regionalization policy and whether Applicants have adequately demonstrated a need for the proposed facility. (Raised by Tracy Jo Allen, Don & Scheri Cloud, Cyndi Daugherty, Andrew Malczewski, Jessica Marshall, Tom Marshall, Carolyn Moebius, Soumit Roy, Sylvia Roy, Matthew Wilson, City of Murphy, City of Parker, NTMWD)
9. Whether Applicants' compliance history or technical capabilities raise issues regarding Applicants' ability to comply with material terms of the permit. (Raised by Matthew Wilson, City of Parker)
10. Whether the application is accurate and contains all required information. (Raised by Don & Scheri Cloud, Tami DeWeese, Jeffrey Dwight, Wendy Galarneau, Alesha Haynes, Michael Haynes, Brian Jones, Andrew Malczewski, Jessica Marshall, Tom Marshall, Carolyn Moebius, Ludwig Orozco, Orozco Family Living Trust, Sylvia Roy, Dan Shoop, Ranjani Venkataraman & Amit Nangia, Matthew Wilson, City of Murphy, City of Parker)
11. Whether the public received adequate notice and opportunities for public participation during TCEQ's review of the application. (Raised by Roxanne Bogdan (for Murphy Historical Society), Harold Camp, Wendy Clark, Don & Scheri Cloud, Dave Cooper, Elizabeth Cross, Tim Daugherty, Tami DeWeese, Jeffrey Dwight, Katherine Harvey, Margaret Henry, Laura Hernandez, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Greg Ligon, Susan Ligon, Linda & Steve Loop, Andrew Malczewski, Tom Marshall, Carolyn Moebius, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, Dan Shoop, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Mayra Trejo, Diane Viere, and Carol Wolniewicz)
12. Whether operation of the proposed facility will contribute to flooding or erosion. (Raised by Roxanne Bogdan, Patrick Calabria, Kim Caldwell, Hal Camp, Harold Camp, Lance

Caughfield, Scott Clark, Wendy Clark, Don & Scheri Cloud, Ashley Conner, Cyndi Daugherty, Tami DeWeese, Jeffry, Dwight, Alicia Evans, Linda Fletcher, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Mary Henshaw, Laura Hernandez, Tony Hernandez, Charles Ho, Deborah Ison, Mary Nell Jackson, Mary Trudy Jackson, Rico Jones & Ariel Tonnu, Kay Learned, Greg Ligon, Linda & Steve Loop, Dianne Lundberg, Andrew Malczewski, Mayela Malczewski, Jessica Marshall, Tom Marshall, Carrolyn Moebius, James Moebius, Ludwig Orozco, Orozco Family Living Trust, Lee Perttle, Emily Plummer, Kimberly Ryan, Dan Shoop, James Spivey, Sunil Unnikrishnan, Diane Viere, Gordy Viere, Alexander Vinyukov, Robert Wunderlich, City of Murphy)

13. Whether operation of the proposed facility will adversely affect property values. (Raised by Linda Braswell, Harold Camp, Lance Caughfield, Wendy Clark, Don & Scheri Cloud, Ashley Conner, Dave Cooper, Elizabeth Cross, Meerna Dalal, Tim Daugherty, Ellen Davis, Timothy Davis, Jeffry Dwight, Shawna Fastnaught, Rebecca Fernandez, Katherine Harvey, Michael Haynes, Margaret Henry, Laura Hernandez, Jena Holton, John Holton, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Alex Jaczak, Lauren Jaczak, Jason Lampier, Greg Ligon, Susan Ligon, Angelique Loncar, Linda & Steve Loop, Edwin Lundberg, Andrew Malczewski, Mayela Malczewski, Tom Marshall, Carrolyn Moebius, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, Soumit Roy, Sylvia Roy, Rhonda Salas, Frank Sarris, Dan Shoop, James, Spivey, Ed Standridge, Brendan Sturges, Patrick Taylor, Mayra Trejo, Diane Viere, Robert Wunderlich, Carol Wolniewicz, and Rolling Ridge Estates HOA)
14. Whether operation of the proposed facility will create nuisance conditions such as noise and light pollution, traffic, or undesirable aesthetic conditions. (Raised by Harold Camp, Wendy Clark, Don & Scheri Cloud, Dave Cooper, Elizabeth Cross, Cyndi Daugherty, Tim Daugherty, Katherine Harvey, Margaret Henry, Laura Hernandez, Charles Ho, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Kay Learned, Linda & Steve Loop, Andrew Malczewski, Tom Marshall, Carrolyn Moebius, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Lee Perttle, Emily Plummer, Dan Shoop, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Mayra Trejo, Diane Viere, Gordy Viere, Carol Wolniewicz, and Rolling Ridge Estates HOA)
15. Whether operation of the proposed facility will adversely affect air quality. (Raised by Patrick Calabria, Kim Caldwell, Rick Debus, Laura Deel, Jeffry Dwight, Rebecca Fernandez, Amanda Ferrara, Mary Henshaw, William Henshaw, John Holton, Mary Trudy Jackson, Dianne Lundberg, Andrew Malczewski, Mayela Malczewski, Tom Marshall, Teral McDowell, Carrolyn Moebius, James Moebius, Lee Perttle, Emily Plummer, Juli Richards, Kimberly Ryan, Sunil Unnikrishnan, Gordy Viere, Ashley Wilson, Rolling Ridge Estates HOA)
16. Whether an alternative facility location or alternative collection and treatment method would be more desirable than the location and treatment method proposed in the application. (Raised by Barbara Dube, Karen Fey, Alesha Haynes, Michael Haynes, Greg Ligon, Susan Ligon, Linda & Steve Loop, Andrew Malczewski, Jessica Marshall, Carrolyn Moebius, Orozco Family Living Trust, Emily Plummer, Frank Sarris)

17. Whether issuance of the draft permit or operation of the proposed facility will contribute to increased population density. (Raised by Linda Braswell, Harold Camp, Wendy Clark, Dave Cooper, Elizabeth Cross, Tim Daugherty, Katherine Harvey, Laura Hernandez, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Linda & Steve Loop, Andrew Malczewski, Mayela Malczewski, Ludwig Orozco, Lynne Orozco, Orozco Family Living Trust, Emily Plummer, Dan Shoop, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Mayra Trejo, Diane Viere, and Carol Wolniewicz)
18. Whether Applicant Harrington / Turner Enterprises LP exists as a legal entity in the State of Texas. (Raised by Don & Scheri Cloud, Jessica Marshall, City of Murphy)
19. Whether issuance of the draft permit and operation of the proposed facility would be inconsistent with local government policy. (Raised by Don & Scheri Cloud, Andrew Malczewski, Carrolyn Moebius)

D. Issues Raised in the Hearing Requests Remain Disputed

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

E. 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. All the issues raised are issues of fact.

F. Issues Were Raised by the Requestors During the Comment Period

All the issues were raised by the requestors during the public comment period.

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

The hearing requests are based on timely comments that have not been withdrawn.

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

The hearing requests raised issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). 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 the permit. Relevant and material issues are those

governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Facility Design, Human Health and Safety, and Flora and Fauna

The TCEQ is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 305, 307 and 309, as well as under specific rules related to wastewater systems found at 30 TAC Chapters 30 and 217. The Texas Surface Water Quality Standards (TSWQS) contained in 30 TAC Chapter 307 require a proposed permit “to maintain the quality of water in the state consistent with public health and enjoyment...” 30 TAC § 307.1. Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Moreover, as explained in the ED’s RTC No. 13, surface water quality also implicates protection of groundwater, and it is the policy of the State of Texas that “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard.” *See* Texas Water Code § 26.401(c)(1).

The TSWQS further provide that “[t]he commission may not issue a permit for a new facility ... unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of water in the state.” 30 TAC § 309.12. As TCEQ regulations designate extensive criteria for the regulation of water quality and the protection of human health and safety, as well as the protection of terrestrial and aquatic animal life, Issues No. 1 through 5 are relevant and material to the Commission’s decision on this application and are appropriate for referral to SOAH.

Existing Uses and Antidegradation

The TCEQ's antidegradation policy requires that "[e]xisting uses and water quality sufficient to protect those existing uses must be maintained." 30 TAC § 307.5(b). Because TCEQ regulations designate criteria for antidegradation of water quality and protection of existing uses, Issues No. 6 is relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Nuisance Odors

Nuisance odors are specifically addressed by 30 TAC § 309.13(e), which requires that nuisance odors be abated and controlled. Under this section, there are three options for discharge permit applicants to satisfy the nuisance odor and abatement control requirements. The applicant may comply with the rule by: 1) owning the buffer zone area; 2) obtaining restrictive easements from adjacent property owners for any part of the buffer zone not owned by the applicant; or 3) providing nuisance odor control. Therefore, Issue No. 7 is relevant and material to the Commission's decision regarding this application and appropriate for referral to SOAH.

Regionalization and Need

Under TWC § 26.081(a), it is "state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems ... to prevent pollution and maintain and enhance the quality of the water in the state." Further,

[i]n considering the issuance ... of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit ... based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order....

TWC § 26.0282. Therefore, Issue No. 8 relating to regionalization and need is relevant and material to the Commission's decision on the Application and is appropriate for referral to SOAH.

Compliance History

The TCEQ is required to consider compliance history when making decisions regarding issuance of a permit. 30 TAC § 60.1(a)(1)(A); 30 TAC § 60.3(a)(1)(A). In order to address concerns with compliance history, the TCEQ may impose certain permit conditions or provisions. 30 TAC § 60.3(a)(2). Because compliance history must be considered in the decision to issue a permit and whether special conditions should be included in the permit, Issue No. 9 is relevant and material to the Commission's decision regarding this Application and is appropriate for referral to SOAH.

Public Participation and Completeness and Accuracy of the Application

Requestors' concerns related to completeness and accuracy of the application are relevant and material to the Commission's decision because the Commission's Chapter 305 and Chapter 281 rules address the required contents of applications. Further requirements pertaining to public notice and public participation are detailed in 30 TAC Chapter 39 and Chapter 55. Therefore, Issues No. 10 and 11 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Issues Not Relevant and Material to the Decision on the Application

The Commission does not have the authority to require an alternative collection and treatment method and can only evaluate the information provided in the application for compliance with applicable regulatory standards. Similarly, the TCEQ does not have authority to mandate a different discharge route or location of a facility, apart from ensuring compliance with siting regulations contained in 30 TAC Chapter 309. The Commission does not have jurisdiction to consider economic impacts of the proposed facility on the region, including impacts to property values. Similarly, the TCEQ does not regulate nuisances such as traffic, noise, light, or aesthetic

concerns². Further, with the exception of nuisance odors, the TCEQ does not have jurisdiction to consider air quality in the context of a water quality permit, nor does the TCEQ have authority to consider general concerns related to flooding and erosion. The TCEQ likewise does not have jurisdiction to consider a permit's impact on population density.

Regarding the existence of Harrington Turner Enterprises, LP as a legal entity, OPIC finds this is not a referable issue and notes its concurrence with the ED's RTC No. 33 that Harrington / Turner Enterprises, LP is a legal entity filed with the Texas Secretary of State in 2008. Regarding inconsistency with Collin County policy against adverse impacts by one property owner on another, TCEQ cannot consider local government policy in evaluating an application but only considers whether the application is compliant with applicable state statutes and regulations. *See also* ED's RTC No. 32. Therefore, Issues No. 12 through 19 are not relevant and material to the Commission's decision on the application and are not appropriate for referral to SOAH.

I. Issues Recommended for Referral

As set forth above, OPIC recommends referral of Issues No. 1 through 11 specified in Section III.C to SOAH because they are relevant and material to the Commission's decision on this application.

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

² To the extent requestors are concerned about the aesthetic appearance of the waters along the discharge route, rather than the appearance of the facility, OPIC notes 30 TAC § 307.4(4) requires that surface waters be maintained in an aesthetically attractive condition. This issue is encapsulated within the surface water quality issues OPIC recommends be referred to SOAH.

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.

IV. CONCLUSION

OPIC respectfully recommends the Commission find the following persons qualify as affected persons in this matter and grant their hearing requests: Mir Abidi, Elizabeth Abraham, Tracy Allen, Roxanne Bogdan, Amber Boley, Linda Braswell, Patrick Calabria, Kim Caldwell, Harold Camp, Lance Caughfield, Wendy Clark, Don & Scheri Cloud, Ashley Conner, Dave Cooper, Elizabeth Cross, Meerna Dalal, Cyndi Daugherty, Tim Daugherty, Rick Debus, Tami DeWeese, Jeffry Dwight, Alicia Evans, Amanda Ferrara, Karen Fey, Linda Fletcher, Ronald Friedline, Wendy Galarneau, Katherine Harvey, Alesha Haynes, Michael Haynes, Margaret Henry, Laura Hernandez, Charles Ho, Jena Holton, John Holton, Deborah Ison, Frank Jackson, Mary Nell Jackson, Mary Trudy Jackson, Brian Jones, Rico Jones & Ariel Tonnu, Kay Learned, Greg Ligon, Susan Ligon, Angelique Loncar, Linda & Steve Loop, Amy Lopez, Rudy Lopez, Dianne Lundberg, Edwin Lundberg, Andrew Malczewski, Mayela Malczewski, Jessica Marshall, Tom Marshall (individually and for Rolling Ridge Estates Homeowners Association), Teral McDowell, Carolyn Moebius, James Moebius, Amit Nangia, Ludwig Orozco, Lynne Orozco (individually and for Orozco Family Living Trust, Lee Perttle, Emily Plummer, Heather Powell, Juli Richards, Soumit Roy, Sylvia Roy, Kim Ryan, Rhonda Salas, Frank Sarris, Dan Shoop, James Spivey, Ed Standridge, Brendan Sturges, Hilary Sturges, Patrick Taylor, Helena Thompson, Mayra

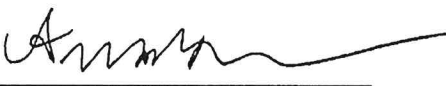
Trejo, Leticia Trevino, Sunil Unnikrishnan, Ranjani Venkataraman, Diane Viere, Gordy Viere, Alexander Vinyukov, Ashley Wilson, Matthew Wilson, Carol Wolniewicz, Robert Wunderlich, City of Murphy, City of Parker, and North Texas Municipal Water District.

OPIC also recommends the Commission refer the following persons to SOAH for an affectedness hearing: Ellen Davis, Timothy Davis, Laura Deel, Shawna Fastnaught, Rebecca Fernandez, Robert Fernandez, Mary Henshaw, William Henshaw, Patrick Hoare, Alex Jaczak, Lauren Jaczak, and Melinda Kellerman.

OPIC further recommends the Commission refer Issues No. 1 through 11 specified in Section III.C for a contested case hearing at SOAH with a maximum duration of 180 days and that the Commission deny all requests for reconsideration and all other pending hearing requests.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests 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.



Amanda D. Pesonen

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See attached list.

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