

DOCKET NO. 2022-0940-MWD

APPLICATION BY	§	BEFORE THE
CITY OF DRIPPING SPRINGS	§	TEXAS COMMISSION
FOR MAJOR AMENDMENT TO TEXAS	§	ON ENVIRONMENTAL
LAND APPLICATION PERMIT	§	QUALITY
NO. WQ0014488001	§	

**SAVE OUR SPRINGS ALLIANCE’S REPLY TO EXECUTIVE DIRECTOR’S
RESPONSE TO HEARING REQUEST**

I. INTRODUCTION

Save Our Springs Alliance (“SOS”) files this Reply to Executive Director’s Response to Hearing Request on the application by City of Dripping Springs (“the Applicant”) seeking a major amendment to Texas Land Application Permit No. WQ0014488001 and the Executive Director’s preliminary decision.

II. FACTUAL BACKGROUND

The Applicant has applied to amend TLAP Permit No. WQ00148801 (“Amended Draft Permit”), to authorize the addition of two irrigation sites and an increase effluent disposal from 319,000 gallons per day to 429,000 gallons per day. The proposed surface irrigation site is close to the banks of Onion Creek, one of six major creeks that originate in the Edwards Aquifer Contributing Zone that carries water across the recharging limestone geography to sustain flow in the Barton Springs segment of the Edwards Aquifer.

A. Procedural Background.

SOS filed timely comments on the application for the Amended Draft Permit that raised relevant and material issues that were not sufficiently addressed by the TCEQ Executive Director’s (ED) Response to Comments. SOS then filed a timely Request for Contested Case Hearing on the Application and Draft Permit of Dripping Springs, for Proposed Amendments to TLAP Permit No. WQ0014488001 (“Contested Case Hearing Request”) that contained facts establishing SOS as an affected person so that SOS’s concerns regarding the impacts of the Amended Draft Permit on nearby surface and groundwater in light of the geological factors and other environmental factors at play in the nearby area can be addressed and resolved through the contested case hearing process.

In response to SOS’s timely Contested Case Hearing Request, the ED filed the Executive Director’s Response to Hearing Request (“ED’s RHR”) and recommended that the TCEQ Commissioners find that SOS is not an affected person. The ED’s response only addressed the affected party status of the requestors, and the ED’s sole reason for the recommendation was the distance of individual SOS members from the irrigation site. The Office of Public Interest (OPIC) also filed a response to SOS’s Contested Case Hearing Request but recommended that

SOS be considered an affected person. OPIC's Response to Hearing Request in the above-entitled matter at 9 ("OPIC's RHR").

B. Save Our Springs Alliance and Its Members.

SOS is a non-profit organization in Austin, Texas that works to protect the Edwards Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Texas Hill Country region and its watersheds, with special emphasis on Barton Springs.

As specified in SOS's Contested Case Hearing Request, SOS has a strong connection to the area that will be impacted by the Amended Draft Permit. SOS has financed and carried out scientific research to document the aquatic life and quality of Onion Creek just upstream of the location of the proposed "Carter Ranch" irrigation area, next to Onion creek. This research, carried out by Ryan King and Jeff Back of Baylor University, also included a site downstream of the proposed irrigation area. SOS members, including Executive Director Bill Bunch, have participated and intend to continue assisting in this research. Considering the soils, geology, proposed application rates, and problems with Dripping Springs existing wastewater irrigation, which has caused pollution of Onion Creek and a small tributary of Onion Creek even though the irrigation field is set back from the creek in the past, the wastewater irrigation, as allowed under the Amended Draft Permit would harm SOS's interests in the protection of water quality, aquatic life, property values, and aesthetic beauty of Onion Creek, as well as in SOS scientific interest in the area.

SOS also has three members with strong connections to the area that will be affected by the Amended Draft Permit. Bill Bunch has swum in Onion Creek in the Caliterra Park, as well as in the creek downstream on the Turkey Hollow Ranch and CharRo Ranch. Mr. Bunch intends to continue swimming in these locations and observing the fish, water birds, wildlife, and water quality. The high degree of likelihood of contamination of Onion Creek in these areas by wastewater irrigation at the Carter Ranch site, as allowed under the Amended Draft Permit, poses a direct harm to Mr. Bunch's and thus to SOS's recreation, conservation, scientific, aesthetic, and personal health and safety interests.

Further, the recreation, conservation, aesthetic, and personal health and safety interests of SOS members Chris and Karen Hill will be harmed by the Amended Draft Permit. Mr. and Mrs. Hill live near the irrigation sites and receive their drinking water from the Dripping Springs Water Supply Corporation. Some of the water provided to the Hills comes from groundwater wells near Onion Creek that could be contaminated by irrigated wastewater recharging into the Trinity Aquifer. Mr. and Ms. Hill also enjoy walking along the creek in the Caliterra parks, in the neighborhood where they own property, and common areas and observing wildlife. Mr. and Mrs. Hill intend to continue enjoying Onion Creek within the Caliterra subdivision in these ways as long as it is safe and enjoyable to do so, however, the Hills' health, conservation, and recreation interests would be harmed by wastewater from the Amended Draft Permit entering the creek and flowing into Caliterra, and the property values for their home will plummet due to the nearby disposal of wastewater.

III. ARGUMENT

A. SOS is an Affected Person and Complied will all Requirements of Section 55.201(c) and (d).

SOS complied with the requirements set out in 30 TAC § 55.201(c) and (d), demonstrated that SOS is an affected person under the factors set out at 30 TAC § 55.203, and qualified for associational standing under 30 TAC §55.205. OPIC agrees that SOS “meets the requirements for group standing and qualifies as an affected person,” but the ED claims that SOS failed to demonstrate that SOS has members that could request a hearing in their own right. OPIC’s RHR at 9; ED’s RHR at 7.

In claiming that SOS failed to demonstrate it was an affected person for purposes of challenging the application for the Amended Draft Permit, the ED misapplied and ignored the factors set out by TCEQ regulations and failed to explain why a deviation from the factors was warranted.

TCEQ regulations set out the factors that the agency must consider when determining affected person status for a contested case hearing. An affected person has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest, based on seven factors:

- (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 resources by the person
- (6) ...whether the requestor timely submitted comments on the application that were not withdrawn
- (7) For governmental entities, their statutory authority over or interest in the issues relevant to the application

30 TAC § 55.203.

As set out more fully below, each factor set out in the TCEQ regulations weigh in favor of granting SOS affected person status to challenge the application for the Amended Draft Permit at a contested case hearing, even the factor contested by the ED.

(1) The interest claimed by SOS is one protected by the law under which the application will be considered.

The recreational, aesthetic, and safety interests of SOS and its members, Mr. Bunch and the Hills, are protected by applicable law and are specific to them as past, present, and future users of the affected waterway, Onion Creek.

The general principles that govern whether a party has standing to challenge governmental action in court also govern whether a party is an affected person for the purposes of requesting a contested case hearing. *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 375 (Tex. App. 2011) (overturned on other grounds). These general principles include the practice of looking to federal guidance on standing doctrines, doctrines that include determining interests and injuries. *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001). So, the TCEQ may rely on long established precedent in finding that recreational, aesthetic, property values, and health and safety interests are protected by law and sufficient to confer standing, or affected person status, in the context of the Clean Water Act and discharges of water. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 182–84 (2000).

(2) There is no applicable distance restriction or other limitations imposed by law on SOS's interest.

The distance restriction that the ED attempts to impose on SOS and its members in this case is arbitrary and not imposed by law as required by 30 TAC § 55.203. ED's RHR at 7. Despite hinging its entire justification for denying SOS affected person status on the distance of individual members from the irrigation site, the ED cites no authority for imposing a distance restriction and provides no explanation for why such a restriction might be justified in this case. *Id.* (“[d]ue to the distance...they have not demonstrated how they are affected”).

It does not matter that the Hills live and own property two miles from the irrigation site nor does it matter that Mr. Bunch lives twenty miles from the irrigation site. Without a distance restriction imposed by law, the relevant inquiry turns on whether SOS and its members have a legally protected interest separate from the general public that will be harmed by the Amended Draft Permit. Here, as set out in SOS's Contested Case Hearing Request and in OPIC's RHR, all three members described by SOS have a legally protected interest, particular to their own personal enjoyment of Onion Creek, that will be seriously harmed by the Amended Draft Permit.

(3) A reasonable relationship exists between SOS's interest and the Amended Draft Permit.

As an organization SOS has interests in the protection of water quality, aquatic life, property values, and aesthetic beauty of Onion Creek, as well as in SOS scientific interest in the area. And, SOS's members, including Mr. Bunch and the Hills, have interests in recreation, conservation, scientific, aesthetic, and personal health and safety. These interests will be harmed by the Amended Draft Permit if irrigated wastewater contaminates Onion Creek and nearby groundwater, because the wastewater will cause unsafe conditions and irreparably harm the ecosystem.

(4) The Amended Draft Permit will impact the health and safety of SOS and its members.

The contamination of Onion Creek and groundwater by the Amended Draft Permit will impact the health and safety of Mr. Bill Bunch and the Hills. Mr. Bunch regularly swims and plans to continue swimming in Onion Creek in the Caliterra Park, as well as in the creek downstream on

the Turkey Hollow Ranch and CharRo Ranch. Contamination of this waterway by wastewater effluent from the Amended Draft Permit will create conditions that render swimming unsafe. Similarly, the Hills enjoy recreating on and around Onion Creek, an activity that could become unsafe due to wastewater contamination from the Draft Permit. The Hills also receive their drinking water from the Dripping Springs Water Supply Corporation, which in part comes from groundwater wells near Onion Creek that could be contaminated by irrigated wastewater recharging into the aquifer. The Amended Draft Permit is likely to create unsafe conditions, like the ones just described, that will impact the health and safety of SOS members.

(5) The Amended Draft Permit will impact SOS's and its members use of natural resources.

As mentioned in the previous subsection, SOS's members regularly use the natural resource of Onion Creek, which will be impacted by the Amended Draft Permit, for recreation. Mr. Bunch regularly swims in the creek and observes the fish, waterbirds, wildlife, and water quality. The Hills also regularly walk around and near Onion Creek and observe wildlife. This use will be impaired if wastewater from the Amended Draft Permit enters Onion Creek and contaminates the water. The Hill's use of the groundwater for drinking water will also be impaired if the wastewater contaminates nearby ground wells. In short, the Amended Draft Permit will transform a beloved natural resource used for recreation and drinking water into an unusable hazard.

(6) SOS submitted timely comments on the application that were not withdrawn.

It is undisputed that SOS filed timely comments on the application that were not withdrawn. ED's RHR at 7.

To conclude, as demonstrated in this section, SOS has a "personal justiciable interest related to a legal right, duty, privilege, power, or economic interest" in the Amended Draft Permit sufficient to establish associational standing and to establish affected person status sufficient to request a contested case hearing on the Amended Draft Permit.

B. The Issues Raised by SOS are Referable to SOAH for a Contested Case.

The ED provided no explanation for its recommendation that the TCEQ Commission decline to refer any issues to the State Office of Administrative Hearings ("SOAH"). However, as required by 30 TAC § 55.201, SOS in its Contested Case Hearing Request "listed all relevant and material issues of fact that were raised by [SOS] during the public comment period and that are the basis of the hearing request." SOS also specified the ED's response and SOS's continued dispute. Since SOS's Request for Contested Case Hearing identified specific comments made by SOS related to material issues, and identified the ED's corresponding response in his RTC and the factual basis of each dispute, the TCEQ Commission should refer all issues raised by SOS in its Contested Case Hearing Request.

IV. CONCLUSION

For the reasons stated above, SOS is an affected person, and all issues raised by SOS should be referred to the SOAH. The ED's only objection to granting SOS affected person status is inapposite, and as detailed in this reply, failed to explain why SOS should not be granted affected person status or why the issues raised by SOS should not be referred to SOAH. Accordingly, SOS respectfully requests that the TCEQ Commission grant its Contested Case Hearing Request.

Sincerely,

/s/ Bill Bunch
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CERTIFICATE OF SERVICE

I certify that on August 29, 2022, the "SAVE OUR SPRINGS ALLIANCE'S REPLY TO EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST" for major amendment to TLAP No. WQ0014488001 by City of Dripping Springs was filed with the TCEQ's Office of the Chief Clerk, a copy was served by electronic mail to the Applicant, TCEQ Executive Director, Public Interest Counsel, and Alternative Dispute Resolution, and a copy was served by U.S. mail to the other requestors.

/s/ Bill Bunch
Bill Bunch
Save Our Springs Alliance
Executive Director