

April 17, 2023

To: Laurie Gharis, Chief Clerk, Texas Commission on Environmental Quality

From Wilbarger Creek Conservation Alliance (WCCA),
Jon Beall, individually and as President of WCCA (Beall)
Anne Brockenbrough, individually and as Vice President of WCCA (Brockenbrough)
Marilyn Kelinske, M.D., individually and as a Board Member of WCCA (Kelinske)

Re: SWWC Utilities Inc (Applicant)
TCEQ Docket No. 2023-0370-MWD
Response to the TCEQ Executive Director's (Executive Director) and the Office of Public
Interest Counsel's Response to Hearing Requests by WCCA, Beall, Brockenbrough and
Kelinske

Additional response....

The geographic definition for affected parties was increased in the current contested case over the renewal of Liberty Hill's discharge permit (WQ0014477001). Last year, TCEQ's commissioners and the SOAH judges approved the certification of landowners living more than 1 mile downstream from Liberty Hill's outfall as affected parties. Some of these affected parties are 3 miles downstream, while one is slightly upstream. It was clear that these landowners were affected from photos of the existing algae in the South San Gabriel River around and below Liberty Hill's outfall. The city's current permit allows it to discharge up to 1,200,000 GPD, though on average it was discharging less than 1,000,000 gallons per day as of July 2020.

The draft permit that TCEQ has proposed for SWWC would allow it to discharge up to 800,000 GPD into Wilbarger Creek. This is two-thirds of the current permitted volume for Liberty Hill's plant. In addition, the volume of existing flow in Wilbarger Creek is substantially less than the flow in the South San Gabriel River. It's reasonable to assume that just as the algae effect of Liberty Hill's discharge on the South San Gabriel has extended for more than 3 miles, the potential algae effect of SWWC's discharge on Wilbarger Creek could extend for a comparable distance. The standard that TCEQ's commissioners and SOAH judges used for determining affected parties for Liberty Hill's application should therefore be used for SWWC's application.

Respectfully submitted,

Jon Beall

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WCCA requests standing as an affected association and Beall, Brockenbrough and Kelinske request standing as affected persons related to SWCC Utilities application for Permit in **TCEQ Docket No. 2023-0370-MWD**. This docket applies to an application by SWWC Utilities to discharge up to **800,000 gallons per day of treated effluent into Wilbarger Creek**.

Standing as an Affected Association and Affected Persons

- The Executive Director and OPIC seek to deny standing to WCCA and Beall based on Beall's *mailing address in Austin rather than on the location of his affected property on Wilbarger Creek*. Beall is the landowner of 3 Creeks Farm located at 17312 Littig Rd. which is adjacent to Ms. Brockenbrough's Elm Creek Ranch. Both properties include both sides of Wilbarger Creek as does Ms. Kelinske's ranch. Mr. Beall works on 3 Creeks Farm most days. The Multicultural Refugee Coalition of Central Texas leases part of 3 Creeks Farm on which it operates New Leaf Agriculture with 10 employees farming daily and 20 -30 volunteers weekly.
- The Executive Director and OPIC seek to deny standing to Beall, Brockenbrough and Kelinske based on the location of their properties, claiming that because they are approximately 2 to 3 miles downstream from the Applicant's outfall they will not be affected differently from the general public. This statement does not pass a common sense test. Wilbarger Creek flows through approximately 2 miles of property owned collectively by Beall, Brockenbrough and Kelinske. Each

landowner owns property on both sides of Wilbarger Creek. The owners thus own approximately 4 miles of creek frontage along Wilbarger Creek. There is no public access along Wilbarger Creek. Thus, these landowners have a justiciable interest in the quality of wastewater that this permit would authorize to discharge into Wilbarger Creek that is distinct from the general public.

- The Executive Director and OPIC seek to deny the standing of the parties stating that because the properties are more than 2 to 3 miles downstream from the Applicant's wastewater discharge plant, there is a "diminished likelihood that the regulated activity will impact their health, safety or use of property." This also lacks a common sense basis because, most of the year Wilbarger Creek is already 100% treated effluent as it flows through the property of Beall, Brockenbrough and Kelinske. All three properties are working farms or ranches. Evaporation during the heat of the summer will cause this effluent to be even more concentrated than at the point of discharge. To say that we will not be affected in a manner distinct from the general public does not reflect the reality of the situation. Beall, Brockenbrough and Kellinske have a justiciable interest in this application.
- **WCCA should be granted standing as an affected organization.** WCCA formed in Texas in 2011 as a 501(c)(3) charitable organization and land trust. WCCA's charter states its mission in part is:

"...to preserve and protect the water quality, wildlife and working farms and ranches in Eastern Travis County and Western Bastrop County with a focus on the Wilbarger Creek Watershed..." (Emphasis added)

Since 2011 using conservation easements and Travis County bond money, WCCA worked with private landowners and Travis County to preserve in perpetuity more than 2,000 acres of open space for wildlife, farms, ranches and parkland along Wilbarger Creek between Manor and Elgin. WCCA's goal is 4,000 acres.

WCCA has a history of advocacy for Wilbarger Creek -

- In 2017, WCCA worked with TCEQ on a permit application by Ergon Asphalt & Emulsions located just east of Majestic Manor.
- In 2020, WCCA worked with TCEQ on a permit application for a package treatment plant for Great Escapes RV Park.
- In 2021, WCCA worked with TCEQ on a permit for a package treatment plant for the Brickston development.

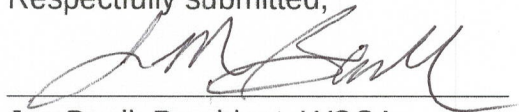
WCCA's participation will ensure adequate consideration of the impacts this permit can have on Wilbarger Creek. Both the Executive Director and the OPIC agree that WCCA and Beall have identified **four Referrable Issues to SOAH for a Contested Case Hearing:** .

- Issue 1: Is the additional effluent to be discharged protective of aquatic life and terrestrial wildlife in and adjacent to Wilbarger Creek?
- Issue 2: Should the draft permit require higher treatment standards to include the most protective and available techniques?
- Issue 3: Were the cumulative impacts of the proposed discharge into Wilbarger Creek properly modeled and evaluated?
- Issue 4: Does the permit application address potential malfunctions at the proposed facility?

Without WCCA's participation in a hearing, these issues will not be determined and Wilbarger Creek will not be adequately protected.

For these reasons, we request standing on behalf of ourselves as individuals and for WCCA.

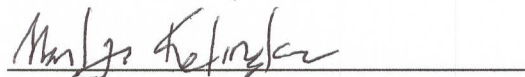
Respectfully submitted,



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