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June 16, 2023

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

Submitted via TCEQ efilings system: <http://www.tceq.texas.gov/goto/efilings>

TO: All Parties on the TCEQ efile distribution list

RE: Docket No. 2023-0555-IWD

MTX Materials, LP (Applicant)

Request(s) filed on Permit No. WQ0005337000

Party Requesting Contested Case Hearing: Cook's Branch Conservancy

Dear Commissioners, Ms. Gharis, and Interested Parties,

Cook's Branch Conservancy, hereafter "CBC," protestant, initially notes that the applicant has not responded or otherwise objected to CBC's request for a contested case hearing. Further, OPIC and the Executive Director concur with CBC's request for a contested case hearing.

CBC will not belabor the record or the Commissioners' time by restating the points well made by OPIC and the ED, other than to note that CBC's request and supporting comment were presented by a professionally trained environmental consultant, Joe Hamrick of Raven Environmental, with years long work in the Cook's Branch Conservancy including the water that is the subject of this application.

While the CBC generally agrees with OPIC and the ED's characterization of the first three issues for referral to SOAH, CBC does not agree with the characterization of "Issue 4." Mr. Hamrick specifically pointed out in his comments that the Alligator Snapping Turtle is a candidate species of the federal Endangered Species List,¹ 86 FR 62434, but is already listed on the State of

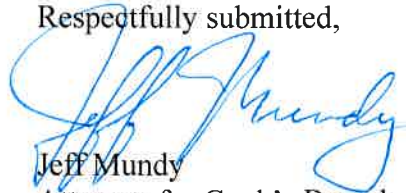
¹ <https://www.fws.gov/species-publication-action/endangered-and-threatened-wildlife-and-plants-threatened-species-52>

Texas Endangered and Threatened Species List maintained by TPWD pursuant to 31 TAC § 65.175.² The TPWD GIS database confirms both the status as “threatened” and presence in Montgomery County.³ Mr. Hamrick in his comment/report confirms actual presence in the potentially impacted waters through the regularly conducted work of biologists and environmental consultants on the Cook’s Branch Conservancy. Further, there must be a similar consideration of effects of other federally and state listed species such as the Red-cockaded Woodpecker, which drink from the waters, known to be present, and which are managed in cooperation with TPWD.

Thus, CBC disagrees with OPIC and the ED’s characterization of “Issue 4” and their recommendation to not consider this issue. TCEQ must consider the requested application’s effects on the legally protected species such as the Alligator Snapping Turtle and Red-cockaded woodpecker, and whether TCEQ’s issuance of a permit would cause violations of the Texas and federal laws protecting threatened and endangered species. *See*, 31 TAC § 65.171, *et seq.* and 16 U.S.C. § 1531, *et seq.* This issue could be specifically included as a subpart of Issue 1 and/or Issue 3, or it could be a standalone separate issue for consideration as Issue 4. Either way, the effect of TCEQ’s decision on the application on the legally protected species is a matter of significance in considering a decision on this application.

CBC further agrees with OPIC and the ED’s suggestion for a 180 day hearing.

Respectfully submitted,



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² <https://texreg.sos.state.tx.us/fids/202001043-1.pdf>

³ <https://tpwd.texas.gov/gis/rtest/>

Certificate of Service

I certify that on June 16, 2023, this reply was filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via the TCEQ's efilng system, hand delivery, or by deposit in the United States mail, return receipt requested.



Jeff Mundy