

**TCEQ DOCKET NO. 2023-0564-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>WALTON TEXAS, LP FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TPDES PERMIT NO. WQ0015918001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

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**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Walton Texas, LP (Applicant) for a TPDES Permit No. WQ0015918001. The Office of the Chief Clerk received contested case hearing requests from San Marcos River Foundation, Texas Rivers Protection Association, Greater Edwards Aquifer Authority, John William Jennings, and the Humphrey’s Cemetery Association.

The Executive Director recommends that the Commission grant the hearing requests for San Marcos River Foundation, Texas Rivers Protection Association, Humphrey’s Cemetery Association, John William Jennings, and Martindale Water Supply Corporation. The Executive Director recommends denying the hearing requests for Greater Edwards Aquifer Authority.

Attached for Commission consideration are satellite maps of the area showing the locations of the facility and requestors.

**II. FACILITY DESCRIPTION**

Walton Texas, LP, 14614 North Kierland Boulevard, Scottsdale, Arizona 85254, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015918001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. TCEQ received this application on September 8, 2020.

The facility will be located approximately 2,100 feet northeast of the intersection of State Highway 80 and State Highway 142, in Caldwell County, Texas 78655. The treated effluent will be discharged to Hemphill Creek, thence to Morrison Creek, thence to the Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are limited aquatic life use for both Hemphill Creek and Morrison Creek.

The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review preliminarily

determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination was required.

The daily average flow of effluent shall not exceed 0.0525 million gallons per day (MGD), nor shall the average discharge during any two-hour period (2-hour peak) exceed 146 gallons per minute (gpm). During the period beginning upon the completion of expansion to the 0.21 MGD facility and lasting through the completion of expansion to the 0.42 MGD facility, the permittee is authorized to discharge subject to the following interim II effluent limitations: The daily average flow of effluent shall not exceed 0.21 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 583 gpm. During the period beginning upon the completion of expansion to the 0.42 MGD facility and lasting through the date of expiration, the permittee is authorized to discharge subject to the following final effluent limitations: The daily average flow of effluent shall not exceed 0.42 MGD, nor shall the average discharge during any two-hour period (2-hour peak) exceed 1,167 gpm.

### III. PROCEDURAL BACKGROUND

The permit application was received on September 8, 2020, and declared administratively complete on December 23, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Austin American-Statesman* on January 11, 2021, and in Spanish in *El Mundo Newspaper* on January 14, 2021. The ED completed the technical review of the application on June 22, 2021. A Combined Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) was published in English in the *Austin American-Statesman* on October 4, 2021, and in Spanish in *El Mundo Newspaper* on September 30, 2021. A notice of public meeting was published in English in the *Austin-American Statesman* on March 9, 2022. A public meeting was held on April 11, 2022, via webcast. The public comment period ended on April 11, 2022. This application was filed after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. This application is subject to those changes in the law.

### IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

#### A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.<sup>1</sup>

Responses to hearing requests must specifically address:

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<sup>1</sup> 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.<sup>2</sup>

## **B. Hearing Request Requirements**

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the ED's Response to Comment.<sup>3</sup>

A hearing request must substantially comply with the following:

- (1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (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 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 comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and

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<sup>2</sup> 30 TAC § 55.209(e).

<sup>3</sup> 30 TAC § 55.201(c).

- (5) provide any other information specified in the public notice of application.<sup>4</sup>

### **C. Requirement that Requestor be an Affected Person/“Affected Person” Status**

To grant a contested case hearing, the Commission must determine that a requestor is an “affected” person by conducting the following analysis:

- (a) For any application, 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.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (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.
- (d) In determining 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 commission's administrative record, including whether the application meets the requirements for permit issuance;
  - (2) the analysis and opinions of the ED; and
  - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

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<sup>4</sup> 30 TAC § 55.201(d).

## D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.”<sup>5</sup> The Commission may not refer an issue to the State Office of Administrative Hearings (SOAH) for a contested case hearing unless the Commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.<sup>6</sup>

## V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

### A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

#### 1. *Parties the Executive Director recommends the Commission find Affected Persons*

##### Robert Deviney on behalf of Humphrey’s Cemetery Association

Under 30 TAC § 55.201, individuals requesting a contested case hearing must provide timely comments and identify personal justiciable interests that would be affected by the application when they submit their request for a contested case hearing.

Mr. Deviney submitted timely comments on this application. In his hearing request he stated that he was filing the request on behalf of the Humphrey’s Cemetery Association. He expressed several concerns with the application as to how it could negatively impact the cemetery which lies approximately 1 mile downstream of the proposed facility. Mr. Deviney also expressed concerns regarding the implementation of the agency’s regionalization rules stating that there are other regional facilities able to process the effluent from the proposed development.

Because the cemetery’s interests are not common to the general public, and they were timely raised, the Executive Director should recommend that the Commission find Mr. Deviney an affected person.<sup>7</sup>

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<sup>5</sup> 30 TAC § 50.115(b).

<sup>6</sup> 30 TAC § 50.115(c).

<sup>7</sup> Because the Cemetery Association owns land near the proposed wastewater treatment facility the ED did not evaluate this requestor under the Associational Standing test in 30 TAC §55.205.

### **John William Jennings**

Mr. Jennings submitted timely comments on this application. He expressed several concerns with the application as to how it could negatively impact his farm operations which is located approximately 1.5 miles downstream. Specifically, Mr. Jennings expressed concerns about the draft permit's impact to groundwater and his livestock.

Because his interests are not common to the general public, and they were timely raised, the Executive Director should recommend that the Commission find Jennings an affected person.

### **Martindale Water Supply Corporation (MWSC)**

MWSC submitted timely comments and a hearing request on this application. In their hearing request and comments, they articulated their concerns with the proposed facility with emphasis on their ability to continue providing water to the City of Martindale without negative effects from the proposed facility. In their comments they stated that their water supply comes from shallow groundwater which they describe as an "alluvium" which they state lies less than 50 feet below the surface. According to the address they provided in their comments, their facility is located less than a mile from the proposed location of the waste water treatment facility in the draft permit. They are concerned that their close proximity to the discharge route as well as the shallow nature of the alluvium could result in contamination of their water from the effluents constituents.

Because these interests are not common to the general public, and they were timely raised, the Executive Director should recommend that the Commission find Martindale Water Supply Corporation an affected person.

### **Frank Caldwell on behalf of San Marcos River Foundation and Texas Rivers Protection Association (SMRF & TRPA)**

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015 must meet the requirements in 30 TAC § 55.205.

SMRF and TRPA submitted timely hearing requests and comments on this application. In their request, they stated several concerns with the application including odor, water quality issues, antidegradation, regionalization, groundwater, wildlife, livestock, and human health. In addition to expressing these issues, these organizations identified an individual member of their organizations, Frank Caldwell, who is purported to own property located approximately a tenth of a mile from the location of the proposed treatment facility. The hearing request further articulated Mr. Caldwell's concerns how the draft permit may affect his particular interests, and his concerns mirrored those previously expressed in the hearing request.

Because these organizations have complied with 30 TAC § 55.205(a), the interests they raised are not common to the general public, and the issues were timely raised, the Executive Director recommends that the Commission find SMRF and TRPA affected Persons.

**2. Parties the Executive Director recommends the Commission not find Affected Persons**

**Nathan Glavy and Annalisa Peace on behalf of Greater Edwards Aquifer Alliance (GEAA)**

As specified above, in addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205.

Mr. Glavy and Ms. Peace submitted timely comments on behalf of GEAA as well as a hearing request in which they expressed several concerns regarding the draft permit, which included the impact to water quality in the receiving waters, regionalization, and the effluent limits set for the application. However, their hearing requests failed to meet one of the threshold requirements of 30 TAC § 55.205(a)(1) as they failed to identify an individual member of their organization who would otherwise have standing to request a hearing in their own right.

Therefore, the Executive Director should recommend to the Commission that they find that GEAA is neither an affected person nor should they grant their hearing requests.

**B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).**

**1. Whether the draft permit complies with TCEQ's rules regarding nuisance odors. (RTC Response No. 2)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit violates TCEQ's odor control rules, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**2. Whether the draft permit complies with the TCEQ's antidegradation policy under 30 Tex. Admin. Code § 307.5. (RTC Response No. 5)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with the antidegradation policy, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**3. Whether the draft permit is protective of human health and aquatic life. (RTC Response No. 3)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit is not protective of human health and aquatic life, that information would be relevant



and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**4. Whether the effluent limits in the draft permit are protective of water quality. (RTC Responses 12 and 20)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown that the effluent limits in the draft permit are not protective of water quality, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**5. Whether the draft permit complies with TCEQ's regionalization policy. (RTC Response 7)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with TCEQ's regionalization policy, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

**6. Whether the draft permit is protective of groundwater. (RTC Response 17)**

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit is not protective of groundwater, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

## VI. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission grant the hearing requests for San Marcos River Foundation, Texas Rivers Protection Association, Humphrey's Cemetery Association, John William Jennings, and Martindale Water Supply Corporation. The Executive Director recommends denying the hearing requests for Greater Edwards Aquifer Authority.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by the affected person as identified by the Executive Director:

(Issue 1) Whether the draft permit complies with TCEQ's rules regarding nuisance odors. (RTC Response No. 2)



(Issue 2) Whether the draft permit complies with the TCEQ's antidegradation policy under 30 Tex. Admin. Code § 307.5. (RTC Response No. 5)

(Issue 3) Whether the draft permit is protective of human health and aquatic life. (RTC Response No. 3)

(Issue 4) Whether the effluent limits in the draft permit are protective of water quality. (RTC Responses No. 12 and 20)

(Issue 5) Whether the draft permit complies with TCEQ's regionalization policy. (RTC Response No. 7)

(Issue 6) Whether the draft permit is protective of groundwater. (RTC Response No. 17)

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor,  
Interim Executive Director

Guy Henry, Acting Deputy Director  
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## CERTIFICATE OF SERVICE

I certify that on June 2, 2023, the “Executive Director’s Response to Hearing Request” for TCEQ Permit WQ0015918001 for Walton Texas, LP was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Harrison Cole Malley

MAILING LIST  
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TCEQ Docket No. 2023-0564-MWD; Permit No. WQ0015918001

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See attached list.

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# Attachment A



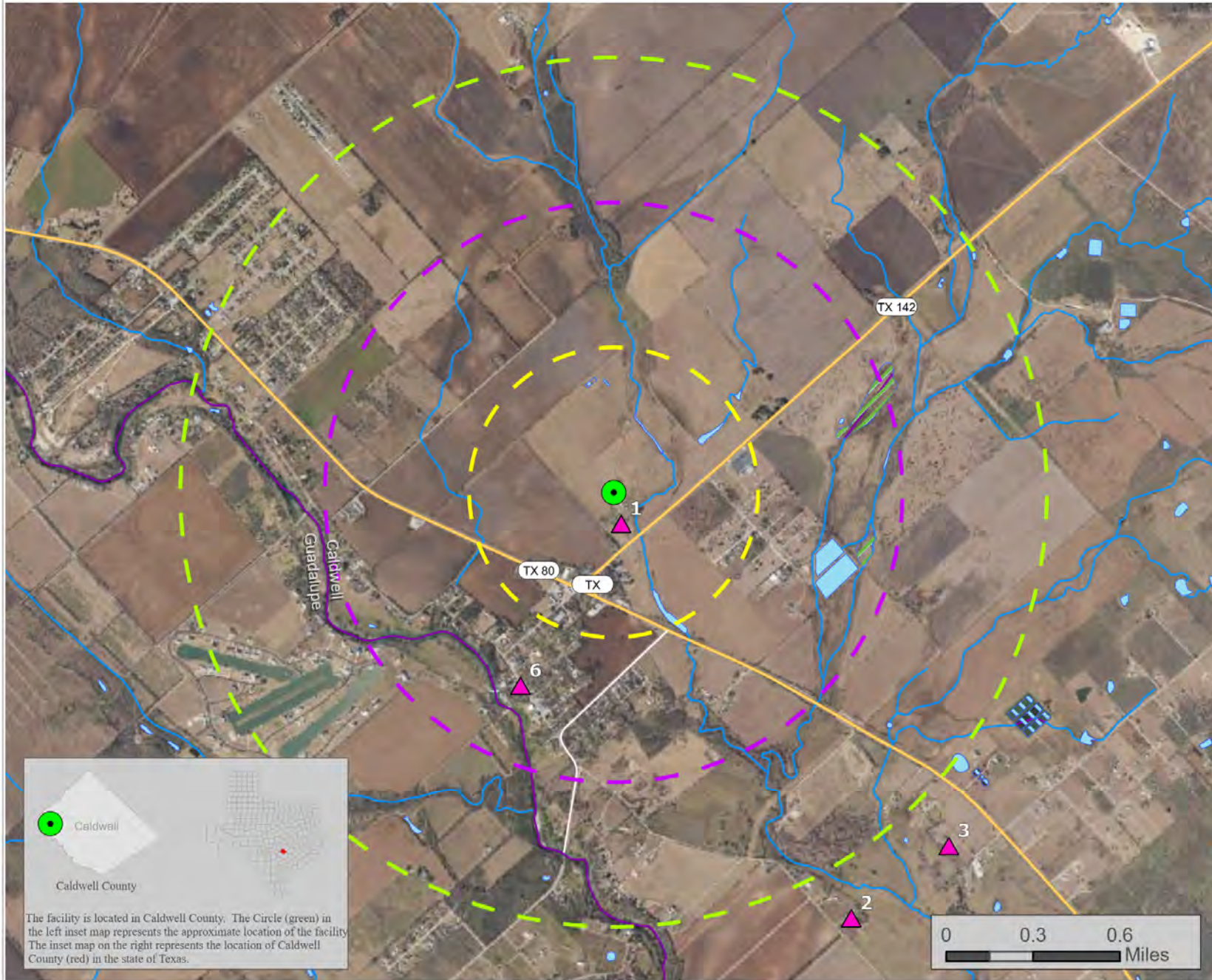
# Application by Walton Texas, LP for TPDES Permit No. WQ0015918001



Protecting Texas by  
Reducing and  
Preventing Pollution

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 5/22/2023  
CRF 0087708  
Cartographer: Abanda

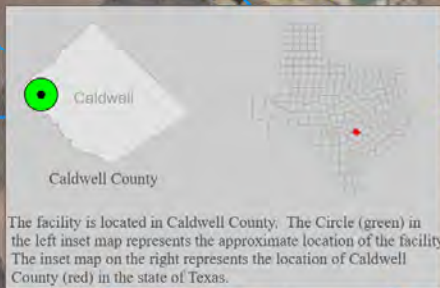


- Facility Point
- Requestors
- 0.5-Mile Buffer
- 1-Mile Buffer
- 1.5-Mile Buffer
- County Boundary
- NHD Flowline
  - Stream/River
  - Artificial Path

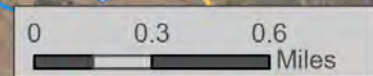
**Refer to Appendix A for Requestor Distances to Facility Point.**

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

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The facility is located in Caldwell County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Caldwell County (red) in the state of Texas.





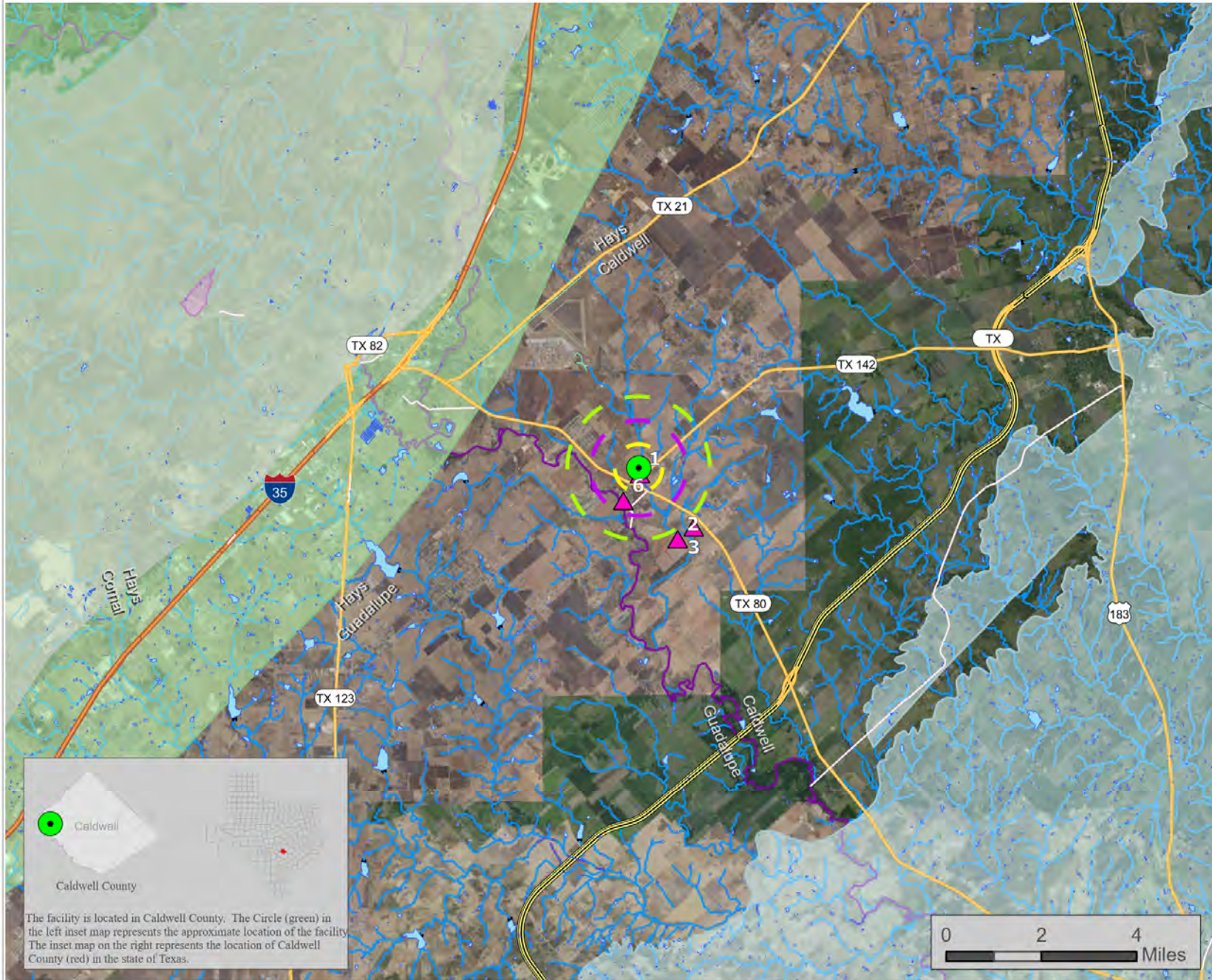
# Application by Walton Texas, LP for TPDES Permit No. WQ0015918001



Protecting Texas by  
Reducing and  
Preventing Pollution

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 5/22/2023  
CRF 0087708  
Cartographer: Abanda

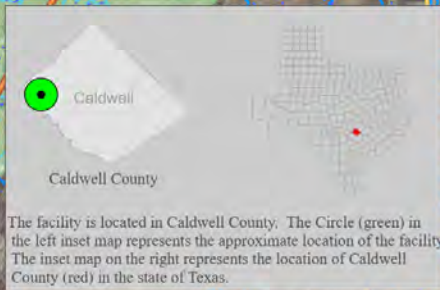


- Facility Point
- Requestors
- 0.5-Mile Buffer
- 1-Mile Buffer
- 1.5-Mile Buffer
- County Boundary
- Major Aquifers**
  - CARRIZO
  - EDWARDS
  - TRINITY
- NHD Flowline**
  - Connector
  - Canal/Ditch
  - Pipeline
  - Stream/River
  - Artificial Path

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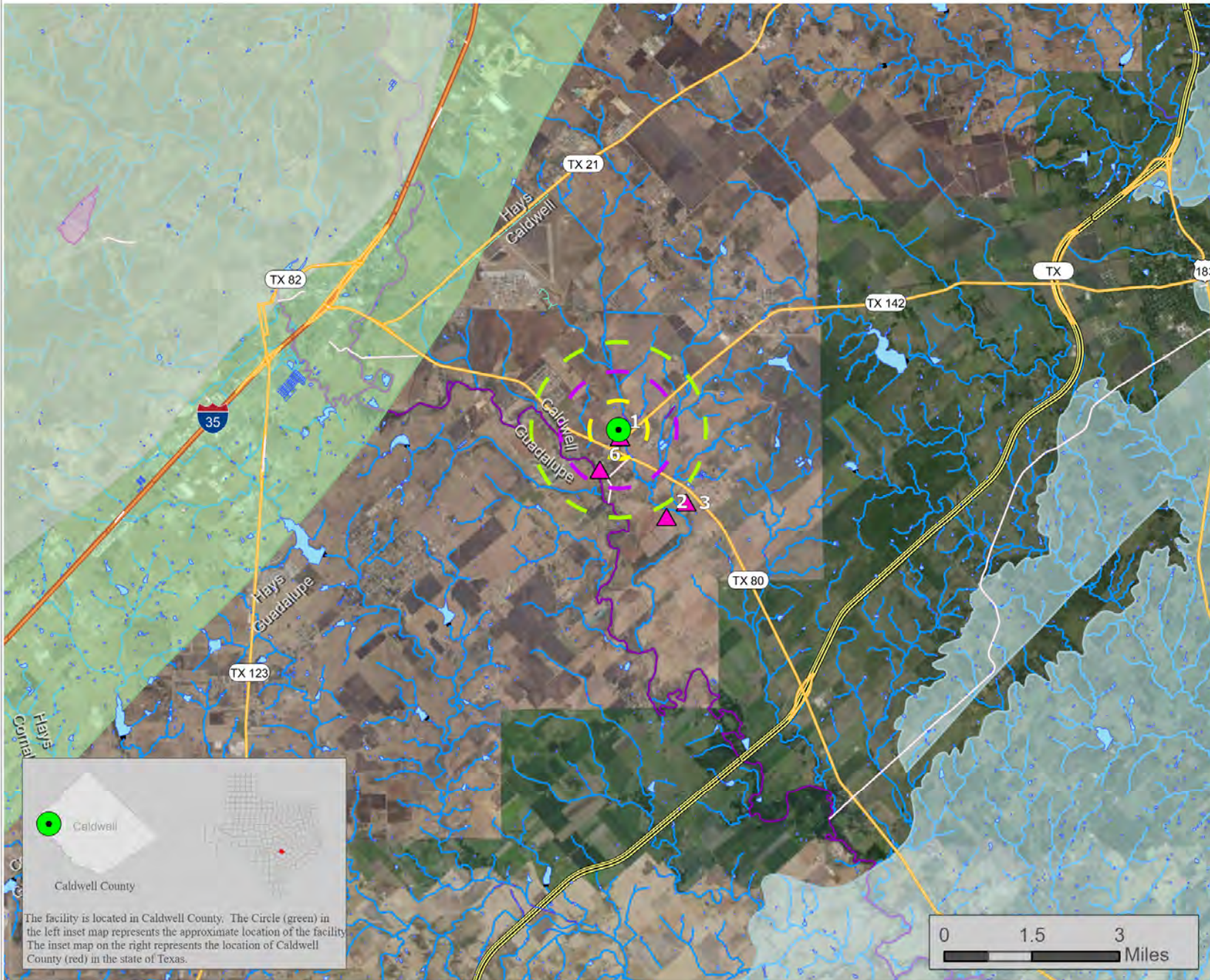
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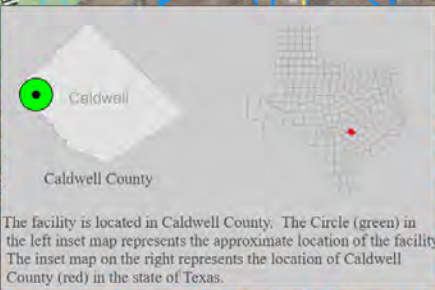


- Facility Point
- Requestors
- 0.5-Mile Buffer
- 1-Mile Buffer
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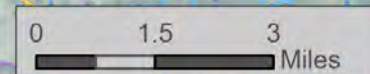
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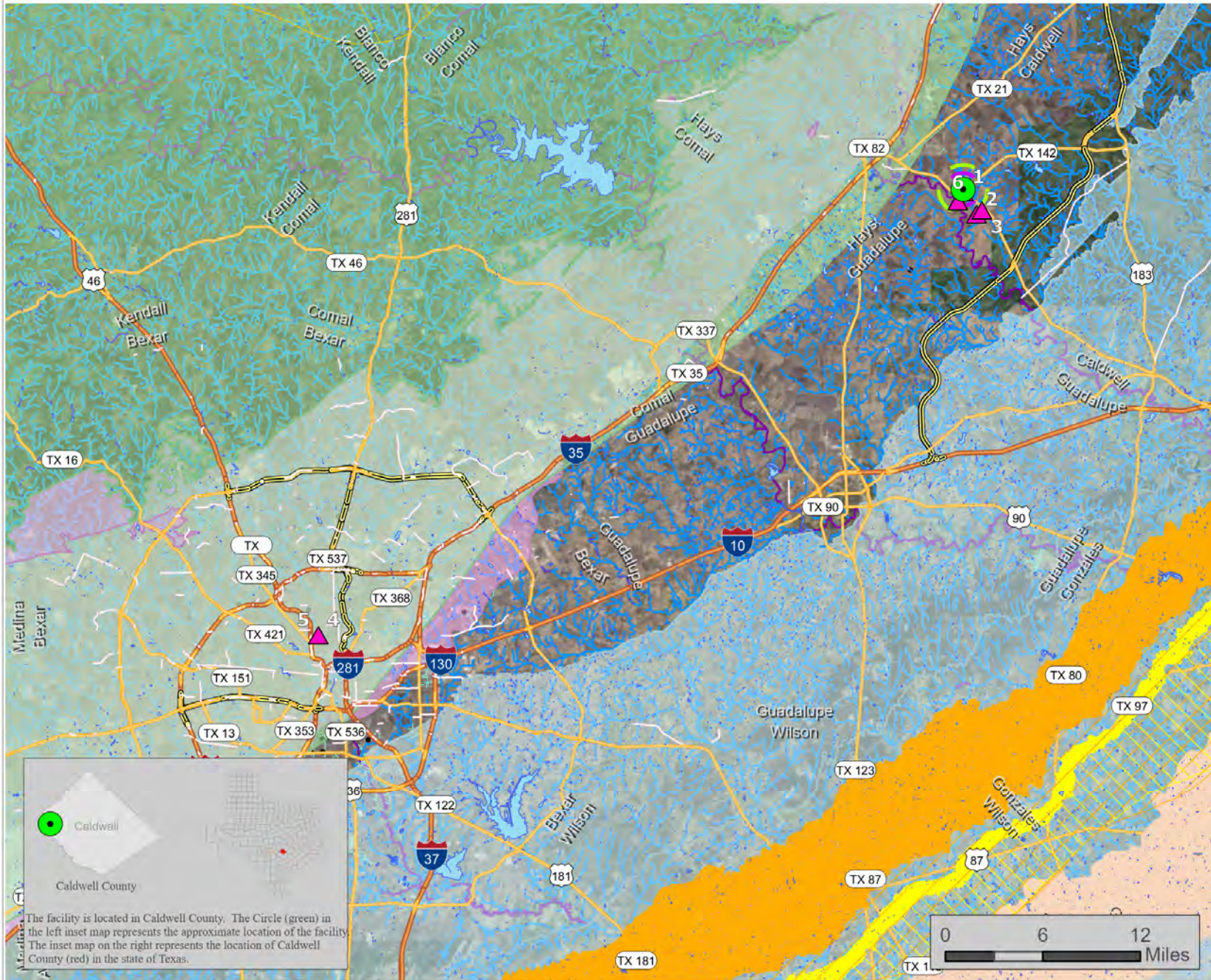
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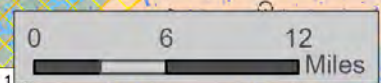
- Facility Point
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- 0.5-Mile Buffer
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- County Boundary
- Major Aquifers
  - CARRIZO
  - EDWARDS
  - EDWARDS-TRINITY
  - GULF\_COAST
  - TRINITY
- Minor Aquifers
  - Yegua Jackson
  - Sparta (outcrop)
  - Sparta (subcrop)
  - Queen City (outcrop)
  - Queen City (subcrop)
  - Ellenburger - San Saba (subcrop)
  - Hickory (subcrop)
- NHD Flowline
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### Appendix A - Distance (miles) Between Requestor and Facility Point

Label #	NAME	Address	Latitude	Longitude	Distance (mi)
1	Frank Caldwell (SMRF and TRPA)	12876 Highway 142, Martindale, TX 78641	29.848765	-97.838774	0.11
2	John William Jennings	3563 SE River Rd, Martindale, TX 78655	29.828775	-97.825957	1.68
3	Robert Deviney on behalf of Humphrey's Cemetery Association	None Recorded	29.8322815	-97.820242	1.68
4	Nathan M Glavy (GEAA)	1809 Blanco Rd, San Antonio, TX 78212	29.462812	-98.508115	48.29
5	Annalisa Peace (GEAA)	1809 Blanco Rd, San Antonio, TX 78212	29.462812	-98.508115	48.29
6	Martindale Water Supply Corporation	206 Main St., Martindale, TX	29.840759	-97.84476	0.74