

TCEQ DOCKET NO. 2023-0569-MWD

APPLICATION BY CRYSTAL	§	BEFORE THE
SPRINGS WATER CO., INC.	§	TEXAS COMMISSION
FOR NEW TPDES PERMIT NO.	§	ON
WQ0016116001	§	ENVIRONMENTAL QUALITY

**CRYSTAL SPRINGS WATER CO., INC.'S
RESPONSE TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Crystal Springs Water Co., Inc. (“*Applicant*”), pursuant to 30 Texas Administrative Code (“*TAC*”) § 55.209(d), and files this written response (“*Response*”) to the Request for Contested Case Hearing on Application by Crystal Springs Water Co., Inc. for Texas Pollutant Discharge Elimination System Permit No. WQ0016116001 (the “*Hearing Request*”), filed by Bayou City Waterkeeper (“*BCWK*”) on March 1, 2023. In support thereof, Applicant would respectfully show the following:

I. EXECUTIVE SUMMARY

Applicant hereby respectfully requests that the Texas Commission on Environmental Quality (the “*Commission*”) deny BCWK’s Hearing Request because it does not meet the requirements of 30 TAC § 55.205, relating to contested case hearing requests by a group or association. Specifically, BCWK lacks standing to request a contested case hearing, and the Hearing Request is procedurally deficient.

II. BACKGROUND

On February 25, 2022, Applicant applied to the Commission for new Texas Pollutant Discharge Elimination System (“*TPDES*”) Permit No. WQ0016116001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The proposed Copperhead Cove wastewater treatment facility (“*WWTF*”) will be located approximately 2,300 feet northeast of the intersection of Copperhead Road and Nicholson Road, in Montgomery County, Texas 77303. Once constructed, the WWTF will be an activated sludge process plant operated in the conventional mode with nitrification. The treated effluent will be discharged via pipe to Camp Creek, thence to Caney Creek in Segment No. 1010 of the San Jacinto River Basin. The unclassified receiving water use is high aquatic life use for Camp Creek, and the designated uses for Segment No. 1010 are primary contact recreation,

public water supply, and high aquatic life use. An antidegradation review of the receiving waters was performed in accordance with 30 TAC § 307.5 and the Commission’s June 2010 *Procedures to Implement the Texas Surface Water Quality Standards*, and as noted in the Executive Director’s Response to Public Comment (“**RTC**”), the Tier 1 antidegradation review “preliminarily determined that existing water quality uses will not be impaired by this permit action,” and “[n]umerical and narrative criteria to protect existing uses will be maintained” consistent with the Texas Surface Water Quality Standards (“**TSWQS**”) and the State of Texas Water Quality Management Plan. The RTC further indicates that the Tier 2 antidegradation review “preliminarily determined that no significant degradation of water quality is expected in Camp Creek and Caney Creek,” and “[e]xisting uses will be maintained and protected.”

The above-referenced application (“**Application**”) was declared administratively complete on April 25, 2022, after which the Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English in the *Conroe Courier* on May 2, 2022, and in Spanish in the *Buena Suerte Newspaper* on May 10, 2022. The Executive Director (“**ED**”) completed the technical review of the Application on July 20, 2022, after which the Notice of Application and Preliminary Decision was published in English in the *Houston Chronicle* on September 9, 2022, and in Spanish in the *Buena Suerte Newspaper* on September 13, 2022. The public comment period ended on October 13, 2022, and BCWK timely submitted its comments on the Application that day.

The ED’s RTC and final decision letter, stating that the Application “meets the requirements of applicable law,” was mailed on January 30, 2023, and established a deadline of March 1, 2023, to submit requests for reconsideration or contested case hearing. BCWK timely submitted its Hearing Request. On May 10, 2023, Applicant received notice that the Hearing Request would be considered by the Commission during the public meeting on June 14, 2023, and Commission rules entitle Applicant to file a formal written response to the Hearing Request on or before 5:00 p.m. on May 22, 2023. Therefore, this Response is timely filed.

III. AUTHORITY

Pursuant to Texas Water Code (“**TWC**”) § 5.556, “[t]he [C]ommission may not grant a request for a contested case hearing unless . . . the request was filed by an affected person as defined by [TWC §] 5.115.” According to Section 5.115:

For the purpose of an administrative hearing held by or for the [C]ommission involving a contested case, “affected person,” or “person affected,” or “person who may be affected” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

With respect to determining whether a hearing requestor meets the above-quoted definition, Commission rules set forth in 30 TAC § 55.203(c) and (d) provide the following:

(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 [C]ommission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the [C]ommission’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.

Hearing requests must also satisfy the following procedural requirements set forth in 30 TAC § 55.201:

(d) 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. 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) for applications filed:

- (B) on or after September 1, 2015, 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 [C]ommission'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 executive director'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.

Finally, hearing requests filed by a group or association, like BCWK, must also meet the requirements of 30 TAC § 55.205, which provides as follows:

- (a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case 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.

Simply put, the Commission cannot grant BCWK's Hearing Request unless it: (1) identifies one or more of BCWK's members that meet the statutory and regulatory requirements to be considered an affected person; and (2) satisfies the other procedural requirements quoted above. The Hearing Request does neither and, therefore, should be denied.

IV. RESPONSE TO HEARING REQUEST

A. BCWK lacks standing to request a contested case hearing

For the Hearing Request to be granted, it must identify one or more of BCWK's members that meet the criteria to be considered affected persons.¹ In this case, because the only member of BCWK identified in the Hearing Request is Mr. Brandt Mannchen, the Hearing Request cannot be granted unless Mr. Mannchen qualifies as an affected person. Based on the information provided in the Hearing Request, however, Mr. Mannchen is not an affected person. As such, the Hearing Request should be denied because it fails to identify "one or more members

¹ 30 Tex. Admin. Code § 55.201(b), .203, .205(a)–(b).

of the group or association that would otherwise have standing to request a hearing in their own right.”²

With respect to Mr. Mannchen, the Hearing Request provides only as follows:

Brandt Mannchen is a longtime member of BCWK. Mr. Mannchen lives in Houston, Texas, and spends a significant amount of time in and around the Sam Houston National Forest. He has actively worked to protect the Lone Star Hiking Trail, which is the longest, continuous, cross-country, wilderness-like hiking trail in the State of Texas via interaction with the U.S. Forest Service for about 45 years. He spends significant time hiking and driving around the forest, monitoring the health of the forest, and birding in and around the forest. He has recreational and aesthetic interests in maintaining the health of the forest and waterways that flow through the forest. In addition to regularly submitting comments to the U.S. Forest Service to improve its oversight of the forest, Mr. Mannchen has participated in TCEQ permitting processes for projects with potential environmental impacts on the forest.

These interests will be impacted by the proposed facility to the extent the facility impacts wildlife habitat and the ecology and productivity of the forest. His interests will be impacted in a manner not common to members of the general public. While irrelevant in consideration of Mr. Mannchen’s recreational interests, Mr. Mannchen’s home address is 4300 Dunlavy Street, Apartment 3138, Houston, Texas 77006.

All of the interests identified above are common to members of the general public. The Sam Houston National Forest is comprised of *public* lands managed by the Forest Service of the United States Department of Agriculture to “provide for *public* needs.”³ As such, any “recreational and aesthetic interests in maintaining the health of the forest and waterways that flow through the forest” are not unique to Mr. Mannchen. Further, the Hearing Request neither identifies any legal right, privilege, or interest that is personal to Mr. Mannchen, nor demonstrates that Mr. Mannchen’s health, safety, or property will be adversely affected by the proposed WWTF or associated activities. In fact, Mr. Mannchen lives in Houston, Texas, roughly 45 miles from the proposed WWTF and receiving waters, which is likely why the Hearing Request doesn’t provide the “brief, but specific, written statement explaining in plain language the requestor’s location and distance relative to the proposed facility” as required by 30 TAC § 55.201(d)(2). Moreover, while it is clear that Mr. Mannchen enjoys spending time in the Sam Houston National Forest, the Hearing Request fails to demonstrate with any specificity how

² *Id.* § 55.205(b)(2).

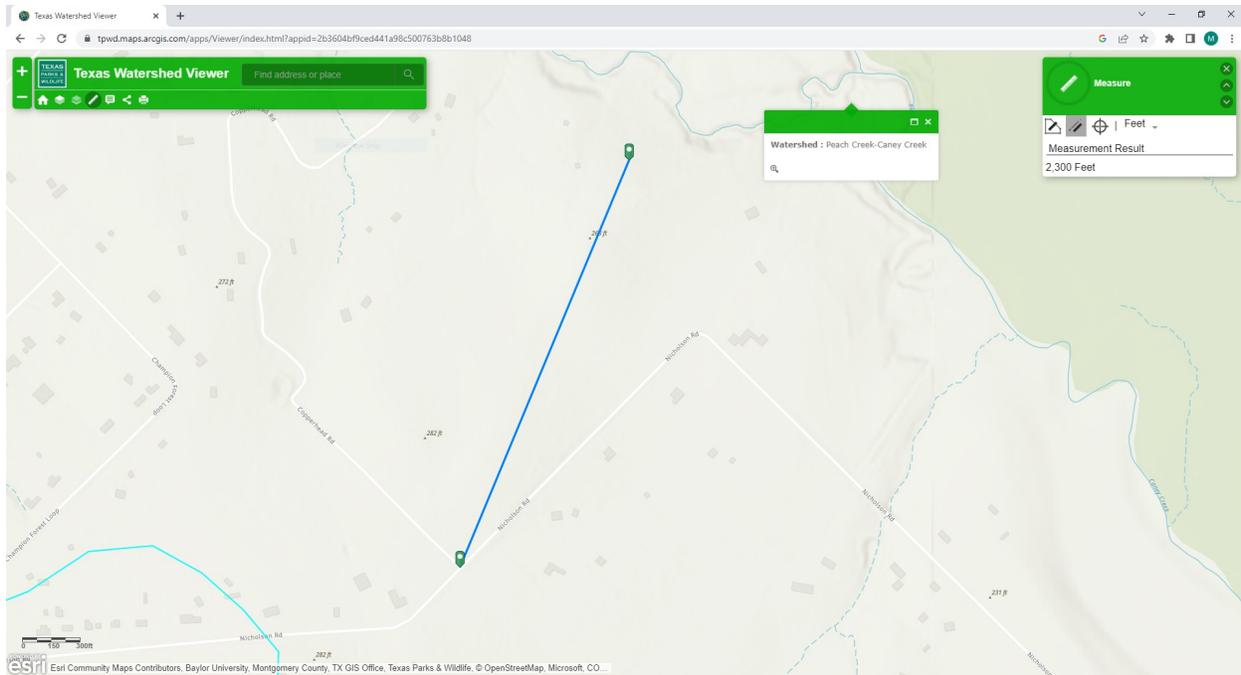
³ U.S. Dep’t of Agric., *Sam Houston National Forest*, https://www.fs.usda.gov/detail/texas/about-forest/districts/?cid=fswwdev3_008443 (emphasis added).

the forest could be affected by the proposed WWTF in any way, much less that the proposed WWTF will “impact[] wildlife habitat and the ecology and productivity of the forest.” In short, even if the Hearing Request had shown that the proposed WWTF would affect the Sam Houston National Forest, any alleged harm to Mr. Mannchen, “a longtime member of BCWK,” is indistinguishable from concerns common to the public in general.

B. The interests BCWK seeks to protect are not germane to the organization’s purpose

Even if the Hearing Request had properly identified a member of BCWK with standing to request a hearing in their own right, it fails to satisfy the Commission’s minimum requirements for hearing requests. As noted above, the Hearing Request does not comply with 30 TAC § 55.201(d)(2) because it fails to provide the requisite “written statement explaining in plain language the requestor’s location and distance relative to the proposed facility.” Further, the interests BCWK seeks to protect are not germane to the organization’s purpose as required by 30 TAC §55.205(a)(2) and (b)(3). According to the Hearing Request, “BCWK is a 501(c)(3) nonprofit corporation with the purpose of protecting the health of the waters and communities across the Lower Galveston Bay watershed.” As noted above, the WWTF at issue is proposed to be located approximately 2,300 feet northeast of the intersection of Copperhead Road and Nicholson Road, in Montgomery County, Texas 77303. The Texas Parks & Wildlife Department online Texas Watershed Viewer,⁴ however, shows that the approximate location of the proposed WWTF is within the Peach Creek-Caney Creek watershed, not the Lower Galveston Bay watershed, as depicted in the following screenshot:

⁴ Tex. Parks & Wildlife Dep’t, *Texas Watershed Viewer*, <https://tpwd.maps.arcgis.com/apps/Viewer/index.html?appid=2b3604bf9ced441a98c500763b8b1048>.



C. Response to BCWK’s issues

Raising the same issues from BCWK’s previously filed comments, the Hearing Request fails to dispute anything in the ED’s RTC or explain how BCWK’s concerns “were not adequately addressed” by the ED’s thorough responses therein. Instead, BCWK’s Hearing Request relies solely on conclusory statements and fails to establish a reasonable basis for concluding that any issue raised by BCWK is factually disputed. Simply put, and as explained in more detail below, the four issues upon which BCWK requested a contested case hearing are unfounded and adequately addressed by the ED’s RTC and the numerical criteria and operating requirements imposed by the draft permit (“*Draft Permit*”).

1. Whether the Applicant has demonstrated that water quality and uses of downstream waters will be protected

BCWK raised concerns that the water quality and designated uses of the receiving waters will not be protected. As noted in the ED’s RTC, the Draft Permit was developed in accordance with the TSWQS to be protective of water quality and imposes conditions and restrictions to ensure that the proposed WWTF will not: (1) discharge any wastewater that results in instream aquatic toxicity; (2) cause a violation of an applicable narrative or numerical TSWQS; (3) result in the endangerment of a drinking water supply; or (4) result in aquatic bioaccumulation that threatens human health. The Draft Permit contains several water quality specific parameter

requirements that limit the potential impact of the discharge on the receiving waters. Additionally, the treated effluent will be disinfected prior to discharge to protect human health. Further, a Tier 1 antidegradation review determined that existing water quality uses will not be impaired by the Draft Permit, and a Tier 2 review preliminarily determined that no significant degradation of water quality is expected in Camp Creek and Caney Creek. As such, there is no factual basis for concern that existing uses will not be maintained and protected.

BCWK also expressed concern regarding discharging into Segment 1010 of the San Jacinto River Basin because it is listed on the Commission's inventory of impaired and threatened waters for bacteria. The proposed WWTF is designed to provide adequate disinfection and in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 63 colony-forming units or most probable number of *Escherichia coli* (*E. coli*) per 100 ml has been added to the Draft Permit. Further, in compliance with 30 TAC § 309.3(g)(1), Applicant will disinfect domestic wastewater using chlorination, which is one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms as well as eliminate noxious odors during disinfection.

2. Whether the Draft Permit includes adequate odor prevention measures

BCWK also expressed concern that potential odors from the proposed WWTF might affect the use of a nearby public park and the receiving waters. However, the Application demonstrates compliance with 30 TAC § 309.13(e), which imposes buffer zone requirements for the abatement and control of nuisance odors. Specifically, Applicant will abate and control nuisance odor by legal restrictions prohibiting the construction of residences within the buffer zone, which is included in the Draft Permit.⁵ Therefore, nuisance odor is not expected to occur because of the permitted activities at the WWTF. BCWK's concerns about a lack of odor prevention measures are unfounded, common to members of the general public, and adequately addressed by the Draft Permit.⁶ Further, future nuisance conditions, should they arise, can be addressed through both civil suits and enforcement by the Commission.

⁵ Draft TPDES Permit No. WQ0016116001 at 34 ("The buffer zone shall be met by right-of-way to the east (road) and west (road) of the property and by non-residential land use to the north (community park) of the property.").

⁶ *Id.*

3. **Whether the Draft Permit complies with Commission requirements related to placement of a wastewater treatment facility in or near the 100-year floodplain**

BCWK claims that the Draft Permit has not been shown to be adequately protective of floodplain impacts, but the Application demonstrates that the proposed WWTF is located above the 100-year flood plain. In addition, the Draft Permit includes Other Requirement No. 4, which requires Applicant to provide protection for the facility from a 100-year flood.

4. **Whether issuance of the Draft Permit complies with Texas' regionalization requirements**

Lastly, BCWK claims that Applicant has not met regionalization requirements. As noted in the ED's RTC, while there are three existing wastewater treatment facilities within a three-mile radius of the proposed WWTF, Applicant submitted responses from two of the existing facilities declining to accept the proposed wastewater volume. The third facility did not respond to Applicant's certified correspondence inquiring as to whether the facility had the willingness and capacity to accept the flows proposed in the Application. Therefore, the Application and Draft Permit comply with the Commission's regionalization requirements.

Simply put, the concerns raised in the Hearing Request are conclusory at best. Further, the issues outlined in the Hearing Request have been thoroughly addressed both in the Application and the ED's RTC and the ED has made a preliminary decision that the Application and Draft Permit meet all applicable statutory and regulatory requirements. Therefore, BCWK's Hearing Request should be denied.

V. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Applicant, Crystal Springs Water Co., Inc., respectfully requests that the Commission deny BCWK's Hearing Request and issue TPDES Permit No. WQ0016116001, as recommended by the ED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 22, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Maris M. Chambers