

Jon Niermann, *Chairman*
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Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 16, 2023

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

RE: **IN THE MATTER OF THE APPLICATION BY SOUTH CENTRAL
WATER COMPANY FOR TPDES PERMIT NO. WQ0016060001
TCEQ DOCKET NO. 2023-0955-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

A handwritten signature in black ink, appearing to read "Josiah T. Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-0955-MWD

APPLICATION BY	§	BEFORE THE
THE SOUTH CENTRAL	§	
WATER COMPANY	§	TEXAS COMMISSION ON
FOR TPDES PERMIT	§	
NO. WQ0016060001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUEST FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to requests for hearing and reconsideration in the above-captioned matter.

I. Introduction

A. Summary of Position

Before the Commission is an application by South Central Water Company (Applicant or South Central) for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016060001. OPIC notes that the TCEQ Chief Clerk’s office received timely hearing requests from two groups and 15 individuals. The Commission also received one timely request for reconsideration from the City of Bulverde. For the reasons stated herein, OPIC respectfully recommends the Commission grant the requests of the Greater Edwards Aquifer Alliance (GEAA), Bulverde Neighborhood Alliance (BNA), Eric Evans, Patricia Graham, Steve Hunsicker, Anit Kaur, Kelly Douglas, BethAnn Erhardt, Edith Isaack, Carlton Wenfield Sundeck, and Jacqueline Sundt, and refer this application for a 180-

day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-7 contained in §III.B. Additionally, OPIC respectfully recommends denial of the pending request for reconsideration.

B. Description of Application and Facility

South Central applied to the TCEQ for new TPDES Permit No. WQ0016060001. If issued, the permit would authorize discharge of treated domestic wastewater from the proposed Diamante Ranch Wastewater Treatment Facility (the Facility) at a daily average flow limit in Interim Phase I of 0.125 million gallons per day (MGD), at a daily average flow limit in Interim Phase II of 0.30 MGD, and at a daily average flow limit in the Final Phase of 0.60 MGD. The Facility is proposed to be located approximately 4,300 feet north of the intersection of Farm-to-Market Road 1863 and Stahl Lane, in Comal County 78163.

The Facility would be an activated sludge process plant operated in the complete mix mode with single stage nitrification. Treatment units in the Interim I and II phases would include a bar screen, an aeration basin, a final clarifier, an aerobic sludge digester, effluent filters, and a chlorine contact chamber. Treatment units in the Final phase would include a bar screen, two aeration basins, a final clarifier, two aerobic sludge digesters, effluent filters, and two chlorine contact chambers.

The proposed discharge route for the treated effluent is via pipe to an unnamed ditch, then to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water use is minimal aquatic life

use for the unnamed ditch. The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The aquifer protection use applies as the Facility would be located in the Edwards Aquifer contributing zone.

A priority watershed of critical concern has been identified in Segment No. 1908 in Comal County. The Comal Springs riffle beetle (*Heterelmis comalensis*), Peck's cave amphipod (*Stygobromus pecki*), fountain darter (*Etheostoma fonticola*), San Marcos gambusia (*Gambusia georgei*), San Marcos salamander (*Eurycea nana*), Texas blind salamander (*Eurycea rathbuni*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), and Texas wild-rice (*Zizania texana*) have been determined to occur in the contributing zone of the southern segment of the Edwards Aquifer in Segment No. 1908. The presence of these species in watersheds of critical concern requires Environmental Protection Agency (EPA) review and, if appropriate, consultation with U.S. Fish and Wildlife Service (USFWS).

C. Procedural Background

The TCEQ received the application on October 19, 2021, and declared it administratively complete on December 23, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in Spanish in *La Voz Newspaper* on January 7, 2022, and in English in the *San Antonio Express-News* on January 21, 2022. The ED completed the technical review of the application on April 15, 2022. The Applicant published the Combined NORI and Notice of Application and Preliminary Decision (NAPD) in the *San Antonio*

Express-News in English on June 16, 2022, and in Spanish in *La Voz Newspaper* on July 6, 2022. The Combined NORI and NAPD was issued to correct the Applicant's contact information contained in the original NORI. A public meeting was held on January 26, 2023, and the public comment period ended on the same day. The Chief Clerk mailed the ED's Revised Response to Public Comment on June 15, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was July 17, 2023. The TCEQ Chief Clerk's office received timely hearing requests from two groups and 15 individuals.

II. Applicable Law

A. Requests for Hearing

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015) (SB 709). Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that 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;
- (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 by the requestor 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 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.

30 TAC § 55.201(d)

Under 30 TAC § 55.203(a), 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. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (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, safety, and 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.

Under § 55.203(d), to determine 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 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.

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association 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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Greater Edwards Aquifer Alliance

GEAA, through its Executive Director Annalisa Peace and counsel Eric Allmon, submitted multiple timely comments and hearing requests. GEAA states that it is a non-profit organization that advocates for protection and preservation

of the Edwards Aquifer, its springs, watersheds, and the Texas Hill Country. As such, the interests the group or association seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). The request identifies Asa Dunn as a group member who would otherwise have standing to request a hearing in their own right. According to the map prepared by ED staff, Asa Dunn lives 0.19 miles of the proposed Facility. He is concerned about the effect the Facility could have on his water quality, his hay crop, and his cattle. Based on his location, OPIC is able to conclude that a reasonable relationship exists between the interests he seeks to protect and the Applicant's regulated activity. *See* 30 TAC § 55.203(c)(3). Mr. Dunn therefore has standing to request a hearing in his own right as required by 30 TAC § 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

In both timely comment and request, GEAA states concerns including those related to the characterization of and suitability of the discharge route; compliance with the location standards in 30 TAC § 309.13; adverse impact to water quality; creation of nuisance odors; flooding attributable to the Facility's discharge; adverse effect on agriculture, domestic animals, and local wildlife; and compliance with the state's regionalization policy. Because GEAA has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

Bulverde Neighborhood Alliance

BNA submitted multiple timely comments and hearing requests—both through its members and through counsel, Eric Allmon. BNA states that it is a community organization that exists to protect the water, land, and air quality of the Bulverde area. As such, the interests the group or association seeks to protect through their hearing request are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). Joyce Lux is identified in the requests as a group member who would otherwise have standing to request a hearing in their own right. According to the map prepared by ED staff, Ms. Lux resides 0.42 miles of the proposed Facility. She is concerned about the Facility's impact on the water wells on her property and the effect this could have on her health and the health of her cattle. Based on her proximity, OPIC is able to conclude that a reasonable relationship exists between the concerns she raises and the Applicant's regulated activity. *See* 30 TAC § 55.203(c)(3). Therefore, Ms. Lux does have standing to request a hearing in her own right as required by 30 TAC § 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

In both timely comment and request, BNA states concerns including those related to adverse impact to water quality, including water wells; flooding attributable to the Facility's discharge; creation of nuisance odors; adverse effect on domestic animals and local wildlife; and non-compliance with the state's regionalization policy. Because BNA has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

Individual Requestors Located Less than 1 Mile from the Proposed Facility

The Commission received timely requests and comments from the following requestors who are located at distances within one mile of the proposed Facility: Eric Evans (0.45 miles), Steve Hunsicker (0.54 miles), and Anit Kaur (0.45 miles). These requestors share concerns that at a minimum, the proposed Facility will negatively impact water quality and cause nuisance odor.

To be granted a contested case hearing, the Requestors must show that they qualify as “affected persons,” which are those who have personal justiciable interests related to a legal right, duty, privilege, power, or economic interest affected by the application, and must distinguish those interests from interests common to the general public. *See* 30 TAC § 55.203(a). Their concerns about water quality and animal life are interests which are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Further, as their property is near the proposed Facility, a reasonable relationship exists between those interests and the Applicant’s regulated activity—a relevant factor under 30 TAC § 55.201(c)(3).

Their proximity, in combination with their stated interests, demonstrates that they are likely to be affected in a way not common to members of the general public, and thus possess personal justiciable interests in this matter. Therefore, OPIC concludes that Eric Evans, Steve Hunsicker, and Anit Kaur have demonstrated that they possess a personal justiciable interest in this matter and qualify as affected persons.

Individual Requestors Located Between 1 and 2 Miles from the Proposed Facility

The Commission received timely requests and comments from the following requestors who are located at distances greater than one mile but less than two miles from the proposed Facility: Kelly Douglas (1.48 miles), BethAnn Erhardt (1.75 miles), Edith Isaack (1.95 miles), Carlton Wenfield Sundeck (1.9 miles), and Jacqueline Sundt (1.75 miles). These requestors raise a number of varied concerns, including those about water quality and nuisance odor. For example, all of the requestors explain that the well water they consume is classified as groundwater under the influence of surface water.

OPIC observes that their concerns about water quality and nuisance odor are interests which are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Further, a reasonable relationship exists between those interests and the Applicant's regulated activity. *See* 30 TAC § 55.201(c)(3). Specifically, OPIC finds that because their wells are under the influence of surface water and are near the proposed Facility and discharge route, the requestors have demonstrated that there is a reasonable likelihood that they could be affected by the Applicant's regulated activity in a way not common to members of the general public. Finally, OPIC notes that there are no explicit distance restrictions imposed by law in this matter. *See* 30 TAC § 55.201(c)(2).

Therefore, OPIC concludes that Kelly Douglas, BethAnn Erhardt, Edith Isaack, Carlton Wenfield Sundeck, and Jacqueline Sundt qualify as affected persons.

Individual Requestors Located At Distances Greater than 2 Miles from the Proposed Facility

The Commission received timely requests and comments from the following requestors who are located at distances greater than two miles from the proposed Facility: Patricia Graham (83 miles), Jennifer Johnson (6.49 miles), Anna Molina (4 miles), and Tim Williford on behalf of Texas Water Utilities (66 miles).

These requestors are located at distances significantly greater than two miles from the proposed Facility and discharge point. OPIC notes that there are no specific distance limitations applicable to whom may be considered an affected person for purposes of this application, but at distances over two miles, OPIC finds that these requestors lack the proximity to establish a reasonable relationship between their claimed interests and the regulated activity. *See* 30 TAC § 55. 203(c)(3). Given the nature and volume of the proposed discharge to be permitted and considering these requestors' distances from the proposed Facility and regulated activity, OPIC cannot find that Patricia Graham, Jennifer Johnson, Anna Molina, and Tim Williford (Texas Water Utilities) are affected persons.

Additionally, OPIC notes that Mr. Williford states that Texas Water Utilities maintains water wells which draw from the aquifer and is concerned about the Facility impacting the aquifer's water quality. However, the only address provided by Mr. Williford is in Pflugerville and approximately 65 miles from the proposed Facility and regulated activity. In the absence of a closer address

provided by the requestor, OPIC is unable to find that Mr. Williford has demonstrated that Texas Water Utilities is likely to be impacted by the Facility's operation in a way that is not common to members of the general public. Therefore, OPIC concludes that Texas Water Utilities has not shown that it qualifies as an affected person.

Individual Requestors With No Timely Filed Comments

The Commission received timely hearing requests from Asa Dunn and Coquina Dunn. However, the record indicates that these requestors did not file comments during the public comment period for this application. The Commission is precluded by statute from finding a person to be affected if they did not file timely comments on the application. Texas Water Code (TWC) § 5.115(a-1)(2)(B); 30 TAC § 55.201(c). Additionally, OPIC notes that by rule, a hearing request must explain how and why a requestor believes that they will be adversely affected by a proposed facility in a manner not common to members of the general public. *See* 30 TAC § 55.201(d)(2). Neither requestor raised or discussed any substantive issues concerning the proposed Facility or its discharge. The absence of this information hinders OPIC's assessment of the likelihood that they could be affected in a way that differs from the general public.

Consequently, OPIC is unable to conclude that Asa Dunn and Coquina Dunn qualify as affected persons.

Margie Hastings

Margie Hastings submitted a timely comment and hearing request. In her submittal, she explains that she owns property approximately one thousand feet south of the proposed Facility. However, she did not provide her property's address as required by 30 TAC § 55.201(d)(1). Additionally, her property is not depicted on either the ED's map or the affected landowners map included with the Application. The lack of a known property address prevents the OPIC from being able to assess the likelihood that she will be affected by the proposed Facility in a way that differs from the general public. Because of the absence of this information, OPIC is unable to conclude that Ms. Hastings qualifies as an affected person.

B. Which issues raised in the hearing requests are disputed

The affected persons discussed above raised the following issues:

1. Whether the Application and Facility comply with the location standards of 30 TAC § 309.13.
(Raised by the following affected persons: BNA, GEAA)
2. Whether the discharge route will function properly as an operational feature of the proposed Facility.
(Raised by the following affected persons: BNA, GEAA, Patricia Graham)
3. Whether the Facility and draft permit will adversely affect surface and ground water quality, including area water wells.
(Raised by the following affected persons: BNA, GEAA, Kelly Douglas, BethAnn Erhardt, Eric Evans, Patricia Graham, Steve Hunsicker, Edith Isaacs, Anit Kaur, Carlton Wenfield Sundbeck, Jacqueline Sundt)
4. Whether the Facility and draft permit will create nuisance odors.
(Raised by the following affected persons: BNA, GEAA, Kelly Douglas, BethAnn Erhardt, Eric Evans, Steve Hunsicker, Edith Isaacs, Anit Kaur, Carlton Wenfield Sundbeck, Jacqueline Sundt)

5. Whether the Facility and draft permit are adequately protective of area wildlife and domestic animals.

(Raised by the following affected persons: BNA, GEAA, Kelly Douglas, BethAnn Erhardt, Eric Evans, Steve Hunsicker, Edith Isaacs, Anit Kaur, Carlton Wenfield Sundbeck, Jacqueline Sundt)

6. Whether the Facility and draft permit are adequately protective of human health.

(Raised by the following affected persons: BNA, GEAA, Kelly Douglas, BethAnn Erhardt, Eric Evans, Patricia Graham, Steve Hunsicker, Edith Isaacs, Anit Kaur, Carlton Wenfield Sundbeck, Jacqueline Sundt)

7. Whether the draft permit complies with the state's regionalization policy and demonstration of need for the volume requested in the application for a new discharge permit pursuant to TWC § 26.0282.

(Raised by the following affected persons: BNA, GEAA)

8. Whether the Facility and draft permit will create flooding.

(Raised by the following affected persons: BNA, GEAA)

9. Whether the proposed Facility will cause increased traffic.

(Raised by the following affected persons: Kelly Douglas, BethAnn Erhardt, Eric Evans, Steve Hunsicker, Edith Isaacs, Anit Kaur, Carlton Wenfield Sundbeck, Jacqueline Sundt)

C. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised here are issues of fact.

D. Whether the issues were raised during the public comment period

All issues were specifically raised by requestors who qualify as affected persons during the public comment period.

E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn comments.

F. Whether the issues are relevant and material to the decision on the application

The affected persons' hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii) as well as other issues that are not relevant and material. To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Location Standards

The affected persons in this matter are concerned that the application and proposed Facility do not comply with the location standards of 30 TAC § 309.13. This section contains requirements related to the Facility's location relative to a number of things, including 100-year flood plains, wetlands, and water wells. Therefore, Issue no. 1 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Suitability of the Discharge Route

The affected persons in this matter are concerned that the proposed discharge route has been improperly characterized in the application and will

not function properly. This concern appears to be based on the suitability and functioning of the discharge route. Proper functioning of a discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12. Therefore, Issue no. 2 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

Water Quality, Human Health and Safety, Property Use, Wildlife, and Domestic Animals

The affected persons in this matter are concerned with adverse effects to water quality—including well water—and its impacts on human health, property use, domestic animals, and wildlife. They opine that the effluent limits contained in the draft permit are not sufficiently protective, that the Facility should incorporate beneficial reuse, and that disinfection should be achieved using ultraviolet light instead of chlorine as is currently proposed. The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.” 30 TAC § 307.1. According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not

be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). The Standards also require water quality to be consistent with enjoyment and that no toxic effects result from contact with the water. Therefore, Issue nos. 3, 5, and 6 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Nuisance Odor

The affected persons in this matter are concerned that the proposed Facility will cause nuisance odor conditions. Odor is specifically addressed by 30 TAC § 309.13(e), which requires that nuisance odor be abated and controlled. Further, § 307.4 delineates general criteria that surface waters must meet, including aesthetic parameters which work, in part, to prevent nuisance conditions attributable to the proposed Facility. Finally, one of the purposes of Chapter 309 is “to minimize the possibility of exposing the public to nuisance conditions.” 30 TAC § 309.10. Therefore, Issue no. 4 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Regionalization

The affected persons in this matter are concerned that the proposed Facility would not comply with Texas’s Regionalization Policy. Under TWC § 26.081(a), it is “state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to prevent pollution and maintain and enhance state water quality.” Further, “in

considering the issuance...of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit...based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter.” TWC § 26.0282. Therefore, Issue no. 7 is relevant and material to the Commission’s decision on the application.

Vehicular Traffic and Flooding

Finally, the affected persons raised concerns about potential increases in vehicular traffic and flooding resulting from the proposed Facility. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider issues related to increased traffic or general concerns about flooding when deciding whether to issue a TPDES permit. Therefore, Issue nos. 8 and 9 are not relevant and material to the Commission’s decision regarding this Application and are not appropriate for referral to SOAH.

G. Maximum expected duration for the contested case hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC

§ 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. Request for Reconsideration

The City of Bulverde timely submitted a request for reconsideration of the Executive Director's decision because the application erroneously indicates that the proposed Facility and its service area are not within Bulverde's city limits; the Applicant has not sufficiently justified the need for the Facility or the treatment capacity sought, therefore it does not comply with the state's regionalization policy; the Facility may create nuisance odors; and it may adversely impact public health, animal life, groundwater, and local aquifers.

These issues are relevant and material to the Commission's decision on this application. However, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the ED's decision should be reconsidered. At this time, an evidentiary record does not exist, and therefore, OPIC cannot recommend that the request for reconsideration be granted on these bases. As discussed herein, OPIC is recommending a contested case hearing in this matter and is further recommending that many of these

issues be referred for hearing. Therefore, OPIC respectfully recommends denial of this request for reconsideration.¹

V. Conclusion

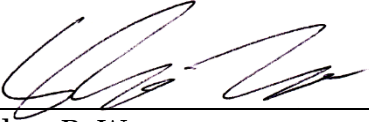
For the reasons stated above, OPIC finds that the following groups and individuals qualify as affected persons: GEAA, BNA, Eric Evans, Patricia Graham, Steve Hunsicker, Anit Kaur, Kelly Douglas, BethAnn Erhardt, Edith Isaack, Carlton Wenfield Sundeck, and Jacqueline Sundt. Therefore, OPIC respectfully recommends that the Commission grant these hearing requests, deny all other hearing requests, and refer this application for a contested case hearing at SOAH on Issue nos. 1-7 contained in §III.B with a maximum duration of 180 days. Finally, OPIC respectfully recommends denial of the pending request for reconsideration.


Respectfully submitted,

[Signatures on Next Page]

¹ While OPIC is recommending denial of this request for reconsideration and notes that the City of Bulverde did not submit a hearing request in this matter, should the Commission find other requestors affected and order a hearing convened, the City of Bulverde will have the opportunity to attend and request party status at the preliminary hearing if desired.

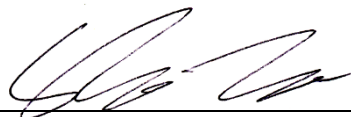
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CERTIFICATE OF SERVICE

I hereby certify that October 16, 2023, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Request for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.


Sheldon P. Wayne

MAILING LIST
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TCEQ DOCKET NO. 2023-0955-MWD

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