

TCEQ DOCKET NO. 2023-1563-MWD

APPLICATION BY GREENWOOD	§	BEFORE THE
VENTURES GROUP, LLC FOR NEW	§	TEXAS COMMISSION ON
TEXAS POLLUTION DISCHARGE	§	ENVIRONMENTAL QUALITY
ELIMINATION SYSTEM PERMIT NO.	§	
WQ0016148001		

GREENWOOD VENTURES GROUP, LLC’S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant Greenwood Ventures Group, LLC (Applicant) and files this Response to Hearing Requests relating to the issuance of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016148001, and would respectfully show the following:

I. SUMMARY OF RESPONSE

The Texas Commission on Environmental Quality (TCEQ or Commission) received timely hearing requests from four individuals, two environmental groups and one governmental entity. As explained more fully below, of the four individual requests, only Colby and Erin Stephens are affected persons who filed hearing requests demonstrating a justiciable interest. Neither San Marcos River Foundation (SMRF)¹ nor Greater Edwards Aquifer Alliance (GEAA)² are affected persons because they do not meet the test for group or associational standing.³ The Guadalupe-Blanco River Authority (GBRA) is an affected person by virtue of its standing as a governmental entity since the proposed discharge is within its jurisdictional area.

Accordingly, the Commission should deny all hearing requests but those filed by GBRA and Stephens and, if it refers this case to the State Office of Administrative Hearings (SOAH) for

¹ SMRF filed four identical comment letters on March 28, 2023 – two by SMRF Executive Director and two by their legal counsel Victoria Rose with Save Our Springs Alliance (SOS). None of the four comment letters requested a contested case hearing. The only contested case hearing was filed on October 4, 2023 on behalf of SMRF by SOS which was deficient as explained below.

² GEAA filed three identical hearing requests on March 28, 2023 by Executive Director Annalisa Peace, Technical Director Nathan Glavy and Technical Director Mike Clifford and are also deficient as explained below.

³ Title 30 Tex. Admin. Code (TAC) § 55.205.

hearing, direct that the proceeding not exceed 180 days consistent with section 2003.047(e-2)(1) of the Texas Water Code.

II. BACKGROUND

Applicant seeks authorization to discharge domestic wastewater from a “minor” wastewater treatment plant (WWTP) that will serve single family homes in a residential development located approximately 6.4 miles from the City of Lockhart, in Caldwell County, Texas. The proposed TPDES permit would allow a daily average flow of 0.325 million gallons per day (MGD) in the Interim I phase, 0.65 MGD in Interim II phase and 0.975 MGD in the Final phase. The Draft Permit proposes effluent limitations in all phases of 10 mg/L carbonaceous biochemical oxygen demand five-day (CBOD₅), 15 mg/L total suspended solids (TSS), 2 mg/L ammonia-nitrogen (NH₃-N), 1.0 mg/L total phosphorus (TP), 126 colony forming units (CFU) of *E. coli* per 100 ml, and 5.0 mg/L minimum dissolved oxygen (DO),⁴ which is considered enhanced secondary treatment with nitrification and additional phosphorus removal.

According to the Executive Director (ED), these limits comply with the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP), and the proposed discharge will not impair existing water quality, which the ED’s staff confirmed through a Tier 1 antidegradation review.⁵ Treated effluent will to be discharged to an unnamed tributary, then to a second unnamed tributary, then to West Fork Plum Creek, then to Plum Creek in Segment No. 1810 of the Guadalupe River Basin which is not currently listed as an impaired or threatened waterbody on the section 303(d) list. The TCEQ designated aquatic life uses of minimal (for the unnamed tributaries), limited (West Fork Plum Creek) and high (Plum Creek, Segment 1810) for these respective reaches of the discharge route. Standards’ review determined that the discharge from the proposed permit action is not expected to affect any federal

⁴ Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision at 3 (Oct. 26, 2022) (Technical Summary).

⁵ *Id.* Also, a Tier 2 antidegradation review was performed and concluded that no significant degradation of water quality is expected in West Fork Plum Creek and Plum Creek.

endangered or threatened aquatic or aquatic-dependent species.⁶ In all technical respects, the proposed amendment complies with all Commission rules and policy.

III. AUTHORITY

To be granted, an “affected person” with a personal justiciable interest demonstrating a non-speculative injury resulting from the granting of the permit must make the request for hearing. Section 55.203 provides the standing criteria for individual requestors Vinklarek, Edmonson and Lindsey, as follows:⁷

- (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:

⁶ *Id.* at 2.

⁷ The map attached as **Exhibit A** shows the physical location of all individual requestors relative to the proposed site.

- (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 executive director; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, 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.⁸

The test for associational or group standing for SMRF and GEAA is different from individuals or governmental entities and is set forth in 30 TAC §55.205:

- (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.⁹

Individuals Vinklarek, Edmonson and Lindsey lack a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application¹⁰ while SMRF and GEAA similarly lack standing because no member of the groups would otherwise have standing to request a hearing in their own right.¹¹

⁸ 30 TAC § 55.203.

⁹ 30 TAC § 55.205(a), (b).

¹⁰ 30 TAC § 55.203(a).

¹¹ 30 TAC § 55.205(a)(1), (b)(2).

IV. RESPONSE TO HEARING REQUESTS

1) **Individual Requests for Contested Case Hearing**

Susan Vinklarek

As depicted on Applicant Exhibit A, Ms. Vinklarek's property is neither located on the discharge route nor in the 1-mile radius. Ms. Vinklarek filed the first hearing request received by the TCEQ in this docket on June 29, 2022 and filed no additional requests. The mailing list provided in the June 29, 2022 request is given as 901 Brook Hill Lane, Fort Worth, Texas 76244 and is otherwise silent on Ms. Vinklarek's justiciable interest. As there is no information on how the requester believes she will be adversely affected by the proposed facility in a manner not common to the members of the general public, Ms. Vinklarek's request fails to meet the standing criteria in 30 TAC §§ 55.201(d) and 55.203 and her hearing request should be denied.

Martin Edmondson

As depicted on Exhibit A, like Ms. Vinklarek, Mr. Edmondson's property is not located on the discharge route or within the 1-mile radius, but in fact is even further away than Ms. Vinklarek at approximately 2.1 miles from the WWTP and 2.2 miles from the discharge route. While Mr. Edmondson's October 14, 2023 request lists a myriad of concerns, it is completely silent on how he believes he will be adversely affected by the proposed facility in a manner not common to the members of the general public. As a result, like Ms. Vinklarek, Mr. Edmondson's request fails to meet the standing criteria in 30 TAC §§ 55.201(d) and 55.203 and his hearing request should be denied.

Larry Lindsey

Mr. Lindsey lives adjacent to the proposed site, but upstream from the WWTP, outfall and discharge route. The sole issue raised in his October 14, 2022 hearing request relates to flooding – the potential for West Fork Plum Creek to “overflow its banks” – which is outside of the jurisdiction of the TCEQ. Because he raises no other issues, and no relevant and material issues at all, and the request is totally silent on how he will be adversely affected by the proposed facility

in a manner not common to the members of the general public, Mr. Lindsey's hearing request should be denied.

2) **Group Requests for Contested Case Hearing**

SMRF

SMRF filed its single hearing request on October 4, 2023.¹² In its request, it states that it meets the requirements to be considered an affected person because its members Chelsea Collins and Jerry Doyle have standing in their own right. Chelsea Collins has not filed a public comment or hearing request in this docket and SMRF provided no evidence of Ms. Collins' membership in SMRF or her physical address as required by 30 TAC § 55.205(b)(2).

While SMRF provided a physical address for Mr. Doyle, it also provided no proof of his membership in SMRF. SMRF's description of Mr. Doyle's interests is also demonstrably different than the interests Mr. Doyle stated in his own public comment filed during the public meeting on March 28, 2023.¹³ Mr. Doyle's TCEQ form indicated only that he wanted to be added to the mailing list and raised three questions (regarding flooding, odor from the water (not the WWTP) and percentage of treated water in the creek). Mr. Doyle did not indicate in any way that he was a member of SMRF, or that he was requesting a hearing, or that he believes he will be adversely affected by the proposed facility in a manner not common to the members of the general public. None of the three questions asked by Mr. Doyle constitute relevant and material issues¹⁴ for purposes of affected person status and, since he lacks affected person status, he cannot be the basis on which SMRF claims their own status.

Since neither Chelsea Collins nor Jerry Doyle are affected persons in their own right, SMRF failed to prove its associational standing and its hearing request should be denied.

¹² All other SMRF filings were comment letters that did not request a contested case hearing and did not provide any information related to standing.

¹³ See **Exhibit B**, Jerry Doyle's TCEQ Registration Form.

¹⁴ Flooding and the volume of effluent in the unnamed tributaries are not issues within the TCEQ's jurisdiction. Similarly, odors from water is not a jurisdictional issue (only those emanating from the WWTP).

GEAA

GEAA's three identical hearing requests are deficient on their face for groups. Long on issues, GEAA is short on required details – it failed to identify any member who would have standing in their own right. The March 28, 2023 requests list no names or physical addresses and therefore fail to meet the explicit standing criteria for groups in 30 TAC § 55.205(b)(2). GEAA failed to prove its associational standing and its hearing requests should be denied.

V. RELEVANT AND MATERIAL ISSUES FOR REFERRAL

The only relevant and material issues raised by Mr. and Mrs. Stephens are odor pertaining to the operation of the WWTP and “infringement” on natural habitat and wildlife. The only issue raised by GBRA relates to the sufficiency of the proposed effluent limitations (GBRA seeks revisions to CBOD₅ and TSS only).

Therefore, if the Commission concludes that Mr. and Mrs. Stephens and GBRA have standing to participate in a contested case hearing at SOAH and refers this case, Applicant recommends the referral of the following issues only: 1) whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13 and 2) whether the draft permit is protective of surface water quality and wildlife in accordance with applicable regulations including the TSWQS.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant Greenwood Ventures, LLC respectfully prays that the Commission deny the hearing requests of individuals Susan Vinklarek, Martin Edmonson and Larry Lindsey and groups, SMRF and GEEA; and if it grants the hearing requests by Mr. and Mrs. Stephens and GBRA, that the case be referred on the two issues identified in Section V above for no longer than 180 days.

Respectfully submitted,

Helen S. Gilbert

By: _____

Helen S. Gilbert
State Bar No. 00786263
Randall B. Wilburn
State Bar No. 24033342
BARTON BENSON JONES, PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 565-4995
Telecopier: (210) 600-9796
hgilbert@bartonbensonjones.com
rwilburn@bartonbensonjones.com

**ATTORNEYS FOR GREENWOOD
VENTURES GROUP, LLC**

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 29th day of January 2024:

Mr. Garrett Arthur
Public Interest Counsel
Office of the Public Interest Counsel
TCEQ-MC 103
P.O. Box 13087
Austin, TX 78711-3087
Garrett.Arthur@tceq.texas.gov

Ms. Laurie Gharis, Chief Clerk
Office of Chief Clerk
TCEQ-MC 105
P.O. Box 13087
Austin, TX 78711-3087
Chiefclerk@tceq.texas.gov

Ms. Kathy Humphreys, Staff Attorney
Mr. Fernando Salazar Martinez, Staff Attorney
Office of Legal Services
TCEQ-MC 173
P.O. Box 13087
Austin, TX 78711-3087
Kathy.Humphreys@tceq.texas.gov
Fernando.Martinez@tceq.texas.gov

Mr. and Mrs. Stephens
Sola Fe Ranch LLC
680 Westwood Rd.
Lockhart, TX 78644-4699
Stephenscolby@yahoo.com
Erin_a_stephens@yahoo.com

Mr. Justin Adkins
Guadalupe Blanco River Authority
2225 E. Common St.
New Braunfels, TX 78130-3157
jadkins@gbra.org

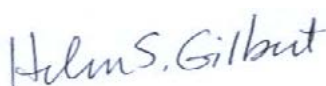
Mr. Martin Edmondson
Double M Ranch
162 Paint Brush Trail
Lockhart, TX 78644-4565
m.edmo@yahoo.com

Ms. Victoria Rose
Save Our Springs Alliance
4701 W Gate Blvd, Suite D401
Austin, TX 78745-1479
victoria@sosalliance.org

Ms. Susan Vinklarek
8901 Brook Hill Ln.
Fort Worth, TX 76244
Vinklarek@me.com

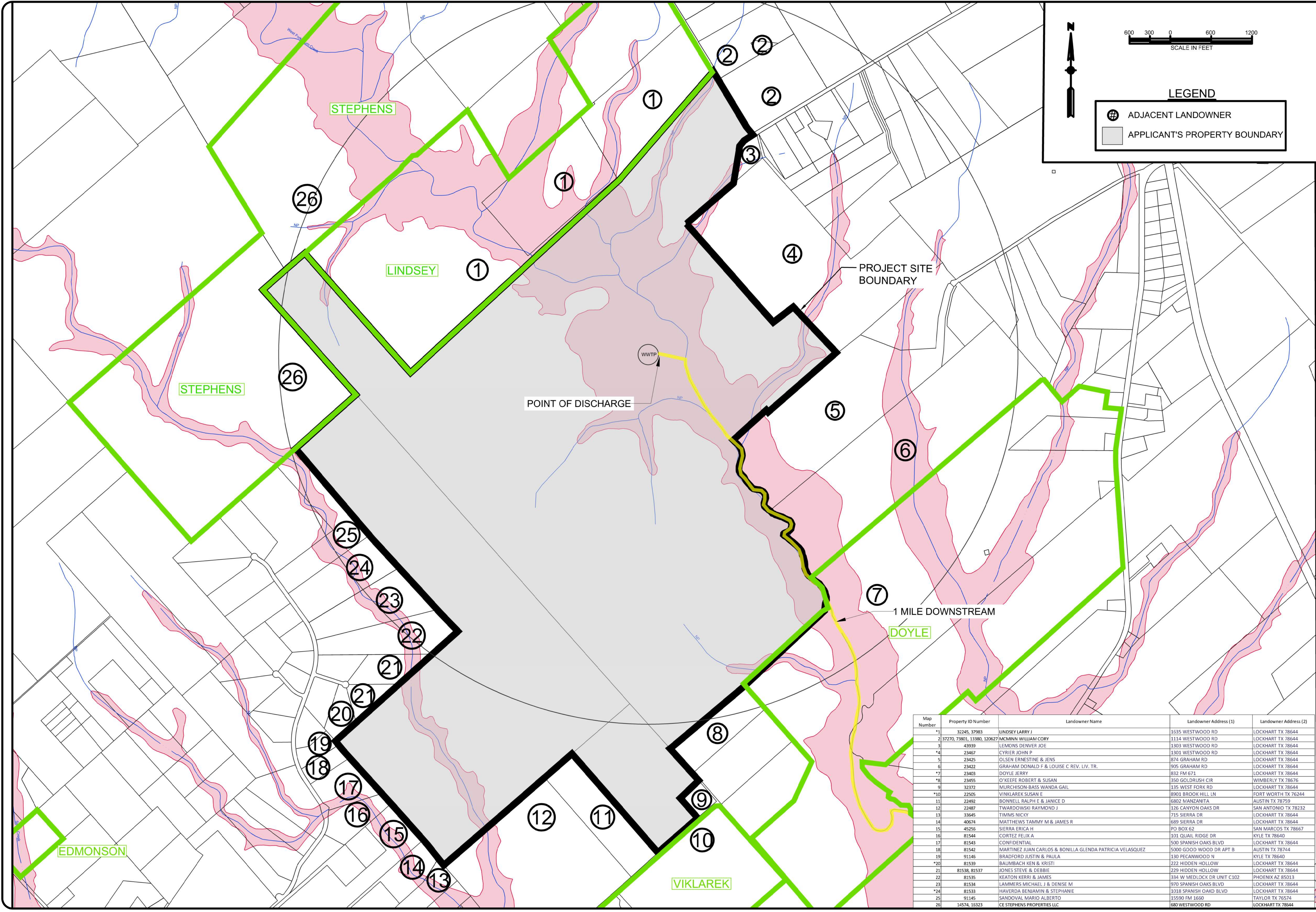
Mr. Larry Lindsey
1635 Westwood Rd.
Lockhart, TX 78644-4000
Buckylindsey@aol.com

Ms. Annalisa Peace, Executive Director
Greater Edwards Aquifer Alliance
1809 Blanco Rd.
San Antonio, TX 78212-2616
Annalisa@aquiferalliance.org


By: _____
Helen S. Gilbert

LEGEND

- Ⓜ ADJACENT LANDOWNER
- ▭ APPLICANT'S PROPERTY BOUNDARY



Map Number	Property ID Number	Landowner Name	Landowner Address (1)	Landowner Address (2)
*1	32245, 37983	LINDSEY LARRY J	1635 WESTWOOD RD	LOCKHART TX 78644
2	37270, 73801, 13380, 120627	MCMINN WILLIAM CORY	1114 WESTWOOD RD	LOCKHART TX 78644
3	49939	LEMONS DENVER JOE	1303 WESTWOOD RD	LOCKHART TX 78644
*4	23467	CRIVER JOHN P	1301 WESTWOOD RD	LOCKHART TX 78644
5	23425	OLSEN ERNESTINE & JENS	874 GRAHAM RD	LOCKHART TX 78644
6	23422	GRAHAM DONALD F & LOUISE C REV. LIV. TR.	905 GRAHAM RD	LOCKHART TX 78644
*7	23403	DOYLE JERRY	832 FM 671	LOCKHART TX 78644
*8	23455	O'KEEFE ROBERT & SUSAN	350 GOLDRUSH CIR	WIMBERLY TX 78676
9	32372	MURCHISON-BASS WANDA GAIL	135 WEST FORK RD	LOCKHART TX 78644
*10	22505	VINKLAREK SUSAN E	8901 BROOK HILL LN	FORT WORTH TX 76244
11	22492	BONNELL RALPH E & JANICE D	6802 MANZANITA	AUSTIN TX 78759
12	22487	TWARDOWSKI RAYMOND J	126 CANYON OAKS DR	SAN ANTONIO TX 78232
13	33645	TIMMS NICKY	715 SIERRA DR	LOCKHART TX 78644
14	40674	MATTHEWS TAMMY M & JAMES R	689 SIERRA DR	LOCKHART TX 78644
15	45256	SIERRA ERICA H	PO BOX 62	SAN MARCOS TX 78667
16	81544	CORTEZ FELIX A	101 QUAIL RIDGE DR	KYLE TX 78640
17	81543	CONFIDENTIAL	500 SPANISH OAKS BLVD	LOCKHART TX 78644
18	81542	MARTINEZ JUAN CARLOS & BONILLA GLENDA PATRICIA VELASQUEZ	5000 GOOD WOOD DR APT B	AUSTIN TX 78744
19	91146	BRADFORD JUSTIN & PAULA	130 PECANWOOD N	KYLE TX 78640
*20	81539	BAUMBACH KEN & KRISTI	222 HIDDEN HOLLOW	LOCKHART TX 78644
21	81538, 81537	JONES STEVE & DEBBIE	229 HIDDEN HOLLOW	LOCKHART TX 78644
22	81535	KEATON KERRI & JAMES	334 W MEDLOCK DR UNIT C102	PHOENIX AZ 85013
23	81534	LAMMERS MICHAEL J & DENISE M	970 SPANISH OAKS BLVD	LOCKHART TX 78644
*24	81533	HAVERDA BENJAMIN & STEPHANIE	1018 SPANISH OAK BLVD	LOCKHART TX 78644
25	91145	SANDOVAL MARIO ALBERTO	13590 FM 1609	TAYLOR TX 76574
26	14574, 16323	CE STEPHENS PROPERTIES LLC	680 WESTWOOD RD	LOCKHART TX 78644

LOCKHART TRACT
ADJACENT LANDOWNER MAP

NO.	REVISIONS	DESCRIPTION	BY	DATE

DATE: _____
DESIGNED BY: _____
DRAWN BY: _____
CHECKED BY: _____
DRAWING NAME: _____

LJA Engineering, Inc.
7500 Rialto Boulevard
Building II, Suite 100
Austin, Texas 78735
Phone 512.439.4700
Fax 512.439.4716
FRN - F-1986

JOB NUMBER: A474
SHEET NO. SHEETS

w:\MAPS\Lockhart\WMP Application\submittal\Adj Landowner Map.dwg
User: icrone
Date Modified: Jan 29, 2014 12:07:51 PM
Plot Date/Time: Jan 29, 2014 12:07:51

TCEQ Registration Form

March 28, 2023

Greenwood Ventures Group LLC TPDES PERMIT FOR MUNICIPAL WASTEWATER PERMIT NO. WQ0016148001

PLEASE PRINT

Name: Jerry + Linda Doyle + Michael McKinney

Mailing Address: 832 FM 671 Lockhart, TX,

Physical Address (if different): _____

City/State: Lockhart Zip: 78644

This information is subject to public disclosure under the Texas Public Information Act

Email: jldoyle_1969@yahoo.com

Phone Number: (512) 913-3066

• Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

Property 10 23403 + 23407
(Written comments may be submitted at any time during the meeting)

~~How~~ Will the increased water flow in the creek cause greater flooding?

Will the water have an odor?

What percentage of the treated water will flow through the creek?

Please give this form to the person at the information table. Thank you.

RECEIVED
MAR 28 2023
AT PUBLIC MEETING