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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 29, 2024

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 GREENWOOD
VENTURES GROUP, LLC FOR NEW TPDES PERMIT NO.
WQ0016148001
TCEQ DOCKET NO. 2023-1563-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in dark ink that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-1563-MWD

**APPLICATION BY
GREENWOOD VENTURES
GROUP, LLC FOR NEW TPDES
PERMIT NO. WQ0016148001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Greenwood Ventures Group, LLC (Greenwood or Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016148001. The Commission received timely comments and hearing requests from Guadalupe-Blanco River Authority (GBRA), Greater Edwards Aquifer Alliance (GEAA), San Marcos River Foundation (SMRF), Martin Edmonson, Larry Lindsey, Colby and Erin Stephens, and Susan Vinklarek. For the reasons stated herein, OPIC respectfully recommends the Commission find that GBRA is an affected person, and further recommends granting their hearing request. OPIC recommends denial of all other hearing requests.

B. Description of Application and Facility

Greenwood applied for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 325,000 gallons per day (GPD) in the Interim I phase, a daily average flow not to exceed 650,000 GPD in the Interim II phase, and a daily average flow not to exceed 975,000 GPD in the Final phase.

The proposed facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units for the Interim I phase would include one aeration basin, one final clarifier, one sludge digester, and a chlorine contact chamber. Treatment units for the Interim II phase would include two aeration basins, two final clarifiers, two sludge digesters, one chlorine contact chamber, and a dichlorination chamber. Treatment units for the Final phase would include three aeration basins, three final clarifiers, three sludge digesters, a chlorine contact chamber, and a dichlorination chamber.

The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

If this permit is issued, the facility would be located approximately 1.87 miles southwest of the intersection of County Road 214 and U.S. Highway 183, in Caldwell County.

The treated effluent would 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. The unclassified receiving water uses are minimal aquatic life for the unnamed tributaries, limited aquatic life use for West Fork Plum Creek (intermittent with pools), and high aquatic life use for West Fork Plum Creek (perennial). The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer but does not apply to this facility's discharge, which is located downstream from these zones.

C. Procedural Background

Greenwood's application was received on April 20, 2022, and declared administratively complete on June 14, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on June 30, 2022, in the *Lockhart Post-Register* and in Spanish on June 23, 2022, in *El Mundo*. The Notice of Application and Preliminary Decision was published in English on December 22, 2022, in the *Lockhart Post-Register* and in Spanish on December 15, 2022, in *El Mundo*. A public meeting was held in Lockhart on March 28, 2023. At the request of Senator Zaffirini, a second public meeting was held in Lockhart on June 13, 2023. The public comment period ended at the close of the second public meeting. The Executive Director's (ED) Response to Comments (RTC) was mailed on September 13, 2023. The deadline for filing requests for a contested case hearing or reconsideration of the ED's decision on the application was October 13, 2023.

II. APPLICABLE LAW

The Application was filed 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). Under 30 Texas Administrative Code (TAC) § 55.21(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 requestor'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. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. Relevant factors to be considered in determining whether a person is affected 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 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.

30 TAC § 55.203(c).

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

30 TAC § 55.203(d).

Under 30 TAC § 55.205(b), 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 must 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.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestor is an affected person

GBRA

Justin Adkins submitted timely comments and a hearing request on behalf of GBRA. The request indicates that GBRA is a conservation and reclamation district created by the State of Texas with the obligation to control, store, and preserve the waters of any rivers and streams, including the Guadalupe and Blanco Rivers and their tributaries, for all useful purposes. GBRA claimed that its authority derives from its enabling legislation. Additionally, GBRA referred to Texas Water Code (TWC) § 26.171, which authorizes GBRA to inspect the public water in its area to determine if the quality of the water meets state water quality standards, to determine if the persons discharging effluent into the public water have obtained permits, and to determine if those permit holders are complying with the requirements of the permit.

The hearing request raised concerns about water quality, including the use of chlorine as a disinfectant, and excessive nutrient limits. Governmental entities with authority under state law over issues raised by the application may be considered affected persons.¹ Furthermore, when determining whether

¹ 30 TAC § 55.203(b).

governmental entities are affected persons, factors related to their statutory authority over or interest in the issues relevant to the application should be considered.² GBRA's concerns are protected by the law under which the application will be considered. Further, GBRA has demonstrated that it has authority under state law over the issues it has raised. Therefore, OPIC finds that GBRA qualifies as an affected person.

GEAA

Annalisa Peace, Nathan Glavy, and Mike Clifford submitted timely comments and a hearing request on behalf of GEAA. In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. Here, no specific individuals were identified by name and address.

The hearing request raised concerns about water quality, including effluent quantities, nutrient limits, chlorine as a disinfectant, cumulative impacts of multiple wastewater discharges, and high levels of pharmaceuticals in the water.

While some of the concerns raised on behalf of GEAA are protected by the law under which the application will be considered, GEAA failed to identify any member who would have standing in their own right to request this contested case hearing. Because GEAA has not offered a member of the association who would have standing in their own right, the group cannot qualify as an affected person under 30 TAC § 55.205(b).

² 30 TAC § 55.203(c).

SMRF

Victoria Rose submitted timely comments and a hearing request on behalf of SMRF. In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. Here, SMRF identified Jerry Doyle, who resides at 832 FM 671 in Lockhart. According to the map created by ED staff, this is 1.49 miles from the facility point, and not along the discharge route.

The hearing request raised concerns about water quality, including effluent and nutrient limits, as well as chlorine as a disinfectant. The request also raised concerns about Applicant's compliance with notice requirements.

While the concerns raised on behalf of SMRF are protected by the law under which the application will be considered, SMRF failed to identify any member who would have standing in their own right. While SMRF identified Mr. Doyle by name and address, given his lack of proximity to the proposed facility and the discharge route, OPIC cannot find that Mr. Doyle would be affected in a manner not common to the general public. Because SMRF has not offered a member of the association who would have standing in their own right, the group cannot qualify as an affected person under 30 TAC § 55.205(b).

Martin Edmonson

Mr. Edmonson submitted timely comments and a hearing request. He gave his address as 162 Paint Brush Trail, Lockhart, which, according to the map created by ED staff, is 1.71 miles from the proposed facility and not along the discharge route. Mr. Edmonson articulated concerns about human health, water

quality, wildlife, livestock, domestic animals, nuisance conditions, odor, facility malfunction, operator qualifications, air pollution, light and noise pollution, infrastructure, and erosion. However, given Mr. Edmonson's lack of proximity to the proposed facility and the discharge route, OPIC cannot find that he would be affected in a manner not common to the general public.

Larry Lindsey

Mr. Lindsey submitted timely comments and a hearing request. He gave his address as 1635 Westwood Road, Lockhart, which, according to the map created by ED staff, is 1.19 miles from the proposed facility, and not along the discharge route. Mr. Lindsey articulated concerns about recreational use and infrastructure. Here, Mr. Lindsey discussed the regular recreational activities he and others partake in on his own property, primarily hunting, but he did not discuss any specific recreational activities that he participates in near the proposed facility or along the discharge route. Given Mr. Lindsey's lack of proximity to the proposed facility and the discharge route, OPIC cannot find that he would be affected in a manner not common to the general public.

Colby and Erin Stephens

Colby and Erin Stephens submitted timely comments and a hearing request. They gave their address as 680 Westwood Road, Lockhart, which, according to the map created by ED staff, is 1.67 miles from the proposed facility, and not along the discharge route. Mr. and Ms. Stephens articulated concerns about human health, water quality, wildlife, livestock, domestic animals, recreation, noise, infrastructure, and erosion. However, given Colby and Erin

Stephens lack of proximity to the proposed facility and the discharge route, OPIC cannot find that they would be affected in a manner not common to the general public.

Susan Vinklarek

Ms. Vinklarek submitted timely comments and a hearing request. She gave her address as 8901 Brook Hill Lane, Fort Worth, which, according to the map created by ED staff, is 215.30 miles from the proposed facility. Ms. Vinklarek articulated general opposition to the permit, but failed to provide any specific references to how she might be uniquely affected by the building of the proposed facility. Given Ms. Vinklarek's lack of proximity to the proposed facility, in combination with the lack of specificity in her concerns, OPIC cannot find that she would be affected in a manner not common to the general public.

B. Which issues raised in the hearing requests are disputed

The affected requestor raised the following issue:

1. Whether the permit is adequately protective of water quality, including whether there are adequate nutrient limits.

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 issue raised by the affected requestor is an issue of fact.

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

Issue No. 1 in Section III.B was specifically raised by an affected requestor 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 public comments.

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

The affected requestor raised an issue that is 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). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality

The affected requestor raised concerns about adverse effects to water quality. The Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. 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). Finally, 30 TAC § 307.4(e) requires that nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation which impairs an existing, designated, presumed, or attainable use. As Chapter 307 designates criteria for the regulation of water quality, the protection of human health and safety, and the protection of animal life, Issue No. 1 is relevant and material to the Commission’s decision regarding this application.

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. 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 should be 180 days from the first day of the preliminary hearing until the proposal for decision is issued.

IV. CONCLUSION

Having found that GBRA qualifies as an affected person in this matter, OPIC respectfully recommends that the Commission grant their hearing request and refer Issue No. 1 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

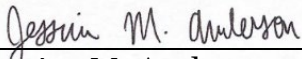
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jessica M. Anderson

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TCEQ DOCKET NO. 2023-1563-MWD

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See attached list.

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