

TCEQ DOCKET NO. 2023-1564-MWD

APPLICATION OF AGUILAS ROBLES, LLC FOR NEW TEXAS POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0015843001	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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AGUILAS ROBLES, LLC’S RESPONSE TO HEARING REQUEST

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant Aguilas Robles, LLC (Applicant) and files this Response to the Hearing Request relating to the issuance of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015843001, and would respectfully show the following:

I. SUMMARY OF RESPONSE

The Texas Commission on Environmental Quality (TCEQ or Commission) received hearing requests from a single requestor, Catalaunian, LLC (Catalaunian).¹ While Catalaunian’s property is adjacent to the site of the proposed wastewater treatment facility (WWTP), it is not an affected person. The interest raised -- property ownership of *Catalaunian’s property* -- is not relevant or material to the decision on the application in this docket which pertains to Aguilas’ 362-acre wholly separate property known as “Flying W.”

Catalaunian raised no health and safety, environmental or natural resource concerns nor raised any interests protected by the law under which the TPDES application will be considered. Rather, Catalaunian’s requests are merely a repackaged version of its Petition for Revocation and Involuntary Transfer, which was denied by the Commission on January 10, 2024.² Accordingly,

¹ Catalaunian, LLC filed two different public comments and hearing requests on July 17, 2023 and a third hearing request on October 5, 2023 after the Executive Director (ED) issued her Response to Comments (RTC) on September 6, 2023. The three requests are not identical.

² *Order Regarding the Petition Filed by Catalaunian, LLC for the Commission to Involuntarily Transfer TCEQ Permit No. WQ0015843001 from Aguilas Robles, LLC to Petitioner, or in the Alternative, Revoke the Permit or Revoke and Reissue the Permit to Petitioner*, TCEQ Docket No. 2023-1430-MWD (Jan. 17, 2024) (Revocation Petition).

the Commission should deny Catalaunian’s hearing requests and remand this matter to the Executive Director (ED) for issuance of the proposed permit.

II. BACKGROUND

Applicant seeks a major amendment to TPDES Permit No. WQ0015843001 which would authorize the relocation of the WWTP and outfall and increase the discharge volume from 34,300 gallons per day to 600,000 gallons per day in the final phase. The WWTP is still considered by the TCEQ to be a “minor” facility. The Draft Permit proposes effluent limitations in all phases of 5 mg/L carbonaceous biochemical oxygen demand five-day (CBOD₅), 5 mg/L total suspended solids (TSS), 2 mg/L ammonia-nitrogen (NH₃-N), 0.5 mg/L total phosphorus (TP), 126 colony forming units (CFU) of *E. coli* per 100 ml, and 4.0 mg/L minimum dissolved oxygen (DO),³ which is considered advanced treatment.

According to the 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.⁴ Treated effluent will to be discharged to an unnamed tributary of York Creek, then to York Creek, then to the Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin, which is not an impaired or threatened waterbody under the section 303(d) list. The TCEQ designated aquatic life uses are minimal, limited and high for these respective reaches of the discharge route. An EPA endangered or threatened species review is not required for this permit. 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.

³ Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision at 3 (May 18, 2023) (Technical Summary).

⁴ *Id.* Also, no Tier 2 antidegradation review was conducted because there are no water bodies of exceptional, high, or intermediate aquatic life use present within the stream reaches assessed.

Section 55.203 provides the standing criteria for individuals, including limited liability companies like Catalaunian, as follows:

(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.

.....

(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; [and]

(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

(d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:

(1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;

(2) the analysis and opinions of the executive director; and

(3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor. . . .⁵

⁵ 30 TAC § 55.203.

As set out more fully below, Catalaunian does not meet the standing criteria in 30 TAC § 55.203, nor does it specify any of the ED’s responses that it disputes, the factual basis of the dispute, nor list any disputed issues of law as required by 30 TAC § 55.201(d)(4)(B).

IV. RESPONSE TO HEARING REQUEST

Applicant does not dispute that Catalaunian’s property is adjacent to the proposed permit amendment site. As the Commission knows from Catalaunian’s Revocation Petition, the current location of the yet-to-be constructed WWTP is on Catalaunian’s property.⁶ However, the purpose of the major amendment is to move the WWTP off of Catalaunian’s property to a site located entirely on the Flying W. Yet, Catalaunian inconceivably seeks to stop that move by filing its hearing request. Most property owners would support moving a proposed WWTP off of its property, but not Catalaunian. Catalaunian’s efforts to prevent the major amendment make this one of the oddest hearing requests filed with TCEQ. Catalaunian’s adjacency in the absence of relevant and material issues disqualifies it as an affected person.

As explained above, Catalaunian’s issue relates solely to its property, not the WWTP and outfall to be located on the Flying W that are subject of the Application for Major Permit Amendment. The distinction between exactly what Catalaunian pled and exactly where the two properties are located is important. In each of Catalaunian’s three hearing requests, it expressly tied its ownership interest to property it defined as “*the Property*,” located at 6281 FM 1102, New Braunfels, Texas 78132. As the ED correctly pointed out in her RTC, “the Property” located at 6281 FM 1102, New Braunfels, Texas 78132 is **not** the location of the WWTP to be authorized in this docket. The authorization sought by the pending application is for the Flying W property located at a different location, approximately 0.68 miles northwest of the intersection of Watson Lane and FM 1102, in Comal County, Texas 78132 with a street address of 6524 FM 1102, New Braunfels, Texas 78132.⁷ Catalaunian’s property interest in *its* property is completely immaterial to this permit proceeding and outside the “four corners” of the subject application and does not qualify as a relevant or material issue.

⁶ TCEQ Docket No. 2023-1430-MWD.

⁷ See **Exhibit A**, map of the separate properties.

Additionally, Catalaunian has not explained how its ownership interest is protected under the law under which the application will be considered, chapter 26 of the Texas Water Code or chapters 281, 305, 307 or 309 of the agency's rules. Neither has Catalaunian articulated whether there is a reasonable relationship between the interest claimed in its property and the activity to be regulated on the Flying W property. Catalaunian's request fails on those bases.

Related to its property ownership issue, Catalaunian also complains that Aguilas' amendment "could affect" its ability to receive authorization for its own WWTP (on its own property). This is a misreading of the Commission's Regionalization Policy (Evaluating Regionalization for Proposed Wastewater Systems - RG-632 (August 2023)). First, Catalaunian's speculation that it would be "subject to Aguilas Roble's [service] conditions" is contrary to the Regionalization Policy which is permissive and has never been used to force connection to a neighboring system.⁸ Second, if Catalaunian seeks its own permit, it will have to go through the same process as every other applicant who must complete the TDPES Permit Application's Domestic Technical Report 1.1. Section 1.B. That is, it would have to send requests to any permitted system with a WWTP or collection system within 3 miles. In that regard, Catalaunian's interest is not unique, but common to any member of the general public who could also file a TPDES application. However, to be clear, Catalaunian's request does not state that is seeking a contested case hearing on the *basis* of Regionalization. Rather, Catalaunian's argument is basically that Aguilas' amendment makes its job of complying with the State's Regionalization Policy (for its own permit) more inconvenient someday. Not only is that not an interest protected by the law under which Aguilas' major amendment will be considered, but it is yet another novel policy interpretation by Catalaunian to be rejected by the Commission.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant Aguilas Robles, LLC respectfully prays that the Commission deny Catalaunian, LLC's hearing requests and issue the TPDES permit as recommended by the ED.

⁸ Pursuant to RG-632, Catalaunian may still proceed to permit a stand-alone system after submitting an analysis of expenditures.

Respectfully submitted,

Helen S. Gilbert

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**ATTORNEYS FOR AGUILAS ROBLES,
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:

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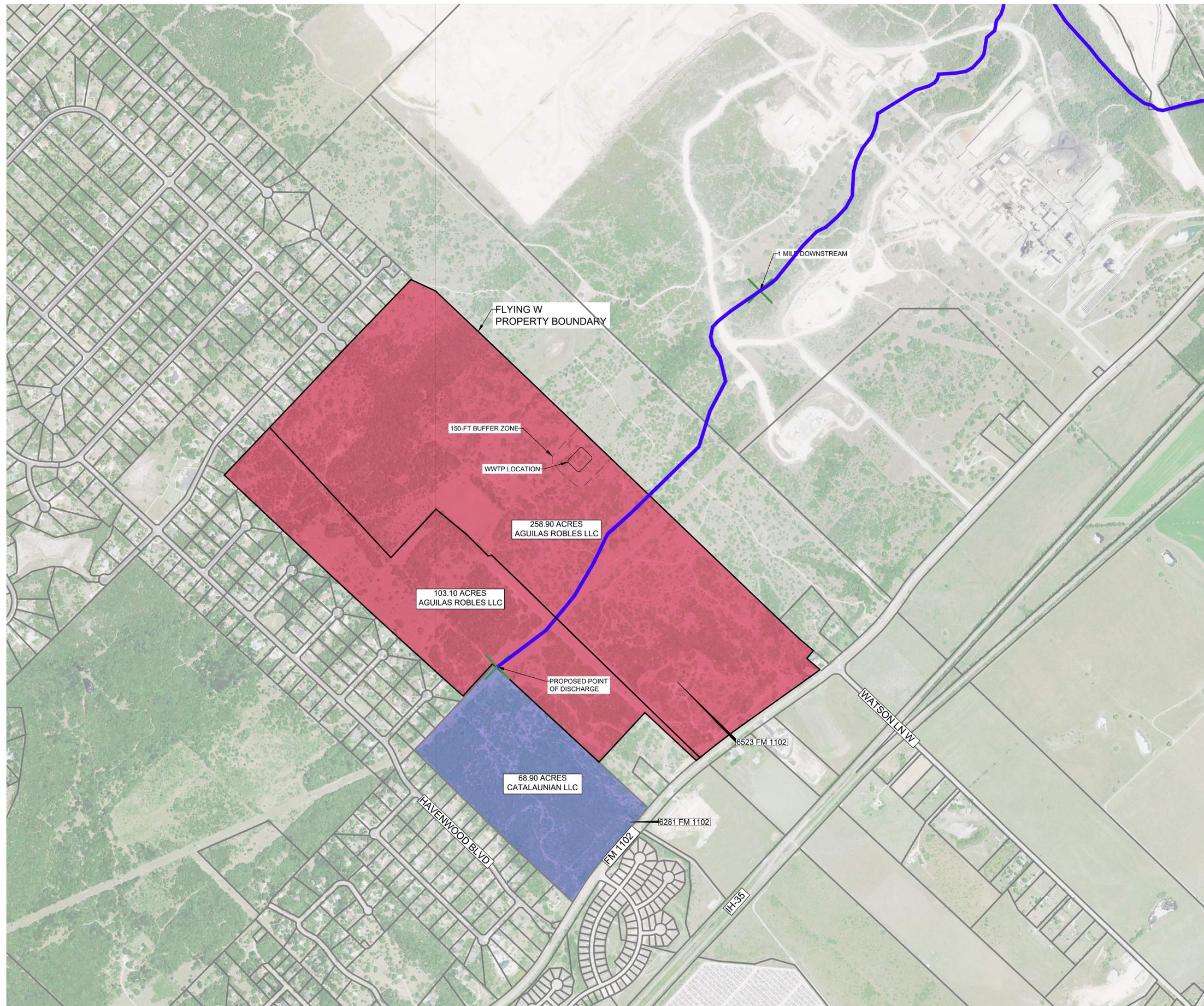
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LEGEND

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	AGUILAS ROBLES LLC

LOCATION MAP FOR AMENDMENT TO WQ PERMIT WQ0015843001

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