

**TCEQ DOCKET NO. 2023-1591-MWD**

<b>APPLICATION BY CORIX UTILITIES</b>	<b>§</b>	<b>BEFORE THE</b>
<b>INC. FOR TPDES PERMIT NO.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>WQ0013977001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
	<b>§</b>	
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**ENVIRONMENTAL STEWARDSHIP AND CHAP AMBROSE’S REPLY TO  
RESPONSES TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Environmental Stewardship and Chapman Edward Ambrose (collectively, “Requesters”) hereby submit this Reply to the Responses to Hearing Requests filed by Corix Utilities Inc. (“Applicant”), the Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”).

**I. Summary**

The ED and OPIC have properly found that Environmental Stewardship is an affected person due to the recreational interest possessed by Environmental Stewardship’s member Richard Martin. By this Reply, requesters supply information which demonstrates that Mr. Ambrose is also an affected person by virtue of his recreational use of downstream waters. The Commission should find that Requesters are “affected persons” and should grant both their requests for a contested case hearing.

## II. Discussion

### **A. Environmental Stewardship is an affected person, and its hearing request should be granted.**

Consistent with the recommendations of OPIC and the ED, Environmental Stewardship has shown itself to be an affected person by virtue of the regularity and particularity of Environmental Stewardship member Richard Martin's recreational use of the Wilbarger Bend area of the Colorado River. Mr. Martin's use of the impacted natural resource distinguishes his interest from that of the general public.

As described in Environmental Stewardship's hearing request, the use of natural resources (particularly the Colorado River) by Mr. Martin and other Environmental Stewardship members who enjoy the Colorado River area for fishing would be potentially impacted by the proposed discharge. The discharge will contain nutrients and oxygen-demanding substances that will potentially lower the dissolved oxygen in receiving waters in a way that would contribute to a further impairment of the abundance and diversity of aquatic life in downstream waters, including Wilbargers Bend. The area of the receiving waters of the discharge upstream of Wilbarger Bend contain a relatively low volume of flow in comparison to the volume of the proposed discharge, such that upon operation as fully authorized, the discharge will not be significantly diluted prior to reaching Wilbargers Bend.

Applicant errs in asserting that Mr. Martin would not qualify as an affected person. Applicant speculates that Mr. Martin may fish further downstream than the confluence of the receiving tributary and the Colorado River or upstream of the confluence of the

unnamed tributary and the Colorado River. As identified by Mr. Martin in the attached affidavit, Mr. Martin's regular fishing activities include fishing in the immediate area of the confluence of the unnamed tributary and the Colorado River.<sup>1</sup> That area is only slightly more than a mile downstream of the discharge.

Applicant further claims that a consideration of "distance restrictions or other limitations imposed by law" require a finding that Mr. Martin is not affected, citing the requirement that a mailing list include: (1) landowners that are adjacent to the applicant's property; and (2) landowners that are one mile downstream from the discharge point. While TCEQ has commonly applied a one-mile standard for a determination of whether a person is affected, this is not a distance restriction nor a limitation imposed by law. As discussed in Environmental Stewardship's hearing request, the imposition of any such limitation would be a violation of the conditions of Texas' delegated authority to administer the National Pollutant Discharge Elimination System permitting program.

Applicant further errs in claiming that there is no reasonable relationship between the interest claimed and the activity regulated. Mr. Martin's interest is in recreation within the downstream waters, which is reliant on the presence of aquatic life within those waters. As acknowledged by the ED, the designated uses for Segment No. 1428 (where Mr. Martin fishes downstream of the discharge) are primary contact recreation, public water supply, and exceptional aquatic life use. The protection of these uses is a primary purpose of the regulation of the discharge from Corix's proposed discharge. Thus, as acknowledged by

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<sup>1</sup> See Attachment A.

the ED and OPIC, a reasonable relationship exists between the interest claimed by Mr. Martin and the proposed discharge.

Applicant further errs in asserting that Mr. Martin cannot be found affected because there allegedly is no likely impact of the regulated activity on the health and safety of Mr. Martin, nor Mr. Martin's use of property. This argument essentially asks that the TCEQ make a decision on the merits of the application as a basis for the denial of Environmental Stewardship's hearing request. As noted in Environmental Stewardship's hearing request, Texas has committed that this factor will not be considered with regard to a hearing request on a TPDES permit. A determination of the merits should only be made after a full hearing is held to develop an adequate record upon which to make such a determination. Applicant's argument claiming that there is no likely impact of the regulated activity on use of the impacted natural resource by the person suffers from the same flaw. Again, this invites the Commission to make a determination that can only properly be made after the conduct of a full hearing to consider the merits of the application.

**B. Chap Ambrose also qualifies as an Affected Person.**

Mr. Ambrose's initial hearing request did not provide extensive detail regarding his recreational uses of the Colorado Rivers. However, in making a decision on a hearing request, the Commission may consider all information timely submitted, which would include a timely reply submitted by a requester and any accompanying affidavits.<sup>2</sup> A full consideration of Mr. Ambrose's use of the impacted natural resources, as identified in this

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<sup>2</sup> Tex. Water Code § 5.115(a-1)(1)(E).

reply and Mr. Ambrose's attached affidavit, demonstrates that Mr. Ambrose is an affected person.

Mr. Ambrose regularly recreates in the same area and in a similar manner as Mr. Martin, whom both the ED and OPIC recommend would qualify as an affected person. Periodically during the last 10 years, Mr. Ambrose has canoed, fished by catch and release, and swam in the Wilbargers Bend area of the Colorado River downstream of the proposed discharge, accessing the river via the Utley Bridge boat ramp on FM 969. During the last year, Mr. Ambrose has engaged in these activities approximately once per week, depending on the weather. Mr. Ambrose intends to continue this routine in the future.

Approximately once per month, Mr. Ambrose's family accompanies him on fishing and canoeing trips in the Colorado River in the area of the confluence of the unnamed tributary and the Colorado River downstream of the discharge. Mr. Ambrose's family tubes and swims on the river during these trips. Mr. Ambrose's family has also attended several bird watching trips along the Colorado River downstream of the proposed discharge during 2023 and plans to continue these trips.

Mr. Ambrose's 9-year-old daughter also attends LCRA Summer Camp at the McKinney Roughs Park, where she participates in outdoor recreational activities, including hiking, ropes courses, nature walks, and enjoying the natural beauty of the park. His daughter attended the camp for six weeks during the summer of 2023 and has plans to attend again during the summer of 2024. McKinney Roughs Park is located .25 miles from the proposed discharge point. The enjoyment of McKinney Roughs Park by Mr. Ambrose's daughter and others who use the McKinney Roughs Park area for summer camp and other

recreational activities would potentially be adversely affected by nuisance odors from the treatment plant operations authorized by the draft permit.

The proposed discharge raises several concerns for Mr. Ambrose within the scope of factors relevant to the determination of whether a requester is an affected person, including the impact of the discharge upon Mr. Ambrose's health and safety and the effect of the discharge upon his use of an impacted natural resource. He is concerned that the proposed discharge would degrade water quality in the Colorado River in a manner that lessens the aesthetic beauty of the Colorado River, lessens the fish available to catch in the Colorado River, and impairs the ability of the river to support wildlife that he enjoys viewing. He is also concerned about the impacts that contamination of the river by the proposed discharge could have upon the health of his family and his own health. Given that the purpose of the water quality permitting process is to protect the quality of receiving waters and protect public health, there is a reasonable relationship between the interests claimed by Mr. Ambrose and the discharge authorized by the draft permit.

Mr. Ambrose testifies to these facts in the affidavit attached as Attachment B.

In light of these circumstances, Mr. Ambrose makes use of the Colorado River in a particularized manner that renders him an affected person.

### **III. Prayer**

For the reasons stated above, Requesters respectfully pray that the Commission grant the hearing requests of Environmental Stewardship and Chap Ambrose and refer all issues raised by these persons to the State Office of Administrative Hearings.

Respectfully submitted,

*/s/ Eric Allmon*

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*Counsel for Environmental Stewardship*

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 29, 2024, a true and correct copy of the foregoing Reply to Responses to Hearing Requests was electronically filed with the Chief Clerk of TCEQ, and that copies were served upon the following parties via e-mail.

/s/ Eric Allmon  
Eric Allmon

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# ATTACHMENT A

TCEQ DOCKET NO. 2023-1591-MWD

APPLICATION BY CORIX § BEFORE THE  
UTILITIES (TEXAS) INC. FOR § TEXAS COMMISSION  
TPDES PERMIT NO. WQ0013977001 § ON ENVIRONMENTAL QUALITY

AFFIDAVIT OF RICHARD MARTIN

1. My name is Richard Martin. I am over the age of 18 and am competent to make this affidavit to the following facts based on my personal knowledge.
2. I am a member of the Environmental Stewardship.
3. I reside at a rental property on 703 Austin Street, Bastrop, Texas 78602. I am a taxpayer of Bastrop County.
4. I have used the area of the Colorado River from Webberville to Bastrop for more than 50 years for recreational activities, specifically fishing.
5. I fish by catch and release in the Wilbargers Bend area of the Colorado River approximately two to three times a month, depending on the weather, accessing the river via the Utley Bridge boat ramp on FM 969 downstream of the proposed discharge. I intend to continue this routine.
6. I estimate that the fish population within the Colorado River has already been reduced by approximately 89%.
7. The quality of life for myself and for other Environmental Stewardship members who enjoy the Colorado River area for fishing would be greatly reduced by the proposed discharge.

Further the affiant sayeth not.

  
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RICHARD MARTIN

SUBSCRIBED TO AND SWORN before me on this 29 day of January, 2024.

Sierra Schulz  
Notary Public, State of Texas

My commission expires:

10/23/2027

Sierra Schulz  
Notary's name (printed)



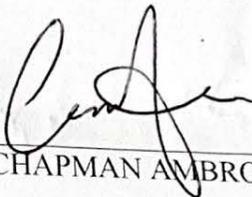
# ATTACHMENT B



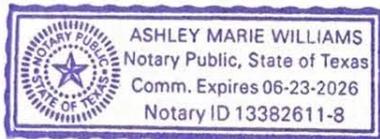
quality in a manner that would lessen the aesthetic beauty of the Colorado River, lessen the fish available to catch, and impair the ability of the river to support wildlife such as the birds which I enjoy viewing.

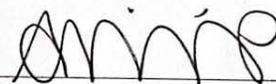
9. I am also concerned that pollution from the proposed discharge would result in contamination of waters where I canoe, fish and swim. I am concerned that such contamination may be harmful to my health and the health of my family.

Further the affiant sayeth not.

  
CHAPMAN AMBROSE

SUBSCRIBED TO AND SWORN before me on this 26<sup>th</sup> day of January, 2024.



  
Notary Public, State of Texas

My commission expires:

6-23-2026

Ashley Williams  
Notary's name (printed)