

# **The Carlton Law Firm, P.L.L.C.**

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Facsimile: (512) 900-2855

Michael Parsons  
*michael@carltonlawaustin.com*

May 13, 2024

**TO: Persons on the Attached Mailing List**

**RE: Docket No. 2024-0132-MWD  
Vale Building Group LLC (Applicant)  
Request(s) filed on TPDES Permit No. WQ0016212001**

The attached document was filed earlier today with the Alternative Dispute Resolution (ADR) left off of the certificate of service. A complete version of Jonah Water Special Utility District's Reply to the Executive Director's and the Office of Public Interest Counsel's Response to Hearing Request is attached to this letter. The only difference is that the certificate of service now includes the ADR. I apologize for any inconvenience.

Sincerely,

**THE CARLTON LAW FIRM, P.L.L.C.**



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Michael Parsons  
Attorney for Jonah Water Special Utility  
District

**TCEQ DOCKET NO. 2024-0132-MWD**

**TPDES PERMIT NO. WQ0016212001**

**APPLICATION BY THE VALE § BEFORE THE TEXAS COMMISSION**  
**BUILDING GROUP, LLC FOR TPDES §**  
**PERMIT NO. WQ0016212001 § ON ENVIRONMENTAL QUALITY**

**JONAH WATER SPECIAL UTILITY DISTRICT’S REPLY TO THE EXECUTIVE  
DIRECTOR’S AND THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSES  
TO HEARING REQUEST**

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

COMES NOW, Jonah Water Special Utility District (“Jonah” or the “District”) and files  
this its Reply to the Executive Director’s (“ED”) and the Office of Public Interest Counsel’s  
 (“OPIC”) Responses to Hearing Request and, in support thereof, would respectfully show the  
following:

**I. INTRODUCTION**

The District filed a timely request for contested case hearing and public comments with the  
Texas Commission on Environmental Quality (“TCEQ”) on April 25, 2023. On October 16, 2023,  
the ED filed responses to the public comments. The District filed its reply to the ED’s response to  
public comments on November 15, 2023, which was timely. The ED and OPIC each filed  
responses to hearing requests on April 29, 2024. The District must file its reply to the ED’s and  
OPIC’s responses at least nine days before the meeting. The meeting is scheduled for May 22,  
2024, so the deadline for the District to file its reply is May 13, 2024. Therefore, this reply is  
timely. The District agrees with the OPIC’s response and the ED’s response in most respects.

**II. REPLY TO THE EXECUTIVE DIRECTOR AND OFFICE OF PUBLIC  
INTEREST COUNSEL**

**A. Affected Person Status**

Jonah agrees with ED’s and OPIC’s conclusions that Jonah is an affected person under 30  
Texas Admin. Code (“TAC”) § 55.203.

**B. Disputed Issues In OPIC's Response**

**1. Whether the draft permit is protective of water quality and the uses of the receiving waters under the applicable Texas Surface Water Quality Standards (Standards).**

Jonah agrees with OPIC's conclusion that this is a disputed issue of fact, raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to the State Office of Administrative Hearings ("SOAH") for a contested case hearing under 30 TAC § 50.115(c).

**2. Whether the draft permit would impact any nearby water wells.**

Jonah agrees with OPIC's conclusion that this is a disputed issue of fact, raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

**3. Whether the draft permit includes appropriate provisions to protect against increases in algal growth and blooms.**

Jonah agrees with OPIC's conclusion that this is a disputed issue of fact, raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

**4. Whether the draft permit is adequately protective of human health and safety.**

Jonah agrees with OPIC's conclusion that this is a disputed issue of fact, raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

**5. Whether the application complies with TCEQ's regionalization policy.**

Jonah agrees with OPIC's conclusion that this is a disputed issue of fact, raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

### **C. Disputed Issues in ED's Response**

#### **1. Whether the draft permit is protective of nearby wells and groundwater in accordance with the Texas Surface Water Quality Standards.**

Jonah agrees with ED's conclusion that this issue involves a disputed question of mixed fact and law, was raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

#### **2. Whether the draft permit includes adequate protections against algal growth and blooms.**

Jonah agrees with ED's conclusion that this issue involves a disputed question of mixed fact and law, was raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

#### **3. Whether the draft permit is protective of human health.**

Jonah agrees with ED's conclusion that this issue involves a disputed question of fact, was raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

#### **4. Whether the application complies with TCEQ's regionalization policy.**

Jonah agrees with ED's conclusion that this issue involves a disputed question of fact, was raised during the comment period and not withdrawn, is relevant and material to the decision on the application, and is thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

#### **5. Whether the TCEQ should deny the draft permit because effluent from the wastewater treatment facility may contaminate the well head during a flood event.**

Jonah agrees with ED that this issue involves a disputed question of fact and was raised during the comment period and not withdrawn, but disagrees with ED's conclusion that the issue is not relevant and material to the decision on the application.

Effluent from the wastewater treatment facility contaminating a downstream well head is a fact question, as acknowledged by ED<sup>1</sup>, and is properly decided by a trier of fact. Simply concluding it is not relevant or material implies the analysis has already taken place. The proper body to conduct this analysis is a trier of fact, and thus this issue is relevant and material and should be referred to SOAH for a contested case hearing. Whether or not contamination will occur in a flood event is relevant and material, especially when considering the well head is located in a Federal Emergency Management Agency ("FEMA") designated Zone A special flood hazard area, according to FEMA's national Flood Hazard Layer FIRMette, attached as Attachment A. Attachment B is a snip of the FEMA National Flood Hazard Layer FIRMette which depicts the approximate location of the proposed facility in relation to the water well. According to Attachments A and B, the effluent almost immediately discharges into Zone A and flows within feet, roughly 90 feet, of the well. The well could be susceptible to contamination during flood events.

OPIC cites *Anderson v. Mutual, Inc.*, 477 U.S. 242, 248-51 (1986) to correctly assert that "relevant and material issues include those governed by the substantive law relating to the permit at issue."<sup>2</sup> The purpose of the Location Standards subchapter of 30 TAC § 309 is to make sure issuing permit approval for new domestic wastewater treatment facilities are located on a site that minimizes possible contamination of water in the state.<sup>3</sup> These location standards are minimum standards<sup>4</sup> and the commission is not required to issue a permit, even if the facility complies with 30 TAC § 309.12 and 309.13.<sup>5</sup>

The rules establish the floor of what is required for approval, while giving the commission latitude to approve or deny a permit on an individual basis if the minimum threshold is met. The commission is not required to approve a permit. This discretion deems the issue of a well head, in

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<sup>1</sup> Executive Director's Response to Hearing Requests and Requests for Reconsideration at 10

<sup>2</sup> The Office of Public Interest Counsel's Response to Request for Hearing at 8

<sup>3</sup> 30 TAC § 309.10(b)

<sup>4</sup> 30 TAC § 309.10(a)

<sup>5</sup> 30 TAC § 309.14(b)

a flood zone, being contaminated during a flood event by effluent from an upstream wastewater treatment facility relevant and material to the issuance of the permit.

In addition to being relevant as a stand alone issue, this issue is also relevant to whether or not the permit is protective of nearby wells, groundwater, and water quality. This issue is a specific application of the more general issues of the effects the proposed facility could have on nearby wells, groundwater, and water quality.

### **III. CONCLUSION AND PRAYER**

Jonah submitted timely comments and a timely hearing request and has not withdrawn any comments making Jonah's pending hearing request valid. Given the proximity of the proposed facility to Jonah's water CCN territory and its district boundaries, the probable impact of this proposed facility on water quality and water bodies used by Jonah in its provision of water service, and the State's policy regarding regionalization, Jonah has demonstrated that it is an affected person under TCEQ rules and that the addressed issues in this response are issues involving disputed questions of fact or disputed questions of mixed fact and law, were raised during the comment period and were not withdrawn, are relevant and material to the decision on the application, and are thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c).

WHEREFORE, PREMISES CONSIDERED, Jonah Water Special Utility District hereby prays that the Texas Commission on Environmental Quality grants the District's hearing request, determine the District is an affected person, determine that all issues involve disputed questions of fact or disputed questions of mixed fact and law, were raised during the comment period and were not withdrawn, are relevant and material to the decision on the application, and are thus appropriate to refer to SOAH for a contested case hearing under 30 TAC § 50.115(c), and that the issue of effluent contaminating a well head during a flood event is relevant on its own as a stand alone issue and it is also relevant under other issues dealing with nearby wells, groundwater, and water quality.

Respectfully submitted,



---

Michael Parsons

Michael Parsons  
State Bar No. 24079109  
[michael@carltonlawaustin.com](mailto:michael@carltonlawaustin.com)

Erin R. Selvera  
State Bar No. 24043385  
[erin@carltonlawaustin.com](mailto:erin@carltonlawaustin.com)

John J. Carlton  
State Bar No. 03817600  
[john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)

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4301 Westbank Drive, Suite B-130  
Austin, Texas 78746  
Telephone: (512) 614-0901  
Facsimile: (512) 900-2855

**ATTORNEYS FOR JONAH WATER SPECIAL  
UTILITY DISTRICT**

## CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document on all parties of record on this 13<sup>th</sup> day of May 2024, as follows:

### **FOR APPLICANT:**

Joshua Welch, Project Manager  
Vale Building Group LLC  
1165 North Patterson Avenue  
Florence, Texas 76527  
*Via First Class Mail*

Aaron Rojas, Professional Engineer  
MRB Group  
8834 North Capital of Texas Highway  
Suite 220  
Austin, Texas 78759  
*Via First Class Mail*

### **FOR PUBLIC INTEREST COUNSEL:**

Garrett T. Arthur, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
*Via First Class Mail*

### **FOR THE EXECUTIVE DIRECTOR:**

Ryan Vise, Deputy Director  
Texas Commission on Environmental Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
*Via First Class Mail*

Kathy J. Humphreys, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
*Via First Class Mail*

Abdur Rahim, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
*Via First Class Mail*

### **FOR ALTERNATIVE DISPUTE RESOLUTION:**

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711  
*Via First Class Mail*

### **FOR THE CHIEF CLERK:**

Ms. Laurie Gharis, Chief Clerk  
TCEQ  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
**Via Electronic Filing with TCEQ**

  
\_\_\_\_\_  
Michael Parsons



# National Flood Hazard Layer FIRMette



97°35'57"W 30°40'58"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

97°35'19"W 30°40'27"N

## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
MAP PANELS		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.



This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 4/25/2023 at 3:56 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



## Attachment B

Snip of the FEMA Nation Flood Hazard Layer FIRMette depicting approximate the location of the proposed facility in relation to the Weir water well



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<sup>4</sup> 30 TAC § 309.10(a)

<sup>5</sup> 30 TAC § 309.14(b)

a flood zone, being contaminated during a flood event by effluent from an upstream wastewater treatment facility relevant and material to the issuance of the permit.

In addition to being relevant as a stand alone issue, this issue is also relevant to whether or not the permit is protective of nearby wells, groundwater, and water quality. This issue is a specific application of the more general issues of the effects the proposed facility could have on nearby wells, groundwater, and water quality.

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Respectfully submitted,



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Michael Parsons

Michael Parsons  
State Bar No. 24079109  
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4301 Westbank Drive, Suite B-130  
Austin, Texas 78746  
Telephone: (512) 614-0901  
Facsimile: (512) 900-2855

**ATTORNEYS FOR JONAH WATER SPECIAL  
UTILITY DISTRICT**



## CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document on all parties of record on this 13<sup>th</sup> day of May 2024, as follows:

### **FOR APPLICANT:**

Joshua Welch, Project Manager  
Vale Building Group LLC  
1165 North Patterson Avenue  
Florence, Texas 76527  
*Via First Class Mail*

Aaron Rojas, Professional Engineer  
MRB Group  
8834 North Capital of Texas Highway  
Suite 220  
Austin, Texas 78759  
*Via First Class Mail*

### **FOR PUBLIC INTEREST COUNSEL:**

Garrett T. Arthur, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
[garrett.arthur@tceq.texas.gov](mailto:garrett.arthur@tceq.texas.gov)

### **FOR THE EXECUTIVE DIRECTOR:**

Ryan Vise, Deputy Director  
Texas Commission on Environmental Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
[ryan.vise@tceq.texas.gov](mailto:ryan.vise@tceq.texas.gov)

Kathy J. Humphreys, Staff Attorney  
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Environmental Law Division MC-173  
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[kathy.humphreys@tceq.texas.gov](mailto:kathy.humphreys@tceq.texas.gov)

Abdur Rahim, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
[abdur.ramin@tceq.texas.gov](mailto:abdur.ramin@tceq.texas.gov)

### **FOR THE CHIEF CLERK:**

Ms. Laurie Gharis, Chief Clerk  
TCEQ  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
**Via Electronic Filing with TCEQ**



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Michael Parsons

# National Flood Hazard Layer FIRMette



97°35'57"W 30°40'58"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

97°35'19"W 30°40'27"N

## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
MAP PANELS		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.



This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 4/25/2023 at 3:56 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



## Attachment B

Snip of the FEMA Nation Flood Hazard Layer FIRMette depicting approximate the location of the proposed facility in relation to the Weir water well

