

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 22, 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 MUNICIPAL
OPERATIONS, LLC FOR NEW TPDES PERMIT NO.
WQ0016171001
TCEQ DOCKET NO. 2024-0670-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Josiah Mercer".

Josiah T. Mercer, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-0670-MWD

APPLICATION BY MUNICIPAL	§	BEFORE THE
OPERATIONS, LLC	§	TEXAS COMMISSION ON
FOR NEW TPDES PERMIT	§	ENVIRONMENTAL
NO. WQ0016171001	§	QUALITY

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

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 and Request for Reconsideration in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Municipal Operations, LLC (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016171001. The Commission received requests for a contested case hearing from fifty-three requestors, and over four hundred public comments on this application. Upon review of all requests, OPIC respectfully recommends the Commission grant the hearing requests from the following persons: Greater Edwards Aquifer Alliance, San Antonio Water System, San Antonio Metro Health, Jorge and Iliana Aburto, Candy Berkeley, Tom and Mary Briggs, Jim and Sandy Burris, Samuel Galm, Zach and Mariana, Brian and Brooke Minihan, Joseph and Sharon Minihan, Castillo, George and Samantha Hill, Randy

and Kelley Kelch, Karen Leidner, Justin and Patricia McCord, Jerry and Karen Muldowney, the Roan family, Michael and Diana Schick, Steven Soukup, Elizabeth Toepperwein, and Jeff and Cari Traylor. For the reasons stated herein, OPIC respectfully recommends denial of the remaining hearing requests.

In addition, the Commission received requests for reconsideration from Katlyn Butler, Brittney Clay, Shelli Dutta, Frank Grammens, Tanya Granados, Arnulfo Leija, Hannah Nesbitt, the City of San Antonio, Marlo Ondrej, Jane Sams, Jimmy Santiago, Rakesh Sehgal, Belinda Stanley, Rob Swanson, and Debbie Swisher. Finally, OPIC recommends denial of the pending requests for reconsideration.

B. Background of Facility

Municipal Operations, LLC has applied to the TCEQ for new TPDES Permit No. WQ0016171001. If issued, the draft permit would authorize discharge of treated domestic wastewater not to exceed 200,000 gallons per day (gpd) in the Interim I Phase, a daily average flow not to exceed 400,000 gpd in the Interim II Phase, and an annual average flow not to exceed 1,000,000 gpd in the Final Phase. The proposed wastewater treatment facility would serve the Guajolote Ranch Development.

If issued, the permitted facility would be located approximately 1.75 miles west-southwest of the intersection of Babcock Road and Scenic Loop Road, in Bexar County, and would be an activated sludge process plant operated in conventional mode with chemical phosphorous removal capability. Treatment units in the Interim I Phase would include a primary fine screen, an equalization

tank, a secondary fine screen, an anoxic tank, an aeration basin, an aeriated MBR tank, a sludge holding tank, and an ultraviolet light (UV) disinfection system. Treatment units in the Interim II Phase would include a primary fine screen, two equalization tanks, two secondary fine screens, two anoxic tanks, two aeration basins, two aeriated MBR tanks, a sludge holding tank, and an UV disinfection system. Treatment units in the Final Phase would include a primary fine screen, four equalization tanks, four secondary fine screens, four anoxic tanks, four aeration basins, four aeriated MBR tanks, a sludge holding tank, and an UV disinfection system. The facility has not been constructed. The draft permit states that the effluent will be discharged via pipe to Helotes Creek, then to a pond, then to Helotes Creek, then to Culebra Creek, then to Lower Leon Creek in Segment No. 1906 of the San Antonio River Basin. The unclassified receiving water is minimal aquatic life use for Helotes Creek (upstream of unnamed tributary), and limited aquatic life use for the pond and for Helotes Creek (downstream of unnamed tributary). The designated uses for Segment No. 1906 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

TCEQ received Municipal Operations' application on May 23, 2022, with additional information received on November 11, 2022, and declared administratively complete on August 30, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on September 22, 2022, in the *San Antonio Express-News* and in Spanish on September 28, 2022, in the *Conexion*. The ED completed its technical review of the application on November

16, 2022, and prepared the draft permit, which if approved, would establish the conditions under which the proposed facility must operate. The Notice of Application and Preliminary Decision (NAPD) was published on April 5, 2023, in the *San Antonio Express-News* and in Spanish in the *Conexion* on April 5, 2023. A public meeting was held on May 9, 2023, in San Antonio. The public comment period ended on May 9, 2023, at the close of the public meeting. The ED's Response to Comments (RTC) was mailed on January 12, 2024, and the deadline for submittal of a contested case hearing request or request for reconsideration was February 12, 2024.

II. APPLICABLE LAW

A. Request for Hearing

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 TAC § 55.201(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.

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. 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. An interest common to members of the general public does not qualify as a personal justiciable interest. 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.

For applications filed on or after September 1, 2015, § 55.205(b) states that 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 shall 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.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestors are affected persons

Greater Edwards Aquifer Alliance

The Greater Edwards Aquifer Alliance (GEAA) submitted a timely hearing request and comments through their attorney, Eric Allmon. GEAA states that it is a nonprofit organization that seeks to protect and preserve the Edwards Aquifer and Trinity aquifers, their springs, and their watersheds. This includes advocating to protect water quality in Hill Country streams. As such, the interests the group or association seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). GEAA's request identifies Wade and Ward Saathoff, Chrystal Galm Woodcock, Shawn and Sam Galm, and Jane Sams as group members who would otherwise have standing to request a hearing in their own right.

According to the map prepared by ED staff—Ms. Sams, Ms. Woodcock, and the Galms all reside within 1.5 miles of the outfall, directly downstream, and within several hundred feet from the point at which the discharge route leaves the proposed development. Each of their properties borders either the discharge route or a connected stream. The Saathoffs reside within one-half mile of the proposed facility. These GEAA members all have private water wells on their property and are concerned about the effect the facility and associated runoff would have on water quality. They also raise concerns about odor and enjoyment of property. A reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity. *See* 30 TAC § 55.203(c)(3). These

requestors would therefore have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

In both timely comment and request, GEAA states concerns related to the Application's identification and notice to adjacent landowners, protection of water quality, protection of wildlife, creation of nuisance odors, compliance with location standards, identification of operator, and compliance with Texas' regionalization policy. Because GEAA has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

San Antonio Water System (SAWS) & San Antonio Metropolitan Health District (Metro Health)

Attorney Joe Freeland timely filed combined comments and a hearing request on behalf of SAWS through Metro Health on February 13, 2023—in addition to prior comments filed on May 8, 2023—raising concerns about potential impacts that the proposed wastewater plant could have on the quality of the groundwater in the Edwards Aquifer and the possible adverse effects on the Bexar County Karst Invertebrates and their habitat. In its request, Metro Health states that it is a department of the City of San Antonio. Metro Health is an administrative department of San Antonio, created by San Antonio's Charter to "enforce all laws of the state and ordinances and regulations relating to public health." Additionally, Metro Health is authorized by ordinance to monitor and

address public health issues relating to sewer lines. SAWS is San Antonio's retail water utility providing water service to approximately two million people located throughout Bexar, Medina, Comal, and Atascosa Counties. The request states that groundwater produced from the Edwards Aquifer represents a significant portion of SAWS' water supply. Additionally, SAWS is responsible for administering San Antonio's Water Quality Ordinance.

The request further states that the proposed treatment plant is located in the contributing zone of the Edwards Aquifer, upstream of the recharge zone. Requestors are concerned that the proposed discharge will travel down Helotes Creek, which they maintain is highly fractured and closely connected hydraulically to the recharge of the Trinity and Edwards Aquifers. SAWS owns and operates drinking water wells in the Trinity and Edwards Aquifers downgradient from the discharge route, and they are potentially subject to pollutants discharged by the facility. Therefore, the request states, the proposed discharge would be into a watercourse that has a direct connection to the drinking water supply relied on by SAWS to serve its customers, and the operation of the proposed wastewater plant could adversely affect the greater San Antonio region's drinking water supply.

Given the relevance of SAWS' and Metro Health's stated concerns and their governmental authority as administrative departments for the City of San Antonio, OPIC finds that SAWS and Metro Health are governmental entities with statutory authority over their stated issues of concern and, therefore, are affected persons pursuant to 30 TAC § 55.203.

Requestors in proximity with the facility, outfall, or discharge route

The Commission received timely requests and comments from the following requestors who are in proximity with the proposed facility, outfall, or discharge route: Jorge and Iliana Aburto, Candy Berkeley, Tom and Mary Briggs, Jim and Sandy Burris, Samuel Galm, Zach and Mariana, Brian and Brooke Minihan, Joseph and Sharon Minihan, Castillo, George and Samantha Hill, Randy and Kelley Kelch, Karen Leidner, Justin and Patricia McCord, Jerry and Karen Muldowney, the Roan family, Michael and Diana Schick, Steven Soukup, Elizabeth Toepperwein, and Jeff and Cari Traylor. The Aburtos, the Briggs, the Burris, the Castillos, the Hills, the Kelchs, the McCords, the Muldowneys, the Schicks, and the Traylor families all share a fence line with the proposed development—within one-half mile from the proposed outfall. Karen Leidner lives within several hundred feet of the point at which the discharge route leaves the proposed development. Her property is directly along an adjacent creek that converges with the discharge route and could be affected by upstream contamination—especially during times of drought or flood. She draws water from a well on her property and is concerned about the potential negative effect on her water quality.

To be granted a contested case hearing, the requestors must show that they qualify as “affected persons,” which are those who have personal justiciable interests related to a legal right, duty, privilege, power, or economic interest affected by the application, and must distinguish those interests from interests common to the general public. *See* 30 TAC § 55.203(a). These requestors’ concerns about water quality, human health, nuisance odor, and use of property

are interests which are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Further, as their properties are proximate to either the facility, outfall, or the discharge route, a reasonable relationship exists between those interests and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3).

Their proximity, in combination with their stated interests, demonstrates that they are likely to be affected in a way not common to members of the general public, and thus possess personal justiciable interests in this matter. Therefore, OPIC concludes that Jorge and Iliana Aburto, Candy Berkeley, Tom and Mary Briggs, Jim and Sandy Burris, Samuel Galm, Zach and Mariana, Brian and Brooke Minihan, Joseph and Sharon Minihan, Castillo, George and Samantha Hill, Randy and Kelley Kelch, Karen Leidner, Justin and Patricia McCord, Jerry and Karen Muldowney, the Roan family, Michael and Diana Schick, Steven Soukup, Elizabeth Toepperwein, and Jeff and Cari Traylor have demonstrated that they possess a personal justiciable interest in this matter and qualify as affected persons.

City of Grey Forest and Helotes City Council

The proposed facility and outfall are well outside the bounds of the City of Grey Forest and more than five miles from the City of Helotes. No part of the proposed facility is within the ETJ of either municipality. The proposed discharge route does travel through the City of Grey Forest, but it enters its ETJ almost two miles from the proposed outfall. Due to the large intervening distance between the proposed facility and the location of the requestors, OPIC must respectfully find that the City of Grey Forest and Helotes City Council are not likely to be

affected in a manner different from the general public and thus do not qualify as affected persons pursuant to 30 TAC § 55.203.

Requestors with large intervening distance, failure to identify personal justiciable interest, or untimely comment

The substantial requirements for a hearing request are identified under 30 TAC § 55.201(d). Specifically, 30 TAC § 55.201(d)(2) states that a hearing request must “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.” Further, the deadline to submit a timely comment for this application was May 9, 2023. Any hearing requests received that are not based upon comments received during the comment period may not be considered by the Commission. 30 TAC § 55.201(c). The following requestors either did not submit a timely comment, failed to list a personal justiciable interest, or listed a property address not proximate to the outfall, discharge route, or facility – thus diminishing the likelihood that this facility will impact them in a way not common to members of the general public:¹ Kelley Ferguson, Jane Armstrong, John Ayraud, Michael Phillips, Donna Gottwald,

¹ OPIC notes that there are no specific distance requirements applicable in this matter. However, the requestors addressed in this section that did submit timely comments listing a personal justiciable interest are not in proximity with the facility or outfall—and none are along the discharge route within a mile and a half of the outfall.

Jennifer Nottingham, Jeff Davis, Luis Carriles, Patricia Cunningham, John Feist, Jeff Hanson, Annie McEntire, Luis Pack, Daniel Rosen, Timothy Hough, Kelli Golobek, Natalie Bowman, Kelly Luckett, Martha Ann Haynes, Nathan M. Glavy and Annalisa Peace, Kelley Ferguson, Cynthia Massey, Lisa Muyres Pack, Elizabeth Comeaux, and Jane Sams. Accordingly, OPIC must respectfully find that the above-mentioned requestors do not qualify as affected persons.

B. Which issues raised in the hearing requests are disputed

Affected persons raised the following issues:

1. Whether the draft permit is adequately protective of water quality, including groundwater, and recreational use and enjoyment of Requestors' properties;
2. Whether the proposed discharge will adversely impact animal life, including aquatic life, and endangered and threatened species;
3. Whether the Applicant provided proper notice;
4. Whether the draft permit is sufficiently protective against nuisance odors;
5. Whether the Application sufficiently identifies the operator of the plant;
6. Whether the Applicant has demonstrated compliance with Texas regionalization policy; and
7. Whether the Applicant has demonstrated compliance with applicable location standards of Chapter 309 of the TCEQ Rules, including floodplain protection and protection against active geologic processes.

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. All issues raised by Requestors are issues of fact.

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

Issues 1-7 in Section III. B were specifically raised by affected persons during the public comment period.

E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment

All hearing requests are based on timely comments that have not been withdrawn.

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

The hearing requests raise issues that are 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, Animal Life, and Recreation

Requestors raised concerns about adverse effects to water quality and the consequential impacts on aquatic life, animal life, and whether the draft permit will adequately maintain the recreational uses of the waterbodies in the route of the proposed discharge. The Commission is responsible for the protection of water quality under Texas Water Code 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(c) 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 and the protection of animal life, and recreational uses of relevant water bodies, Issues No. 1-2 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Notice

Requestors raised concern that Applicant has not accurately depicted its own property boundary, and in doing so has not provided an accurate list of adjacent property owners, resulting in a lack of proper notice of the application. Requestors’ concerns regarding lack of proper notice are relevant and material

to the Commission's decision on this application and thus Issue No. 3 is appropriate for referral to SOAH.

Odor

Section 309.13(c) of the TCEQ's rules requires domestic facilities to meet buffer zone requirements for the abatement and control of nuisance odor by complying with one of three options: 1) ownership of the buffer zone area; 2) restrictive easements from the adjacent property owners for any part of the buffer zone not owned by the applicant; or 3) providing nuisance odor control. As these rules apply to the permit at issue, Requestors' concerns about odor are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

Operator of Plant

Both the operator and the owner of the facility are required to submit an application for a permit pursuant to 30 TAC § 305.43(a). Requestors dispute whether it has been demonstrated that this requirement has been met with respect to the application and proposed discharge. Accordingly, this Issue No. 5 is appropriate for referral to SOAH.

Regionalization

Under Texas Water Code § 26.081(a), it is "state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems ... to prevent pollution and maintain and enhance the quality of the water in the state." The Texas Water Code further states:

In considering the issuance ... of a permit to discharge waste, the commission may deny or alter the terms of the proposed permit ... based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as such by commission order....

TWC § 26.0282. Therefore, Issue 6 regarding regionalization is relevant and material to the Commission's decision on the Application and is appropriate for referral to SOAH.

Chapter 309 Location

Requestors contend that Applicant has not demonstrated compliance with the Location Standards proscribed by Subchapter B of Chapter 309 of the TCEQ rules pertaining to the applicable location standards for a wastewater treatment facility. Requestors are concerned that the facility is cited at a location prone to flooding, and where wetlands potentially exist. Such concerns are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

G. Maximum Expected Duration of 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. 30 TAC § 50.115(d)(2). 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 would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

Katlyn Butler, Brittney Clay, Shelli Dutta, Frank Grammens, Tanya Granados, Arnulfo Leija, Hannah Nesbitt, City of San Antonio, Marlo Ondrej, Jane Sams, Jimmy Santiago, Rakesh Sehgal, Belinda Stanley, Rob Swanson, and Debbie Swisher submitted timely requests for reconsideration expressing concerns about water quality, lack of proper notice, traffic issues, impacts to recreation, impacts to human and animal health, and general impact to the environment. While most of these concerns are relevant and material to the decision on this application, an evidentiary record would be necessary for OPIC to make a recommendation to the Commission as to whether the ED's decision should be reconsidered. OPIC cannot recommend reconsideration without the benefit of such a record and must therefore recommend denial of the requests for reconsideration.


V. CONCLUSION


OPIC respectfully recommends that the Commission grant the requests of the previously listed affected persons and refer Issue Nos. 1-7 specified in Section III. B. for a contested case hearing at SOAH with a maximum duration of 180

days. Finally, OPIC recommends denial of the requests for reconsideration and remaining hearing requests.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2024 the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Jennifer Jamison

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FOR ALTERNATIVE DISPUTE
RESOLUTION

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REQUESTER(S):

See attached list.

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