

**Summary of Response to Contested Case Hearing Request
The Village at Grape Creek – TPDES Permit No. WQ0016363001**

Overview of the Project

The Village at Grape Creek, LLC has applied for a Texas Pollutant Discharge Elimination System (TPDES) permit to operate a wastewater treatment facility in Fredericksburg, TX. The facility will process up to 20,000 gallons per day, with treated effluent discharged into the Pedernales River. The project will provide 242 tiny home units with recreational amenities while ensuring compliance with all applicable environmental laws.

Legal Arguments Supporting Denial of Contested Case Hearing

1. Regulatory Compliance:
 - a. The Texas Commission on Environmental Quality (TCEQ) determined that the permit application satisfies all requirements under 30 Texas Administrative Code (TAC) Chapter 217.
 - b. A public meeting and comment period were conducted, and the Executive Director's Decision Letter confirmed the project's compliance.
2. Requestors Are Not Affected Persons:
 - a. Under 30 TAC § 55.203, requestors must be "affected persons" to receive a contested hearing. Here, the requestors failed to demonstrate that they are affected persons.
3. No Disputed Issues of Fact or Law:
 - a. The Executive Director's findings of fact and law confirmed that the permit meets all water quality standards.
 - b. Opponents provided no scientific data to contradict TCEQ's findings of fact and law, making their claims speculative.
4. Environmental Protections in Place:
 - a. The permit includes stringent effluent limitations (e.g., 5 mg/L CBOD5, 2 mg/L ammonia-nitrogen, 1 mg/L total phosphorus).
 - b. A Tier 1 and Tier 2 antidegradation review confirmed no significant degradation to the Pedernales River.

Scientific and Environmental Considerations

- The wastewater treatment plant will utilize a Membrane Bioreactor (MBR) system, which exceeds standard treatment methods by filtering out contaminants at a microscopic level.
- The facility is designed to produce Type I Reclaimed Water, which can be used for irrigation, reducing potable water demand.
- The effluent limits will protect aquatic life and public water supplies, and odor control measures ensure minimal community impact.
- The project site is outside the 100-year floodplain, mitigating risks of flooding or erosion.

Conclusion

The permit application fully complies with Texas law and environmental regulations. The requestors have not demonstrated standing or raised valid disputed issues of fact or law. Given TCEQ's findings and the project's benefits, the requests for a contested case hearing should be denied.

**FORMAL RESPONSE TO THE REQUEST FOR A CONTESTED CASE HEARING
RELATED TO DOCKET NO. 2024-1985-MWD AND TPDES PERMIT NO.
WQ0016363001**

January 30, 2025

To: Texas Commission on Environmental Quality and Persons on the Attached
Mailing List

From: Husch Blackwell LLP
Racy Haddad, Partner

Re: Texas Pollutant Discharge Elimination System (“TPDES”) Permit (the “Permit”) for The Village at Grape Creek, LLC (“Applicant”) related to Docket No. 2024-1985-MWD and TPDES Permit No. WQ0016363001.

Dear Commissioners:

On behalf of the Applicant in the above referenced matter, this letter serves as a formal response to the requests for contested case hearing by the individuals and organizations listed in **Appendix 1** (the “Requestors”) and will address the following: an overview of the Project with respect to its procedural background, the TPDES standard of review, the benefits of the Project, rebuttals to the Requestors’ request for contested case hearing on February 27, 2025, collaboration with the Lower Colorado River Authority (“LCRA”), and why a contested case hearing should be denied.

As you are aware, the Applicant previously applied for a TPDES permit for the Applicant’s ongoing development of a tiny home village in Fredericksburg, Texas (the “Project”), and received conditional approval from the TCEQ to begin construction of the wastewater treatment facility, attached herewith as **Exhibit “A”**. Since that time, the Requestors have submitted requests for a contested case hearing regarding the matter.

We respectfully request that the commissioners of the Texas Commission for Environmental Quality (“TCEQ”) deny these requests for failure to demonstrate affected person status, and failure to present disputed issues of material fact or law.

I. Background and Benefits of the project

a. Background

On July 5, 2023, Applicant submitted an application for the Permit, a true and correct copy of which is attached hereto as **Exhibit “B”**. The Permit application requests authorization for the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per

day and the operation of a wastewater treatment facility at the Project site, as further described in **Exhibit “C”** attached hereto. The Applicant’s Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on September 6, 2023, in the *Fredericksburg Standard-Radio Post* and *La Prensa Comunidad* on September 5, 2023. On March 8, 2024, the Applicant received a draft TPDES Permit from TCEQ. Subsequently, the TCEQ formally notified Applicant on July 17, 2024, that they determined based on the information submitted by the Applicant, the permit application satisfied the requirements set forth in 30 Texas Administrative Code (the “TAC”) Chapter 217 and conditionally approved construction of a wastewater treatment facility, provided that the Project was built with the application’s specifications and in accordance with the relevant TAC code. A true and correct copy of the Notice of Application and Preliminary Decision (“NAPD”) is attached hereto as **Exhibit “D”**. The NAPD was published on May 14, 2024, in the *Tex Mex News*, and *Fredericksburg Standards-Radio Post* on May 15, 2024.

In response to the TCEQ’s conditional approval of the wastewater treatment facility, a public meeting was held on June 13, 2024, the same day that the second public comment period ended. On October 9, 2024, the Executive Director of the TCEQ issued a Decision of the Executive Director letter (the “**Decision Letter**”), attached hereto as **Exhibit “E”**, concluding that the Applicant’s “permit application meets the requirements of applicable law” and responding to public comments made by those individuals and organizations listed in Appendix 1. An additional thirty-day comment period to request a hearing/reconsideration followed between October 9, 2024, and November 8, 2024. On January 17, 2025, the TCEQ sent an Agenda Setting Letter notifying all relevant parties of the upcoming Agenda Meeting on Thursday, February 27, 2025, in front of the commissioners of the TCEQ.

As part of the regulatory compliance, the Project’s Permit is subject to the TPDES, ensuring that the Project meets all environmental standards and regulations. To date, Applicant has taken all necessary steps towards strategically developing their wastewater treatment facility in accordance with the requirements set forth in the TAC. Moreover, Budget Proposal #948, attached hereto as **Exhibit “F”**, includes the design calculations that were submitted to TCEQ as part of the TPDES permit application and were also incorporated in the Plans and Specifications submittal to the Water Quality group at TCEQ. These design calculations and plans were relied upon to assess the conditional approval, and we do not believe any issues of fact or law remain open and undecided which would entitle the Requestors to a contested case hearing, as detailed below.

Because the TCEQ has determined that the application submitted meets the requirements of the TAC and for the reasons set forth in Section III herein, deference should be paid to the TCEQ’s analysis contained prior to and as set forth in the Decision Letter and the contested case hearing requests should be denied.

b. The Project

To service this community, the Applicant is seeking to ensure compliance with Texas law with its wastewater treatment facility at the Project. The Project will be located approximately 0.65 miles southwest of the intersection of Jenschke Lane and U.S. Highway 290, in Gillespie County, Texas

78624, and will consist of 242 tiny home units with recreation and amenities, which can deliver significant benefits to the town of Fredericksburg. If the TPDES Permit is issued, the treated effluent will be discharged to an unnamed tributary, thence to the Pedernales River in Segment No. 1414 of the Colorado River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 1414 are primary contact recreation, public water supply, and high aquatic life use.

The Applicant has designed the TPDES in compliance with applicable law and should not be denied its rights under 30 TAC Chapter 217 for permit approval. The Applicant's wastewater treatment facility will be a membrane bioreactor (MBR) system. Treatment units, per approval of the Plans and Specifications by the Water Quality Division, will include two fine screens, an anoxic basin, an aeration basin, a membranes basin, a screw-type sludge press, and an ultraviolet (UV) light disinfection system. The Project has not been constructed.

The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

The draft permit includes the following proposed effluent limitations and monitoring requirements. All flows are expressed in million gallons per day (MGD) / gallons per day (gpd). The two-hour (2-hr) peak flow is expressed in gallons per minute (gpm). All pH values are expressed in standard units (SU). Concentration values are expressed in milligrams per liter (mg/L). Mass-based values are expressed as pounds per day (lbs/day). Bacteria values are expressed in colony-forming units (CFU) or most probable number (MPN) per 100 milliliters (CFU or MPN/100 mL). Per the Statement of Basis/Technical Summary and Executive Director's Preliminary Decision, included in the Draft Permit, TCEQ concluded that based on the model results, effluent limits of 10 mg/L carbonaceous biochemical oxygen demand (CBOD5), 3 mg/L ammonia-nitrogen (NH3-N), and 5 mg/L minimum dissolved oxygen (DO) were recommended. The Applicant volunteered to adopt more stringent effluent limitations in an effort to further preserve the current stream conditions of the discharge route of 5 mg/L CBOD5, 5 mg/L total suspended solids (TSS), and 2 mg/L NH3-N. Per TCEQ's modeling results, the limitations the TCEQ originally set, were concluded to have no negative effect or any significant degradation of the receiving waters from the discharge of the proposed Wastewater Treatment Plant.

The Applicant's intent for the project is to permit and construct an MBR WWTP which produces Type I Reclaimed water per TCEQ 30 TAC Chapter 210 regulations, to beneficially reuse as much of the produced wastewater effluent for on-site irrigation as possible, and to be able to limit the amount of potable water needed for irrigation operations. Due to the current state regulations, to beneficially reuse the Type I Reclaimed water produced at the MBR WWTP, a TPDES permit is required to be issued prior to the issuance of a 210 Reclaimed Water Use Permit. In conjunction with the TPDES permit application, the Applicant applied for a Chapter 210 Re-Use of Domestic Reclaimed Water Authorization Application on July 9, 2024. The application is currently under review at TCEQ, but cannot be approved until the TPDES permit is issued.

II. Standard of Review and Rebuttal of Opposition Comments

a. Requestors Do Not Meet the Affected Person Requirement

Requests for a contested hearing may only be filed by the commission, the executive director, the Applicant, and affected persons. *See* 30 Tex. Admin. Code § 55.201. An affected person is defined as "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." 30 Tex. Admin. Code § 55.203. In determining whether a requestor is an affected person, the Commission is to consider:

- whether the interest claimed is one protected by the law under which the application will be considered;
- distance restrictions or other limitations imposed by law on the affected interest;
- whether a reasonable relationship exists between the interest claimed and the activity regulated;
- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- likely impact of the regulated activity on use of the impacted natural resource by the person;
- 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
- for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- 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;
- the analysis and opinions of the executive director; and
- any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

The Commission has broad discretion to determine whether a requestor is an affected person. "TCEQ's discretion over contested-case hearing requests naturally includes its 'threshold' determination of whether the person seeking the hearing is an affected person. And in making that particular decision, TCEQ enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity—here, underground disposal of by-product material—will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources." *Sierra Club v. Texas Comm'n on Env't Quality*, 455 S.W.3d 214, 223–24 (Tex. App. 2014)

If the Commission finds that a requestor is an affected person and meets the requirements set forth in 30 Tex. Admin. Code § 55.211(c)(2)(A)(ii), the Commission must grant a contested hearing. Sec. 55.211(c)(2)(A)(ii) provides as follows:

(c) A request for a contested case hearing shall be granted if the request is:

...

(2) made by an affected person if the request:

(A) is on an application filed:

...

(ii) [Raise] disputed issues of fact or mixed questions of fact or law that:

(I) were raised during the comment period by the affected person whose request is granted;

(II) were not withdrawn by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment; and

(III) are relevant and material to the commission's decision on the application;

(B) is timely filed with the chief clerk;

(C) is pursuant to a right to hearing authorized by law; and

(D) complies with the requirements of §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing).

Subchapter 55 does not specify how the Commission is to act upon requests filed by Requestors the Commission determines to be "affected persons" who nevertheless do not meet the requirements set forth by § 55.211(c)(2)(A)(ii). Accordingly, it can be inferred that the Commission has discretion over whether to deny contested hearings to these affected persons.

Twenty parties have requested a contested hearing. Below follow Applicant's responses to requests submitted by Aimee Ransleben ("**Ms. Ransleben**"), an individual, on November 8, 2024; and Perales, Allmon & Ice, P.C., counsel for the Pedernales River Association ("**PRA**"), and the Greater Edwards Aquifer Alliance ("**GEAA**") on November 8, 2024. See Appendix 2, attached herewith, for responses to the remaining contested hearing requests.

The contested hearing request jointly filed by counsel for PRA and GEAA fails to demonstrate affected person status. As in *Sierra Club v. Texas Comm'n on Env't Quality*, PRA and GEAA are "not affected persons because the licensed activity will have minimal effect on their health, safety, use of property, and use of natural resources." 455 S.W.3d 214, 225 (Tex. App. 2014). They allege that two of their members live adjacent to and 1,500 feet north of the proposed wastewater treatment facility, respectively, and that these members worry about odor, contaminated stormwater runoff, groundwater quality, and discharge accumulation. While these two members would be "affected persons" if they provided credible evidence of these concerns, they have not done so.

Concerning their aforementioned concerns, PRA and GEAA present no rebuttals of the science set forth in the Application beyond conclusory statements such as "the Application does not demonstrate that the proposed permit would ensure compliance with applicable Texas Surface Water Quality Standards" and "PRA and GEAA disagree with ED's [degradation] analysis." Nor does PRA and GEAA's letter mention any members but the two whose concerns are listed above, much less where their other members live and how those other members are affected. While PRA and GEAA need not demonstrate that they "will prevail in a contested-case hearing" to qualify as

“affected persons,” they do need to show that they “will be affected to some degree.” *United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App. 2000).

Likewise, Ms. Ransleben has not demonstrated affected person status. She concedes that she lives five miles from the Project; asserts an unsubstantiated concern that “[o]pening the door to private entities being able to discharge treated effluent will further deteriorate the water quality of this river;” and claims that “the methodology [used by TCEQ to assess the permit application] provides no consideration of the existing water quality of the river and the impact of the treated effluent on various parameters already elevated due to seasonal factors.” None of these concerns constitutes empirical evidence that the facility will affect Ms. Ransleben; all are speculative and conclusory. In *Sierra Club*, the court noted that two of Sierra Club’s members “live more than three miles from the proposed facility and neither work or spend any substantial time in or around the proposed facility” and that the applicant’s “concerns about general contamination . . . are interests common to the members of the general public. 455 S.W.3d at 224. The court held that “TCEQ was within its discretion to determine that Sierra Club’s members were not affected persons.” *Id.* Here, Ms. Ransleben lives even farther from the Project and has voiced the same kinds of concerns about general contamination of the Pedernales River. She has not provided evidence of a personal justiciable interest, much less one the general public does not share.

Similarly, an “affected person” must “show that (1) issuance of the permit as proposed would cause one or more of its members to suffer an injury, i.e., a concrete and particularized invasion of a legally protected interest that is actual or imminent as opposed to conjectural or hypothetical, and (2) that the injury would likely be redressed by a favorable decision on the party's complaints regarding the proposed permit, i.e., the Commission's refusal to grant the permit or imposition of additional conditions.” *Bosque River Coal. v. Texas Comm'n on Env't Quality*, 347 S.W.3d 366, 375 (Tex. App. 2011), order vacated (Feb. 1, 2013), rev'd on other grounds, 413 S.W.3d 403 (Tex. 2013) (emphasis added). Even if PRA, GEAA, and Ms. Ransleben’s conclusory statements were taken as evidence, they are not “material” under Sec. 55.201, because these statements contain too little information to “have caused the agency to reach a contrary conclusion.” *Sierra Club*, 455 S.W.3d at 227. Therefore, these requestors have not substantiated any concrete harm that would qualify them “affected persons.”

The individuals named in Appendix 2 likewise fail to qualify as affected persons. First, the interests they claim are not protected by the relevant statute governing the application, as they do not pertain to rights or property that the law explicitly safeguards. Second, many of these individuals are not located near the Project, making them too far removed from the regulated activity to be directly impacted by the Project. Additionally, there is no reasonable relationship between their claimed interests and the activity being regulated, as many individuals are concerned with activities not related to regulations overseen by TCEQ. Furthermore, the likely impact of the activity on their health, safety, or property use is minimal or non-existent, as specified in the Response to Comments. Finally, many individuals did not list relevant and material disputed issues of fact and law.

(b) Requestors Have Not Listed Relevant and Material Disputed Issues of Fact and Law

Section 55.201(d)(4)(B) requires that a contested hearing request "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." Therefore, the Commission may deny a contested hearing request when requestors do not meet this requirement. The purpose of this provision is to enable the public to respond to the Commission's post-comment period findings of fact and law as set forth in the Executive Director's decision, while also preventing contested hearings about facts that are not in dispute.

Here, whether the facility creates an additional environmental burden for the Pedernales River and Greater Edwards Aquifer is relevant and material to whether the facility complies with applicable law and should be approved. The findings of fact set forth in the Executive Director's decision of October 9, 2024, concluded the facility will meet the most stringent effluent requirements set forth by TCEQ, will effectively reduce organics — including nitrogen and phosphorus — to limits well below required standards, will not be reliant on chemicals within the process which may be harmful to the environment, and will meet all noise and odor abatements as required. Crucially, *one of the Executive Director's findings of fact was that the "permit application meets the requirements of applicable law."* Moreover, "[a] Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. . . . [and a] Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Pedernales River, which has been identified as having high aquatic life use." The Requestors have attempted to create a disputed issue of fact regarding whether the facility creates an additional environmental burden by opining that the facility will raise phosphorous levels to an intolerable degree, cause odors, affect groundwater, and cause other undesirable effects on the Pedernales River. But the Requestors cite no facts or data to support their concerns as the Executive Director did in the Decision Letter. For example, PRA and GEAA write, "PRA and GEAA disagree that [the Commission's 1 mg/L phosphorous limit]—or any other limitations in the Draft Permit—will preclude excessive accumulation of algae or eutrophic conditions in the receiving waters." Yet they cite no source for this assertion. Similarly, PRA and GEAA write, "The Application does not demonstrate that the proposed discharge will maintain the existing uses for the Pedernales River as public water supply or 'maintain present uses and not impair potential uses of groundwater or pose a public health hazard' under Texas Water Code § 26.401(c)(2)." PRA, GEAA and Ms. Ransleben do not cite a single fact or provision of the Application to support this claim, much less to substantiate their claim that the facility's discharge will affect groundwater quality.

All of the Requestors' arguments share this defect. In order for a "disputed issue of fact" to exist, two or more contrary facts must conflict. For example, suppose the weather forecast predicts sun tomorrow with 90% certainty, and a viewer worries it will rain without having any reason to doubt the forecast. There would be no disputed issue of fact, because the empirically-based weather forecast has been countered by an unfounded, unempirical worry. Fact has not been met with fact. Likewise, the Commission has advanced its own findings of fact, while the Requestors advanced only speculative concerns devoid of facts, data, or citations. The Texas Rules of Evidence are instructive: "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable

than it would be without the evidence; and (b) the fact is of consequence in determining the action." Tex. R. Evid. 401. The requestor's unsubstantiated worries do not change the probability of any fact at issue, much less a fact of consequence in determining whether to grant the permit. Therefore, there is no "disputed issue of fact" pursuant to § 55.201(d)(4)(B). Since the Requestors have not met the requirements for a contested hearing request, the Commission has discretion to deny their request.

Although Hill County Underground Water Conservation District ("HCUWCD") is an affected person pursuant to § 55.203(b), its contested hearing request does not raise any relevant and material disputed issues of law and fact. HCUWCD asks that the Permit include: (1) effluent limitations on nitrate and total nitrogen; (2) effluent limitations on bacteria; and (3) prohibitions of pharmaceuticals, microplastics, and certain other compounds. Regardless of the merit of these proposals, they are not relevant and material disputed issues of law and fact because they do not contradict the findings of fact set forth in the Executive Director's decision or raised during the public comment period. Indeed, HCUWCD does not cite the Executive Director's findings of fact and law at all. HCUWCD's proposals are suited for the public comment period, and not as the basis of a contested hearing request. Finally, the Permit already contains effluent limitations, and HCUWCD has failed to cite any statute or regulation permitting TCEQ to regular pharmaceutical and microplastic discharge from a treated wastewater discharge facility.¹

III. Rebuttals to Remaining Public Comments

The public comments fail to qualify the Requestors as affected persons and do not rise to a dispute of law or fact. Below follows the Executive Director's response to each of the comments to which PRA and GEAA responded in their contested hearing request, supplemented by responses from Applicant's engineers.

Comment 1:

Concerns were raised about the draft permit's potential impacts on Breckmann Branch and the Pedernales River, including recreational and fishing uses, as well as impacts on wildlife, livestock, and agriculture.

Response 1:

The TCEQ ensures water quality protection under applicable laws and standards. Effluent limits in the draft permit are designed to maintain instream uses and prevent aquatic toxicity, violations of water quality standards, or harm to public water supplies. The draft permit also addresses disinfection requirements to protect human health.

Engineer Response:

The expected effluent characteristics shown in the provided Budget Proposal #948 design calculations, show that expected effluent values for the proposed MBR WWTP. The expected effluent values are lower than what has been proposed in the draft TPDES permit, and are in line with Table F.7. Performance Standards for Conventional Pollutants and Nutrients for Membrane Bioreactors, in TCEQ's 30 TAC 217.157(c)(1). The MBR treatment process produces much

¹ TCEQ's sewerage ban for hazardous waste pharmaceuticals, 30 TAC 335.761, applies to healthcare facilities, not treated wastewater discharge facilities.

lower typical effluent characteristics than that of Conventional Activated Sludge WWTPs, due to the ultrafiltration of the membranes that will be used in the treatment process. The proposed MBR membranes have a pore size of 0.038 micrometers, the small pore size is able to filter out typical wastewater effluent characteristics to a nominal value, further protecting the Breckmann Branch and Pedernales River water quality, recreational and aquatic uses. The Applicant also requested more stringent effluent limitations, consisting of a 5 mg/L CBOD₅, 5 mg/L TSS, 2 mg/L NH₃-N, and 1 mg/L TP to further ensure the water quality of the receiving streams would not be adversely affected.

The City of Fredericksburg (COF) WWTP also discharges into Barons Creek and thence to the Pedernales River, approximately 8.5 miles upstream of the proposed MBR WWTP. The City of Fredericksburg current TPDES effluent limitations include a 10 mg/L CBOD₅, 15 mg/L TSS, and 2 mg/L NH₃-N, with a total average daily flow of 2.5 MGD. The effluent limitations proposed in the MBR WWTP are much more stringent and also include a limit on total phosphorus which the COF does not currently have an effluent limitation on. The proposed flow of 20,000 gpd for the MBR WWTP is 0.8% of the average daily flow of the COF WWTP. Based on the minimal volume of flow capacity, as well as more stringent permit limits than the COF, and also the ability of the MBR WWTP to treat to Type I reclaimed water standards, the proposed wastewater effluent discharge will not adversely affect the receiving waters of the Breckmann Branch and the Pedernales River's water quality, or affect the current recreational uses of the receiving waters.

Comment 2:

Concerns about additional nutrient loads causing harmful algal blooms and the adequacy of the proposed total phosphorus (TP) limits in nutrient-sensitive streams.

Response 2:

A total phosphorus limit of 1 mg/L was included in the draft permit to prevent excessive algal growth. The limit aligns with standards for discharges in sensitive zones, ensuring protection against eutrophic conditions.

Engineer Response:

The expected effluent characteristics shown in the provided Budget Proposal #948 design calculations, show that expected values for Total Phosphorus limits are below 1 mg/L. The proposed Wastewater Treatment Plant includes a Membrane Bioreactor ("MBR") treatment system. Per TCEQ's 30 TAC 217.157(c)(1), Table F.7. Performance Standards for Conventional Pollutants and Nutrients for Membrane Bioreactors, also show that Total Phosphorus (with bio-P removal) to be approximately 0.5 mg/L. While the draft permit for phosphorus is set at 1 mg/L, effluent values produced at the MBR WWTP are expected to be lower, therefore the potential for algal blooms in the Beckmann Branch and Pedernales River are reduced even further.

Comment 3:

Concerns were raised about antidegradation reviews and cumulative impacts of wastewater treatment facilities on surface water quality.

Response 3:

A Tier 1 and Tier 2 antidegradation review determined no impairment or significant degradation

of water quality. Modeling analysis accounted for worst-case conditions and cumulative impacts, confirming compliance with water quality standards.

Engineer Response:

TCEQ performed a Tier 1 and 2 antidegradation review and determined the existing water quality uses will not be impacted by the proposed TPDES permit. TCEQ also performed a modeling analysis review of the proposed wastewater effluent discharge to evaluate potential impacts on major oxygen-demanding constituents within the effluent on dissolved oxygen levels of receiving waters. Based on the modeling analysis performed by TCEQ, the draft permit reflects conservative Dissolved Oxygen requirements to prevent degradation to the receiving waters. Per TCEQ's Statement of Basis/Technical Summary included in the Draft permit, the TCEQ's modeling showed that even with less stringent limitations of 10 mg/L CBOD5, 3 mg/L NH3-N, and 5 mg/L DO, the receiving waters would not be adversely affected. The Applicant requested to adopt more stringent effluent limitations, as reflected in the Draft permit, to further ensure the protection of the receiving waters quality.

Comment 4:

Concerns about the draft permit's potential impacts on groundwater quality and supply.

Response 4:

The draft permit adheres to non-degradation goals for groundwater quality. However, groundwater monitoring wells are not required, and groundwater availability is not within TCEQ's jurisdiction.

Engineer Response:

Per the Executive Director's Letter dated October 8, 2024, the draft TPDES permit meets the Texas Surface Water Quality Standards, and are protective of the surface water quality, human health, and environment, and can therefore ensure the protection of the groundwater quality. An overview of the Ellenburger Aquifer is as shown below, and included in this report as **Exhibit "G"** showing the surrounding water supply wells and their respective water quality information.

Review of the Texas Water Development Board's (TWDB's) groundwater data viewer indicates the Hensel Sand Formation of the Trinity Group is located at land surface at the site and surrounding area. The Hensel Sand consists of sand, silt, and clay and is approximately 140 feet thick beneath the site. The Hensel Sand unconformably overlies the Ellenburger Group.

The Ellenburger Group consists of alternating limestone and dolomite units and is part of the Ellenburger-San Saba Aquifer, which is designated as a minor aquifer by the Texas Water Development Board (TWDB). The Ellenburger Group is approximately 1,000 feet thick beneath the site.

The TWDB has received well completion reports for approximately 35 wells that have been drilled/completed within a 1-mile radius of the site. These reports indicate the wells were completed to depths varying from approximately 140 feet below ground surface (bgs) to 520 feet bgs. The depth to groundwater in these wells has been reported from approximately 40 to 100 feet bgs.

Groundwater quality data, via the TWDB website, is available for only two of the approximately 35 wells referenced previously. These wells were completed more than a ½ mile from the site, to depths of 180 and 202 feet bgs; and withdraw water from the Ellenburger-San Saba aquifer. The locations of these wells are shown on the attached Exhibit. The attached Exhibit also includes groundwater quality data for several inorganic constituents of concerns with their respective primary maximum contaminant levels (MCLs). As shown in this exhibit, nitrate is the only constituent of concern that has exceeded its MCL. TWDB well reports and groundwater quality data for these two wells is also attached.

Two public supply wells were drilled and completed on the site in mid-2024 and their locations are also noted on the attached exhibit. The wells were completed to depths of 360 and 400 feet bgs and withdrawal water from the Ellenburger-San Saba aquifer. Laboratory analysis of groundwater samples collected from the wells indicates that none of the primary constituents of concern exceed their respective MCLs. The laboratory report of analysis for the groundwater samples collected from these wells are also attached.

The proposed MBR WWTP will discharge Type 1 reclaimed water to an intermittent tributary of the Pedernales River, when the Type I reclaimed water cannot be used for irrigation purposes. Per TCEQ, Type 1 reclaimed water can be used for irrigation of public parks, school yards, residential lawns, and athletic fields and can be used for fire protection, food-crop irrigation and application to pastures grazed by milking animals. Additionally, the proposed effluent standards of the WWTP are:

Biochemical Oxygen Demand (5-day): 5.0 milligram per Liter (mg/L);
Total Suspended Solids: 5.0 mg/L;
Ammonia Nitrogen: 2.0 mg/L;
Total Phosphorus: 1.0 mg/L; and
Dissolved Oxygen: 5.0 mg/L

Given that:

- the depth to groundwater beneath the site is approximately 40 feet or greater,
- Type 1 reclaimed water can be used for the noted purposes; and
- the proposed effluent standard for nitrate is less than or equal to existing groundwater concentrations;

The proposed discharge of Type 1 reclaimed water to the intermittent tributary does not pose a risk to groundwater quality.

Comment 5:

Concerns about potential impacts on drinking water quality and whether treated wastewater would meet drinking water standards.

Response 5:

Wastewater treatment plants are not required to meet drinking water standards. The draft permit includes effluent limits protective of designated uses, including public water supply.

Engineer Response:

The proposed WWTP is not required to meet state drinking water standards, as the proposed WWTP is not producing potable water for human consumption. The proposed WWTP location will also meet all requirements pertaining to Domestic Wastewater Effluent Limitation and Plant Siting, 30 TAC Chapter 309, Subchapter B. The proposed WWTP will comply with all minimum horizontal distance requirements to ensure the protection of surrounding drinking water supply wells.

Comment 13:

Concerns were raised about nuisance odors from the facility and impacts on air quality.

Response 13:

TCEQ requires buffer zones or odor control measures for wastewater treatment plants. The Applicant will comply by locating treatment units at least 150 feet from property lines. The proposed Membrane Bioreactor (MBR) system is designed to minimize odors, and the facility is exempt from air quality permits due to low pollutant contributions. Complaints can be reported to TCEQ's Environmental Complaint Line.

Engineer Response:

The proposed WWTP will meet all requirements pertaining to Domestic Wastewater Effluent Limitation and Plant Siting, 30 TAC Chapter 309, Subchapter B, pertaining to Nuisance Odor prevention. The Applicant will meet the Buffer Zone requirements, set for the aforementioned Chapter 309, to ensure that the wastewater treatment plant units are located a minimum 150 feet from any property line and residential building. Per Attachment F, Buffer Zone Map, included in the TPDES application, and attached as Exhibit "H" herein, the entire 150-foot buffer zone area is contained within the Applicant's property boundaries, the proposed WWTP is located approximately 228 feet away from the nearest property boundary, located to the west of the Applicant's site.

Comment 14:

Concerns about public involvement, awareness of the permitting process, and construction prior to permit approval.

Response 14:

The application and related documents were made publicly available at a local library and TCEQ's office. Public notice requirements were followed, but errors in the landowner mailing list excluded some individuals. Construction is not permitted until the discharge permit is issued, per TWC 26.027(c).

Engineer Response:

The Applicant has submitted all required documentation in accordance with TCEQ. Construction of the proposed WWTP shall not commence until all necessary permits have been issued.

Comment 15:

Concerns were raised about the facility's location in a floodplain and potential erosion or flooding caused by discharge.

Response 15:

The facility is above the 100-year floodplain and must be protected against such floods per

permit requirements. TCEQ regulates water quality but not flooding or erosion; for these concerns, local floodplain administrators should be contacted.

Engineer Response:

The facility is not located within the 100-year floodplain. Per Exhibit A, FEMA Floodways Map, included in the TPDES application, as attached as Exhibit “I”, herein and attached to this document, the proposed WWTP is shown to lie outside of Zone A (100-year Floodplain). FEMA Firm Map No. 48171C0500 C and 48171C0477 C, were used to delineate the Floodplain at the project site.

IV. LCRA Support and Community Outreach

During the public comment period, LCRA expressed its openness to work with the Applicant’s permit application by serving as an intermediary between the Applicant and the TCEQ to ensure the Applicant adherence to the more stringent proposals submitted to TCEQ. A copy of LCRA’s letter is attached hereto as Exhibit “J.”

Additional efforts have been made to secure LCRA’s support for the Applicant’s TPDES Permit. Discussions between LCRA and the Applicant, along with its agents, regarding a potential monitoring agreement are ongoing. Such an agreement would enable LCRA to act as a neutral third party to ensure compliance with all specifications, plans, and Texas Administrative Code requirements applicable to the Applicant’s wastewater treatment facility.

LCRA’s support highlights the project’s alignment with TCEQ’s wastewater management and compliance goals.

V. Conclusion

The Project application was timely filed, an analysis was done and was shown to have met the TAC, a conditional approval of construction for the wastewater treatment facility and a draft TPDES Permit were granted by TCEQ, and the Executive Director’s response letter concluded that the “permit application meets the requirements of applicable law”. The Requestors failed to demonstrate that they are affected persons and disputed issues of fact have not been presented by the Requestors. The Project will deliver substantial benefits to the Fredericksburg community, including expanded housing options and recreational amenities, while ensuring environmental compliance through advanced wastewater treatment systems.

The requests for a contested case hearing should be denied as the Requestors lack standing, fail to meet procedural requirements, and do not present material issues of fact or law. Furthermore, the Applicant has demonstrated a commitment to compliance to the law as it has met the requirements of the TAC and is engaged in ongoing discussions with the LCRA to ensure neutral oversight and

adherence to all applicable standards. For these reasons, the TCEQ should defer to Executive Director's Response to Public Comment and deny the contested case hearing requests.

Thank you for your attention to this matter.

Sincerely,



Racy Haddad

EXHIBIT INDEX

Mailing List

Exhibit "A": Conditional Approval
Exhibit "B": Permit Application
Exhibit "C": Service Area Map
Exhibit "D": Notice of Application and Preliminary Decision
Exhibit "E": Executive Director's Response to Comment dated October 9, 2024
Exhibit "F": Budget Proposal #948
Exhibit "G": Overview of the Ellenburger Aquifer
Exhibit "H": Buffer Zone Map
Exhibit "I": FEMA Floodways Map
Exhibit "J": LCRA Public Comment Letter

Appendix 1: List of Requestors

Appendix 2: Requestors' Public Comments and Requests for Contested Case Hearing

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Mailing List

[See Attached]

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for / para
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TPDES Permit No. WQ0016363001 / TPDES Permiso No. WQ0016363001

FOR THE APPLICANT /
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INTERESTED PERSONS /
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see attached list/ ver lista adjunta

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EXHIBITS

All exhibits made part of this memorandum can be accessed at:

https://drive.google.com/drive/folders/1tWDPmN6I2at_pJWVu5-r5xxmflsBaYsA