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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 14, 2025

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 BLIZEXAS, LLC FOR  
TCEQ PERMIT NO. WQ0016111001  
TCEQ DOCKET NO. 2025-0543-MWD**

Dear Ms. Gharis:

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

Sincerely,

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

Josiah T. Mercer, Attorney  
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-0543-MWD**

<b>APPLICATION BY BLIZEXAS, LLC</b>	<b>§</b>	<b>BEFORE THE</b>
<b>FOR TCEQ PERMIT NO.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>WQ0016111001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO  
REQUESTS FOR HEARING AND REQUESTS 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 or Commission) files this response to the hearing requests and requests for reconsideration received in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application of Blizexas, LLC for new Texas Land Application (TLAP) Permit No. WQ0016111001. The TCEQ Chief Clerk’s office received many timely hearing requests and eleven timely requests for reconsideration. As discussed herein, OPIC respectfully recommends that the Commission grant the hearing request of Hays Trinity Groundwater Conservation District, Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Save our Springs Alliance, Shield Ranch, Casey Durcholz, Kevin Fleming, Dr. Cynthia Steele High, William High, Michael Howard, Jason Katz, Susan & Thomas Munns, Michael Munsell, Carrie & Witold Napiorkowski, Kim Norris, Richard & Stacy Sorenson, James Spry, and Steve Warntjes—and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue

nos. 1-14 contained in §III.B. OPIC also recommends the denial of all requests for reconsideration.

## **B. Description of Application and Facility**

On February 17, 2022, Blizexas, LLC (Applicant) applied to TCEQ for new TLAP Permit No. WQ0016111001 (Application) to authorize the discharge of treated domestic wastewater from the proposed Rockingwall Ranch wastewater treatment facility (Facility) that would be located approximately 0.25 mile east of Crumley Ranch Road and Fitzhugh Road in Hays County.

The Application, if granted, would authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day to be land applied by subsurface area drip dispersal system irrigation to 2.75 acres at an application rate of 0.1 gallons per square foot per day. The Facility would be an activated sludge process plant using the conventional mode. Treatment units will include an onsite lift station, two flow equalization basins, a bar screen, an aeration basin, a final clarifier, a tertiary media filter, and a chlorine contact chamber. The Applicant is proposing to use two flow equalization basins, each 40,000 gallons, to dampen the high variability of wastewater generation and convey a consistent, attenuated flow stream to the subsequent treatment units.

## **C. Procedural Background**

TCEQ received this Application for a new permit on February 17, 2022, and declared it administratively complete on April 26, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in *The Hays*

*Press News Dispatch* on May 11, 2022. The Application was determined technically complete on June 15, 2022. The Notice of Application and Preliminary Decision (NAPD) was published in *The Hays Press News Dispatch* on July 20, 2022.

The first public meeting notice was published in *The Dripping Springs Century News* on October 27, 2022. The first public meeting was held on November 29, 2022. The second public meeting was scheduled for January 29, 2024. A combined NORI/NAPD was published in *El Mundo* on August 10, 2023. The second public meeting notice was published in *El Mundo* on December 21, 2023, in *The Dripping Springs Century News* on December 28, 2023, and in *The Austin American-Statesman* on December 28, 2023.

The public comment period ended at the close of the meeting on January 29, 2024. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments (RTC) on March 3, 2025. The deadline for filing requests for a contested case hearing or a request for reconsideration was April 2, 2025.

## **II. Applicable Law**

### **A. Requests for a Contested Case Hearing**

This Application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.<sup>1</sup> Under Title 30, Texas Administrative Code (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

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<sup>1</sup> Tex. S.B. 709, 84th Leg., R.S. (2015).

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 person'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.<sup>2</sup>

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. An interest common to members of the general public does not qualify as a personal justiciable interest. As provided by § 55.203(b), governmental entities, including local governments and public

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<sup>2</sup> 30 TAC § 55.201(d).

agencies, with authority under state law over issues raised by the application may be considered affected persons. 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.<sup>3</sup>

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.<sup>4</sup>

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<sup>3</sup> 30 TAC § 55.203(c).

<sup>4</sup> 30 TAC § 55.203(d).

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 must 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. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under Title 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 Requests for a Contested Case Hearing**

#### **A. Whether the Requestors are Affected Persons**

##### **Groups/Associations/Governmental Entities**

##### **Hays Trinity Groundwater Conservation District**

The Hays Trinity Groundwater Conservation District (the District) submitted a timely hearing request and comments. The District states that it is a state agency created to protect and manage the quality and quantity of the Trinity Aquifer within the boundaries of its jurisdiction, which includes all of the proposed new irrigation sites. The ED's Response to Public Comment notes that the District is responsible for groundwater management for the area that includes the Facility's property.

Under Section 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.

In both request and comment the District raises concerns related to surface water and groundwater contamination. Also related to water quality, it contends that the draft permit should contain effluent limits for nitrate and total nitrogen. Each of these specific interests in water quality is protected by the law

under which this application will be considered.<sup>5</sup> The proposed Facility and its associated land application site are within the District's boundaries. Given that the Facility lies within the jurisdictional boundaries of the District, and recognizing the District's statutory authority and stated interests, OPIC finds that the District has a unique interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to the general public. OPIC also finds that a reasonable relationship exists between the interests the District seeks to protect and the Applicant's regulated activity.<sup>6</sup> Furthermore, the District has explained it has statutory authority over and interest in issues relevant to the application.<sup>7</sup> For these reasons, OPIC finds that the District, as a governmental entity, qualifies as an affected person.

*Fitzhugh Neighbors and Greater Edwards Aquifer Alliance*

The Fitzhugh Neighbors and Greater Edwards Aquifer Alliance (FN/GEAA) jointly submitted a timely hearing request and comments through their attorney, Lauren Ice. FN/GEAA states that they are nonprofit organizations. FN's purpose is to advocate for sustainable growth and development in the Fitzhugh corridor and protect the natural environment. GEAA's purpose is to promote the protection and preservation of the Edwards and Trinity Aquifers, their springs, watersheds, and the lands that sustain them. As such, the interests these groups seek to protect are germane to their purposes as required by 30 TAC § 55.205(b)(3). Additionally, OPIC finds that neither the claim asserted, nor the

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<sup>5</sup> See 30 TAC § 55.203(c)(1).

<sup>6</sup> See 30 TAC § 55.203(c)(3).

<sup>7</sup> See 30 TAC § 55.203(c)(7).

relief requested, requires the participation of individual group members as required by 30 TAC § 55.205(b)(4).

To be considered affected, a group or association must also identify a member who would otherwise have standing to request a hearing in their own right.<sup>8</sup> To establish standing, the group must show that at least one of its members possesses a personal justiciable interest in this matter related to a legal right, duty, privilege, power, or economic interest affected by the application.<sup>9</sup> Furthermore, the interest must be distinguished from interests common to the general public.<sup>10</sup> The request identifies multiple group members who have standing to request a hearing in their own right. OPIC finds that FN/GEAA has satisfied this requirement for establishing group standing.

FN identifies Sue and Tom Munns (0.59 miles), Dave and Catherine D'Abate (0.50 miles), Terri and Tim Van Ackeren (1.61 miles), and Jim Spry (0.88 miles) as group members who would otherwise have standing to request a hearing in their own right. FN/GEAA jointly identify Carrie and Witold Napiorkowski (0.59 miles), and Richard and Tracey Sorenson (0.64 miles) as members of both organizations.

The organizations dispute whether the draft permit will be protective of water quality, including surface water and groundwater, and animal life. They also question whether stricter effluent limitations are needed, whether the Facility complies with TCEQ design criteria and siting requirements, and whether it will cause issues with stormwater runoff or nuisance odors. Finally, they

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<sup>8</sup> See 30 TAC § 55.205(b)(2).

<sup>9</sup> See 30 TAC § 55.203(a).

<sup>10</sup> *Id.*

question the need for the Facility, if the application was properly noticed, and whether the Applicant owns all of the site's property.

OPIC finds that for the identified group members discussed above, FN/GEAA have sufficiently distinguished their interests from those of the general public as required by 30 TAC § 55.203(a). Given the members' locations and the concerns raised, OPIC finds that a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity.<sup>11</sup> Therefore, OPIC finds that multiple of the identified members would have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2). As such, OPIC concludes that FN/GEAA meet all requirements for group standing and qualify as affected persons.

*Save our Springs Alliance*

The Save our Springs Alliance (SOS) submitted a timely hearing request and comments through their attorney, Victoria Rose. SOS states that it is a nonprofit organization that works to “protect the Edwards Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Hill Country region and its watersheds.” This includes advocating to protect water quality in Barton Creek and its contributing zones. 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). SOS' request identifies Sharon Thiede as a group member who would otherwise have standing to request a hearing in her own right.

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<sup>11</sup> See 30 TAC § 55.203(c)(3).

According to the ED maps, Ms. Thiede resides 0.14 miles from the proposed Facility and its land application site. Ms. Thiede is concerned about odors as well as contamination of the groundwater and surface water. Ms. Thiede has a drinking water well on her property. A reasonable relationship exists between the interests Ms. Thiede seeks to protect and the Applicant's regulated activity.<sup>12</sup> She would therefore have standing to request a hearing in her 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 member in the case.

In both timely comment and request, SOS raises concerns related to the protection of surface and groundwater quality, protection of wildlife, adequacy of the irrigation field geology, completeness of the Application, sufficiency of the monitoring requirements, adequacy of the effluent limits, compliance with regionalization, and adequacy of notice. Because SOS has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

***Requestors Who Reside in Close Proximity of the Regulated Activity and Possess a Personal Justiciable Interest***

The Commission received timely hearing requests from the following requestors who are located within approximately one and a half miles of the proposed Facility and its associated land application site: Shield Ranch (0.37 miles), Casey Durcholz (1.47 miles), Kevin Fleming (0.8 miles), Dr. Cynthia Steele High (0.97 miles), William High (0.97 miles), Michael Howard (1.15 miles), Jason

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<sup>12</sup> See 30 TAC § 55.203(c)(3).

Katz (0.69 miles), Susan & Thomas Munns (0.59 miles), Michael Munsell (1.29 miles), Carrie & Witold Napiorkowski (0.59 miles), Kim Norris (1.19 miles), Richard & Stacy Sorenson (0.64 miles), James Spry (0.88 miles), and Steve Warntjes (0.74 miles).

To be granted a contested case hearing, a requestor must demonstrate that they are an “affected person” who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.<sup>13</sup> These interests must be distinguishable from interests that are common to the general public.<sup>14</sup>

In both timely request and comment, each of the requestors identified in this subsection has raised relevant and material concerns, including those related to odor, water quality, human health, livestock, wildlife, or impacts to domestic water wells. These interests are protected by the law under which this application will be considered.<sup>15</sup> The map prepared by the ED shows these requestors are located within one and a half miles from the proposed Facility and its associated land application site.

OPIC finds that their proximity to the Facility and the regulated activity increases any likelihood that they may be affected by its operation in a way not common to members of the general public.<sup>16</sup> Further, as their properties are near

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<sup>13</sup> See 30 TAC § 55.203(a).

<sup>14</sup> *Id.*

<sup>15</sup> See 30 TAC § 55.203(c)(1).

<sup>16</sup> See 30 TAC § 55.203(a).

the Facility, a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity.<sup>17</sup>

Therefore, OPIC concludes that each of these requestors has demonstrated that they possess a personal justiciable interest in this matter and qualifies as an affected person.

**Individual Hearing Requestors with Timely Filed Comments Who Are Not Within Close Proximity to the Proposed Facility or Regulated Activity**

The Commission received timely hearing requests from the following persons who have not shown they are close to the proposed Facility or land application site: Terri & Tim Ackeren (1.61 miles), Jacobi Alvarez (19.7 miles), Wendy Austin (2.11 miles), Sondra Cherico (2.06 miles), Mike Clifford (~8 miles), Mark Hunter Denton (2.3 miles), Barbara Dietz (10.84 miles), Robert Henry Fritz (1.66 miles), Rachel Hill (7.81 miles), Greg Jenkins (1.89 miles), Debbie Jenkins (1.89 miles), Jana Kaura (3.31 miles), Bryan Kelley (1.97 miles), Tom & Barbara Kessler (2.57 miles), Anna Konvit (~20 miles) Johanna Mailer (2.45 miles), Michaela McCown (4.53 miles), Steve McCreary (2.52 miles), Anne Miller (17.67 miles), Mollie & Stefan Passernig (1.96 miles), Edward Reynolds (1.9 miles), Karen Richards (4.53 miles), David Roach (2.06 miles), Leah Rummel (2 miles), Sue Searles (~1.9 miles), Claudia Smith (2.42 miles), Annie Spade (2.1 miles), Roslyn & Matt Spinn (~2.5 miles), Patricia Whiteside (14.05 miles), and Mark Wojcik (1.75 miles).

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<sup>17</sup> 30 TAC § 55.201(c)(3).

The map prepared by the ED's staff appears to locate these requestors at distances greater than one and a half miles from the proposed Facility and its associated land application site. OPIC notes that there are no specific distance limitations applicable to who may be considered an affected person for purposes of this application; however, given the nature and volume of the regulated activity proposed to be permitted and considering these requestors' distances from the proposed Facility, OPIC cannot find that these requestors are likely to be impacted by the Facility's operations in a way that differs from the general public as required by 30 TAC § 55.203(a). Therefore, OPIC must conclude that these requestors have not shown that they possess personal justiciable interests in this matter and, as such, have not demonstrated that they qualify as affected persons.<sup>18</sup>

***Requestors Who Have Not Demonstrated that they Possess a Personal Justiciable Interest***

The Commission received timely hearing requests from the following persons who have not demonstrated that they possess a personal justiciable interest in this matter as required by 30 TAC § 55.203(a): Catherine Munns D'Abate (0.50 miles), Dave D'Abate (0.50 miles), Stephanie Darter (0.37 miles), Cristiano de Paolis (8.75 miles), Daniel Lopez (0.37 miles), and Trisha Markey (0.23 miles).

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<sup>18</sup> While OPIC is unable to find that these requestors qualify as affected persons based on the information provided in their requests, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

By way of example, many of the requests submitted by these individuals simply request either a contested case hearing or a public hearing on this permit application, or else only contain discussion of issues that are not within the Commission's jurisdiction to consider in the context of this permitting action, such as flooding or concerns related to the music venue that the Facility plans to serve. Among other things, a hearing request must explain how and why a requestor believes that they will be adversely affected by a facility in a manner not common to members of the general public.<sup>19</sup> These requestors do not include any specific statement of how or why they feel that they may be personally affected by the Facility. As such, these requestors have not demonstrated that they possess personal justiciable interests as required by 30 TAC § 55.203(a). Consequently, OPIC is unable to conclude that these requestors qualify as affected persons.

**Individual Hearing Requestors With No Timely Filed Comments**

The Commission received timely hearing requests from Juan Carlos Bonilla (2.08 miles), Esteban Espana (2.08 miles), Jesus Espana (2.08 miles), Dr. Laura Espana (2.08 miles), Salvador Espana (2.08 miles), Phaedra Kelley (1.97 miles), John Sehon (151.81 miles), and Connie Shepherd (2.08 miles). The record indicates that these hearing requestors did not file comments during the public comment period for this application.

By law, for the Commission to find that a hearing requestor qualifies as an affected person, the requestor must have submitted timely comments on the

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<sup>19</sup> See 30 TAC § 55.201(d)(2).

application, and the request must be based only on that affected person's timely comments.<sup>20</sup> Because these requestors have not complied with this requirement, OPIC is unable to find that these requestors qualify as affected persons.

**B. Which Issues Raised in the Hearing Requests Are Disputed**

Affected persons raised the following disputed issues in timely public comment:

1. Whether the application and draft permit are adequately protective of water quality, including drinking water, surface water, and groundwater.

Raised by: Hays Trinity Groundwater Conservation District, Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, SOS, Shield Ranch, Casey Durcholz, Kevin Fleming, Dr. Cynthia Steele High, William High, Michael Howard, Jason Katz, Susan & Tomas Munns, Michael Munsell, Carrie & Witold Napiorkowski, Kim Norris, Richard & Stacy Sorenson, James Spry, and Steve Warntjes.

2. Whether the application and draft permit are sufficiently protective of vegetation, wildlife, and the environment.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, SOS, Shield Ranch, Casey Durcholz, Kevin Fleming, Dr. Cynthia Steele High, Michael Howard, Jason Katz, Susan & Tomas Munns, Carrie & Witold Napiorkowski, and James Spry.

3. Whether the application is complete and accurate, including inclusion of any required engineer report and the calculations used to support the application and estimate effluent amounts.

Raised by: Shield Ranch and Kevin Fleming.

4. Whether the drip fields are of a sufficient size and appropriate location.

Raised by: SOS, Shield Ranch, Kevin Fleming, and Carrie & Witold Napiorkowski.

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<sup>20</sup> TWC § 5.115(a)(a-1)(2)(B); 30 TAC § 55.201(c).

5. Whether the soil and geology of the site is compatible with the Facility and accurately reflected in the Application and draft permit.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, SOS, Shield Ranch, Kevin Fleming, Susan & Tomas Munns, Carrie & Witold Napiorkowski, and Richard & Stacy Sorenson.

6. Whether the application and draft permit require a sufficient amount of storage capacity.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Shield Ranch, and Kevin Fleming.

7. Whether the application and draft permit are sufficient to prevent nuisance odor.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Shield Ranch, and Kevin Fleming.

8. Whether the application and draft permit comply with applicable buffer zone requirements.

Raised by: Shield Ranch and Kevin Fleming.

9. Whether the application and draft permit comply with applicable requirements related to sewage sludge solids management plan, recharge feature plan, soil evaluation, site preparation plan, and soil sampling and testing.

Raised by: SOS, Shield Ranch, and Kevin Fleming.

10. Whether the draft permit should be required to include discharge limits for nitrate, nitrogen, and phosphorous, and stricter limitations for total suspended solids and biochemical oxygen demand.

Raised by: Hays Trinity Groundwater Conservation District, Shield Ranch, Kevin Fleming; William High, Susan & Tomas Munns, Carrie & Witold Napiorkowski, and Richard & Stacy Sorenson.

11. Whether issuance of the draft permit is contrary to the state's regionalization policy or whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under Texas Water Code § 26.0282.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, and SOS.

12. Whether the Application and proposed Facility comply with TCEQ design criteria found at Title 30, Chapter 222, Subchapter D.

Raised by: Fitzhugh Neighbors and Greater Edwards Aquifer Alliance.

13. Whether the Application substantially complied with public notice requirements.

Raised by: Fitzhugh Neighbors and Greater Edwards Aquifer Alliance.

14. Whether the Application demonstrates that Applicant has sufficient ownership interests in the property where the Facility is proposed to be located.

Raised by: Fitzhugh Neighbors and Greater Edwards Aquifer Alliance.

15. Whether the application and draft permit allows for an unacceptable amount of impervious cover at the Facility's site.

Raised by: Shield Ranch, Kevin Fleming, William High, Michael Howard, Susan & Tomas Munns, Michael Munsell, Carrie & Witold Napiorkowski, Richard & Stacy Sorenson, and Steve Warntjes.

16. Whether the application and site comply with applicable stormwater requirements.

Raised by: Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Shield Ranch, Kevin Fleming, Susan & Tomas Munns, Michael Munsell, and Richard & Stacy Sorenson.

17. Whether the application and draft permit sufficiently demonstrate that the Applicant will be able to respond to Facility malfunctions.

Raised by: Shield Ranch and Kevin Fleming.

### **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.<sup>21</sup> The issues listed above are issues of fact.

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<sup>21</sup> 30 TAC § 55.211(c)(2)(A).

**D. Whether the Issues Were Raised During the Public Comment Period**

All issues were specifically raised by requestors who qualify as affected persons during the public comment period.

**E. Whether the Hearing Requests are Based on Issues Raised Solely in a Withdrawn Public Comment**

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn comments.

**F. Whether the Issues are Relevant and Material to the Decision on the Application**

The requestors raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.<sup>22</sup>

**Water Quality, Human Health and Safety, Animal Life, Livestock**

The affected persons in this matter are concerned with adverse effects to water quality—including surface water, groundwater, and drinking water—and its impacts on human health and safety, animal life, and livestock. The Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit

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<sup>22</sup> *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

“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.”<sup>23</sup> 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.”<sup>24</sup>

Moreover, Section 309.10(b) states, “The purpose of this chapter is to condition issuance of a permit and/or approval of construction plans and specifications for new domestic wastewater treatment facilities...on selection of a site that minimizes possible contamination of ground and surface waters...”<sup>25</sup> Therefore, Issue nos. 1 and 2 are relevant and material to the Commission’s decision regarding this Application and are appropriate for referral to SOAH.

#### **Application Accuracy and Completeness**

The affected persons in this matter raise concerns regarding the accuracy of the Application, noting potential deficiencies regarding the lack of information supporting Applicant’s contention that the City is unwilling or unable to provide wastewater service to Applicant for use by future residential customers in the proposed service area. The Commission’s Chapter 305 and Chapter 281 rules

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<sup>23</sup> 30 TAC § 307.1.

<sup>24</sup> 30 TAC § 307.4(d).

<sup>25</sup> See also 30 TAC § 309.12.

address the required contents of applications and approved application forms. Moreover, TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information.<sup>26</sup> Accordingly, Issue No. 3 is relevant and material to the Commission's decision on this Application.

**Drip Field Location, Size, Geology and Soil**

The affected persons in this matter are concerned that the site may not be suitable for the Facility when considering its geology and soil conditions. Additionally, they question whether the drip fields are in a good location and of suitable size. Commission rules, including those found in 30 TAC Chapter 309, relating to "Domestic Wastewater Effluent Limitations and Plant Siting," and 30 TAC Chapter 222, relating to "Subsurface Area Drip Dispersal Systems," require evaluation of the site's soil and geology, including some evaluation by a professional engineer. Additionally, the draft permit includes numerous special provisions related to soil and geology. Accordingly, Issue Nos. 4 and 5 are relevant and material to the Commission's decision on this Application.

**Storage Capacity**

The affected persons in this matter are concerned that the Facility has not designed adequate storage capacity for its treated effluent. The Applicant is required to estimate the amount of storage capacity needed for treated and untreated effluent as part of the application process. Further, adequate storage

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<sup>26</sup> 30 TAC § 305.125(19).

implicates the ability of the Facility to operate in compliance with its permit conditions. Therefore, Issue No. 6 is relevant and material to the Commission's decision on this Application.

**Buffer Zone and Nuisance Odor**

The affected persons in this matter are concerned that the proposed Facility could potentially cause nuisance odor and that the buffer zones are inadequate. Odor is specifically addressed by 30 TAC § 309.13(e), which requires that nuisance odor be abated and controlled. Further, 30 TAC § 307.4 provides general criteria that surface waters must meet—including aesthetic parameters which work, in part, to prevent nuisance conditions associated with TPDES permits. Finally, one of the purposes of Chapter 309 is “to minimize the possibility of exposing the public to nuisance conditions.”<sup>27</sup> Additionally, a number of buffer zones and minimum distance requirements are included in the draft permit. Therefore, Issue nos. 7 and 8 are relevant and material to the Commission's decision regarding this Application and are appropriate for referral to SOAH.

**Sewage Sludge Solids Management Plan, Recharge Feature Plan, Soil Evaluation, Site Preparation Plan, and Soil Sampling and Testing**

The affected persons in this matter are concerned that the various plans and evaluations required for this application, including the sewage sludge solids management plan, the recharge feature plan, the soil evaluation, the site preparation plan, and soil sampling and testing are not sufficient to protect water

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<sup>27</sup> 30 TAC § 309.10.

quality and the environment. Soil evaluations are governed by 30 TAC § 222.73 and the draft permit contains special provisions related to soil requirements. The recharge feature plan is governed by 30 TAC, Chapter 222 and is required to be submitted by a professional engineer or geoscientist. Additionally, the draft permit requires proper disposal of sewage sludge. Therefore, Issue no. 9 is relevant and material to the Commission's decision on the application and is appropriate for referral to SOAH.

**Limits for Nitrogen and Phosphorus, Suspended Solids, and Biochemical Oxygen Demand**

The affected persons in this matter are concerned that the effluent limitations in the draft permit are not sufficient. Effluent limitations for domestic wastewater treatment plants, including those utilizing land application via subsurface drip dispersal systems are established by 30 TAC § 309.4. Therefore, Issue no. 10 is relevant and material to the Commission's decision on the application and is appropriate for referral to SOAH.

**Regionalization**

The affected persons in this matter are concerned that the proposed Facility would not comply with Texas' Regionalization Policy and required demonstration of need for the Facility at that location. Under TWC § 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 state water quality." Further, "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 pursuant to provisions of this subchapter.”<sup>28</sup> Therefore, Issue no. 11 is relevant and material to the Commission’s decision on the application and is appropriate for referral to SOAH.

### **Compliance with Design Criteria**

The affected persons in this matter are concerned that the Facility’s design is deficient and does not comply with applicable design criteria per TCEQ rules. The Applicant is required to meet the design criteria requirements of 30 TAC Chapter 217 for domestic wastewater treatment plants prior to construction of the Facility. Therefore, Issue no. 12 is relevant and material to the Commission’s decision on the application and is appropriate for referral to SOAH.

### **Public Notice Requirements**

The affected persons in this matter are concerned that the public notice given by Applicant was deficient. Chapter 39, Subchapter J of the Commission’s rules governs public notice for this type of application. The issue of whether this permit was properly noticed is therefore relevant and material to the Commission’s decision to issue or deny this permit, and Issue no. 13 is appropriate for referral to SOAH.

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<sup>28</sup> TWC § 26.0282.

### **Ownership of Site Property**

The affected persons in this matter are concerned that the Applicant does not have sufficient ownership interest in the land upon which the Facility will be constructed. For TLAP permits, the Application requires the landowner to apply as a co-applicant if the applicant does not have a lease agreement or deed recorded easement with the landowner. Therefore, Issue no. 14 is relevant and material to the Commission's decision on the application and is appropriate for referral to SOAH.

### **Impervious Cover and Stormwater Runoff**

The affected persons in this matter are concerned that the Facility's site and associated venue contain too much impervious cover and that this may impact the functioning of the Facility's land application system by causing stormwater runoff. TCEQ does not have the authority to address these issues as part of the wastewater permitting process. TWC Chapter 26 and applicable wastewater regulations do not authorize TCEQ to consider the issue of impervious cover or runoff resulting from the development. The construction process of the development may be subject to stormwater construction permitting, authorized by a separate process. Therefore, OPIC cannot find that Issue nos. 15 and 16 are relevant and material to the Commission's decision on this Application.

### **Malfunction Response**

The affected persons in this matter are concerned that the Facility may malfunction and not be able to respond in a way that prevents a discharge of

untreated or partially treated effluent into surrounding areas. While the Applicant is required to properly maintain the wastewater treatment facility and effluent dispersal system, concerns about a malfunction the Facility may experience in the future are too speculative in nature to form the basis of a referred issue. Additionally, OPIC notes that the draft permit does not authorize any discharge of pollutants into water in the State. Therefore, OPIC cannot find that Issue no. 17 is relevant and material to the Commission's decision on this Application.

#### **H. Maximum Expected Duration for the Contested Case 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.<sup>29</sup> 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.

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<sup>29</sup> 30 TAC § 50.115(d)(2).

#### **IV. Analysis of Requests for Reconsideration**

Ann Banos, Alison Baucom, Dr. Patricia K. Gibson, the City of Austin, Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Mark Purcell, Shield Ranch, Sue Searles, Annie Spade, and Roslyn & Matt Spinn submitted timely requests for reconsideration expressing concerns about water quality and the Facility's impact on animal life. They also question whether stricter effluent limitations are needed, the adequacy of monitoring requirements, whether the Facility complies with TCEQ design criteria, storage, and siting requirements, and whether it will cause issues with stormwater runoff or nuisance odors. Finally, they question the need for the Facility, if the application was properly noticed, and whether the Applicant owns all of the site's property.

While 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**

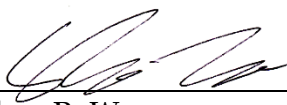
For the reasons discussed above, OPIC finds that Hays Trinity Groundwater Conservation District, Fitzhugh Neighbors, Greater Edwards Aquifer Alliance, Save our Springs Alliance, Shield Ranch, Casey Durcholz, Kevin Fleming, Dr. Cynthia Steele High, William High, Michael Howard, Jason Katz, Susan & Thomas Munns, Michael Munsell, Carrie & Witold Napiorkowski, Kim Norris, Richard &

Stacy Sorenson, James Spry, and Steve Warntjes have demonstrated that they qualify as affected persons. Therefore, OPIC respectfully recommends that the Commission grant their hearing requests and refer Issue nos. 1-14 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC recommends denying all requests for reconsideration.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that July 14, 2025 the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
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