

TCEQ DOCKET NO. 2025-1159-MWD

APPLICATION BY

TERRELL TIMMERMANN FARMS, LP

FOR TPDES PERMIT NO.

WQ0016229001

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**APPLICANT’S RESPONSE TO JONAH SUD’S COMMENTS AND
REQUEST FOR CONTESTED CASE HEARING**

Terrell Timmermann Farms, LP (“Timmermann” or the “Applicant”) submits this Response to Jonah SUD’s Comments and Request for Contested Case Hearing made to the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) on the above-referenced application and draft permit, and would respectfully show the following:

I. SUMMARY OF ARGUMENT

Jonah Special Utility District (“Jonah SUD”) fails to raise sufficient interests that would afford it affected person status, and the Commissioners should deny its hearing request. The Commissioners should see Jonah SUD’s affected person arguments for what they are: generalized and speculative predictions of water quality impairments, a reliance upon a *water* (not wastewater) Certificate of Convenience and Necessity (“CCN”) that Jonah SUD holds, and a claim of regionalization interests without identifying a Jonah SUD wastewater plant or permit that could otherwise treat Timmermann’s wastewater flows. Jonah SUD also wrongly attempts to graft a CCN consent argument—relevant in separate Public Utility Commission (“PUC”) proceedings—into its TPDES protest, when such strategy has been rejected previously in a TPDES permit protest. Fundamentally, Jonah SUD has not established that it has a personal justiciable interest as required to obtain standing as an affected person for a contested case hearing (“CCH”). The CCH request must be denied for these reasons as fully set forth herein.

II. BACKGROUND

Applicant seeks a new Texas Pollutant Discharge Elimination System (“TPDES”) permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 975,000 gallons per day (the “Application”). The proposed facility will be located at 12995 East State Highway 29, Georgetown, Williamson County, Texas 78626. The treated effluent will be discharged to Pecan Branch, thence to San Gabriel/North Fork San Gabriel River in Segment No. 1248 of the Brazos River Basin. The Executive Director (the “ED”) completed the technical review and prepared a draft permit dated March 30, 2023 (“Draft Permit”). The time period for public comments opened following the Notice of Preliminary Decision during which Jonah SUD filed its only comments and request for a CCH.

After the close of public comments the ED, in its response to comments (“RTC”), found that the Draft Permit, as issued, is protective of water quality and complies with the Texas Surface Water Quality Standards (“TSQWS”), and the state water quality management plan, and that existing water quality will not be impaired by the Draft Permit.¹

III. APPLICABLE LAW

Under TCEQ rules, affected persons, the Commission, the TCEQ ED, and the Applicant may request a CCH.² 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.”³ “An interest common to members of the general public does not qualify as a personal judiciable interest.”⁴ Thus, a request for a CCH must include a brief, but specific, description of “the

¹ ED’s Response to Public Comment, Tex. Comm’n on Env’t Quality (“TCEQ”) Docket No. 2025-1159-MWD 5–7 (Mar. 15, 2024).

² 30 Tex. Admin. Code (“TAC”) § 55.201(b).

³ 30 TAC § 55.203(a).

⁴ *Id.*

requestor's location and distance relative to the proposed facility or activity that is the subject of the application.”⁵ Moreover, the requestor must do more than provide a conclusory statement in the request that he or she will be harmed by the proposed activity by detailing “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.”⁶

When determining whether an individual or entity is an affected person, all relevant factors are considered by the Commission, including:

(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 use of property of the person; (5) likely impact of the regulated activity on the 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.⁷

Persons seeking affected person status must submit their hearing requests in writing to the Chief Clerk's Office “no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.”⁸ For purposes of the Application, the notice directed all potential protestants to submit their requests for a CCH or reconsideration of the ED's decision on the matter to the Chief Clerk's Office within 30 calendar days from March 21, 2024, the date of the ED's decision and RTC.

⁵ 30 TAC § 55.201(d)(2).

⁶ *Id.*

⁷ 30 TAC § 55.203(c).

⁸ 30 TAC § 55.201(a).

Accordingly, all timely hearing requests must have been received by the Chief Clerk's Office by April 22, 2024.

Under TCEQ rules, the ED, Office of Public Interest Counsel, and the Applicant "may submit written responses to the requests no later than 23 days before the commission meeting at which the commission will evaluate the requests."⁹ A person who filed a hearing request may submit "written replies . . . no later than nine days before" the scheduled TCEQ Commission Agenda wherein the hearing request will be considered.¹⁰

IV. JONAH SUD'S REQUEST FOR A CONTESTED CASE HEARING SHOULD BE DENIED

A. Jonah SUD's focus on "consent" to operate within its *water* CCN has no bearing for this TCEQ proceeding for a *wastewater* discharge permit.

Jonah SUD does not hold a wastewater CCN therefore the Applicant was not required to seek consent for its TPDES Application from Jonah SUD. Jonah SUD believes that any utility seeking to provide *any* service within its *water* CCN service area must seek its consent to provide such services, thus, Jonah SUD asserts that the Applicant should be legally barred from receiving a permit because the Timmermann's did not seek Jonah SUD's consent, and Jonah SUD would not give its consent if the Applicant asked.¹¹ However, Jonah SUD's interpretation ignores the plain language of the regulation, which only requires such consent for "retail water or sewer utility service[s] within the boundaries of a district that provides the *same type* of retail water or sewer utility service."¹² As the State Office of Administrative Hearings ("SOAH") has previously found when Jonah SUD made the identical argument, "there simply is no legal requirement that an

⁹ 30 TAC § 55.209(d).

¹⁰ 30 TAC § 55.209(g).

¹¹ Jonah SUD's Comments 2 (citing Texas Water Code ("TWC") § 13.244(c) and 16 TAC § 24.225(c)) (stating "Jonah has not and will not provide this consent.").

¹² 16 TAC § 24.225(c) (emphasis added).

applicant for a TPDES permit obtain consent from . . . a *water* CCN holder. . . . Jonah is free to make its consent argument before the PUC if and when [the] Applicant files for a wastewater CCN there, but it has no bearing on Applicant’s TPDES Application.”¹³ Here, the Applicant is in the same situation. Timmermann is facing the same protestant—Jonah SUD—raising an identical argument and looking to bootstrap the existence of a water CCN onto a wastewater permit protest. The law is clear, “the commission may not refer an issue to SOAH for a hearing unless the commission determines that the issue . . . is relevant and material to the decision on the *application*.”¹⁴ The Commission should decline Jonah SUD’s invitation to expand regulatory CCN consent requirements to a TPDES permit requirement as Jonah SUD attempts here.

Jonah SUD’s reliance on Texas Water Code (“TWC”) § 13.244(c) and § 24.225(c) of Title 16 of the Texas Administrative Code is also misplaced because the provisions pertain to conditions for obtaining a CCN from the PUC. Because the Applicant is currently pursuing a TPDES permit, not a CCN, Jonah SUD’s consent is not necessary for approval of the Draft Permit, nor does it require consent from those who aspire one day to provide the same type of service as that for which the Applicant is actively seeking a permit. The Applicant complied with the requirements for a TPDES permit. Jonah SUD cannot demonstrate any harm to its *water* CCN by TCEQ permitting Timmermann’s *wastewater* facility and, therefore, Jonah’s CCH referral request on such argument should be denied.

¹³ Proposal For Decision, Application of R040062, LP for TPDES Permit No. WQ0016008001, State Off. of Admin. Hearings (“SOAH”) Docket Number 582-23-10368, 16 (Nov. 21, 2023).

¹⁴ TWC § 5.556(d)(3) (emphasis added).

B. Applicant and TCEQ Considered Regionalization in the Application; Jonah SUD is not a Regional Wastewater Provider and has not identified a permit or wastewater plant where Jonah could provide service in lieu of Timmermann.

The Application was submitted consistent with TCEQ regulations and requirements to evaluate regionalization opportunities.¹⁵ Jonah SUD contends that Timmermann’s proposed facility fails to adhere to TCEQ’s regionalization policy.¹⁶ Jonah SUD expresses a willingness and ability to provide wastewater service to the Applicant, but, conspicuously absent from Jonah SUD’s hearing request, is any reference to Jonah SUD’s own wastewater facility or TPDES permit within three miles¹⁷ of Timmermann’s proposed facility.¹⁸ Further, Jonah SUD contends that Timmermann was required to “request[] wastewater service from Jonah,”¹⁹ but Timmermann cannot request service from an entity/facility that does not exist. Here, like in other parallel cases, Jonah attempts regionalization based upon aspirational Jonah SUD wastewater service. Jonah SUD has protested numerous TPDES permits in Williamson County, and it has addressed regionalization in nearly every request for a CCH—touting itself as a regional provider but not providing information on its regional wastewater system because it has none.²⁰

¹⁵ TWC § 26.081; TCEQ, *Evaluating Regionalization for Proposed Wastewater Systems*, RG-632 3–5 (Aug. 2023), <https://www.tceq.texas.gov/downloads/permitting/wastewater/general/regionalization-rg-632-final.pdf>.

¹⁶ Jonah SUD’s Comments 1–2; ED’s Response to Public Comment, TCEQ Docket No. 2025-1159-MWD 7 (Mar 15, 2024).

¹⁷ TCEQ, *Evaluating Regionalization for Proposed Wastewater Systems*, RG-632 3–4 (Aug. 2023), <https://www.tceq.texas.gov/downloads/permitting/wastewater/general/regionalization-rg-632-final.pdf> (“If your proposed facility is within a three-mile radius of a permitted domestic wastewater system or a portion of your service area is within another utility’s sewer CCN area, you must request service from the existing permitted system owner or operator.”).

¹⁸ A search of the TCEQ’s Commissioner’s Integrated Database (the “CID”) shows that Jonah Water SUD, CN600640759, does not hold a TPDES permit. *See*: <https://www14.tceq.texas.gov/epic/eCID/index.cfm?clear=Y> (last visited on August 18, 2025).

¹⁹ Jonah SUD’s Comments 2.

²⁰ When Jonah SUD alleged that an application should be denied based on its lack of compliance with TCEQ’s regionalization policy, the ED and an ALJ in separate cases rejected this argument as baseless because “Jonah has nothing to ‘regionalize’.” Application of R040062, LP for TPDES Permit No. WQ0016008001, SOAH Docket No. 582-23-10368, TCEQ Docket No. 2022-1731-MWD 26 (Nov. 21, 2023); ED Response to Hearing Requests, TCEQ Docket No. 2024-0131-MWD 8–9 (Apr. 1, 2024) (noting that the ALJ found that Jonah SUD had “no wastewater facilities whatsoever, [had] no TCEQ permit or even a permit application on file that would authorize them a means to provide such services, no authorization from Jonah’s own board to provide such services, and no wastewater CCN from the [PUC] that would authorize them to provide wastewater services.”); ED Response to Hearing Request,

TCEQ’s regionalization policy seeks to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.”²¹ TCEQ has consistently maintained a neutral role and has discretion to require regionalization if and when the circumstances indicate that regionalization would be reasonable.²² In this instance, regionalization—with Jonah SUD as a wastewater service provider—is not reasonable because Jonah SUD has neither a permit nor plant.

For purposes of the Application and its compliance with regionalization policy, the ED accurately determined that regionalization was adequately addressed in the Application since the proposed facility is not located (1) within a wastewater CCN; (2) within municipal boundaries; nor, (3) three miles of another permitted facility.²³ There are no other regional wastewater providers in the area, thus, regionalization was adequately addressed, and cannot be a basis for a referral for a CCH.

TCEQ Docket No. 2024-0131-MWD 9 (Apr. 1, 2024) (“[Jonah SUD’s] [r]equest does not mention whether Jonah SUD has any existing facilities that could accept wastewater from the Applicant when the application was filed . . . Jonah SUD has not demonstrated how it would be adversely affected by Wilco MUD’s Application in a manner not common to the general public.”).

²¹ TWC § 26.081.

²² Application of R040062, LP for TPDES Permit No. WQ0016008001, SOAH Docket No. 582-23-10368, TCEQ Docket No. 2022-1731-MWD 22 (Nov. 1, 2023) (“TCEQ encourages and promotes regionalization by asking these questions and considering whether connecting to other facilities is reasonable”).

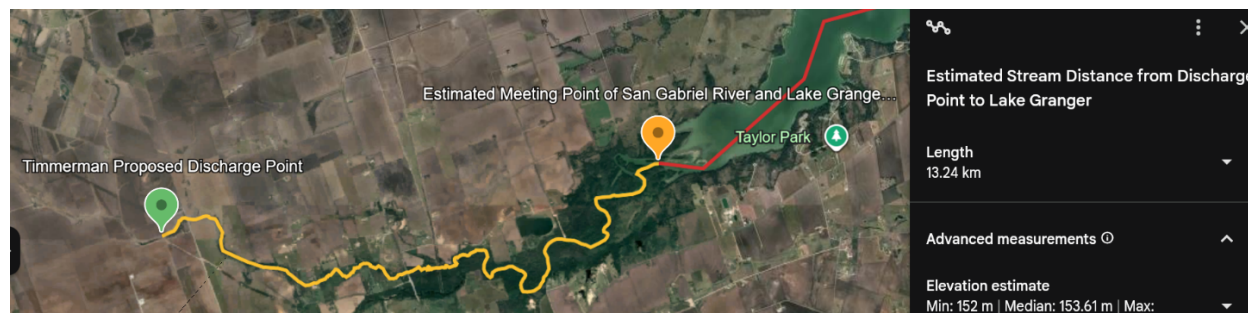
²³ ED’s Response to Public Comment, TCEQ Docket No. 2025-1159-MWD 7–8 (Mar. 15, 2024) (“If your proposed facility is within a three-mile radius of a permitted domestic wastewater system or a portion of your service area is within another utility’s sewer CCN area, you must request service from the existing permitted system owner or operator.”); TCEQ, *Evaluating Regionalization for Proposed Wastewater Systems*, RG-632, 3–4 (Aug. 2023), <https://www.tceq.texas.gov/downloads/permitting/wastewater/general/regionalization-rg-632-final.pdf>.

C. Jonah SUD’s assertions of unsafe water quality and negative community impact from the proposed permit are unsupported, given the distance between the discharge and Jonah SUD’s diversion point.

The distance between the Timmermann discharge and Jonah SUD’s diversion point underscores the attenuated water quality concerns. Jonah SUD’s speculation about hypothetical harm approximately eight miles downstream where the discharge would reach the headwaters of Lake Granger²⁴ does not amount to a justiciable interest. TCEQ’s guidance is clear, requiring that “the hearing request must list relevant and material concerns with the draft permit that the hearing requester would like to litigate at the contested case hearing.”²⁵ As shown in **Figure 1**, the Timmermann discharge only reaches Lake Granger after a stream distance of approximately 8 miles (**Figure 1**).

Figure 1

Pollutants discharged from the proposed discharge point must travel approximately 8.23 stream miles downstream to reach Lake Granger.²⁶



Furthermore, the apparent diversion point is an *additional* four miles (approximately) from there, as shown in **Figure 2** below, demonstrating a gap of over twelve *miles* from discharge to

²⁴ See infra Figure 1.

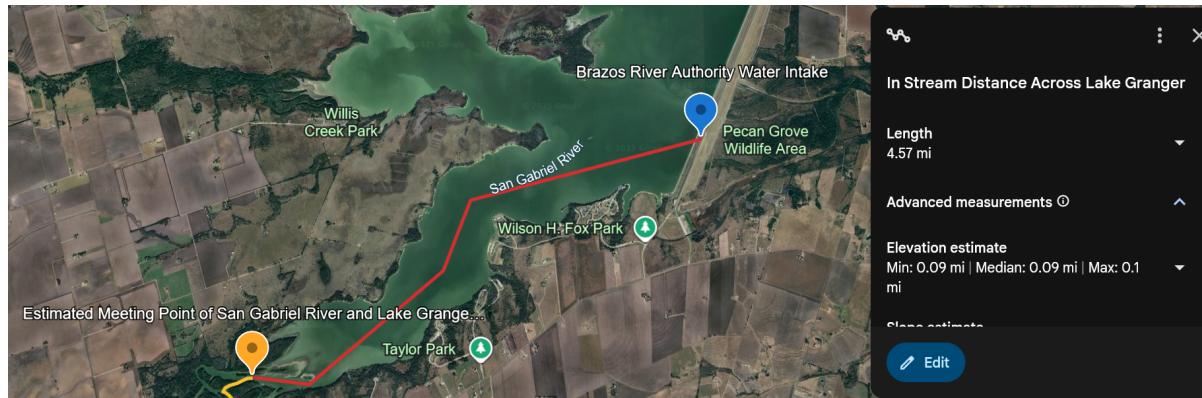
²⁵ TCEQ, *Requesting a Contested Case Hearing for Wastewater, Waste, or Air Permits*, RG-649 5 (Oct. 2024), <https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-649-contested-case-hearing-wastewater-waste-air.pdf>.

²⁶ Terrell Timmerman Farms LP Application for New TPDES Permit WQ0016229001, Sec. 10.B. (outfall latitude and longitude, 30.6530 N, -97.4839 W).

diversion. (Figure 2.)

Figure 2

Pollutants that enter Lake Granger from the San Gabriel River must travel approximately 4.57 stream miles across the lake to reach the Brazos River Authority's water intake point.²⁷



Outlining vague concerns about water quality and speculating that harm will occur if a permit is not followed are not relevant and material concerns, particularly when there is not proximity between a protestant's property interests and the proposed discharge point. Jonah SUD alleges, without specificity, that the proposed discharge will produce algal growth or blooms.²⁸ Jonah SUD claims to obtain its water "from surface water and wells, including water from Lake Granger, which is fed by the San Gabriel River,"²⁹ however, Jonah SUD fails to identify where the water

²⁷ Publicly available information identifies East Williamson County Regional Water System, on the East side of Lake Granger, as the intake point for surface water distributed by Jonah SUD. Water and Wastewater Treatment, Brazos River Authority (last accessed Aug. 27, 2025), <https://brazos.org/about-us/environmental/water-and-wastewater-treatment> (the Brazos River Authority owns and operates a regional surface water treatment plant in Williamson County that draws water from Lake Granger and provides potable drinking water to the City of Taylor, Jonah Water Special Utility District, and the Lone Star Regional Water Authority); Texas Water Rights Viewer, TCEQ (last accessed Aug. 27, 2025), <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=44adc80d90b749cb85cf39e04027dbdc> (Water Right ID C5163, 30.693333 N, -97.333973 W). Jonah could have undertaken the exercise of identifying the distances between the proposed discharge point and its source of drinking water, but it did not. This mapping exercise exposes the significant distance between the proposed discharge point and the believed water intake point (which Jonah SUD did not specify) and further attenuates any interest Jonah SUD may have in this discharge application. TCEQ, if desired, could independently verify the distances shown above.

²⁸ Jonah SUD's Comments 1. *But see* 30 TAC § 55.201(d)(2) (affected persons must provide a "brief, but specific, written statement explaining . . . how and why the requestor believes he or she will be adversely affected by the proposed . . . activity").

²⁹ Jonah SUD's Comments 1.

intakes are located vis-à-vis the proposed Timmermann discharge.³⁰ Information on the distance between a discharge point and an intake point is relevant to determining whether an alleged adverse effect is concrete, particularized, and fairly traceable to a discharge point because pollutants, such as phosphorus, are assimilated and diluted as they travel through waterbodies.³¹ Yet, there are no treatment plants, pumps, wells, or other places of interest, identified on the map provided by Jonah SUD to justify any allegations that the proposed discharge point's location would affect the quality of water withdrawn from Lake Granger by escalating algal growth or producing unsanitary or unsafe conditions, as Jonah SUD alleges.³²

Jonah SUD also claims, in conclusory fashion, that the water quality of the water bodies would be affected but did not identify the location, from which it diverts water, with a "specific" description, coordinates, or map, as the rules mandate.³³ Instead, Jonah SUD points generally to Lake Granger and the San Gabriel River, ignoring the statutory requirement to provide "a brief, but *specific*," statement of "location and distance [from] the proposed facility."³⁴ Without knowledge of the "location and distance" for Jonah's purported water sources "to the proposed [discharge site] that is the subject of the application," there lacks a nexus between Jonah SUD's

³⁰ *Id.* at 3 (map of CCN service area provided in Jonah SUD's Comments but shows no detailed map of its water supply sources).

³¹ *Tex. Comm'n on Env'tl. Quality v. City of Waco*, 413 S.W.3d 409, 418 (Tex. 2013) (aff'd TCEQ's denial of City of Waco's request for a hearing based partly on TCEQ's determinations that nutrients would be diluted or assimilated or that to assume algal growth would come from this one permitted activity was speculative where there were numerous discharges upstream from Lake Waco).

³² See Jonah SUD's Comments 1.

³³ *Id.*

³⁴ *Id.*; Publicly available information identifies East Williamson County Regional Water System, on the East side of Lake Granger, as the intake point for surface water distributed by Jonah SUD. *Water and Wastewater Treatment*, *supra* note 27. This intake point is more than 10 miles, as the crow flies, from the proposed discharge point. Texas Water Rights Viewer, *supra* note 27 (Water Right ID C5163, 30.693333 N, 97.333973 W); Terrell Timmerman Farms LP Application for New TPDES Permit, 12, Sec. 10.B. (30.6530 N, 97.4839 W). Pollutants would need to travel approximately eight in-stream miles downstream, and approximately four miles across Lake Granger, which will have a significant diluting effect on any harm they might pose.

³⁴ 30 TAC § 55.201(d)(2) (emphasis added).

purported harm as it relates to the wastewater permit at issue here.³⁵

TCEQ takes into consideration the health concerns of area residents, as well as the relative amount of nutrients, when reviewing applications and deciding whether or not to issue a wastewater discharge permit.³⁶ The ED's RTC details how the water quality division drafts the proposed permit to ensure that all reasonable steps will be taken to prevent the proposed discharge from adversely affecting human health and maintain compliance with the TWC, TCEQ rules, and the TSWQS.³⁷ Thus, Jonah's claim that the proposed discharge point will cause algal growth and blooms, or unsafe and unsanitary conditions in its drinking water supply is unsupported as the TPDES permit limits are specifically set to prevent such conditions.³⁸ A CCH request must state relevant and material concerns with the application or draft permit; Jonah SUD's speculative allegations about hypothetical downstream harm do not meet that standard and therefore fail to establish a justiciable interest.

D. Jonah SUD asserts a complaint common to members of the general public when it says there will be a negative community impact, thus, it does not have a justiciable interest and cannot be an "affected person."

Jonah SUD's global community impact claim is precisely the type of general-public harm that TCEQ typically rejects in hearing requests and should do so here. Affected persons must

³⁵ *Id.*

³⁶ 30 TAC § 307.4 (criteria to consider when setting water quality standards includes aesthetics, toxic and radiological substances, nutrients, temperature, salinity, aquatic life uses, habitat, and dissolved oxygen, recreational uses, antidegradation, and pH); 30 TAC § 305.124 ("Acceptance of the permit by the person to whom it is issued constitutes an acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.").

³⁷ See ED's Response to Public Comment, TCEQ Docket No. 2025-1159-MWD, at 5–7 (Mar. 15, 2024).

³⁸ This is not the first time Jonah makes this same argument and the Commission or SOAH have seen through their tactics. When Jonah SUD alleged, without evidence, that a TPDES permit would fail to protect human health and reduce water quality, the ED and an ALJ found no reason to disturb the assumption that a draft permit is protective of human health and the environment. Application of R040062, LP for TPDES Permit No. WQ0016008001, SOAH Docket No. 582-23-10368, TCEQ Docket No. 2022-1731-MWD, at 31 (Nov. 1, 2023). In that vein, the ED recently reminded Jonah SUD that a general concern about the quality of a water body, such as Lake Granger or the San Gabriel River, which Jonah SUD has no statutory authority over, cannot support affected person status because a governmental entity claiming affected person status must have statutory authority over their claimed interest. ED's Response to Hearing Request, TCEQ Docket No. 2025-1048-MWD 6 (Aug. 15, 2025).

establish “[a]n interest [not] common to members of the general public.”³⁹ Jonah SUD asserts that the proposed facility “will have a negative impact on the local community within Jonah” (without ever detailing what the “local community within Jonah” actually represents).⁴⁰ A general negative impact that blankets an entire community is precisely the type of harm that does not support affected person status because it is common to the members of the public within that community.

Jonah SUD’s “negative impact on the local community” claim lacks detail and amounts to a catch-all hypothetical concern that is not particular to Jonah SUD. Because Jonah SUD provides no proof that the Draft Permit’s limits and other terms are deficient in protecting public health and the environment, its assertions fall short, and its hearing request should be denied.

V. CONCLUSION

Jonah SUD fails to state a claim that would warrant affected person status and referral to SOAH. Jonah SUD has failed to demonstrate a personal justiciable interest that will be affected by the Commission’s approval of the Application; therefore, the Commission should find that it is not an affected person and deny its hearing request. The Applicant respectfully requests that the Commission deny Jonah SUD’s hearing request, approve Timmermann’s Application, and issue TPDES Permit No. WQ0016229001 as proposed by the ED. The Applicant further requests that the Commission grant the Applicant all other relief to which it is entitled.

³⁹ 30 TAC § 55.203(a).

⁴⁰ See Jonah SUD’s Comments 1.

Respectfully submitted,

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A handwritten signature in blue ink, reading "Nathan E. Vassar", is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Response to Request for Contested Case Hearing was sent via electronic mail to the individuals identified below on this, the 29th day of August, 2025, to the following parties and counsel of record:

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