

Brooke T. Paup, *Chairwoman*
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Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 26, 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 HAYS COMMONS
DEVELOPMENT, INC. FOR WATER PERMIT NO. WQ0016373001
TCEQ DOCKET NO. 2025-1295-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 "Eli Martinez".

Eli Martinez, Senior Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-1295-MWD

APPLICATION BY HAYS COMMONS	§	BEFORE THE TEXAS
DEVELOPMENT, INC.	§	COMMISSION ON
FOR WATER PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0016373001	§	

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

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration in the above-referenced matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

OPIC recommends granting the hearing requests of City of Hays, the Barton Springs Edwards Aquifer Conservation District, Save Our Springs, Karen Aboussie, Hannah Ballou, Alonna Beatty, Stuart Berkowitz, Candace Blake, Philip Brisky, Lydia Bryan-Valdez, Jim & Elizabeth Camp, Lucia Carracedo, Joel Depenning, Jason & Krista Hall, Jessica Hirn, Gina Jamison, Stacey Knight, William Knight, Glenda Matthews, Gerald & Linda McKnight, Aedin Meagher, Monica Mugan, Rob & Tiffany Novak, Claudia Ochoa, Carol Pennington, Barbara Reeves, Jeff Ross, Michael & Darlene Starr, Alexis Tancredo, Annelouise Tookoian, Valerie Trombley, Charles Tuttle, Antonio Sanchez-Valdez, Carolyn Wood, Lois Wright,

Jonathan Ayres, Andrew Brunone, Diana Cunningham, Gerald Haschke, Mark Holloway, Ken Kurzawski, Brenda Lozano, Paula Perlman, Matt Ruff, Alfonso Carlon, Aimee Lakey, David Patterson, and Nicholas Thomas. OPIC also recommends the Commission refer the issues specified in Section III.G. for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. OPIC recommends the Commission deny the pending requests for reconsideration.

B. Description of Application and Facility

Hays Commons Development, Inc. (Hays Commons or Applicant) has applied to the TCEQ for a Texas Land Application Permit (TLAP) that would serve the Hays Commons Development in Travis and Hays Counties. This permit would authorize the land application of treated domestic wastewater (effluent) at a daily average flow rate not to exceed 0.05, 0.10, and 0.15 million gallons per day (MGD) in the Interim I, II, and Final phases via surface irrigation of 60 acres of non-public access land. The draft permit does not authorize effluent discharges into Waters in the State.

The proposed facility would be located approximately 0.25 miles southwest of the intersection of Farm-to-Market Road 1626 and State Highway 45 Southwest in Hays County. The facility and disposal site would be located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin.

The proposed facility would be a membrane bioreactor (MBR) facility. Treatment units in the Interim I phase would include bar screens, an anoxic/equalization basin, a pre-aeration basin, a membrane basin, a sludge digester, and a chlorine contact chamber. Treatment units in the Interim II phase would include bar screens, an anoxic/equalization basin, two pre-aeration basins, two membrane basins, two sludge digesters, and two chlorine contact chambers. Treatment units in the Final phase would include bar screens, an anoxic/equalization basin, three pre-aeration basins, three membrane basins, three sludge digesters, and three chlorine contact chambers.

The proposed facility would also include a storage pond with a total surface area of 5.34 acres and total capacity of 68.67 acre-feet for storage of treated effluent prior to irrigation of Bermuda grass and rye grass during the cool season. Application rates to the irrigated land must not exceed 2.80 acre-feet per year per acre irrigated.

If the effluent is to be transferred to a holding pond or tank, re-chlorination prior to the effluent being delivered into the irrigation system is required. A trace total chlorine residual shall be maintained in the effluent at the point of irrigation application. The monitoring must be done after the final treatment unit and prior to storage of the treated effluent. If the effluent is land applied directly from the treatment system monitoring must be done after the final treatment unit and prior to land application.

Sludge generated from the Proposed facility would be hauled by a registered transporter to Walnut Creek WWTF TPDES Permit No. WQ0010543001 to be digested, dewatered, and then disposed of with the bulk of the sludge from the plant accepting the sludge. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

C. Procedural Background

The TCEQ received the application on July 17, 2023, and declared it administratively complete on September 5, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in Travis County in the *Austin American-Statesman* on October 3, 2023. The ED completed the technical review of the application on March 12, 2024, and prepared a draft permit. The Applicant published a Combined Notice of Public Meeting and Notice of Application and Preliminary Decision in Travis County in the *Austin American-Statesman* on June 12, 2024. On July 16, 2024, the public meeting requested by State Representative Erin Zwiener was held in Buda. The comment period for the application closed on July 25, 2024.

The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments (RTC) on May 27, 2025. The deadline for filing requests for a contested case hearing was June 26, 2025. The Commission received numerous timely hearing requests and requests for reconsideration.

II. APPLICABLE LAW

A. Hearing Requests

The application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015).

Under Title 30 TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the 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.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), an “affected person” is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and

- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

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 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. 30, Texas Administrative Code ("TAC") § 55.201.

B. Requests for Reconsideration

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

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestor is an affected person

I. Governmental Entities

1. *City of Hays*

On July 15, 2024, and June 11, 2025, timely hearing requests were received from the City of Hays. The request raises concerns related to public health,

safety, and welfare; regionalization; sufficiency of notice; and potential negative impacts on surface water, groundwater, and the City's drinking water supply wells. These interests are protected by the law under which the application will be considered. According to its request, the City of Hays owns and operates a public water system that derives its sole water supply from the Barton Springs segment of the Edwards Aquifer. Two public water supply wells serve its system: one is located approximately sixty feet from the edge of the proposed TLAP area, and the other is located approximately 600 feet from the boundaries of the proposed municipal utility district associated with the application. Therefore, based on the proximity of the proposed TLAP facility, ponds, or application zones to the wells that serve its municipal public water system, OPIC therefore finds that a reasonable relationship exists between the interests claimed by the City of Hays and the regulated activity.

Further, the City of Hays specifically articulates its statutory obligation to provide safe, potable drinking water to the customers of its public water system, both inside and outside of its municipal boundaries. Thus, the City has authority under state law over the issues contemplated by the application and has interests not common to the general public. OPIC therefore recommends that the Commission find the City of Hays an affected person.

2. City of Buda

On June 25, 2025, a timely hearing request was received from the City of Buda based upon its timely comments submitted on July 25, 2024. The request

raises concerns related to poor soil conditions that may not support adequate vegetative cover, promoting sediment runoff to the proximate Little Bear Creek and its tributary. The request also raises the issues of regionalization, and potential degradation of ground and surface water quality. These interests are protected by the law under which the application will be considered.

While it may be inferred that the City has a statutory obligation to provide safe, potable drinking water to the customers of its public water system—and therefore has authority under state law over the issues contemplated by the application—the request does not specifically identify which wells may be impacted or their location relative to the proposed facility, ponds, or application zones. The ED’s map depicts a location over 10 miles from any of these features, a distance too great to determine that a reasonable relationship exists between the general interests over water quality and sedimentation resulting from the regulated activity. Because these interests are therefore not distinguishable from members of the general public, OPIC does not find that the City of Buda is an affected person.

3. Barton Springs Edwards Aquifer Conservation District

On June 26, 2025, timely hearing requests were received from the Barton Springs Edwards Aquifer Conservation District based on timely comments submitted July 16, 2024. The request raises concerns related to contamination of surface and groundwater, including the Edward’s Aquifer and Little Bear Creek; adequacy of soil conditions; potential impacts on wildlife, including

endangered species; buffer zone requirements; human health and safety; and excessive nutrients in the permitted effluent. These interests are protected by the law under which the application will be considered.

BSEACD is a groundwater conservation district created by order of the Texas Water Commission in 1986, validated by special act of the Texas Legislature, and confirmed by the voters within the BSEACD. BSEACD has the powers, duties, authority, and responsibilities set forth in Chapter 36, Water Code, and in the BSEACD Enabling Act to provide for the conservation, preservation, protection, recharging and prevention of waste of groundwater within the Barton Springs segment of the Edwards Aquifer and other aquifers within its jurisdictional boundaries. *See* Tex. Water Code § 36.0015; Tex. Spec. Dist. Local Laws Code § 8802.002. The interests claimed by BSEACD include its interests in fulfilling its statutory obligations and duties to protect groundwater, including by preventing pollution or harmful alteration of groundwater. According to its hearing request, BSEACD is also legally required to implement a Habitat Conservation Plan and Incidental Take Permit approved by the U.S. Fish and Wildlife service to protect two federally-listed endangered species that rely on both the quality and quantity of groundwater within BSEACD's jurisdiction. Thus, the BSEACD has authority under state law over the issues contemplated by the application and has interests not common to the general public. OPIC therefore recommends that the Commission find BSEACD is an affected person.

II. Groups or Organizations

1. *Greater Edwards Aquifer Alliance*

The Commission received timely comments and a hearing request from GEAA. GEAA is a 501(c)(3) nonprofit organization that promotes effective broad-based advocacy for protection and preservation of the Edwards and Trinity Aquifers, its springs, watersheds, and the Texas Hill Country that sustains them. The hearing request raises concerns that wastewater and stormwater impacts, both individually and combined, would harm Little Bear Creek and the Edwards Aquifer, potentially contaminating nearby wells, the local water supply, and connected surface waters. The hearing request states that GEAA has multiple members who would be adversely affected by the proposed application.

As required for group standing under 30 TAC § 55.205(b), GEAA timely submitted comments, and the interests GEAA seeks to protect are germane to its purpose. However, GEAA's hearing request did not identify a member, by name and physical address, who would otherwise have standing to request a hearing in their own right as required under 30 TAC § 55.205(b)(2). In the absence of identification of any group member in its hearing request,¹ OPIC cannot find that GEAA's hearing request meets the requirements for group standing. Therefore, OPIC cannot find that GEAA qualifies as an affected person.

¹ OPIC notes that Kyle Sorahan timely submitted a hearing request in which he expressed support for GEAA and attached GEAA's hearing request. Similarly, Lucinda Stolzengurg submitted GEAA's hearing request as part of her request. However, although both requestors incorporated GEAA's filing, their names are not listed in GEAA's hearing request as members.

2. Darren Bien, Coves of Cimarron HOA

A timely hearing request was submitted by board member Darren Bien on behalf of the Coves of Cimarron Homeowners Association. The request articulates concerns relating to contamination of the Edwards Aquifer and the wells relied upon for the Cimarron Park Water Company, which is the drinking water source for the community.

In order for a group or association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing to request a hearing in their own right. 30 TAC § 55.205(b)(2). The ED's map indicated that the closest feature of the proposed facility to Darren Bien's provided address is the pond—which lies approximately 1.65 miles away. No other member of the association is named.

The request does not provide any discussion of the organization's purpose or how that purpose relates to the interests it seeks to protect. *See* 30 TAC § 55.205(b)(3). Additionally, the request does not indicate that neither the claim asserted nor the relief requested would require the participation of the individual members in the case. *See* 30 TAC § 55.205(b)(4). Given the omission of this information, OPIC finds that the Coves of Cimarron Homeowners Association has not shown that it possesses a personal justiciable interest in this matter and does not qualify as an affected person.

3. Save our Springs

The Commission received timely comments and a hearing request from Save Our Springs (SOS). SOS is a non-profit conservation 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. SOS is concerned about the impacts of the draft permit on groundwater and surface water as well as the Edwards Aquifer Recharge Zone. The hearing request named Lydia Bryan-Valdez as an affected member with standing to request a hearing in their own right.

As required for group standing under 30 TAC § 55.205(b), SOS timely submitted comments; the interests SOS seeks to protect are germane to its purpose; neither the claim asserted nor the relief requested requires the participation of individual SOS members; and SOS' hearing request identifies, by name and address, members who would otherwise have standing to request a hearing in their own right.² The hearing request stated that Lydia Bryan-Valdez's fence line borders the proposed wastewater treatment facility, and the groundwater well that she relies on, is only 300 feet away from the proposed wastewater facility.

According to the map prepared by ED staff, Ms. Bryan-Valdez resides 0.76 miles from the Facility, 0.73 miles from the pond, and 0.06 from the land application area. Ms. Bryan-Valdez submitted comments in her individual capacity and raised concerns regarding groundwater and surface water

² Lydia Bryan-Valdez and Antonio Sanchez; Alonna Beatty and Brandon Gaston; Stuart Berkowitz; Jim Camp; Carol Pennington; and Darlene Starr are identified in SOS' hearing request as SOS members who would otherwise have standing to request a hearing in their own right. For purposes of analyzing SOS' request as a group hearing request, OPIC limited its analysis to one member's qualification as an affected person to establish SOS as a group requestor.

contamination. These concerns are interests that are protected by the law under which this application is considered, and a reasonable relationship exists between those interests and regulation of the facility. *See* 30 TAC § 55.203(c)(1) & (3). Based on Ms. Bryan-Valdez's interests and her proximity to the facility, she has a personal justiciable interest in this matter which is not common to members of the general public. *See* 30 TAC § 55.203(a). Therefore, OPIC finds that SOS member Lydia Bryan-Valdez would have standing to request a hearing in her own right. Because SOS meets all the requirements for group standing, OPIC finds that it qualifies as an affected person.

III. Individual requestors who submitted timely comments and hearing requests and are located within a mile of the facility, ponds, or application zones

Timely comments and hearing requests were submitted by Karen Aboussie, Hannah Ballou, Alonna Beatty, Stuart Berkowitz, Candace Blake, Philip Brisky, Lydia Bryan-Valdez, Jim & Elizabeth Camp, Lucia Carracedo, Joel Depenning, Jason & Krista Hall, Jessica Hirn, Gina Jamison, Stacey Knight, William Knight, Glenda Matthews, Gerald & Linda McKnight, Aedin Meagher, Monica Mugan, Rob & Tiffany Novak, Claudia Ochoa, Carol Pennington, Barbara Reeves, Jeff Ross, Michael & Darlene Starr, Alexis Tancredo, Annelouise Tookoian, Valerie Trombley, Charles Tuttle, Antonio Sanchez-Valdez, Carolyn Wood, and Lois Wright. According to the map created by ED staff, each of these individuals resides less than one mile from either the proposed facility, pond, or application zones.

Collectively, these requests raise the following issues: contamination groundwater or surface water; adequate protective of the human health, safety, and the environment; compliance with TLAP requirements over the Edwards Aquifer Recharge Zone; interference with use and enjoyment of property; compliance with buffer zone requirements; adequacy of provisions in the draft permit to prevent unauthorized discharges; adequacy of application rate provisions in the draft permit is to protect water quality; sufficiency of monitoring requirements in the draft permit; nuisance odors; compliance with TCEQ's regionalization policy; adherence to notice requirements; adequacy of the soils on the proposed irrigation fields; whether the draft permit is sufficiently protective of wildlife; whether the geology of the proposed irrigation fields renders the area unsuitable for a TLAP; whether the draft permit contains adequate protections for sensitive karst features; whether the draft permit sufficiently limits *E. coli*; whether the proposed irrigation fields are within the FEMA floodplain; and whether the proposed facility will have adverse effects on property values. Many of these interests are protected by the law under which this application will be considered, as discussed in Section III.C. below. *See* 30TAC § 55.203(c)(1).

Because of these requestors' proximity to the proposed facility, ponds, or application zones, OPIC finds that a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestors' proximity increases

the likelihood that the regulated activity will impact their health, safety, use of property, and use of impacted natural resources. *See* 30 TAC § 55.203(c)(4)-(5). Given their relevant concerns and proximity, OPIC finds that these requestors would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that these requestors are affected persons.

IV. Individual requestors who submitted timely comments and hearing requests that indicate concerns that include contamination of their drinking water wells and are located between one mile and two miles of the facility, ponds, or application zones

Timely comments and hearing requests were submitted by Jonathan Ayres, Andrew Brunone, Diana Cunningham, Gerald Haschke, Mark Holloway, Ken Kurzawski, Brenda Lozano, Paula Perlman, Matt Ruff, Alfonso Carlon, Aimee Lakey, David Patterson, and Nicholas Thomas. According to the map created by ED staff, each of these individuals resides between one and two miles from either the proposed facility, pond, or application zones. Each of these individuals raise the issue of potential contamination of groundwater that may negatively impact the water wells they rely on for potable water in their homes. Many of these individuals also have concerns already articulated by the requestors in Section V above. Although the requestors in this group reside a greater distance from the facility, ponds, or application zones from the previous group, OPIC finds their reliance on wells for drinking water and their common concern for protection of that water source establishes a reasonable relationship between the interests they seek to protect and the Applicant's regulated activity. The requestors

describe an unusually porous and karst-filled geography in the area of the facility, ponds, and application zones that may easily transmit contaminants into the groundwater. Given their relevant concerns and proximity of the water wells relied upon to provide potable water to their homes, OPIC finds that these requestors would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that these requestors are affected persons.

V. Individual requestors who failed to submit a timely comment

Brandon Gaston, Christian Gaston, Carol Gordon, Chris Duke, Erin Duke, Mary-Jeannine Tinsley, Dustin Seymour, Mattia Marinus, Kristen Ploeger, Tesha Kammerdiener, Scott Lauger, Dale Van Bloklan, Eric Moccia, Dane Smith, and Gina Jamison all submitted hearing requests but failed to submit timely comments. 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 application, and the request must be based only on that affected person's timely comments. *See* Texas Water Code (TWC) § 5.115(a)(a-1)(2)(B); 30 TAC § 55.201(c). Because these requestors have not complied with this requirement, OPIC is unable to find that these requestors have demonstrated that they qualify as affected persons.

VI. Physical Address Not Provided

G. Waters submitted timely comments and a hearing request raising concerns related to ground and drinking water, as well as potential contamination of the Edwards Aquifer. The map created by ED staff could not

determine the distance between this requestor's home and the proposed facility, ponds, or application zones because no physical address was provided in the request. Although the concerns raised by G. Waters are protected by the law under which this application will be considered, without a specific distance from which to determine that a reasonable relationship exists between the interests this requestor seeks to protect and the Applicant's regulated activity, OPIC cannot find that G. Waters is an affected person under the law.³

VII. Individual requestors who submitted timely comments and hearing requests that are located over two miles from the facility, ponds, or application zones and do not adequately specify a groundwater source of drinking water within a reasonable distance of the facility, ponds, or application zones

Timely comments and hearing requests were submitted by Kelly Lowder, Kendra Potts, Eloy & Tina Valdez, and Kyle Sorahan. Each of these individuals raise the issue of potential contamination of groundwater that may negatively impact the water wells they rely on for potable water in their homes. Many of these individuals also have concerns already articulated by the requestors in Section V above. However, according to the map created by ED staff, each of these individuals resides over two miles from the proposed facility, pond, or application zones. At this greater distance, OPIC cannot determine that there is a reasonable relationship between the interests these requestors seek to protect

³ While OPIC is unable to find that G. Waters qualifies as an affected person based on the information provided in the hearing request, 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.

and the Applicant's regulated activity in the absence of the specific identification and relative location of the water well they utilize. Because OPIC cannot find that these requestors would be affected by the draft permit in a manner not common to the general public, we cannot find that they are affected persons under the applicable law.⁴

B. The affected persons raised the following disputed issues:

1. Whether the draft permit will contaminate groundwater or surface water.
2. Whether the draft permit is adequately protective of human health, safety, and the environment.
3. Whether the draft permit complies with the requirements for a TLAP on the Edwards Aquifer Recharge Zone.
4. Whether the operations under the draft permit would interfere with the affected persons' use and enjoyment of the property.
5. Whether the draft permit complies with all buffer zone requirements.
6. Whether the provisions in the draft permit are adequate to prevent unauthorized discharges.
7. Whether the application rate in the draft permit is adequate to protect water quality.
8. Whether the monitoring requirements in the draft permit are adequate.
9. Whether the draft permit will cause nuisance odors.
10. Whether the application and draft permit complies with TCEQ's regionalization policy.

⁴ 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.

11. Whether the Applicant followed the proper notice procedures for the draft permit.
12. Whether the soils on the proposed irrigation fields are adequate.
13. Whether the draft permit is protective of wildlife and endangered species.
14. Whether the geology of the proposed irrigation fields renders the area unsuitable for a TLAP.
15. Whether the draft permit contains adequate protections for sensitive karst features.
16. Whether the draft permit should include a limit on nutrients and *E. coli*.
17. Whether the proposed irrigation fields are within the FEMA floodplain.
18. Whether the proposed facility will have adverse effects on property values.

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. The issues raised in the request are issues of fact.

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

Issues 1-18 in Section III.C. were specifically raised by requestors 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 request is not based on issues raised in withdrawn public comments.

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

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Human Health, Safety, and Environment

Though TLAP permits do not allow for the discharge of treated effluent, wastewater treatment and effluent limitations at wastewater treatment facilities must maintain water quality in accordance with the TCEQ's surface water quality standards (TSWQS). 30 TAC § 309.1(a). Effluent quality for a TLAP permit is addressed under the Commission's rules at 30 TAC § 309.4. In addition, under 30 TAC § 309.12 (Site Selection to Protect Groundwater or Surface Water), the siting of a facility should minimize possible contamination of both surface water and groundwater. Also, the land application of effluents must maintain groundwater quality and groundwater resources. 30 TAC § 309.20(4). The rules under 30 TAC § 222.81(a) are mandatory minimum buffer zone requirements for subsurface area drip dispersal system to protect public water wells, private water wells, and surface water in the state from any potential negative impact. An

applicant must also comply with any requirements “determined by the executive director to be necessary to protect human health.” 30 TAC § 222.85.

As TCEQ regulations designate extensive criteria for the regulation of water quality and the protection of human health and safety, Issue nos. 1, 2, 3, 4, 5, 6, 8, 13, and 16 are relevant and material.

Effluent Application Rate

The affected persons raised concerns about whether the application rate in the draft permit is adequate to protect water quality. Effluent quality and waste application rates for a TLAP permit are addressed under the Commission’s rules under 30 TAC Chapter 309. Therefore, Issue no. 7 is relevant and material.

Soil Properties and Subsurface Geology

For TLAP applications, “[c]onceptual design aspects related to waste application rates, crop systems, seepage, and runoff controls shall be based upon the soil physical and chemical properties, hydraulic characteristics, and crop suitabilities for the waste application site.” 30 TAC § 309.20(a)(3). Under 30 TAC § 309.20(b)(4), soil testing is required for TLAP sites. Also, under 30 TAC § 222.79, a Recharge Feature Plan for the proposed irrigation fields is required as a part of the application for a Subsurface Area Drip Dispersal Systems wastewater facility. Therefore, concerns regarding the geology of the proposed irrigation fields, protections for sensitive karst features, and the irrigation fields being in FEMA floodplain raised under Issue nos. 12, 14, 15, and 17 are relevant and material to the Commission’s decision on the application.

Nuisance Odors

A wastewater treatment facility must abate and control nuisance odors prior to construction. 30 TAC § 309.13(e). Because the TCEQ regulates nuisance odors from wastewater treatment facilities, Issue No. 9 is relevant and material.

Regionalization

Under Texas Water Code § 26.081(a), it is “state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems ... to prevent pollution and maintain and enhance the quality of the water in the state.” Therefore, Issue no. 10 regarding regionalization is relevant and material to the Commission’s decision on the application and is appropriate for referral to SOAH.

Public Notice

The affected persons in this matter are concerned about whether the Applicant followed the proper notice procedures. Chapter 39, Subchapters J and H govern 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. 11 is appropriate for referral to SOAH.

Property Values

The affected persons raised concerns regarding the proposed facility’s impact on property value. The TCEQ does not have jurisdiction under the Texas Water Code or its regulations to address or consider property values in its

determination of whether to issue a water quality permit. Accordingly, Issue No. 18 is not relevant or material to the Commission's decision on this application.

G. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the draft permit will contaminate groundwater or surface water.
2. Whether the draft permit is adequately protective of the human health, safety, and the environment.
3. Whether the draft permit complies with the requirements for a TLAP on the Edwards Aquifer Recharge Zone.
4. Whether the operations under the draft permit would interfere with the affected persons' use and enjoyment of the property.
5. Whether the draft permit complies with all buffer zone requirements.
6. Whether the provisions in the draft permit are adequate to prevent unauthorized discharges.
7. Whether the application rate in the draft permit is adequate to protect water quality.
8. Whether the monitoring requirements in the draft permit are adequate.
9. Whether the draft permit will cause nuisance odors.
10. Whether the application and draft permit complies with TCEQ's regionalization policy.
11. Whether the Applicant followed the proper notice procedures for the draft permit.
12. Whether the soils on the proposed irrigation fields are adequate.
13. Whether the draft permit is protective of wildlife and endangered species.

14. Whether the geology of the proposed irrigation fields renders the area unsuitable for a TLAP.
15. Whether the draft permit contains adequate protections for sensitive karst features.
16. Whether the draft permit should include a limit on nutrients and *E. coli*.
17. Whether the proposed irrigation fields are within the FEMA floodplain.

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. 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 should be 180 days from the first day of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

The Commission received timely requests for reconsideration from the City of Austin Watershed Protection Department, City of Buda, Alonna Beatty, Dale Blokland, Alfonso Carlon, Chris Duke, Erin Duke, Christian Gaston, Gina

Jamison, Tesha Kammerdiener, Stacey Knight, William Knight, Aimee Lakey, Scott Lauger, Mattia Marinus, Eric Moccia, Claudia Ochoa, Kristen Ploeger, Barbara Reeves, Darlene Starr, Dustin Seymour, Dane Smith, Michael Starr, Mary Tinsley, Nicholas Thomas, and Edgar Zavaleta. Their requests raise concerns about groundwater and aquifer protection, particularly the Edwards Aquifer recharge zone and the vulnerability of private and community drinking wells. They highlight risks of water contamination, rapid pollutant transport through karst features, and the potential degradation of local water supply and drinking water quality. Additional concerns include the proposed wastewater treatment system reliability, odor, air quality, runoff impacts, as well as threats to wildlife habitat, biodiversity, and ecological integrity. Collectively, these issues emphasize potential impacts on public health, quality of life, and long-term environmental sustainability. The City of Austin Watershed Protection Department requests reconsideration, stating that the ED did not address the soil limitations or include conditions to mitigate them, and that the City's recommendations for ultraviolet disinfection and a 5.0 mg/L minimum dissolved oxygen limit were not considered. The City urges TCEQ to revise the draft permit to ensure protection of the Edwards Aquifer and other sensitive areas.

While OPIC notes that most of these concerns are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. At this

time, OPIC is recommending a contested case hearing on the issues as discussed in Section III.G., but prior to development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision. Therefore, OPIC respectfully recommends denial of all pending requests for reconsideration.

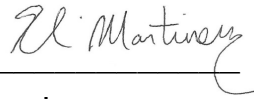
V. CONCLUSION

For the reasons discussed above, OPIC respectfully recommends the Commission find City of Hays, the Barton Springs Edwards Aquifer Conservation District, Save Our Springs, Karen Aboussie, Hannah Ballou, Alonna Beatty, Stuart Berkowitz, Candace Blake, Philip Brisky, Lydia Bryan-Valdez, Jim & Elizabeth Camp, Lucia Carracedo, Joel Depenning, Jason & Krista Hall, Jessica Hirn, Gina Jamison, Stacey Knight, William Knight, Glenda Matthews, Gerald & Linda McKnight, Aedin Meagher, Monica Mugan, Rob & Tiffany Novak, Claudia Ochoa, Carol Pennington, Barbara Reeves, Jeff Ross, Michael & Darlene Starr, Alexis Tancredo, Annelouise Tookoian, Valerie Trombley, Charles Tuttle, Antonio Sanchez-Valdez, Carolyn Wood, Lois Wright, Jonathan Ayres, Andrew Brunone, Diana Cunningham, Gerald Haschke, Mark Holloway, Ken Kurzawski, Brenda Lozano, Paula Perlman, Matt Ruff, Alfonso Carlon, Aimee Lakey, David Patterson, and Nicholas Thomas are affected persons in this matter and grant their hearing requests. OPIC further recommends the Commission refer the issues listed in section III.G. for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC respectfully recommends denial of all requests for reconsideration.

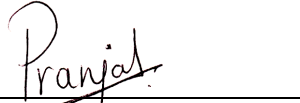
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail or by deposit in the U.S. Mail.


Eli Martinez

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