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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 PLUM CREEK
CALDWELL, LP FOR TPDES PERMIT NO. WQ0015738001
TCEQ DOCKET NO. 2025-1320-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1320-MWD

**APPLICATION BY
PLUM CREEK CALDWELL, LP
FOR TPDES PERMIT NO.
WQ0015738001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUEST FOR HEARING**

To the Members of the Texas Commission on Environmental Quality:

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

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Plum Creek Caldwell, LP (Applicant) for an amended Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015738001. The Commission received requests for a contested case hearing from the Guadalupe-Blanco River Authority (GBRA) and Ben O Corp. GBRA later withdrew its request for hearing. For the reasons stated herein, OPIC respectfully recommends the Commission find that the Ben O Corp qualifies as an affected person in this matter, grant its hearing request, and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-4 contained in §III.B.

B. Background of Facility

Plum Creek Caldwell, LP has applied to TCEQ for a major amendment to TPDES Permit No. WQ0015738001. As proposed, the draft permit authorizes an

increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 160,000 gallons per day to an annual average flow not to exceed 3,080,000 gallons per day. The Applicant proposes to operate the Caldwell County MUD 1 Wastewater Treatment Facility (the Facility), which has not been constructed yet. The proposed location of the Facility is approximately 600 feet south of the intersection of Dickerson Road and State Highway 80, in Caldwell County.

If built, the Facility will be a membrane bioreactor facility. Treatment units in the Interim I Phase will include one mechanical screen, one vortex grit chamber, two fine screens, two anoxic basins, two aeration basins, two membrane basins and one ultraviolet light (UV) chamber. The Interim II Phase would add two anoxic basins, two aeration basins, two membrane basins, and two UV chambers. The Final Phase would add another mechanical screen and vortex grit chamber, two fine screens, eight anoxic basins, eight aeration basins, eight membrane basins, and three UV chambers.

The proposed discharge route is to Dickerson Creek, then to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Dickerson Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

TCEQ received the application on March 23, 2023, and declared it administratively complete on April 13, 2023. The Applicant published the Notice

of Receipt and Intent to Obtain a Water Quality Permit in English in the *Lockhart Post Register* on April 27, 2023 and in Spanish in *El Mundo Newspaper* also on April 27, 2023. The ED completed the technical review of the application and prepared the proposed draft permit, which if approved, establishes the conditions under which the Facility must operate. The Applicant published the Notice of Application and Preliminary Decision in English in the *Lockhart Post Register* on February 22, 2024 and in Spanish in *El Mundo* on October 11, 2024. Notice of a public meeting was published in English in the *Lockhart Post Register* on February 20, 2024, and in Spanish in *El Mundo* on February 15, 2024. A public meeting was held March 26, 2024, and the public comment period ended at the close of the public meeting. The Executive Director's (ED) Response to Comments was mailed on May 1, 2025, and the deadline for submittal of a contested case hearing request or request for reconsideration was June 2, 2025.

II. APPLICABLE LAW

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, 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 applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

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

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an “affected person” is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 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 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.

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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC,

and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

III. ANALYSIS OF HEARING REQUEST

A. Whether the Requestor is an Affected Person

Guadalupe-Blanco River Authority

The Commission received timely comments and requests for a contested case hearing from GBRA. On September 12, 2025, GBRA submitted a filing wherein it explained that it had reached an agreement with the Applicant regarding the application and draft permit. Specifically, it stated that “Applicant has represented to GBRA that it will request that the TCEQ add [a daily average TP limit of 1.0 mg/L] for all phases to the permit.” As such, “GBRA respectfully withdraws its comments and request for a contested case hearing relating to this proposed amendment.” In light of this withdrawal, OPIC has provided no further analysis of GBRA's comments and hearing request.

Ben O Corp

The Commission received timely comments and a request for a contested case hearing from Michael Ohlendorf on behalf of Ben O Corp. The request explains that Ben O Corp is a family farm, and is owned by Mr. Ohlendorf along with his daughters and nephew. Ben O Corp states that it owns land downstream of the Facility's proposed discharge into Dickerson Creek. According to the map

created by ED staff, the nearest boundary of the Ben O Corp property is located less than one-half of a mile from the Facility, and the discharge route runs through a portion of the property. The requestor expresses multiple concerns, including those related to diminished water quality and related impacts to human health and livestock. Additionally, the requestor states that Applicant should be subject to a previously-entered-into settlement agreement.

To be granted a contested case hearing, a requestor must show that they possesses a personal justiciable interest in this matter related to a legal right, duty, privilege, power, or economic interest affected by the application. *See* 30 TAC § 55.203(a). Furthermore, the interest must be distinguished from interests common to the general public. *Id.*

A relevant factor in evaluating if a person is affected is whether a reasonable relationship exists between the interest claimed and the activity regulated. *See* 30 TAC § 55.203(c)(3). Here, the interests expressed by Ben O Corp in protecting water quality, human health, and animal life are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Furthermore, as the property is near the Facility and the discharge route runs through it, a reasonable relationship exists between Ben O Corp's claimed interests and the Facility's regulated activity. *See* 30 TAC § 55.203(c)(3). Moreover, the property's location increases the likelihood that the Facility's operations could impact use of the Ben O Corp property. *See* 30 TAC § 55.203(c)(4). Considering the requestor's stated concerns and location relative to the Facility, OPIC concludes that Ben O Corp possesses a personal justiciable

interest in this matter that is not common to the general public and has successfully demonstrated that it qualifies as an affected person. *See* 30 TAC § 55.203(a).

B. Which Issues Raised in the Hearing Request Are Disputed

The affected person's hearing request raise the following disputed issues:

1. Whether the Facility and draft permit comply with the Texas Surface Water Quality Standards and are adequately protective of water quality.
2. Whether the Facility and draft permit are adequately protective of human health and animal life.
3. Whether the draft permit is adequately protective of requestor's use and enjoyment of property, including recreational use of Dickinson Creek.
4. Whether the discharge route is properly characterized in the application and draft permit and, as an operational feature of the Facility, will function properly.
5. Whether the Facility and draft permit adequately comply with the terms of the 2021 settlement agreement.
6. Whether operation of the Facility will cause flooding of requestor's property.

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. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

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

Issue nos. 1–6 raised in the hearing request were raised in the comment period by the requestor. *See* 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

E. Whether the Hearing Request is Based on Issues Raised Solely in a Withdrawn Public Comment

While GBRA withdrew its public comments and hearing request, Ben O Corp did not. Therefore, Ben O Corp's hearing request is not based on issues raised in withdrawn comments.

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

The affected person in this matter have raised 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. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Human Health, Animal Life, and Recreational Use

The affected person in this matter is concerned with adverse effects to water quality and its impacts on human health, livestock, and recreational activities. The Commission is responsible for the protection of water quality under Texas Water Code, Chapter 26 and 30 TAC Chapter 307. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit "maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state." 30 TAC

§ 307.1. Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). According to Section 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d).

Therefore, Issue nos. 1, 2, and 3 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

Application and the Discharge Route

The affected person in this matter is concerned that the application does not accurately characterize the discharge route of the treated effluent that the Facility will discharge. Ben O Corp states that as a result of a dredging project conducted by the Texas Department of Transportation in the 1970’s, instead of following the route depicted in the application, the treated effluent will actually flow into a channel. The discharge will pool at the end of the channel, and then flow over part of the Ben O Corp property before eventually rejoining the “old Dickerson Creek channel.”

The concern articulated by Ben O Corp appears to be based on the suitability and functioning of the discharge route. Proper functioning of a

discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state. Further, as discussed above, the Standards in 30 TAC, Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state.” 30 TAC § 307.1. An inaccurate or inadequate representation of the effluent route could prevent ED staff from conducting a complete and accurate analysis.

Additionally, the Commission’s rules in Chapters 305 and 281 address the required contents of applications and approved application forms. 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 must promptly submit such facts and information. Accordingly, Issue No. 4 is relevant and material to the Commission’s decision on this Application.

Settlement Agreement

The affected person in this matter questions whether a previous settlement agreement related to reuse would be incorporated into the proposed draft permit. As noted in the ED’s RTC, the Applicant did not request to have Other Requirement no. 8 (related to reuse) contained in the existing permit removed from the draft permit. To the extent that other provisions of the settlement agreement were not incorporated into the existing permit, they would

not be within the jurisdiction of TCEQ to address in a proceeding on the draft permit. Any breach of the settlement agreement would instead be subject to private remedies as provided for in the settlement agreement. Therefore, Issue no. 5 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

Flooding

Finally, the affected person in this matter raises concerns about flooding of their property resulting from the Facility's discharge. The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider flooding when deciding whether to issue a TPDES permit. Therefore, Issue no. 6 is not relevant and material to the Commission's decision regarding this application and is not appropriate for referral to SOAH.

G. 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. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing


on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

V. Conclusion

For the reasons discussed above, OPIC finds that Ben O Corp has demonstrated that it qualifies as an affected person. As such, OPIC respectfully recommends that the Commission grant its hearing request and refer Issue nos. 1-4 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days.

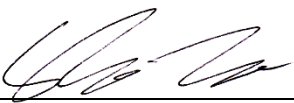
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that September 26, 2025, the Office of Public Interest Counsel's Response to Request for Hearing 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.


Sheldon P. Wayne

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