

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



David Timberger, *Interim Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 9, 2026

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 BELLE VIE UTILITIES
LLC FOR TPDES PERMIT NO. WQ0016459001
TCEQ DOCKET NO. 2026-0185-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 cursive script that reads "Michael Rakauskas".

Michael Rakauskas, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2026-0185-MWD

APPLICATION BY BELLE VIE
UTILITIES LLC FOR TPDES
PERMIT NO. WQ0016459001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

THE 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 on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Belle Vie Utilities, LLC (Belle Vie or Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016459001. The Commission received a timely hearing request from Lauren J. Kalisek on behalf of North Texas Municipal Water District (NTMWD). For the reasons stated herein, OPIC respectfully recommends that the Commission grant NTMWD's hearing request.

B. Description of Application and Facility

Belle Vie has applied to TCEQ for new TPDES Permit No. WQ0016459001 seeking authorization to discharge treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The Belle Vie Utilities LLC

Wastewater Treatment Plant (WWTP) would serve a residential development. The proposed WWTP is a membrane bio-reactor facility. Treatment units in the Interim I phase include two fine screens, an anoxic tank, an aerobic tank, a membrane cell, a sludge press, and an ultraviolet light (UV) disinfection system. Treatment units in the Interim II phase include two fine screens, an anoxic tank, an aerobic tank, a membrane cell, a sludge press, and an UV disinfection system. Treatment units in the Final phase include two fine screens, two anoxic tanks, two aerobic tanks, two membrane cells, a sludge press, and an UV disinfection system. The facility is proposed approximately 0.3 miles northwest of the intersection of Farm-to-Market Road 1396 and County Road 2985 in Fannin County.

If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary, then to Lake Bois d' Arc, then to Bois d' Arc Creek, then to Red River Below Lake Texoma in Segment No. 0202 of the Red River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and high aquatic life use for Lake Bois d' Arc and Bois d' Arc Creek. The designated uses for Segment No. 0202 are primary contact recreation, public water supply, and high aquatic life use.

C. Procedural Background

The application was received on December 19, 2023, and declared administratively complete on March 5, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Fannin County Leader* on March 19, 2024, in the *Tex Mex News* on March 19, 2024. The Notice of Application and Preliminary Decision was published in the *Fannin County Leader* on January 14, 2025, and in the *Tex Mex News* on January 14, 2025. The public comment period ended on February 13, 2025, and the ED mailed its Response to Comments on November 13, 2025. The deadline for filing requests for a contested case hearing or reconsideration of the ED's decision was December 15, 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 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.

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. 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).

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

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

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

III. ANALYSIS OF HEARING REQUEST

A. Whether the requestor is an affected person

Lauren J. Kalisek submitted timely comments and hearing requests on behalf of North Texas Municipal Water District (NTMWD). These requests raise concerns relating to negative impacts on water quality, Applicant's ownership of the property and failure to submit required forms, deficiencies in design criteria such as emergency procedures during power failure and operational flexibility, and failure to identify surface water intakes for domestic drinking water supply within 5 miles downstream of the proposed outfall.

Governmental entities with authority under state law over issues raised by the application may be considered affected persons. 30 TAC § 55.203(b). Additionally, a relevant factor in determining whether a governmental entity qualifies as an affected person is its statutory authority over or interest in issues relevant to the application 30 TAC § 55.203(c)(7). Here, NTMWD has shown they are a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution created to serve regional water needs in areas north and east of Dallas. As part of its duties, NTMWD has created and implemented the Bois d'

Arc Lake Watershed Protection Plan to address discharges into the lake and prevent detrimental effects to the water. NTMWD is uniquely affected by the proposed facility, as discharge from the facility would impact Bois d' Arc Lake, which serves as NTMWD's source of water supply for over 2.2 million people. NTMWD has therefore identified its statutory authority to serve regional water needs, its related interest in water quality, and explained how those interests may be affected by operation of the proposed facility. Therefore, OPIC concludes that NTMWD has successfully demonstrated that it qualifies as an affected person.

B. Which issues raised in the hearing request are disputed

The requestor raised the following disputed issues:

1. Whether the draft permit is sufficiently protective of water quality under the Texas Surface Water Quality Standards, including water used as drinking water supply.
2. Whether the application was completed to meet the Agency's regulatory requirements relating to ownership, design criteria, and identification of surface water intakes for domestic drinking water supply.

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 here are issues of fact.

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

Each issue was raised by NTMWD during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn. 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 request raises 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).

Effects of discharge route on water quality.

NTMWD is concerned about the effects of the discharge on water quality. The Commission is responsible for the protection of water quality under TWC 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. According to § 307.6(b)(4) of the Standards, "Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms,

consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d).

Therefore, issue no. 1 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Completeness and Accuracy of the Application

NTMWD is concerned that the application is inaccurate and/or incomplete. Specifically, NTMWD raises potential application deficiencies related to ownership,¹ design criteria,² and identification of surface water intakes for domestic drinking water supply.³ Whether the application contains all required information is a disputed question of fact. Therefore, Issue no.2, is relevant and material to the Commission’s decision regarding this application and is 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,

¹ See Instructions for Completing Domestic Permit Applications at 30.

² See 30 Tex. Admin. Code § 217.

³ See Section 1 of Worksheet 2.0.

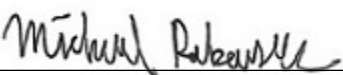
2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). As required by 30 TAC § 55.209(e)(7), OPIC estimates that 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

Having found that NTWMD is an affected person in this matter, OPIC respectfully recommends that the Commission grant its hearing request and refer the matter to SOAH for a contested case hearing on the issues identified in Section III.F. above for a maximum duration of 180 days.

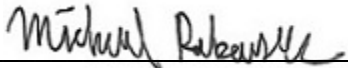
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, 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 to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Michael Rakauskas

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TCEQ DOCKET NO. 2026-0185-MWD

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