

APPLICATION BY	§	BEFORE THE
SILESIA PROPERTIES, LP	§	TEXAS COMMISSION ON
PERMIT No. WQ0015835001	§	ENVIRONMENTAL QUALITY

PROTESTANT GREATER EDWARDS AQUIFER ALLIANCE’S REPLY TO RESPONSES TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the Greater Edwards Aquifer Alliance (“GEAA”) and files this Reply to Responses to Hearings Requests in the above-referenced matter, and would respectfully show as follows:

I. REPLY TO EXECUTIVE DIRECTOR AND OPIC ON ISSUES TO BE REFERRED FOR HEARING

GEAA appreciates the analysis and review of the Protestant’s comments and requests for hearing undertaken by the Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”). GEAA agrees with the ED and OPIC that GEAA meets all requirements for associational standing and is an affected person.¹ GEAA agrees with the ED and OPIC that there are several disputed issues of that were raised during the public comment period which should be referred to the State Office of Administrative Hearings (“SOAH”) for hearing. In addition to the four issues recommended for referral by the ED,² GEAA provides clarification of those issues and agrees with OPIC there are additional issues that are relevant and material to a decision on the application.

GEAA timely raised the following issues which were not withdrawn and affect GEAA and its members’ interests protected by the law under which the application will be considered:

1. Whether the draft permit will adequately protect groundwater from contamination, including groundwater used for drinking water in wells for domestic and livestock use, groundwater in the

¹ See *infra*, page 7-8 for GEAA’s argument as to why all individuals identified as members are standing members in contrast to the ED’s finding.

² The issues referred for hearing by the ED are: 1) Whether the draft permit will adequately protect groundwater from contamination. 2) Whether the draft permit will adequately protect surface water including Honey Creek and the waters in the Honey Creek Cave system, the Guadalupe River, and the Edwards and Trinity Aquifers; 3) Whether the draft permit will be protective of human health and the environment including aquatic plants and animals in Honey Creek.

Honey Creek Cave System, and the Edwards and Trinity Aquifers. The ED identified protection of groundwater as a relevant issue but listed the Edwards and Trinity Aquifers under a separate surface water issue.³ GEAA recommends these two aquifers be listed under the groundwater issue and the issue be clarified as described above. (Recommended by ED, OPIC and clarified by GEAA).

2. Whether the draft permit will be protective of human health and the environment including aquatic plants and animals in Honey Creek, the Guadalupe River, and the Honey Creek Cave System and the Edwards and Trinity Aquifers. GEAA recommends expanding the analysis of protection of human health and the environment to include the Guadalupe River, the Honey Creek Cave System and the Edwards and Trinity Aquifers. (Recommended by ED and clarified by GEAA).
3. Whether the Class C Operator Requirement in the draft permit is adequate to ensure necessary operation and oversight. (Recommended by ED and OPIC).
4. Whether the proposed effluent limits and operations under the draft permit are adequately protective of surface water and groundwater quality and whether different and/or additional effluent limits are necessary? (Recommended by OPIC and clarified by GEAA).⁴
5. Whether Total Nitrogen and Total Phosphorous limits are needed to adequately protect surface water and groundwater quality? (Recommended by GEAA).⁵
6. Whether the draft permit adequately protects the Honey Creek Cave System and associated karst features? (Recommended by OPIC).⁶

³ ED Response to Hearing Requests at 12.

⁴ GEAA believes all issues listed herein should be referred for hearing; should TCEQ not refer this issue as written the substance of it can be incorporated into Issues 1, 2 and 3.

⁵ GEAA believes all issues listed herein should be referred for hearing; should TCEQ not refer this issue as written the substance of it can be incorporated into Issues 1, 2 and 3.

⁶ Id.

7. Whether the soil depths, soil characteristics, and vegetation in the subsurface drip irrigation area will sufficiently absorb the treated effluent and prevent rapid saturation of the soil? (Recommended by OPIC).⁷
8. Whether the proposed soil, seep and spring monitoring provisions in the draft permit are adequately protective? (Recommended by OPIC).⁸
9. Whether the draft permit is adequately protective of human health and the environment, including endangered birds, species, wildlife and wetlands on adjacent properties? (Recommended by OPIC).⁹
10. Whether operations under the draft permit would interfere with the affected persons' use and enjoyment of their property? (Recommended by OPIC).¹⁰
11. Whether operations under the draft permit would negatively impact the recreational use of the Honey Creek Cave System and the associated karst system, the Honey Creek State Natural Area, the Guadalupe River, and the Guadalupe River State Park? (Recommended by OPIC).¹¹
12. Whether the Applicant provided an adequate effluent volume estimate in the application? (Recommended by OPIC).
13. Whether the draft permit requires sufficient irrigation area and sufficient storage capacity? (Recommended by OPIC).¹²
14. Whether the Applicant has correctly calculated available effluent irrigation area given the need for the area to be not accessible to the public during irrigation? (Recommended by GEAA.).¹³
15. Whether the effluent land application rates under the draft permit are adequately protective? (Recommended by OPIC).¹⁴

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

16. Whether the Applicant properly demonstrated a need for the permit as required by the Texas Water Code § 26.082? (Recommended by OPIC).

17. Whether chlorine disinfection conducted pursuant to the draft permit would destroy soil health and bacteria necessary to process land disposed effluent? (Recommended by OPIC).¹⁵

II. REPLY TO APPLICANT SILESIA, L.P. REGARDING GEAA ASSOCIATIONAL STANDING

A. Texas Parks and Wildlife Department Is Barred from Requesting A Hearing

Contrary to Silesia L.P.’s assertion that Texas Parks and Wildlife Department (“TPWD”) did not request a hearing on this draft permit because it is satisfied the permit is protective of natural resources, the truth is that even if TPWD takes issue with this draft permit because of potential degradation to Honey Creek State Natural Area and Guadalupe River State Park, TPWD is legally barred from requesting a hearing.¹⁶ In 2011 the Texas Legislature passed HB 2694 stating “A state agency that receives notice ... may submit comments to the commission ... but may not contest the issuance of a permit or license by the commission.” HB 2694 (82nd Regular Session 2011); 30 Tex. Admin. Code § 55.103 (“Notwithstanding any other law, a state agency, except a river authority, may not file a request for contested case hearing... nor may it be considered an affected person or named a party.”).¹⁷ Silesia L.P.’s attempt to use TPWD’s legally enforced silence as an endorsement of the draft permit does not provide the context that the legislature has barred TPWD from participating any further in the permit process.

As TPWD is an adjacent, downstream landowner to Silesia, L.P. but barred from asserting its interests in this matter, the participation of GEAA and individual landowners becomes even more

¹⁵ Id.

¹⁶ Applicant’s Response to Hearing Requests at 2-3.

¹⁷ Although GEAA presents argument that TPWD cannot request a hearing here for the purpose of highlighting that Silesia used TPWD’s failure to file a hearing request to assume satisfaction with the terms of the draft permit without considering HB 2694, GEAA believes there is a strong argument to be made that the Legislature did not intend that state agencies such as TPWD be barred from hearing when they are an adjacent or downstream landowner to an application.

critical. GEAA, a non-profit organization now carries the responsibility of protecting the State of Texas's Guadalupe River State Park and Honey Creek State Natural Area.

B. GEAA Meets All Requirements for Associational Standing Including Having Individual Members That Would Otherwise Have Standing In Their Own Right.

1. GEAA's identified its individual members that have personal justiciable interests not common to members of the general public.

GEAA's timely submitted comments and requests for hearing extensively discussed the potential impacts to groundwater and surface water if the proposed draft permit is issued. Silesia, L.P. argues, without explanation, that because Dawson, Elmendorf and Wyatt's property are "upgradient" from the proposed facility – "none of them would have standing in their own right."¹⁸ While Silesia uses the word "upgradient," that is a hydrogeology term referring to groundwater and Silesia's affidavit of a Professional Geologist attached to their response explains that they are using the term to describe how *surface* water would flow between the two properties, not *groundwater*. "In other words, surface water flows from the Dawson's property to the Applicant's property."¹⁹ Silesia's argument and affidavit merely state that Dawson, Elmendorf and Wyatt are uphill and that surface water would flow from the affected landowner's properties to the Applicant's and not "vice-versa."²⁰

Silesia, L.P.'s argument and evidence completely ignore that GEAA and Elmendorf, Dawson and Wyatt identified impacts to their groundwater as the most significant way in which they will be adversely affected by the proposed facility. The impacts to groundwater are not controlled by the surface topography, but rather the underground hydrogeology. GEAA provides as Attachment 1 a letter from Dr. George Veni, a PhD., and Professional Geologist with decades of research studying the Honey Creek Cave System. Dr. Veni explains that while the affected landowners' property is upslope or uphill from the Silesia property, groundwater flow direction does not necessarily follow the direction of surface slopes, and Dr. Veni has mapped groundwater flowing in all directions in the area of Honey Creek and

¹⁸ Applicant's Response to Hearing Requests at 20.

¹⁹ Affidavit of Thomas O. Mathews II Attached to Applicant's Response to Hearing Requests.

²⁰ Id.

distances of groundwater flow well within the potential for contaminants from the Silesia site reaching wells on neighboring properties.²¹ Groundwater is very much at risk from the proposed facility and being uphill on the surface does not affect Dawson, Wyatt and Elmendorf's status as affected persons.

Silesia, L.P. makes a similarly inaccurate argument regarding GEAA Member Joyce Moore. Silesia alleges that Moore's property is too "distant" for her to have standing and that, without explanation "there can be no basis for somebody ... separated by Honey Creek to be able to demonstrate an interest different that of the general public."²² As explained by Dr. Veni in Attachment 1, "Silesia's point of Honey Creek separating the properties has no hydrologic meaning and contradicts Silesia's own point about Wyatt, Elmendorf and Dawson, which suggests only downslope properties would have standing...Moore's property is downslope and along the creek where any unmitigated contaminants would flow and potentially concentrate." Dr. Veni describes the location of Honey Creek between the properties as having no hydrologic meaning, such that Moore stands to be impacted by both surface water and groundwater impacts from the draft permit because of her proximity and location downstream of the facilities, and the extremely sensitive hydrogeologic conditions of the Honey Creek Cave system that underly her property and the Applicant's.

2. GEAA's membership includes organizations and individuals.

Silesia asserts that because GEAA lists its member organizations on its website GEAA has no individual members and does not comply with the requirements for associational standing.²³ While GEAA lists its member organizations on the website, it also maintains membership records of its individual members including those listed in GEAA's Request for Contested Case Hearing, specifically Dennis & Joanne Dawson ("Dawson"), Joyce Moore ("Moore"), Susan Wyatt ("Wyatt") , and Agnes Roca & Greg Elmendorf ("Elmendorf").²⁴ As determined by the Executive Director and OPIC, GEAA's

²¹ Letter from George Veni, PhD, P.G. to TCEQ attached to GEAA's Reply as Attachment 1.

²² Applicant's Response to Hearing Requests at 13.

²³ Applicant's Response to Hearing Requests at 19.

²⁴ GEAA Request for Contested Case Hearing on Silesia L.P. Application for Texas Land Application Permit at 2.

Request for Contested Case Hearing complied with 30 Tex. Admin Code § 55.205(b)(2) by identifying by name and physical address these individual members that would have standing in their own right.²⁵

As found by OPIC, Dawson, Moore, Wyatt and Elmendorf are all individual members of GEAA with personal justiciable interests affected by the application in ways not common to members of the public.²⁶ The ED does not state why it identifies only Moore and Dawson as members GEAA identified that would have standing in their own right and does not include Wyatt and Elmendorf.²⁷ GEAA can only speculate as to why Wyatt and Elmendorf were not included as standing members by the ED; and that as to Elmendorf he may have been excluded because the ED found Elmendorf's individual hearing request did not identify issues he raised during the comment period, and therefore did not comply with 30 TAC 55. 201(c)'s requirement that the hearing request be based only on the requestor's timely comments. While that finding may apply to Elmendorf's individual hearing request (although OPIC found otherwise) it is not relevant to his identification by GEAA as an individual member that would otherwise have standing in his own right. The associational standing requirements listed in 30 TAC 55.205(b) do not require that individual association members file comments and hearing requests, only that they would otherwise have standing in their own right because of their personal, justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. The same reasoning applies to Wyatt as she is an affected landowner in close proximity on the affected landowner map and will be impacted by the proposed permit. As found by OPIC, Wyatt is also a GEAA individual member that would have standing in her own right.²⁸

3. GEAA Specified Its Responses to Comments.

Silesia, L.P. asserts that GEAA did not respond to the Response to Comments "in any manner." To the contrary, GEAA's Request for Hearing contained three single spaces pages of discussion of the

²⁵ Executive Director's Response to Hearing Requests at 10; OPIC's Response to Requests for Hearing and Requests for Reconsideration at 9-10.

²⁶ See OPIC's Response to Requests for Hearing and Requests for Reconsideration at 10.

²⁷ Executive Director's Response to Hearing Requests at 10.

²⁸ GEAA Request for Contested Case Hearing at 2.

ED's Response to Comments and identified by number, using footnotes, each Response to Comment that it continues to dispute.²⁹

III. GEAA REQUESTS TCEQ REFER THIS MATTER FOR HEARING

Based on all of the above and the attached letter from Dr. George Veni, GEAA requests that TCEQ 1) grant its hearing request and declare GEAA to be an affected party and 2) recommend the issues listed herein for a contested case hearing.

RESPECTFULLY SUBMITTED,

/s/ Sarah B. Faust

Sarah B. Faust
Law Office of Sarah B. Faust, PLLC
State Bar No. 24040463
P.O. Box 40391
Austin, TX 78704
(512) 415-7781
sarah.b.faust@gmail.com

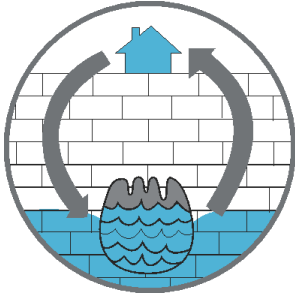
CERTIFICATE OF SERVICE

I certify that on October 26, 2020, GEAA's Reply to Response to Hearing Requests on the application by Silesia Properties, LP for new TCEQ Permit No. WQ0015835001 was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via electronic delivery and/or or U.S. Mail.

/s/ Sarah B. Faust

²⁹ GEAA Request for Contested Case Hearing on Silesia L.P. Application for Texas Land Application Permit at 3-6.

ATTACHMENT 1
LETTER OF DR. GEORGE VENI, PhD., P.G.



George Veni & Associates
Hydrogeologists and Biologists
Environmental Management Consulting
Cave and Karst Specialists

25 October 2020

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087 Austin, Texas 78711-3087

RE: Silesia Properties, LP, TCEQ Docket No. 2020-1246-MWD

Dear Ms. Bohac,

On 19 March 2020, I sent TCEQ comments on the above-referenced project through my role as Executive Director of the National Cave and Karst Research Institute (NCKRI). NCKRI was created by the US Congress as the national authority on caves and the vulnerable karst terrains and aquifers in which they occur. However, NCKRI does not comment on legal disputes unless invited by the regulatory authority to provide an independent, authoritative, review.

I am sending this letter as an individual karst hydrogeologist who has studied the Glen Rose Aquifer system for over 40 years. The core of my PhD dissertation was focused on the proposed Honey Creek Ranch area. Though I currently live out-of-state, I still maintain the database on caves and karst features in Bexar, Comal, and Kendall counties for the nonprofit Texas Speleological Survey and continue to visit and study the area regularly. Though I'm writing on the letterhead of my currently part-time consulting company, I have not been offered, nor will I accept, any compensation for this or potential future comments on this matter. I am writing solely as a matter of social responsibility given my unique experience and knowledge in this area.

This letter primarily addresses Silesia Properties' contention that certain people do not have standing in this case, per Silesia's undated "Applicant's Response to Hearing Requests" sent to TCEQ on or soon after 9 October 2020. I am sending this as a letter, not as an affidavit, because I am currently in a mandatory COVID-19 quarantine and am not able to have this statement notarized. Instead, this letter contains my digital signature and seal as a Professional Geologist licensed by the Texas Board of Professional Geologists. My license extends to the beginning of such licensing in Texas and I am among the first Professional Geologists licensed by the State.

Silesia contends, summarizing on page 20, "With respect to Susan Wyatt, the Elmendorfs, and the Dawsons, each of their ***properties are upgradient from the Applicant's property – meaning that water flows from their properties to the Applicant's property, not vice versa.*** Exhibit B,

Affidavit of Tommy Matthews, PG, REM. None of them have standing in their own right” [emphasis by Silesia].

To clarify the terminology, those properties are “upslope” or “uphill” from the Silesia property. In proper use, “upgradient” refers to the gradient or slope of the groundwater table below the surface. This point is important because while surface water clearly does not flow uphill, groundwater flow direction does not necessarily follow the direction of surface slopes. While the general groundwater gradient that I have mapped in the area is to the southeast, at a local scale, karst aquifers notoriously do not follow such general gradients. I have mapped groundwater in the area flowing in all directions. For example, in a 1999 study for the Texas Parks and Wildlife Department, I documented groundwater from a well to flow about a half mile west and then a mile south, before turning to flow roughly a mile east before discharging into Honey Creek. Such distances are well within the potential for contaminants from the Silesia site to reach water wells on neighboring properties.

Silesia also contends on page 13, “Ms. [Joyce] Moore asserts that she is a co-owner and managing partner of Honey Creek Spring ranch and associated entities, which is held in a limited partnership with her sister. She admits that the property in which she has an interest is more than 1½ miles away from the Applicant’s WWTP and more than 1 mile away from Applicant’s property boundary. Moreover, Honey Creek itself (as well as other properties) separates the Applicant’s property from Ms. Moore’s property” [emphases by Silesia].

Silesia’s point of Honey Creek separating the properties has no hydrologic meaning and contradicts Silesia’s point about Wyatt, the Elmendorfs, and the Dawsons, which suggests that only downslope properties would have standing. Ms. Moore’s property is downslope and along the creek where any unmitigated contaminants would flow and potentially concentrate. Because Ms. Moore can draw water from Honey Creek and use the creek in other ways, her property would be impacted.

Silesia contends against considering information on groundwater flow and surface water discharge stating on pages 23-24, “The Commissioners should not add as an issue in any contested case hearing the question of whether the proposed permit is protective of groundwater or karst features. The permit does not allow discharge beyond the soil level” based on TCEQ’s response to public comments this year on the project. This response by TCEQ is hydrogeologically unsound. The purpose of TCEQ issuing a permit is the protect surface and subsurface waters of the State of Texas. Simply putting a rule in place and assuming it will be obeyed and effective is not sound management, otherwise we would not have food, health, fire, and building inspectors, as well as police and others, to ascertain that the rules and regulations that protect society are being met. Unless TCEQ monitors surface runoff and groundwater from the site, it is not assuring public or environmental health.

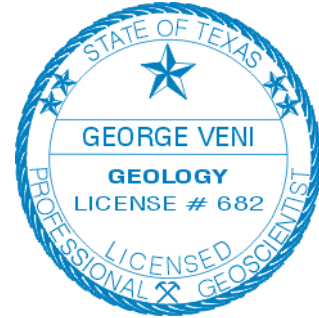
On page 24, Silesia quotes TCEQ which says in part “TCEQ recognizes the significance of karst topography, and out of an abundance of caution, these features are to be protected with buffers, fencing with lockable gates, and upslope diversion berms.” This statement actually demonstrates that TCEQ does not yet recognize the significance of karst. About 40 years ago, representatives of TCEQ’s predecessor agency, the Texas Water Commission, told me that karst does not exist in Texas. Now TCEQ says it recognizes karst, but attempts to manage karst aquifers incorrectly on a feature-by-feature basis, missing the point that is clear in the scientific literature that the entire karst landscape is the sensitive recharge zone for karst aquifers, not just individual features.

Until TCEQ fully and correctly recognizes the vulnerability and complexity of karst landscapes and their underlying aquifers, it will continue to allow projects that put at risk and incrementally degrade the surface and groundwater resources of Texas. I urge TCEQ to consider the information in this letter carefully, and reconsider some of its decisions thus far on this proposed Silesia project.

Sincerely,



George Veni, PhD



**MAILING LIST SILESIA PROPERTIES, LP
DOCKET NO. 2020-1246-MWD; PERMIT NO. WQ0015835001**

FOR THE APPLICANT:

Ronald D Urbanczyk, Owner
Silesia Properties, LP
24114 Blanco Road
San Antonio, Texas 78260
Tel: (210) 490-0090

Aaron J. Laughlin, P.E.
Steger Bizzell
1978 South Austin Avenue
Georgetown, Texas 78626
Tel: (512) 930-9412
Fax: (512) 930-9416

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Bobby Salehi, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Anthony Tatu, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Gunnar Dubke, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0037
Fax: (512) 239-4430

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

**FOR ALTERNATIVE DISPUTE
RESOLUTION**
via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0687
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Bridget C. Bohac
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTOR(S) / INTERESTED PERSONS

See attached list.

REQUESTER(S)

Yvonne L Chapman 30809 Sunlight Dr
Bulverde, TX 78163-2772

Kelly Deanne Davis
Save Our Springs Alliance 4701 W Gate Blvd
Ste D401
Austin, TX 78745-1479

Joanne & Mr Dennis E Dawson 1 Double D Ln
Spring Branch, TX 78070-3633

Dennis Edward Dawson Dawsons Doubles
1 Double D Ln
Spring Branch, TX 78070-3633

Greg Elmendorf Po Box 4066
Bergheim, TX 78004-4066

Sarah Baker Faust
Law Office of Sarah B Faust Pllc 2324 Westrock Dr
Austin, TX 78704-5819

Veronica Hawk
615 Shepherds Ranch
Bulverde, TX 78163-3442

Kurt Menking 8255 Bindseil Ln
San Antonio, TX 78266-2100

Kurt Menking 8255 Bindseil Ln
Garden Ridge, TX 78266-2100

Mrs Anna Michelle Molina 624 Kuntz Pt
Bulverde, TX 78163-5015

Michelle Molina
Bulverde Neighborhoods for Clean Water
624 Kuntz Pt
Bulverde, TX 78163-5015

Joshua Tatum Moore Po Box 558
Harper, TX 78631-0558

Joyce M Moore
Honey Creek Spring Ranch Lp Po Box 558
Harper, TX 78631-0558

Annalisa Peace
Greater Edwards Aquifer Alliance 1809 Blanco Rd
San Antonio, TX 78212-2616

Annalisa Peace
Greater Edwards Aquifer Alliance Po Box 15618
San Antonio, TX 78212-8818

Joe S Ranzau
Texas Cave Management Association 179 Twin Canyon Dr
Boerne, TX 78006-5969