CAUSE NO. 25-18363

VICTOR HOLLENDER, BRUCE NEITZKE, ESTHER SCHNEIDER, and SARAH RIVAS,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
	§	**GILLESPIE COUNTY, TEXAS**
v.	§	
	§	
ROGERS DRAW ENERGY STORAGE, LLC, and B&CWR, INC., d/b/a CACTUS CONSTRUCTION,	§	
Defendants.	§	**216TH JUDICIAL DISTRICT**

GILLESPIE COUNTY'S ANSWER TO
ROGERS DRAW ENERGY STORAGE, LLC'S COUNTERCLAIMS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Gillespie County, Texas ("County" or "Intervenor"), and files this Answer to the Counterclaims asserted by Defendant Rogers Draw Energy Storage, LLC ("Rogers Draw") in its Plea to the Jurisdiction, General Denial and Affirmative Defenses, Counterclaims, and Request for Injunctive Relief. In support thereof, the County respectfully shows the Court as follows:

1.

RESPONSE TO PLEA TO THE JURISDICTION

Rogers Draw's Plea to the Jurisdiction should be denied. The County's claims present a justiciable controversy that is ripe for adjudication.

A. The County's Claims Are Ripe. Rogers Draw fundamentally mischaracterizes the nature of the County's intervention. The County does not seek "preemptive judicial intervention based on hypothetical future regulatory noncompliance." Rather, the County seeks to prevent imminent, concrete, and particularized harm to public safety arising from

the construction and proposed operation of a 145-megawatt lithium-ion battery energy storage facility less than 1,700 feet from Harper Independent School District, where approximately 600 schoolchildren attend classes daily.

The ripeness doctrine ensures that courts do not render advisory opinions on abstract or hypothetical disputes. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). A claim is ripe when the facts have developed sufficiently, such that "an injury has occurred or *is likely to occur*." *Id.* (emphasis added). Here, the facts are not hypothetical:

- Rogers Draw has commenced construction of the BESS facility;
- The facility's location is fixed at less than 1,700 feet from Harper ISD;
- Harper lacks municipal water supply for fire suppression;
- Gillespie County's volunteer fire departments lack specialized training, equipment, and water resources to address lithium-ion battery thermal runaway events; and
- Evacuation of the school and surrounding community during a thermal runaway event would be mathematically impossible given known road capacities and response times.

These are present, verifiable infrastructure conditions that create significant threats to public health and safety in light of the proposed construction of the Rogers Draw facility—not speculative fears. The County need not wait for children to be harmed before seeking judicial protection. *See City of Waco v. Tex. Nat. Res. Conservation Comm'n*, 83 S.W.3d 169, 175 (Tex. App.—Austin 2002, pet. denied) (claims are ripe when the plaintiff demonstrates a "realistic threat" of imminent harm). Fundamentally, a plaintiff need not

"show that the injury has already occurred, provided the injury is imminent or *sufficiently likely*." *Id.* (emphasis added). The injury at issue is the threat to public safety; in light of the County's infrastructure and emergency response limitations, and the commencement of construction at the Rogers Draw site, this threatened injury is "sufficiently likely" for the County's claims to be ripe. *Id.*

B. The County Has Standing to Assert Its Claims. Gillespie County intervenes not as a private property owner but as a political subdivision with constitutional and statutory duties to protect public health, safety, and welfare. *See* Tex. Const. art. XI, § 5; *see generally* Tex. Local Gov't Code Ch. 232, 240, 343, 352. Texas counties possess authority to act to prevent public harm before an actual injury occurs, so long as the threat of injury is reasonably certain. *Hallco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 76 (Tex. 2006) (noting that "nuisances can be prohibited" and that the use of property "may be restricted by the government in the legitimate exercise of its police power"); *Freedman v. Briarcroft Prop. Owners, Inc.*, 776 S.W.2d 212, 216 (Tex. App.—Houston [14th Dist.] 1989, writ denied) (noting that a nuisance cause of action can seek to "prevent a threatened injury where an act or structure will be a nuisance per se, or will be a nuisance for which there is no adequate remedy at law, or where a nuisance is imminent").

As stated above, the specific infrastructure and emergency response considerations in the County, in conjunction with the selection of the Rogers Draw site and its proximity to the Harper ISD campus, render the threatened injury reasonably certain. The County's intervention asserts governmental interests distinct from those of the private plaintiffs. The County bears responsibility for emergency response coordination, fire protection services, public road maintenance, and protection of critical water resources within unincorporated

areas. These sovereign governmental interests are directly implicated by the proposed BESS facility and confer standing independent of any private property claims. Therefore, the County has standing to bring this cause of action.

2.

GENERAL DENIAL

Subject to the defenses and affirmative matters set forth herein, the County enters a general denial to all claims, allegations, and requests for relief asserted by Rogers Draw in its Counterclaims. Tex. R. Civ. P. 92.

3.

AFFIRMATIVE DEFENSES

Without waiving its general denial and without assuming any burden of proof that would otherwise rest upon Rogers Draw, the County asserts the following affirmative defenses:

A. Governmental Immunity. Gillespie County is a political subdivision of the State of Texas and retains governmental immunity from suit and liability except where expressly waived by the Legislature. Tex. Civ. Prac. & Rem. Code Ch. 101; *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006). Rogers Draw's Counterclaims do not fall within any statutory waiver of immunity. Accordingly, the County is immune from Rogers Draw's claims for declaratory and injunctive relief to the extent such claims seek to impose liability or compel governmental action.

B. No Private Right of Action. To the extent Rogers Draw's Counterclaims attempt to assert claims arising under statutes or regulations that do not create a private right of action enforceable against the County, such claims are barred.

C. Exercise of Police Power. The County's intervention in this action constitutes a lawful exercise of its police power to protect public health, safety, and welfare. Such governmental action does not give rise to counterclaims for declaratory or injunctive relief. *See City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984).

D. No Justiciable Controversy for Declaratory Relief. To the extent Rogers Draw seeks declaratory relief, the Uniform Declaratory Judgments Act requires a justiciable controversy between the parties. Tex. Civ. Prac. & Rem. Code § 37.004. Declaratory relief is not available to obtain an advisory opinion or to determine questions not yet arising from an existing state of facts. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). Rogers Draw's requests for declarations regarding "hypothetical future regulatory noncompliance" or the abstract validity of the County's claims are not justiciable.

E. Unclean Hands. Rogers Draw's Counterclaims seeking equitable relief are barred by the doctrine of unclean hands. Rogers Draw has commenced construction of a large-scale industrial facility in close proximity to a public school and residential community without adequate provision for emergency response, fire suppression, or community safety.

4.

RESPONSE TO REQUEST FOR INJUNCTIVE RELIEF

The County opposes Rogers Draw's request for injunctive relief against the Intervenor. Rogers Draw cannot establish the elements required for injunctive relief:

A. No Probable Right to Relief. Rogers Draw cannot demonstrate a probable right to the relief sought against the County because the County's intervention represents a

lawful exercise of governmental authority to protect public safety. There is no legal basis for enjoining a political subdivision from participating in judicial proceedings to protect the health, safety, and welfare of its residents.

B. No Irreparable Injury. Rogers Draw cannot establish that it will suffer irreparable injury absent an injunction. Any harm to Rogers Draw from the County's participation in this litigation is speculative and, in any event, compensable through ordinary legal remedies. In contrast, the harm to public safety that the County seeks to prevent—potential death or serious injury to schoolchildren, residents, resources, and public and private property from a lithium-ion battery fire—is truly irreparable.

C. Balance of Equities. The balance of equities weighs decisively against injunctive relief. Rogers Draw's commercial interest in proceeding with construction cannot outweigh the safety of approximately 600 schoolchildren, their teachers, and the surrounding community. The potential for catastrophic harm from a thermal runaway event at the proposed site—documented extensively in the County's Petition in Intervention—substantially outweighs any burden imposed on Rogers Draw by the County's participation in this litigation.

5.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Intervenor Gillespie County, Texas respectfully prays that:

A. The Court deny Rogers Draw Energy Storage, LLC's Plea to the Jurisdiction;

B. The Court deny Rogers Draw's Counterclaims in their entirety;

C. The Court deny Rogers Draw's request for injunctive relief against the County;

D. The Court award the County its costs of court; and

E. The Court grant such other and further relief to which the County may be justly entitled.

Respectfully submitted,

/s/ William M. McKamie

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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing instrument has been served on the following counsel of record through the electronic filing manager in accordance with Rule 21a(a)(1) or (2) the Texas Rules of Civil Procedure on this 12th day of January, 2026.

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