

**CAUSE NO. 25-18363**

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

**GILLESPIE COUNTY'S PETITION IN INTERVENTION  
AND APPLICATION FOR INJUNCTIVE RELIEF**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, Gillespie County, Texas, (the "County"), by and through its undersigned counsel, and files this Petition in Intervention seeking to join as a party Plaintiff in the above-styled and numbered cause pursuant to Rule 60 of the Texas Rules of Civil Procedure. The County seeks declaratory and injunctive relief against Defendants Rogers Draw Energy Storage, LLC and B&CWR, Inc., d/b/a Cactus Construction, to prevent the construction and operation of a battery energy storage system ("BESS") facility that poses catastrophic threats to public safety, particularly to 600 children attending a school located less than half a mile from the proposed BESS facility who cannot be evacuated in the event of a lithium battery fire.

In support thereof, the County respectfully shows the Court as follows:

**I.  
PARTIES**

1. Intervenor Gillespie County is a political subdivision of the State of Texas, organized and existing under the Constitution and laws of the State of Texas. The County

has governmental authority and responsibility for public health, safety, emergency services, environmental protection, and the general welfare of residents in unincorporated areas of Gillespie County, including the community of Harper where the proposed BESS facility would be located.

2. Plaintiffs Victor Hollender, Bruce Neitzke, Esther Schneider, and Sarah Rivas are residents and property owners in Harper, Gillespie County, Texas, who have filed suit seeking injunctive relief based on nuisance claims. A copy of this petition will be forwarded to Plaintiffs' attorney of record pursuant to the provisions of Rules 21 and 21a of the Texas Rules of Civil Procedure.

3. Defendant Rogers Draw Energy Storage, LLC is a limited liability company authorized to do business in Texas. Defendant has appeared and answered herein, and a copy of this petition will be forwarded to its attorney of record pursuant to the provisions of Rules 21 and 21a of the Texas Rules of Civil Procedure.

4. Defendant B&CWR, Inc., d/b/a Cactus Construction, is a corporation authorized to do business in Texas. Defendant has appeared and answered herein, and a copy of this petition will be forwarded to its attorney of record pursuant to the provisions of Rules 21 and 21a of the Texas Rules of Civil Procedure.

## II.

### **JURISDICTION, VENUE, AND DISCOVERY CONTROL PLAN**

5. This Court has subject matter jurisdiction over this action because it involves relief sought in equity for public safety concerns arising in relation to property located in, and business activities conducted in, Gillespie County, Texas.

6. This Court has personal and specific jurisdiction over Defendant Rogers Draw Energy Storage, LLC because they have purposeful contacts with Texas, as they are

engaged in continuous and systematic activities associated with conducting business in the state, and the particular acts giving rise to this suit involving their development of the proposed BESS facility (the “Rogers Draw BESS”) occurred or will occur in Gillespie County.

7. This Court has personal and specific jurisdiction over Defendant Cactus Construction because it is a Texas corporation engaging in business activities within Gillespie County.

8. Venue is proper in Gillespie County under Section 15.002 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claims occurred or will occur in Gillespie County.

9. The County intends to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**III.**  
**TEXAS RULE OF CIVIL PROCEDURE 47(c)**

10. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, the County makes the following disclosures. The County brings its causes of action under Chapter 343 of the Texas Health and Safety Code, Chapter 352 of the Local Government Code, and Chapter 232 of the Local Government Code against Defendants, as set forth below, to obtain declaratory and injunctive relief from this Court enjoining the construction of the Rogers Draw BESS. The damages sought are within the jurisdictional limits of this Court. The County seeks only non-monetary relief in the form of declaratory and injunctive relief, an award of attorneys’ fees, and any other relief to which the County may be entitled.

## IV. FACTUAL BACKGROUND

### **A. The Unique Threats Posed by BESS Fire Hazards, the Rogers Draw BESS, and Its Catastrophic Risks**

11. Defendants propose to construct and operate a utility-scale BESS facility consisting of 88 storage containers filled with lithium-ion batteries in the unincorporated community of Harper, Gillespie County, Texas. Ex. A.

12. As a general consideration, BESS facilities pose unique and catastrophic hazards for the fire departments tasked with accounting for public health and safety in conducting fire preparedness and response activities. A lithium battery fire is unlike any conventional fire: they cannot be extinguished with conventional suppression methods; reach incomprehensible temperatures, in some cases up to 2,000 degrees Fahrenheit; can burn for extended periods of time up to several weeks, or even reignite up to several days after extinguishing; release toxic, hazardous gases that can be exceedingly harmful to first responders, their equipment, and the surrounding communities; and pose significant threats to environmental conditions, particularly water resources that can be affected by runoff of water application following a fire response.<sup>1</sup> In fact, the current best practice for responses to lithium battery fires is to simply let the fire burn out. Ex. B, at 2-3.

13. The National Fire Protection Association (“NFPA”), which promulgates the fire safety regulations enforced by the County, has noted that BESS facilities in particular present the unique threat of thermal runaway, which describes the “rapid uncontrolled

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<sup>1</sup> See generally ENV’T PROT. AGENCY, “Battery Energy Storage Systems: Main Considerations for Safe Installation and Incident Response,” [https://www.epa.gov/system/files/documents/2025-08/battery\\_energy\\_storage\\_systems\\_fact\\_sheet.pdf](https://www.epa.gov/system/files/documents/2025-08/battery_energy_storage_systems_fact_sheet.pdf) (last visited Nov. 25, 2025); NAT’L FIRE PROT. ASS’N, “Energy Storage Systems (ESS) and Solar Safety,” <https://www.nfpa.org/education-and-research/electrical/energy-storage-systems> (last visited Nov. 25, 2025).

release of heat energy from a battery cell" and "can result in a chain reaction that heats up neighboring [battery] cells . . . [and] can result in a battery fire or explosion."<sup>2</sup> The causes for battery failures that can lead to thermal runaway include physical damage to a battery, exposure to external heat sources, improper battery charging or discharging, and exposure to environmental issues like extreme heat and floods. *Id.* In an area that is prone to both wildfire and flash flood threats, the County finds the threat of battery failure by external environmental factors particularly concerning.

14. Due to the unusual nature of lithium battery fires, including extreme high temperatures, difficulties in cooling the source of the fire deep within a battery, and toxic gases discharged by the batteries, the County's fire response capabilities are not currently sophisticated enough to combat this type of fire. Ex. B, at 2.

15. Recent BESS facility fires in other communities indicate that these risks are not merely hypothetical but present concrete, significant concerns for the County's ability to respond to a fire at the Rogers Draw BESS.

- a. The Gateway Energy Storage facility in Otay Mesa, California burned for 17 days in May 2024, requiring evacuation of surrounding areas and ongoing cleanup efforts that require the imposition of safety measures to protect both the community and workers<sup>3</sup>;
- b. The Moss Landing facility in Monterey County, California has experienced multiple fires requiring evacuations and air quality monitoring by the Environmental Protection Agency, including, in the course of the cleanup process, the requirement that the facility's operator maintain a permanent, private on-site firefighting company<sup>4</sup>; and

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<sup>2</sup> NAT'L FIRE PROT. ASS'N, "Energy Storage Systems (ESS) and Solar Safety," <https://www.nfpa.org/education-and-research/electrical/energy-storage-systems> (last visited Nov. 25, 2025).

<sup>3</sup> ENV'T PROT. AGENCY, "Gateway Energy Camino Lithium-Ion Battery Fire," [https://response.epa.gov/site/site\\_profile.aspx?site\\_id=16485](https://response.epa.gov/site/site_profile.aspx?site_id=16485) (last visited Nov. 25, 2025).

<sup>4</sup> ENV'T PROT. AGENCY, "Moss Landing Vistra Battery Fire Response," <https://www.epa.gov/ca/moss-landing-vistra-battery-fire> (last visited Nov. 25, 2025).

c. BESS facility fires in multiple New York counties have led to shelter-in-place orders and evacuations, and in fact prompted the State of New York to convene a statewide working group to review the fire codes utilized throughout the state.<sup>5</sup>

16. Even without the community context of the proposed location for the Rogers Draw BESS, the County would have significant concerns with its ability to serve the public health and safety by providing fire preparedness and response for the Rogers Draw BESS. Ex. B, at 1-3. However, the specific location proposed for this site establishes even greater cause for concern.

17. Specifically, the Rogers Draw BESS would be located less than 1,700 feet from Harper Independent School District's lone campus, which serves as the sole educational facility for Harper and the surrounding rural area.

18. Harper ISD's campus comprises a preschool, as well as an elementary, middle, and high school housing 600 students ranging from pre-kindergarten through 12th grade, all on a single campus with limited ingress and egress routes and limited evacuation capabilities in the event of a critical disaster.

19. Based on the prevailing conditions in the area and the proximity of the Rogers Draw BESS to Harper ISD's campus, and considering the County's understanding of its own fire response resource capabilities and Harper ISD's evacuation capabilities, the County does not believe it would have the capacity to contain a catastrophic fire at Rogers Draw BESS from the Harper ISD campus before the students could be evacuated. Ex. B, at 3.

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<sup>5</sup> N.Y. STATE ENERGY RSCH. & DEV. AUTH, "Initial Findings Released from Inter-Agency Fire Safety Working Group on Emergency Response," <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-12-21-Governor-Hochul-Announces-Results-of-Fire-Safety-Working-Group> (last visited Nov. 25, 2025).

20. Moreover, the Rogers Draw BESS would be situated near the headwaters of the Pedernales River in Gillespie County. The Pedernales River flows through multiple counties before joining the Colorado River at Lake Travis, providing up to 23% of Lake Travis's inflows during dry periods. Lake Travis serves as the primary water supply for the City of Austin and numerous downstream communities in the Colorado River watershed. The response to a catastrophic fire at the Rogers Draw BESS would likely result in significant amounts of runoff due to the water demands of such a firefighting response, and that water would be tainted by the toxic contaminants associated with a lithium battery fire. Ex. B, at 3. Any contamination from a BESS incident could impact water quality throughout the Pedernales watershed, affecting Gillespie, Blanco, Hays, and Travis Counties, ultimately including the water supply for the City of Austin and other Colorado River basin communities.

**B. The Unique and Unacceptable Danger to Schoolchildren**

21. The proximity of the Rogers Draw BESS to Harper ISD's campus creates an unconscionable and unprecedented risk to the safety of approximately 600 schoolchildren and 90 school staff members and administrators. Upon information and belief, no other BESS facility in the United States has been constructed in such close proximity to an occupied school, let alone a campus serving students ranging from pre-kindergarten through the 12th grade.

22. Harper ISD is the only public school option available to the community, and the children attending the school cannot simply relocate away from the threat posed by the Rogers Draw BESS. Under state law, children are required to be in school. The nearest alternative school district is Fredericksburg ISD, more than 20 miles away. These children

are dependent on the adult teachers and staff at the school for their safety during school hours; in an emergency situation, they would rely on a limited number of school buses and drivers for evacuation.

23. The County is concerned that Harper ISD would be unable to evacuate its campus rapidly in response to a thermal runaway event at the Rogers Draw BESS. The school district lacks adequate bus resources to evacuate 600 students simultaneously, and it cannot ensure the immediate availability of bus drivers during school hours—certainly not on the urgent timeline required to accommodate evacuation demands in the event of a catastrophic fire. Moreover, the Harper ISD campus serves special needs students requiring additional time and specialized transportation in the event of evacuation, as well as young children who would require one-on-one assistance in the event of evacuation. Any evacuation event would result in chaos from parent notification and reunification attempts on limited rural roads, and neither the County nor Harper ISD maintains adequate alternative facilities to receive and shelter 600 displaced students. Ex. B, at 2.

24. The County's fire response team further believes that a timely evacuation would be mathematically impossible, in light of the time it would likely take to load 600 students ranging from preschool to high school seniors onto buses; the likelihood of toxic gas exposure even before the fire reaches the Harper ISD campus; and the impossibility of allowing the students, teachers, and administrators to shelter-in-place, due to the high risk of fire spreading and the lack of filtration systems to provide protection from toxic gases within the school buildings. Ex. B, at 2.

### **C. Gillespie County Lacks the Resources to Respond to a Lithium Battery Fire**

25. Gillespie County cannot respond adequately to a BESS fire emergency because it lacks the specialized resources that would be demanded in the event of a lithium

battery fire. Ex. B, at 2. The community of Harper is served only by a volunteer fire department with no training or equipment for lithium battery fires and, in fact, the entirety of Gillespie County is served primarily by volunteer fire departments (with the exception of Fredericksburg Fire, which has a combination of paid and volunteer firefighters) facing similar limitations. Ex. B, at 2. The nearest teams capable of responding to emergency situations involving hazardous materials are likely located more than 90 minutes away in San Antonio or Austin. Ex. B, at 2. Within the County, responding fire departments would be limited by the lack of specialized foam and suppression agents required for lithium battery fires, as well as the lack of specialized personal protective equipment required for toxic gas exposure. Ex. B, at 2. Additionally, the site lacks adequate water supply for the massive quantities required for cooling operations, which is considered the best practice for allowing a lithium battery fire to burn itself out. Ex. B, at 2-3. Finally, the County and its volunteer fire departments lack decontamination capabilities for citizens or first responders exposed to toxic contaminants. Ex. B, at 2-3.

26. The County's mutual aid agreements will not provide for an adequate response to these types of hazards, as the neighboring jurisdictions within reasonable response time likely do not possess the specialized capabilities required for BESS incidents. Ex. B, at 2.

#### **D. The County's Official Opposition to the Rogers Draw BESS**

27. On February 24, 2025, the Gillespie County Commissioners Court unanimously adopted a Resolution officially opposing the construction and operation of battery energy storage systems in Gillespie County, finding such facilities "contrary to the fundamental economic development and health and safety goals of the County." Ex. A-3.

28. This resolution was adopted after extensive public input, including testimony from fire safety experts, concerned parents, and emergency management officials who documented the impossibility of protecting the community from BESS hazards. Ex. A, at 2.

**V.**  
**GROUND FOR INTERVENTION**

**A. Intervention as of Right**

29. The County is entitled to intervene as of right under Rule 60(a) of the Texas Rules of Civil Procedure. There is no pre-judgment deadline for intervention, and Texas courts have held that a plea in intervention may be untimely only if it is “filed after judgment.” *Texas v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015); *Texas Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008). Because no final judgment has been issued in this case, the County’s intervention is timely.

30. In order to intervene in a pending suit, an intervenor need only show a “justiciable interest” in that suit to support an intervention as a matter of right. *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008). Such an interest arises when a party’s interests, whether in law or in equity, will be affected by the litigation. *Id.* at 155; *see also Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). Intervention is appropriate if the intervening party could have brought the same lawsuit in its own name, whether wholly or in part. *Guar. Fed. Sav. Bank*, 792 S.W.2d at 657.

31. The County clearly has a justiciable interest in the subject of this action. The County has direct governmental interests in the following matters:

- a. Protecting the health and safety of approximately 600 schoolchildren and 100 staff and administrators, as well as the residents and business owners in the surrounding community, within its jurisdiction;

- b. Preventing the creation of an unmanageable emergency response burden;
- c. Protecting critical water resources including the Pedernales River;
- d. Exercising its governmental authority to prevent public nuisances and protect vulnerable populations who cannot protect themselves; and
- e. Maintaining the economic viability and character of the Harper community.

32. The County is so situated that the disposition of this suit without its intervention may, as a practical matter, impair or impede its ability to protect its interests. If the facility is constructed, the County will face immediate and ongoing obligations for emergency preparedness that it cannot fulfill; may bear liability exposure for inadequate emergency response, will face the constant threat of contamination to its water resources; will experience the impairment of property values and economic development; and will be forced to consider and address the irreversible and unconscionable risks to the community as a whole and to the children attending Harper ISD once the batteries are installed.

33. The County's interests are not adequately represented by existing parties. The current Plaintiffs are private property owners asserting individual nuisance and related claims. In contrast, the County is in the unique position of a governmental entity endowed with police power authority and faced with emergency services obligations. Its interest is focused on the *public* health, safety, and welfare—not simply the welfare of individual plaintiffs. For that reason, the County's interest in protecting the attendees of Harper ISD, the entire community, and public resources in the area differs dramatically from the current Plaintiffs' interests. While these interests may dovetail, the key difference is that the County is *obligated* to represent and serve the public health, safety, and welfare. Private

plaintiffs cannot serve the public interest in the same manner; therefore, the County's intervention by right is appropriate.

**B. Permissive Intervention**

34. Should the Court determine intervention as of right is not warranted, the County requests permissive intervention under Rule 60(b). Specifically, the County's claims share common questions of law and fact with the original action, yet the County's interests bring unique governmental authority and resources that will aid in the just determination of this case, as well as a distinctive perspective on the public interest that will help develop a complete record on public safety impacts. Furthermore, intervention will not unduly delay or prejudice the adjudication of the original parties' rights.

**VI.**  
**CAUSES OF ACTION**

**COUNT 1: DECLARATORY AND INJUNCTIVE RELIEF FOR A PUBLIC NUISANCE UNDER CHAPTER 343 OF THE TEXAS HEALTH & SAFETY CODE.**

35. The County re-alleges and incorporates by reference all preceding paragraphs.

36. Section 343.011 of the Texas Health and Safety Code applies explicitly to the unincorporated area of a county and defines public nuisances to include conditions that endanger public health, safety, and welfare.

37. Specifically, Section 343.011(c) explicitly states that public nuisances include "maintaining a building in a manner that is structurally unsafe or *constitutes a hazard to safety, health, or public welfare* because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, *disaster, damage*, or abandonment or *because it*

*constitutes a fire hazard.”* Tex. Health & Safety Code § 343.011(c)(5) (2001) (emphasis added).

38. The Rogers Draw BESS constitutes a public nuisance, or would necessarily result in a public nuisance, because it:

- a. Creates an extreme fire and explosion hazard that cannot be mitigated by available emergency response;
- b. Threatens the immediate safety of 600 schoolchildren who are legally required to be present and who have no feasible alternative for schooling at other locations;
- c. Would release toxic gases requiring mass evacuation or shelter-in-place, despite the impossibility of ensuring that either an evacuation or shelter-in-place can be accomplished safely;
- d. Endangers the Pedernales River watershed and regional drinking water supplies; and
- e. Creates a condition that substantially and unreasonably interferes with the public health, safety, and welfare.

39. Section 343.013 of the Texas Health and Safety Code expressly authorizes counties to bring suit by injunction to “prevent, restrain, abate, or otherwise remedy” public nuisances in unincorporated areas. Tex. Health & Safety Code § 343.013(a) (2007).

40. As a political subdivision of the State of Texas, the County possesses the inherent police power to protect the health, safety, and welfare of its citizens, particularly vulnerable populations such as schoolchildren. *See Halco 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”). The Rogers Draw BESS poses an imminent and practically certain threat to public welfare that the County has both the authority and duty to prevent.

41. The County therefore seeks a declaration that the Rogers Draw BESS as proposed would constitute a public nuisance in violation of Chapter 343 of the Health and Safety Code and further seeks a permanent injunction prohibiting the construction and operation of the Rogers Draw BESS as necessary to prevent an imminent and irreparable public nuisance.

**COUNT 2: DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF FIRE SAFETY STANDARDS ADOPTED PURSUANT TO CHAPTER 352 OF THE LOCAL GOVERNMENT CODE**

42. The County re-alleges and incorporates by reference all preceding paragraphs.

43. Under Chapter 417 of the Texas Government Code, Texas has adopted NFPA standards as part of the state fire code, including NFPA 855 governing the installation of stationary energy storage systems.

44. Under Chapter 352 of the Texas Local Government Code, counties have the authority to enforce fire safety standards and provide fire protection services to residents in unincorporated areas. Accordingly, the County enforces the NFPA standards adopted by the state.

45. Upon information and belief, the Rogers Draw BESS cannot comply with applicable fire safety standards, including but not limited to:

- a. NFPA 855 § 4.3.5 requiring adequate water supplies for firefighting operations;
- b. NFPA 855 § 4.4 requiring adequate emergency response capabilities;
- c. NFPA 855 § 6.3 requiring sufficient separation distances from occupied structures;
- d. NFPA 1 and NFPA 101 provisions protecting educational occupancies; and

e. Texas Fire Code requirements for hazardous materials response capabilities.

46. The facility's proximity to the Harper ISD campus violates fundamental fire safety principles that prioritize protection of vulnerable populations and educational facilities.

47. In a similar situation, Van Zandt County, Texas, obtained injunctive relief against a BESS facility based on fire code violations and emergency response inadequacy. Van Zandt County cited similar concerns with the limited capacity of its fire response infrastructure to respond to the unique risks posed by the proposed BESS facility. Am. Temp. Restr. Order, *Van Zandt Cnty. v. Taaleri Energia N. Am., LLC*, No. 25-00067 (294th Dist. Ct., Van Zandt Cnty., Tex., Apr. 10, 2025).

48. In light of these concerns, the County respectfully asks that this Court issue a declaration finding that the Rogers Draw BESS fails to satisfy applicable fire safety standards and to enjoin construction of a facility that cannot meet minimum safety standards.

**COUNT 3: DECLARATORY AND INJUNCTIVE RELIEF TO PROTECT WATER RESOURCES UNDER CHAPTER 232 OF THE TEXAS LOCAL GOVERNMENT CODE**

49. The County re-alleges and incorporates by reference all preceding paragraphs.

50. Under Chapter 232 of the Local Government Code, counties have authority to protect water resources and regulate development that threatens water quality.

51. If a proposed development is located within a floodplain or flood-prone area, the County has broad authority under Section 232.0015 of the Local Government

Code to regulate or even prohibit development that could result in contamination during flood events.

52. The Rogers Draw BESS's proposed location near the Pedernales River headwaters threatens surface water contamination resulting from firefighting runoff tainted with toxic chemicals and heavy metals from combating a lithium battery fire; groundwater contamination from facility operations and fire suppression activities in the event of a fire event; the contamination of downstream water supplies serving multiple counties and major metropolitan areas; and the contamination of clean water resources serving local agricultural and ranching operations.

53. The siting of hazardous industrial facilities containing toxic materials in sensitive watershed areas violates prudent water resource management principles and threatens irreversible environmental harm. As a steward of the water resources serving its community, the County has an obligation to defend those resources when threatened by significant, particularized dangers associated with the risks of the Rogers Draw BESS.

54. Therefore, the County respectfully asks that this Court issue a declaration finding that the County's authority as described herein permits the enforcement of Chapter 232 of the Local Government Code against the Rogers Draw BESS and enjoin construction of a facility that poses unacceptable and irreversible risks to critical regional water supplies.

## **VII.** **APPLICATION FOR PERMANENT INJUNCTION**

55. The County re-alleges and incorporates by reference all preceding paragraphs.

56. The County has no adequate remedy at law. Monetary damages cannot compensate for the loss of children's lives, nor for the lives of community members and

first responders affected by a fire event. Monetary damages cannot restore contaminated water resources, nor can they remedy the ongoing threat to public safety. No amount of damages can enable the County to provide an adequate emergency response.

57. The County and its residents will suffer immediate and irreparable harm if the facility is constructed, as it will create an impossible emergency response burden posing a permanent and continuous threat to the children of Harper ISD and the community itself, the area's water resources, and the community's property values and community character.

58. Moreover, the balance of equities overwhelmingly favors injunctive relief. The Defendants have no vested right to construct the Rogers Draw BESS at this location. Additionally, Defendants *voluntarily* chose to construct the facility at this inappropriate site despite virtually unanimous community opposition, included the recorded opposition of the County Commissioners. Ex. A-2. Alternative locations are available that would not pose such a significant threat to schools or water resources. In this particular circumstance, the public interest in preserving the safety of the community, preserving the public health and welfare, and preserving the integrity of natural resources outweighs any countervailing economic or private development interest.

59. Granting injunctive relief would serve the public interest by protecting the community and its natural resources, as well as preventing the creation of an unmanageable public hazard and allowing the County to uphold its governmental duty to protect the public health, safety, and welfare.

**VIII.**  
**REQUEST FOR ATTORNEY'S FEES AND COSTS**

60. The County also seeks an award of its attorneys' fees and costs against Defendants. In a declaratory action like this one, "the court may award costs and reasonable

and necessary attorney's fees as are equitable and just." Tex. Civ. Prac. & Rem. Code § 37.009.

**IX.**  
**APPLICATION FOR TEMPORARY INJUNCTION**

61. The County re-alleges and incorporates by reference all preceding paragraphs.

62. The County requests this Court, after hearing, to issue a temporary injunction to preserve the status quo pending final determination of this case.

63. To obtain injunctive relief, an applicant must show it has a cause of action, that it has a probable right to relief, and that it is faced with imminent irreparable harm. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An applicant has a probable right to relief if it has a cause of action for which relief may be granted. *Univ. Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 577-78 (Tex. App.—Austin 2008, no pet.). Among other grounds, “[a] trial court may . . . grant injunctive relief . . . when a dispute involves real property.” *Shor v. Pelican Oil & Gas Mgmt., LLC*, 405 S.W.3d 737, 750 (Tex. App.—Houston [1st Dist.] 2013, no pet.). As detailed herein, the County has well-supported causes of action against Defendants to support its exercise of the police power in the service of the public health, safety, and welfare.

64. In the absence of injunctive relief, the County will suffer irreparable injury for which no remedy at law exists. To establish irreparable injury, a party must demonstrate either: (1) that damages are difficult to quantify or would not provide adequate compensation or (2) that the defendant is insolvent. *See Butnaru*, 84 S.W.3d at 204; *Blackthorne v. Bellush*, 61 S.W.3d 439, 444 (Tex. App.—San Antonio 2001, no pet.); *see also Frequent Flyer Depot, Inc. v. Am. Airlines, Inc.*, 281 S.W.3d 215, 227 (Tex. App.—

Fort Worth 2009, pet. denied). Injunctive relief is necessary to retain the status quo and to prevent irreparable harm to the County and its residents.

65. Specifically, immediate relief is necessary because construction activities could begin at any time. Once Defendants begin preparing the site, practical and economic pressures will mount to complete the project. The unique and significant risks presented by the Rogers Draw BESS, particularly the threat to the children attending Harper ISD and the broader community, demands immediate protection in the form of injunctive relief.

66. Accordingly, to prevent irreparable injury to the County, Defendants should be enjoined from engaging in any development of the Rogers Draw BESS or any alternative BESS facility within Gillespie County.

67. The County is not required to post an injunction bond. Tex. Civ. Prac. & Rem. Code § 6.001.

**X.**  
**CONDITIONS PRECEDENT**

68. All conditions precedent to the County's right to bring this action have been performed or have occurred.

**XI.**  
**REQUEST FOR DISCLOSURE**

69. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the County requests that Defendants disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2.

**XII.**  
**PRAYER**

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

- A. This Court grant Gillespie County, Texas leave to intervene as a party Plaintiff in this action;
- B. Defendants Rogers Draw Energy Storage, LLC and Cactus Construction be required to appear and answer to this Intervention;
- C. Upon hearing, this Court issue a temporary injunction prohibiting Defendants Rogers Draw Energy Storage, LLC and Cactus Construction from commencing or continuing any construction or development activities related to the Rogers Draw BESS;
- D. Upon final hearing, this Court issue a permanent injunction prohibiting Defendants Rogers Draw Energy Storage, LLC and Cactus Construction from constructing, operating, or maintaining a proposed BESS facility at the Harper location or at any location within Gillespie County;
- E. Alternatively, if this Court determines some form of the project may proceed, that it issue an injunction requiring Defendants Rogers Draw Energy Storage, LLC and Cactus Construction to comply with specific conditions necessary to protect public safety, including but not limited to:
  - (1) Relocating the facility at least 2,500 feet from any school, whether private or public, or residential structure;
  - (2) Providing and funding dedicated emergency response equipment and ongoing training for local first responders;
  - (3) Posting bond sufficient to cover all potential evacuation, response, and remediation costs;
  - (4) Installing state-of-the-art fire suppression and containment systems exceeding NFPA standards;
  - (5) Maintaining 24/7 on-site, fully trained and equipped HAZMAT response capability; and
  - (6) Providing alternative water supplies for affected areas; and
  - (7) Providing other such infrastructure improvements as are deemed necessary to protect life, health, and public property for the surrounding community.
- F. This Court award the County its reasonable and necessary attorney's fees and costs pursuant to Texas Civil Practice & Remedies Code § 37.009, Texas Local Government Code Chapter 240, and all other applicable law,

including any equitable grounds for fee-shifting where the County has acted to protect public health, safety, and welfare; and

G. This Court grant all other relief, whether at law or in equity, to which the County may show itself justly entitled.

Respectfully submitted,

*/s/ William M. McKamie*

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Telephone: (830) 990-0675  
Facsimile: (830) 992-2615  
[sneel@gillespiecounty.gov](mailto:sneel@gillespiecounty.gov)

**ATTORNEYS FOR INTERVENOR  
GILLESPIE COUNTY, TEXAS**

## 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 26th day of November, 2025.

### Plaintiffs' Attorneys:

Ross Sutherland  
[rsutherland@scottdoug.com](mailto:rsutherland@scottdoug.com)  
Anthony Arguijo  
[aarguijo@scottdoug.com](mailto:aarguijo@scottdoug.com)  
Shelby Hart-Armstrong  
[sharmstrong@scottdoug.com](mailto:sharmstrong@scottdoug.com)  
**SCOTT DOUGLASS & MCCONNICO LLP**  
303 Colorado Street, Suite 2400  
Austin, Texas 78701

C. Dixon Mosty  
Email: [cdmosty@mostylaw.com](mailto:cdmosty@mostylaw.com)  
Richard C. Mosty  
Email: [rmosty@mostylaw.com](mailto:rmosty@mostylaw.com)  
**MOSTY LAW FIRM**  
222 Sidney Baker St., Ste. 400  
Kerrville, Texas 78028

### Defendant Rogers Draw Energy Storage LLC Attorneys:

Jeremiah Anderson  
[jjanderson@mcguirewoods.com](mailto:jjanderson@mcguirewoods.com)  
Jason Huebinger  
[jhuebinger@mcguirewoods.com](mailto:jhuebinger@mcguirewoods.com)  
**McGuire Woods LLP**  
845 Texas Ave, 24<sup>th</sup> Floor  
Houston, TX 77002

### Defendant B&CWR, Inc., d/b/a Cactus Construction Attorneys:

William H. Ford  
Email: [bill.ford@fordmurray.com](mailto:bill.ford@fordmurray.com)  
Gregory A. Scrivener  
Email: [greg.scrivener@fordmurray.com](mailto:greg.scrivener@fordmurray.com)

Kennedy Hatfield Asel  
Email: [hatfieldasel@fordmurray.com](mailto:hatfieldasel@fordmurray.com)  
**FORD MURRAY, PLLC**  
10001 Reunion Place, Suite 640  
San Antonio, Texas 78216

*/s/ William M. McKamie*

---

William M. McKamie

## Exhibit A

### CAUSE NO. 25-18363

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

---

### AFFIDAVIT OF DANIEL JONES

---

STATE OF TEXAS §  
§  
COUNTY OF GILLESPIE §

BEFORE ME, the undersigned authority, on this day personally appeared Daniel Jones, who, after being by me duly sworn, on his oath stated as follows:

1. "My name is Daniel Jones. I am over eighteen (18) years of age, have never been convicted of a felony and am of sound mind and competent to make this affidavit. The facts stated within this affidavit are true and correct and are within my personal knowledge.
2. I am the County Judge for Gillespie County, Texas, (the "County"). I have served in this role for approximately three years. This affidavit concerns my personal knowledge related to the County's intervention in the lawsuit *Hollender et al. v. Rogers Draw Energy Storage, LLC*.
3. In late 2023, County staff began coordinating with representatives of Peregrine Energy Solutions ("Peregrine"), the company behind Defendant Rogers Draw Energy Storage, LLC. Exhibit A-1. While initial exchanges reflected the County's relatively limited permitting authority for developments within its jurisdiction, once County staff determined that a battery energy storage system ("BESS") site presented unique regulatory concerns accompanied by significant threats to the public health, safety, and welfare, staff began

seeking additional documentation regarding these threats from Peregrine. Exhibit A-1. In particular, County staff noted their concerns related to the risks posed to the Harper ISD campus and the contamination of the area's groundwater resources. Exhibit A-1.

4. On February 24, 2025, the Commissioners Court of Gillespie County adopted a resolution finding that BESS projects, under current design and construction standards, were "contrary to the fundamental economic development and health and safety goals of the County." Exhibit A-2. This resolution was adopted after extensive public input, including testimony from fire safety experts, concerned parents, and emergency management officials who documented the impossibility of protecting the community from BESS hazards.
5. On October 24, 2025, the County Attorney, Sara Neel, contacted Peregrine to express concerns and seek documentation related to the proposed BESS facility's compliance with applicable Fire Code regulations and County flood ordinances. Exhibit A-3. In particular, the County Attorney sought information related to the installation and commissioning of the facility, explosion control measures, a hazard mitigation analysis, anticipated construction milestones, and emergency response plans. Exhibit A-3. Additionally, the County Attorney requested that Peregrine provide a hydrologic and hydraulic study, or a site plan proving that such a study was not necessary, in order to satisfy the County's floodplain ordinance. Exhibit A-3. Satisfactory documentation of these items, or even progress towards providing such documentation, has not been received, despite the County's request for a response within fifteen business days.
6. The County's Fire Marshal, who has consulted with the Fire Marshal for the State of Texas and other experts in matters related to fire suppression following incidents at BESS facilities, has expressed concerns with the County's ability to respond in the event of a fire at the proposed BESS facility, particularly in light of the site's proximity to the Harper ISD campus and the limited ability to evacuate children in the event of an emergency.
7. The County is responsible for preserving the public health, safety, and welfare of the communities within its unincorporated areas. This duty includes protecting its citizens, particularly vulnerable populations like children, from unreasonable risks; serving as the custodian of natural resources; taking all necessary steps to ensure that first responders are prepared to respond to crisis events; and ensuring, to the extent possible, that development proceeds within the County in a manner that minimizes risks to the surrounding community and avoids the creation of a public nuisance.
8. The proposed BESS facility presents a significant risk to the public that, if allowed to proceed under current circumstances, would pose an unmistakable threat to the public health, safety, and welfare. Remedies at law cannot compensate for the potential damage of this threat. Without the injunctive relief sought in the County's petition in intervention,

the County will be powerless to mitigate these risks.

9. I have read the County's Petition in Intervention and Application for Injunctive Relief. Every factual statement contained in Section IV of the Petition is within my personal knowledge and is true and correct. I am the authorized representative for Gillespie County, and I have executed this Affidavit and Verification for the purposes, and in the capacity, therein expressed.
10. The following listed records attached as exhibits to this affidavit are true and correct copies of records kept by the County in the regular course of business; it was the regular course of business for an employee or representative with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or transmit information thereof to be included in such record; and the record was made at or near the time reasonably soon thereafter. I hereby certify that the records attached hereto as exhibits are the originals or exact duplicates of the originals:

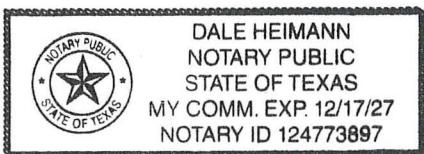
Exhibit A-1	Correspondence between County Staff and Peregrine regarding Preliminary Project Development
Exhibit A-2	February 24, 2025, Resolution of the Commissioners Court of Gillespie County
Exhibit A-3	Request for Information sent to Peregrine by County Attorney Sara Neel

FURTHER AFFIANT SAYETH NOT.”



Daniel Jones  
County Judge, Gillespie County, Texas

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 25<sup>th</sup> day of November, 2025.



Notary Public in and for the State of Texas

## FW: Rogers Draw Follow Up

Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

Thu 12/7/2023 9:37 AM

To:Katy Reagan <[kreagan@peregrineenergysolutions.com](mailto:kreagan@peregrineenergysolutions.com)>;David Rasky <[drasky@peregrineenergysolutions.com](mailto:drasky@peregrineenergysolutions.com)>

FYI

---

**From:** Dustin Ingram

**Sent:** Wednesday, December 6, 2023 1:52 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>; Cameron Hufford <[chufford@peregrineenergysolutions.com](mailto:chufford@peregrineenergysolutions.com)>; Anthony Mansoor <[amansoor@peregrineenergysolutions.com](mailto:amansoor@peregrineenergysolutions.com)>

**Subject:** RE: Rogers Draw Follow Up

Melissa,

Thank you for the conversation and informative follow-up email.

I greatly appreciate the list of resources and POC's, we will be following up with each office in short order.

Our team will plan a site visit in early 2024 and visit Gillespie County at a regular cadence until we begin construction.

I wanted to restate our commitment to being "good neighbors" in the communities in which we work; if there are community organizations, interest groups, or county initiatives to provide education services or support to disproportionately affected communities – please let me know, Peregrine wants to be involved.

Could you please confirm via email that there are no permitting or zoning requirements for this project to the County?

Looking forward to meeting Commissioner Kramer via Teams or in person during one of our visits. Happy to invite your team or representatives to walk the site in the near future.

Utility-scale battery energy storage systems (BESS) are relatively new to the US but will play a large role in our nations energy infrastructure in the coming decades. Please feel free to reach out for general information, NFPA safety standards, and whatever else you may need.

Regards,

**Dustin Ingram | Developer**

**P:** 785.375.4609

**E:** [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)



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---

**From:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>  
**Sent:** Wednesday, December 6, 2023 11:55 AM  
**To:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>  
**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>  
**Subject:** Rogers Draw Follow Up

Hi Dustin,

Thanks again for the meeting, here's a quick summary of items we talked about:

- Here is the contact information for Paul at the Hill Country Underground Water Conservation District, you'll need to contact them regarding permitting the existing well. Office Number: 830.997.4472 / Paul Tybor: cell phone #830.992.9314 / email address: [ptybor@gmail.com](mailto:ptybor@gmail.com)
- Ranch Road 2093 is a TxDOT road so you will need to coordinate with them on the ROW permits for the driveways. We suggest to layout the driveways so they are aligned directly across from driveways on the opposite side of the road. [Brad.Phipps@txdot.gov](mailto:Brad.Phipps@txdot.gov)
- You indicated that there would be no plumbing/bathrooms/wastewater generation, so a County OSSF permit is not needed. I suggest verifying with the County Sanitation Department if documentation is needed for abandoning the existing OSSF system. [OSSF@gillespiecounty.org](mailto:OSSF@gillespiecounty.org)
- The FEMA FIRM maps are outdated for most of Gillespie County, we advise using the FEMA BLE Maps. There is floodplain on the site according to the FEMA BLE Viewer starting at the tree line, but most of the site is outside of the floodplain. If there are any improvements within the floodplain you would need to submit a floodplain development permit application with the floodplain administrator. [floodplain@gillespiecounty.org](mailto:floodplain@gillespiecounty.org)

We also spoke about receiving the 50%, 90%, and 100% construction plans for informational purposes only. And if you could copy the Precinct Commissioner, Keith Kramer, on future emails that would be appreciated.

I can send an email to you stating that there are not any County permits once we receive the final construction plans and can verify that there would be no permits required.

Thanks again and have a good holiday season!

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)



## FW: Rogers Draw Follow Up

**From** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Date** Thu 3/27/2025 9:55 AM

**To** Richard Levin <[rlevin@peregrineenergysolutions.com](mailto:rlevin@peregrineenergysolutions.com)>

---

**From:** Melissa Eckert

**Sent:** Friday, December 8, 2023 1:49 PM

**To:** Dustin Ingram

**Cc:** Keith Kramer ; Cameron Hufford ; Anthony Mansoor

**Subject:** RE: Rogers Draw Follow Up

Hi Dustin,

Based on the preliminary site plan it appears that there would not be any permits required by the County. I would like to see the final construction plans to ensure that remains the case. The addition of any facilities that generate wastewater (bathrooms, sinks, etc.) or the expansion of the site into the floodplain could potentially generate the need for a County OSSF or Floodplain permit.

I will pass your offer on to Tim Lehmberg, the Executive Director of the Gillespie County Economic Development Commission, and he will likely know what local organizations you could plug into.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)

---

**From:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Sent:** Wednesday, December 6, 2023 2:52 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>; Cameron Hufford <[chufford@peregrineenergysolutions.com](mailto:chufford@peregrineenergysolutions.com)>; Anthony Mansoor <[amansoor@peregrineenergysolutions.com](mailto:amansoor@peregrineenergysolutions.com)>

**Subject:** RE: Rogers Draw Follow Up

Melissa,

Thank you for the conversation and informative follow-up email.

I greatly appreciate the list of resources and POC's, we will be following up with each office in short order. Our team will plan a site visit in early 2024 and visit Gillespie County at a regular cadence until we begin construction.

I wanted to restate our commitment to being "good neighbors" in the communities in which we work; if there are community organizations, interest groups, or county initiatives to provide education services or support to disproportionately affected communities – please let me know, Peregrine wants to be involved.

Could you please confirm via email that there are no permitting or zoning requirements for this project to the County?

Looking forward to meeting Commissioner Kramer via Teams or in person during one of our visits. Happy to invite your team or representatives to walk the site in the near future.

Utility-scale battery energy storage systems (BESS) are relatively new to the US but will play a large role in our nations energy infrastructure in the coming decades. Please feel free to reach out for general information, NFPA safety standards, and whatever else you may need.

Regards,

Dustin Ingram | Developer

**P:** 785.375.4609**E:** [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)

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**From:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Sent:** Wednesday, December 6, 2023 11:55 AM

**To:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>

**Subject:** Rogers Draw Follow Up

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- Ranch Road 2093 is a TxDOT road so you will need to coordinate with them on the ROW permits for the driveways. We suggest to layout the driveways so they are aligned directly across from driveways on the opposite side of the road. [Brad.Phipps@txdot.gov](mailto:Brad.Phipps@txdot.gov)
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I can send an email to you stating that there are not any County permits once we receive the final construction plans and can verify that there would be no permits required.

Thanks again and have a good holiday season!

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)



## FW: Touching Base - Dustin with Peregrine Energy Solutions

**From** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Date** Thu 3/27/2025 10:09 AM

**To** Richard Levin <[rlevin@peregrineenergysolutions.com](mailto:rlevin@peregrineenergysolutions.com)>

---

**From:** Melissa Eckert

**Sent:** Tuesday, December 17, 2024 8:05 AM

**To:** Dustin Ingram

**Subject:** RE: Touching Base - Dustin with Peregrine Energy Solutions

Hi Dustin, sorry I missed your call. We do not have grading or building permits if the areas of development are outside of the floodplain. If any improvements are within the floodplain, you would need a floodplain development permit.

Please continue to keep the Precinct Commissioner in the loop.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)

---

**From:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Sent:** Monday, December 16, 2024 1:15 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Subject:** Touching Base - Dustin with Peregrine Energy Solutions

Melissa,

I called your office today to touch base and provide an update about the Rogers Draw Energy Storage Project. Previously have spoken with the FD and Commissioner Kramer a few times, while I understand that there is no permitting or zoning in unincorporated Gillespie County.

I did want to certify again via email that there are no grading or building permits, as we discussed I would do last year.

I understand that there are TCEQ and TXDOT requirements for environmental, and driveway permits that we have previously discussed.

We're wrapping up 30% design, happy to provide you an overview at your convenience.

Regards,

Dustin Ingram | Developer

P: 785.375.4609

E: [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)



PEREGRINE ENERGY

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## Re: BESS Submission Requirements

From Garrett Sabino <gsabino@peregrineenergysolutions.com>

Date Mon 7/14/2025 7:42 PM

To Melissa Eckert <meckert@gillespiecounty.org>; Keith Kramer <kkramer@gillespiecounty.org>

Cc Chris Noonan <cnoonan@peregrineenergysolutions.com>; Doug Hardman <dhardman@peregrineenergysolutions.com>; Phillip Hernandez <phernandez@peregrineenergysolutions.com>; Zack Rollis <zrollis@peregrineenergysolutions.com>; Jordan Gruber <jgruber@peregrineenergysolutions.com>; Brandon Harrison <bharrison@peregrineenergysolutions.com>

Good Evening Melissa,

Following up on our previous email, we want to reemphasize our desire to work cooperatively with the County on the development of the Rogers Draw project. As such, based on discussions with our advisors, please see below our responses to the requested documentation related to the development of the Rogers Draw project:

### 1. Hazard Mitigation Analysis

1. A site-specific Hazard Mitigation Analysis (HMA) is currently under development using the template previously reviewed and approved by multiple Authorities Having Jurisdiction (AHJs) for similar BESS projects. We will submit the completed analysis along with the final site design package upon availability. The HMA will specifically include a comprehensive risk assessment addressing the concerns you have identified, including the impact on nearby schools and groundwater protection procedures, consistent with industry best practices for BESS projects.

### 2. Confirmation of Permits and Regulatory Approvals

1. Based on our review of applicable local, state and federal permitting and/or regulatory requirements, we are currently in compliance / in the process of complying with all such requirements. That being said, please provide the specific permitting / regulatory requirements that the County wants Peregrine to certify compliance under. Additionally, please provide the specific County ordinance or regulation that requires this general compliance certification. This was not included in prior correspondence or in the guidance provided during the County's initial review of the site plan we submitted to the County in 2023. Once the pathway is clearly defined by the County with reference to ordinances, we will readily respond.

### 3. FEMA Floodplain Requirements - 44 CFR 60.3(b)(3) / Flood Damage Prevention Ordinance – Development Permit

1. Pursuant to 44 CFR 60.3(b)(3), where FEMA (1) has established a Zone A and (2) has not produced water surface elevation data or identified a floodway, then the community (i.e., County) must "require that all new subdivision proposals and other proposed developments . . . greater than 50 lots or 5 acres . . . include within such proposals *base flood elevation data*." We have evaluated the floodplain boundaries and base flood elevation (BFE) data as part of our planning and civil engineering review. Preliminary analysis indicates that FEMA has already established BFEs for this area (see [FEMA ESTBFE Tool](#)). As such, under 44

CFR § 60.3(b), no flood study is required. Furthermore, all Rogers Draw project improvements are located entirely outside of the mapped floodplain.

2. The Gillespie County's Flood Damage Prevention Ordinance states that it applies to "all areas of special flood hazard" – which are the Zone A areas (or as those areas may be refined to be A, AE, etc.) (see [Ordinance, Art. III, § A](#)). Nowhere in the Ordinance does it state that *any* development on property that includes a Zone A requires a permit, even *if* no development work is in the Zone A. No development or improvement of the Rogers Draw project will take place in the "area of special flood hazard." As such, under the Flood Damage Prevention Ordinance, no development permit is required.
3. Please note our previous discussions regarding the development plans for the Rogers Draw project and the stated lack of permitting required as a result of all such development taking place entirely outside of the floodplain (see email exchanges on following dates: December 6, 2023, December 8, 2023, July 1, 2024 and December 17, 2024). Additionally, we have previously provided supporting exhibits regarding the planned development for the project with respect to the floodplain as part of our site plan submission to the Engineers Office. Let us know if you would like for us to reshare the same.

#### 4. HCUWCD Water Use Confirmation

1. The Rogers Draw project will not utilize groundwater or any private wells. The private wells located on the project property have been abandoned and plugged with paperwork filed with HCUWCD and TDLR. All fire suppression water will be provided by two 30,000-gallon cisterns, which will be filled and maintained via contracted water delivery. Accordingly, there is no anticipated impact to surrounding wells, and no HCUWCD review or approval is applicable.

#### 5. TxDOT ROW Access Permit

1. We have been in communication with TxDOT's Burnet Area Office and coordination is ongoing with the appropriate contacts at TxDOT. The ROW permit will be obtained and submitted in accordance with their process at the appropriate juncture in time pursuant to construction contracting and planning, and we will promptly provide a copy of the same to the County once it is issued.

Again, we hope to continue to work cooperatively with the County on the Rogers Draw project. If you have any questions about our responses or would otherwise like to meet to discuss the project, please let us know.

Please note that by providing the information above or any of the documents referenced above, Peregrine is not agreeing that it has a legal obligation to do so. Nor is Peregrine waiving any rights, claims or defenses, including the right to assert alternative responses or positions in the future. Nothing in this email shall be deemed an acceptance by Peregrine of any point or position set forth in any correspondence originating from the Commissioners Court of Gillespie County, the County Commissioners or any other County officials.

- Garrett

#### Garrett Sabino | Developer

P: 719.822.5582

E: [gsabino@peregrineenergysolutions.com](mailto:gsabino@peregrineenergysolutions.com)



P E R E G R I N E E N E R G Y

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---

**From:** Melissa Eckert <meckert@gillespiecounty.org>  
**Sent:** Monday, June 23, 2025 11:21 AM  
**To:** Garrett Sabino <gsabino@peregrineenergysolutions.com>  
**Cc:** Keith Kramer <kkramer@gillespiecounty.org>; Daniel Jones <djones@gillespiecounty.org>  
**Subject:** BESS Submission Requirements

Garrett,

As mentioned last Thursday, please submit the construction plans and development permit application for the ongoing development of the BESS site. In addition, the documentation below must be submitted for the BESS development:

This is the first BESS facility proposed in Gillespie County so we are actively looking through the relevant local, state, and federal regulations regarding these developments to do our due diligence in upholding public health, safety, and welfare. The County may require additional documents, plans, or specifications than what is listed below as more information becomes available to the County.

1. The developer must provide all the documentation listed in the Resolution passed by the Commissioners Court which is linked below. The Hazard Mitigation Analysis should include a Risk Assessment to identify the Hazards to be mitigated. This must include, but is not limited to, risk to the Elementary School and the Preschool, and contamination of groundwater.  
<https://www.gillespiecounty.org/upload/page/0034/docs/EXECUTED%20Harper%20BESS%20Resolution%202.24.2025.pdf>
2. The developer must submit a letter stating that all local, state, and federal permits and/or requirements related to BESS and ESS facilities have been met and approved, submit copies of all documentation, plans, reports and specifications used to satisfy the local, state, and federal permits and/or requirements, and submit copies of any approved permits or letters from the local, state, and federal agencies that all the agencies requirements have been met.
3. Per 44 CFR 60.3(b)(3), since the development is over 5 acres and partially within Zone A of the FEMA Floodplain, the developer either needs to provide a detailed flood study to establish the BFEs, or provide a recorded drainage easement across the entirety of the floodplain on the property. Future development of the tract is subject to the Flood Damage Prevention Ordinance in effect at the time the developer submits a complete floodplain development permit for the work and may be subject to additional permitting and requirements. Development is as defined as any man-made change to the land, see the Subdivision Ordinance for the full definition.
4. Provide a letter from the HCUWCD that the developer has provided credible evidence that the private well can provide the required flow needed for fire suppression without adversely affecting existing wells in the surrounding area. Adequate fire flow should be determined by the developer as a part of item 7 in the BESS Resolution linked in #1.

## 5. Provide an approved TxDOT ROW permit for the proposed access.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)



## Exhibit A-2

### **RESOLUTION OPPOSING BATTERY ENERGY STORAGE SYSTEMS (BESS) IN GILLESPIE COUNTY**

WHEREAS, the Commissioners Court of Gillespie County ("Commissioners Court") is responsible for ensuring the health, safety and welfare of the citizens and visitors of Gillespie County; and

WHEREAS, the Commissioners Court is mindful of the need for dependable and sustainable energy at reasonable cost to all residents and businesses, particularly at times of high demand; and

WHEREAS, there has been an increasing number of proposed Battery Energy Storage System ("BESS") projects in Gillespie County, utilizing technology that is new, rapidly evolving and for which there is not a well-documented history of impacts of these projects on local communities; and

WHEREAS, the operational model for BESS projects is remote management and low onsite staffing, and therefore placement of these projects in and around the County's jurisdiction fails to achieve the critical long-range goals of increasing economic and employment opportunities for County residents; optimizing available properties to their highest and best land use; increasing land values; and developing land uses that attract families and business investment; and

WHEREAS, the BESS projects do not bring genuine long-term economic benefits to the County, including jobs and property development to its highest and best use; and instead may burden the County with health and safety risks and costs; long-term static land use; negative impact on existing land values; disincentivizing employers and businesses from locating into the area; and creating lower-than-optimum local sales and ad valorem tax opportunities; and

WHEREAS, the County is located in a geographic area that is subject to drought and severe and destructive wildfires and as such, County residents have been required to undertake extensive fire safety efforts at their homes and businesses and have experienced issues such as ever-increasing home insurance premiums or non-renewals of existing policies due to the potential of fires; and

WHEREAS, one significant health and safety concern reasonably related to BESS projects is the potential for the ignition of fires, explosions and “thermal runaway” events which, once initiated, are extremely difficult to extinguish and can cause explosions, toxic gas release, physical damage, and loss of life, posing significant risks to property, the environment, and human safety; and

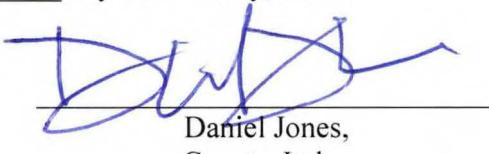
WHEREAS, the construction and operation of BESS projects in close proximity to businesses, schools, childcare centers, medical facilities, residences, other structures, major thoroughfares, and waterways poses significant risks to property, the environment, and human safety; and

WHEREAS, the Commissioners Court concurs in the need for the development of region-wide and/or state-wide BESS legislation, design guidelines, development regulations, and location placement restrictions.

NOW, THEREFORE, BE IT RESOLVED, by the COMMISSIONERS COURT OF GILLESPIE COUNTY, as follows:

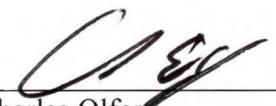
1. The above recitations are true and are incorporated herein as though fully set forth.
2. That the Commissioners Court of Gillespie County finds that Battery Energy Storage System ("BESS") projects, as currently designed and constructed, are contrary to the fundamental economic development and health and safety goals of the County.
3. That the Commissioners Court of Gillespie County hereby opposes the development and operation of all Battery Energy Storage System ("BESS") projects in Gillespie County.
4. That the Commissioners Court of Gillespie County supports the efforts of State Representative Ellen Troxclair in proposing legislation that would reasonably mitigate the risks presented by the operation of BESS projects.

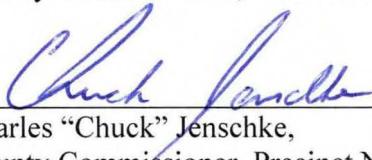
Passed and approved this 24<sup>th</sup> day of February, 2025.

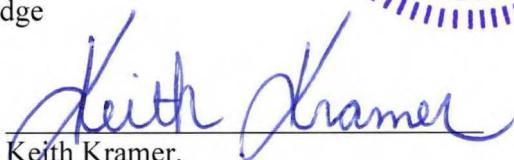


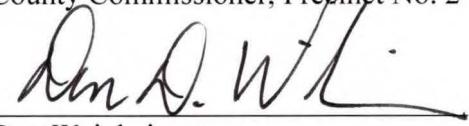
Daniel Jones,  
County Judge



  
Charles Olfers,  
County Commissioner, Precinct No. 1

  
Charles "Chuck" Jenschke,  
County Commissioner, Precinct No. 3

  
Keith Kramer,  
County Commissioner, Precinct No. 2

  
Don Weinheimer,  
County Commissioner, Precinct No. 4

Attest:

Lindsey Brown  
Lindsey Brown  
County Clerk

## Exhibit A-3

Sara Neel  
Gillespie County Attorney



125 W. Main St., Suite L41  
Fredericksburg, Texas 78624  
Phone: 830.990.0675  
Fax: 830.992.2615

---

October 24, 2025

To: Garrett Sabinio, Peregrine Energy Solutions

Re: Request for information –

It is believed your company is or will be initiating construction on the above-mentioned BESS located in Harper, Gillespie County, Texas, not less than approximately 550 yards from the Harper Independent School District. As legal counsel for Gillespie County, as it pertains to this matter, I am sending this letter to obtain information for the protection of the public health, safety, and welfare of Gillespie County residents. This request is in two parts, the first part relating to fire code and the second part relating to the County flood ordinances.

### I. Fire Code

This request is in accord with the National Fire Protection Association (hereinafter "NFPA") 855 Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition. The request is from the Authority Having Jurisdiction (hereinafter "AHJ") and that authority shall be defined as the Gillespie County Commissioner's Court exercising its authority by and through the Gillespie County Fire Marshal. The section numbers below are references to the NFPA 855 Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition.

Pursuant to 4.1.2.1.1. please provide the plans and specifications associated with the ESS and its intended installation, commissioning, and use for approval by the AHJ including the following:

1. Location and layout diagram of the room or area in which the ESS is to be installed
2. Details on hourly fire-resistant-rated assemblies provided or relied upon in relation to the ESS
3. The quantities and types of ESS units
4. Manufacturer's specifications, ratings, and listings of ESS
5. Description of energy storage management systems and their operation
6. Location and content of required signage
7. Details on fire suppression, smoke or fire detection, gas detection, thermal management, ventilation, exhaust, and deflagration venting systems, if provided

8. Support arrangement associated with installation including any required seismic support

The required test data, in compliance with 4.1.2.1.3. including:

1. Large-scale fire test data in accordance with 4.1.5.
2. Hazard mitigation analysis in accordance with 4.1.4.
3. Calculations or modeling data to determine compliance with NFPA 68 and NFPA 69 in accordance with section 4.12
4. Other test data, evaluation information, or calculations as required elsewhere in this standard

If NFPA 69 is being used for explosion control, please provide documentation of NFPA 69 compliance from a licensed professional engineer. Please include supporting documentation, including all items in NFPA 69 2019 15.2.1.1.

Please provide your complete commissioning plan as required by 4.1.2.4. in accord with 6.1.5 which describes the means and methods necessary to document and verify that the system and its associated controls and safety systems, as required by this standard, are in proper working condition. The minimum information required for this request is:

- 1) An overview of the commissioning process developed specifically for the ESS to be installed and narrative description of the activities to be conducted.
- 2) Roles and responsibilities for all those involved in the design, commissioning, construction, installation, or operation of the system(s).
- 3) Means and methods whereby the commissioning plan will be made available during the implementation of the ESS project(s).
- 4) Plans and specifications necessary to understand the operation of the ESS and all associated operational controls and safety systems.
- 5) A detailed description of each activity to be conducted during the commissioning process, who will perform each activity, and at what point in time the activity is to be conducted.
- 6) Procedures to be used in documenting the proper operation of the ESS and all associated operational controls and safety systems
- 7) Testing for any required fire detection or suppression and thermal management, ventilation, or exhaust systems associated with the installation and verification of proper operation of the safety controls
- 8) The following documentation:
  - a) Commissioning checklist
  - b) Relevant operational testing forms
  - c) Necessary commissioning logs
  - d) Means and methods whereby facility operation and maintenance staff will be trained on the system
  - e) Identification of personnel who are qualified to service and maintain the system and respond to incidents involving each system

- f) A decommissioning plan meeting the provisions of Section 8.1 that covers the removal of the system from service and from the facility in which it is located and information on disposal of materials associated with each ESS

As per 6.1.3. the commissioning report shall document the commissioning process and the results in accordance with 6.1.3.1, 6.1.3.2, 6.1.3.3. For your reference, these have been outlined as follows:

#### 6.1.3.1

A commissioning report shall summarize the commissioning process and verify the proper operation of the system and associated operational controls and safety systems.

#### 6.1.3.2

The report shall include the final commissioning plan, the results of the commissioning process, and a copy of the plans and specifications associated with the as-built system design and installation.

#### 6.1.3.3

The report shall include any issues identified during commissioning and the measures taken to resolve them.

Please provide the hazard mitigation analysis required by section 4.1.4 Hazard Mitigation Analysis. Also please provide all supporting documentation used to develop the Hazard Mitigation Analysis.

Please provide a schedule of your expected construction milestones for this project.

Please provide a copy of the approved emergency operations plan for AHJ that covers emergencies both during construction and operation. Along with the emergency operations plan, please provide details on how Peregrine intends to provide trained personnel to respond to emergencies to comply with 4.16.2. Gillespie County requires the items outlined in this letter to be provided and the AHJ must complete the review and approval prior to the ESS becoming operational.

## II. Floodplain Ordinance

Additionally, pursuant to the Gillespie County Floodplain Ordinance 3.1.1. (B) and (C) a development over 5 acres on a tract wholly or partially within Zone A must establish Base Flood Elevation (BFEs) by a detailed Hydrologic and Hydraulic Study, or if all development is outside of the floodplain, the study may be waived if a drainage easement is established over the entirety of the Special Flood Hazard Area (SFHA) prohibiting all encroachments. Please provide the required Hydrologic and Hydraulic Study, or a site

plan demonstrating that all proposed development is outside of the floodplain along with proof of recordation of a drainage easement meeting the criteria of 13.1.1(C).

Please respond to this inquiry within 15 business days. Your response should be directed to my office and attention.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*S.Neel*

**Sara Neel**

Gillespie County Attorney  
Gillespie County  
(830) 990-0675  
[countyattorney@gillespiecounty.org](mailto:countyattorney@gillespiecounty.org)  
[www.gillespiecounty.org](http://www.gillespiecounty.org)

Copies to:

Gillespie County Judge, Daniel Jones  
Gillespie County Commissioner Precinct 2, Keith Kramer  
Gillespie County Engineer, Melissa Eckert, PE, CFM  
Gillespie County Fire Marshal, Steven Olfers  
Hazard Dynamics, Erik Archibald, PhD, P.E.

## Exhibit B

### CAUSE NO. 25-18363

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

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### AFFIDAVIT OF STEVEN OLTERS

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STATE OF TEXAS §  
§  
COUNTY OF GILLESPIE §

BEFORE ME, the undersigned authority, on this day personally appeared Steven Olfers, who, after being by me duly sworn, on his oath stated as follows:

1. "My name is Steven Olfers. I am over eighteen (18) years of age, have never been convicted of a felony and am of sound mind and competent to make this affidavit. The facts stated within this affidavit are true and correct and are within my personal knowledge.
2. I am the County Fire Marshal of Gillespie County, Texas (the "County"). I have served in this role for approximately 20 years. As the County Fire Marshal, I am tasked with investigating fires and facilitating fire prevention efforts within the County, as well as responding to incidents involving environmental enforcement or hazardous materials. I also provide technical assistance to local fire departments. Gillespie County is primarily served by volunteer fire departments, along with Fredericksburg Fire & EMS, which is a combination department including both paid and volunteer firefighters. This affidavit concerns my personal knowledge as the County Fire Marshal related to the County's intervention in the lawsuit *Hollender et al. v. Rogers Draw Energy Storage, LLC*.
3. In late 2023, County staff began coordinating with representatives of Peregrine Energy Solutions ("Peregrine"), the company behind Defendant Rogers Draw Energy Storage, LLC. Their proposed project involves the development of a battery energy storage system ("BESS") facility that would house battery storage containers filled with lithium ion

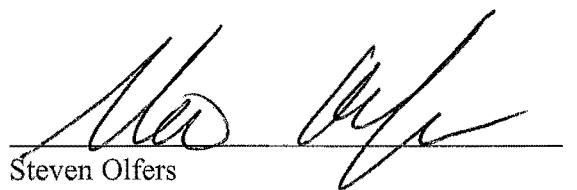
batteries. In reviewing the proposed project, County staff consulted me to evaluate the project's fire safety implications, including the risks associated with lithium battery fires, concerns with hazardous materials, and threats to natural resources like the area's groundwater supply.

4. Based on my knowledge, expertise, and training as the County Fire Marshal, it is my understanding that lithium battery fires present unique challenges for fire suppression efforts that create significant risks to first responders and local communities. Fighting a lithium battery fire is not the same type of activity as suppressing a conventional fire or controlling other hazardous materials incidents.
5. Lithium battery fires are unpredictable and are known to burn extremely hot, often demanding large quantities of water to protect nearby exposures. Additionally, these batteries pose the threat of thermal runaway, which occurs when a battery's internal components rapidly begin to overheat and undergo a thermal cascade that cannot be stopped once it begins. A battery cell in thermal runaway will likely transfer heat to adjacent battery cells, creating a chain reaction of overheating batteries that cause fires or explosions. Once thermal runaway begins, the best practice is to allow the chain reaction to finish while using water to cool adjacent batteries before they enter thermal runaway. Other hazards include the occasionally explosive release of toxic gases, including hydrogen carbon monoxide, and hydrogen fluoride. Additionally, toxic liquids like electrolyte solutions and coolants can be released into the environment following damage to a BESS facility.
6. The toxic materials involved in suppressing a lithium battery fire demand the use of specialized personal protective equipment that fire departments typically do not maintain, as well as specialized equipment decontamination processes for any equipment kept or disposal of equipment that cannot be decontaminated. It is my understanding that none of the fire departments within Gillespie County have the specialized equipment, including personal protective equipment, specialized foam, and other specialized suppression agents, that would be required in order for first responders to safely respond to a fire at the proposed BESS facility. The nearest fire departments that may be equipped to safely respond to a lithium battery fire are located in either Austin or San Antonio. While the County maintains mutual aid agreements for responding to catastrophic fire events, neighboring jurisdictions may not have the specialized capabilities needed to respond to a lithium battery fire, and the County's ability to respond would therefore be dramatically limited.
7. Additionally, the facility would be woefully unprepared for the sheer water demands of a fire suppression or any fire operation activity at the site. The project has proposed to maintain two 30,000-gallon cisterns on site. Exhibit A-1, at 8. This quantity would be entirely inadequate to conduct the cooling techniques recommended as a best practice for

allowing a lithium battery fire to essentially burn itself out while fire response activities focus on preventing the spread of the fire to adjacent battery cells.

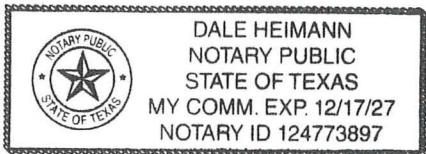
8. The proposed BESS facility is planned for a site located less than half a mile from the Harper ISD campus, which serves schoolchildren from pre-k through high school. As the County Fire Marshal, part of my duties include working with the County's emergency management coordinator to maintain emergency response awareness, such as knowledge of the evacuation needs of facilities like schools within the surrounding community. The avenues available to Harper ISD for ingress and egress from the campus could highly compromise evacuation efforts in the event of a lithium battery fire at the proposed BESS facility. Students and staff would likely be exposed to airborne toxic gas released from a fire at the proposed BESS facility before evacuations could be facilitated, and it is unclear whether the County would have the capacity to contain a catastrophic fire before students could be evacuated. Shelter-in-place at the campus is not an option because the school lacks specialized air filtration systems to address toxic gases released from a lithium battery fire.
9. Historically, Gillespie County has experienced wildfires and flash flooding events. This reality would present a possible threat to the integrity of the BESS facility's battery storage, leading to a higher likelihood of a system failure that could cause catastrophic thermal runaway events. Additionally, for much of the year, prevailing winds in the area would place the Harper ISD campus downwind of the proposed BESS facility, compounding the concern for the spread of both fire and airborne toxic gases.
10. The massive amounts of water needed to respond to a lithium battery fire would potentially create runoff containing toxic waste that would flow into the groundwater and surface water resources. The County would be challenged to contain those toxic contaminants.
11. I have read the County's Petition in Intervention and Application for Injunctive Relief. Every factual statement contained in Section IV of the Petition is within my personal knowledge and is true and correct. I am the authorized representative for Gillespie County, and I have executed this Affidavit and Verification for the purposes, and in the capacity, therein expressed.

FURTHER AFFIANT SAYETH NOT."



\_\_\_\_\_  
Steven Olfers  
County Fire Marshal, Gillespie County, Texas

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 26<sup>th</sup>  
day of November, 2025.



A handwritten signature in blue ink, appearing to read "Dale Heimann".

Notary Public in and for the State of Texas

## FW: Rogers Draw Follow Up

Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

Thu 12/7/2023 9:37 AM

To:Katy Reagan <[kreagan@peregrineenergysolutions.com](mailto:kreagan@peregrineenergysolutions.com)>;David Rasky <[drasky@peregrineenergysolutions.com](mailto:drasky@peregrineenergysolutions.com)>

FYI

---

**From:** Dustin Ingram

**Sent:** Wednesday, December 6, 2023 1:52 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>; Cameron Hufford <[chufford@peregrineenergysolutions.com](mailto:chufford@peregrineenergysolutions.com)>; Anthony Mansoor <[amansoor@peregrineenergysolutions.com](mailto:amansoor@peregrineenergysolutions.com)>

**Subject:** RE: Rogers Draw Follow Up

Melissa,

Thank you for the conversation and informative follow-up email.

I greatly appreciate the list of resources and POC's, we will be following up with each office in short order.

Our team will plan a site visit in early 2024 and visit Gillespie County at a regular cadence until we begin construction.

I wanted to restate our commitment to being "good neighbors" in the communities in which we work; if there are community organizations, interest groups, or county initiatives to provide education services or support to disproportionately affected communities – please let me know, Peregrine wants to be involved.

Could you please confirm via email that there are no permitting or zoning requirements for this project to the County?

Looking forward to meeting Commissioner Kramer via Teams or in person during one of our visits. Happy to invite your team or representatives to walk the site in the near future.

Utility-scale battery energy storage systems (BESS) are relatively new to the US but will play a large role in our nations energy infrastructure in the coming decades. Please feel free to reach out for general information, NFPA safety standards, and whatever else you may need.

Regards,

**Dustin Ingram | Developer**

**P:** 785.375.4609

**E:** [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)



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---

**From:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>  
**Sent:** Wednesday, December 6, 2023 11:55 AM  
**To:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>  
**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>  
**Subject:** Rogers Draw Follow Up

Hi Dustin,

Thanks again for the meeting, here's a quick summary of items we talked about:

- Here is the contact information for Paul at the Hill Country Underground Water Conservation District, you'll need to contact them regarding permitting the existing well. Office Number: 830.997.4472 / Paul Tybor: cell phone #830.992.9314 / email address: [ptybor@gmail.com](mailto:ptybor@gmail.com)
- Ranch Road 2093 is a TxDOT road so you will need to coordinate with them on the ROW permits for the driveways. We suggest to layout the driveways so they are aligned directly across from driveways on the opposite side of the road. [Brad.Phipps@txdot.gov](mailto:Brad.Phipps@txdot.gov)
- You indicated that there would be no plumbing/bathrooms/wastewater generation, so a County OSSF permit is not needed. I suggest verifying with the County Sanitation Department if documentation is needed for abandoning the existing OSSF system. [OSSF@gillespiecounty.org](mailto:OSSF@gillespiecounty.org)
- The FEMA FIRM maps are outdated for most of Gillespie County, we advise using the FEMA BLE Maps. There is floodplain on the site according to the FEMA BLE Viewer starting at the tree line, but most of the site is outside of the floodplain. If there are any improvements within the floodplain you would need to submit a floodplain development permit application with the floodplain administrator. [floodplain@gillespiecounty.org](mailto:floodplain@gillespiecounty.org)

We also spoke about receiving the 50%, 90%, and 100% construction plans for informational purposes only. And if you could copy the Precinct Commissioner, Keith Kramer, on future emails that would be appreciated.

I can send an email to you stating that there are not any County permits once we receive the final construction plans and can verify that there would be no permits required.

Thanks again and have a good holiday season!

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)



## FW: Rogers Draw Follow Up

**From** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Date** Thu 3/27/2025 9:55 AM

**To** Richard Levin <[rlevin@peregrineenergysolutions.com](mailto:rlevin@peregrineenergysolutions.com)>

---

**From:** Melissa Eckert

**Sent:** Friday, December 8, 2023 1:49 PM

**To:** Dustin Ingram

**Cc:** Keith Kramer ; Cameron Hufford ; Anthony Mansoor

**Subject:** RE: Rogers Draw Follow Up

Hi Dustin,

Based on the preliminary site plan it appears that there would not be any permits required by the County. I would like to see the final construction plans to ensure that remains the case. The addition of any facilities that generate wastewater (bathrooms, sinks, etc.) or the expansion of the site into the floodplain could potentially generate the need for a County OSSF or Floodplain permit.

I will pass your offer on to Tim Lehmberg, the Executive Director of the Gillespie County Economic Development Commission, and he will likely know what local organizations you could plug into.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)

---

**From:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Sent:** Wednesday, December 6, 2023 2:52 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>; Cameron Hufford <[chufford@peregrineenergysolutions.com](mailto:chufford@peregrineenergysolutions.com)>; Anthony Mansoor <[amansoor@peregrineenergysolutions.com](mailto:amansoor@peregrineenergysolutions.com)>

**Subject:** RE: Rogers Draw Follow Up

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Utility-scale battery energy storage systems (BESS) are relatively new to the US but will play a large role in our nation's energy infrastructure in the coming decades. Please feel free to reach out for general information, NFPA safety standards, and whatever else you may need.

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Dustin Ingram | Developer

**P:** 785.375.4609**E:** [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)

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**From:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Sent:** Wednesday, December 6, 2023 11:55 AM

**To:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Cc:** Keith Kramer <[kkramer@gillespiecounty.org](mailto:kkramer@gillespiecounty.org)>

**Subject:** Rogers Draw Follow Up

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- Here is the contact information for Paul at the Hill Country Underground Water Conservation District, you'll need to contact them regarding permitting the existing well. Office Number: 830.997.4472 / Paul Tybor: cell phone #830.992.9314 / email address: [ptybor@gmail.com](mailto:ptybor@gmail.com)
- Ranch Road 2093 is a TxDOT road so you will need to coordinate with them on the ROW permits for the driveways. We suggest to layout the driveways so they are aligned directly across from driveways on the opposite side of the road. [Brad.Phipps@txdot.gov](mailto:Brad.Phipps@txdot.gov)
- You indicated that there would be no plumbing/bathrooms/wastewater generation, so a County OSSF permit is not needed. I suggest verifying with the County Sanitation Department if documentation is needed for abandoning the existing OSSF system. [OSSF@gillespiecounty.org](mailto:OSSF@gillespiecounty.org)
- The FEMA FIRM maps are outdated for most of Gillespie County, we advise using the FEMA BLE Maps. There is floodplain on the site according to the FEMA BLE Viewer starting at the tree line, but most of the site is outside of the floodplain. If there are any improvements within the floodplain you would need to submit a floodplain development permit application with the floodplain administrator. [floodplain@gillespiecounty.org](mailto:floodplain@gillespiecounty.org)

We also spoke about receiving the 50%, 90%, and 100% construction plans for informational purposes only. And if you could copy the Precinct Commissioner, Keith Kramer, on future emails that would be appreciated.

I can send an email to you stating that there are not any County permits once we receive the final construction plans and can verify that there would be no permits required.

Thanks again and have a good holiday season!

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)



## FW: Touching Base - Dustin with Peregrine Energy Solutions

**From** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Date** Thu 3/27/2025 10:09 AM

**To** Richard Levin <[rlevin@peregrineenergysolutions.com](mailto:rlevin@peregrineenergysolutions.com)>

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**From:** Melissa Eckert

**Sent:** Tuesday, December 17, 2024 8:05 AM

**To:** Dustin Ingram

**Subject:** RE: Touching Base - Dustin with Peregrine Energy Solutions

Hi Dustin, sorry I missed your call. We do not have grading or building permits if the areas of development are outside of the floodplain. If any improvements are within the floodplain, you would need a floodplain development permit.

Please continue to keep the Precinct Commissioner in the loop.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)

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**From:** Dustin Ingram <[dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)>

**Sent:** Monday, December 16, 2024 1:15 PM

**To:** Melissa Eckert <[meckert@gillespiecounty.org](mailto:meckert@gillespiecounty.org)>

**Subject:** Touching Base - Dustin with Peregrine Energy Solutions

Melissa,

I called your office today to touch base and provide an update about the Rogers Draw Energy Storage Project. Previously have spoken with the FD and Commissioner Kramer a few times, while I understand that there is no permitting or zoning in unincorporated Gillespie County.

I did want to certify again via email that there are no grading or building permits, as we discussed I would do last year.

I understand that there are TCEQ and TXDOT requirements for environmental, and driveway permits that we have previously discussed.

We're wrapping up 30% design, happy to provide you an overview at your convenience.

Regards,

Dustin Ingram | Developer

P: 785.375.4609

E: [dingram@peregrineenergysolutions.com](mailto:dingram@peregrineenergysolutions.com)



PEREGRINE ENERGY

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## Re: BESS Submission Requirements

From Garrett Sabino <gsabino@peregrineenergysolutions.com>

Date Mon 7/14/2025 7:42 PM

To Melissa Eckert <meckert@gillespiecounty.org>; Keith Kramer <kkramer@gillespiecounty.org>

Cc Chris Noonan <cnoonan@peregrineenergysolutions.com>; Doug Hardman <dhardman@peregrineenergysolutions.com>; Phillip Hernandez <phernandez@peregrineenergysolutions.com>; Zack Rollis <zrollis@peregrineenergysolutions.com>; Jordan Gruber <jgruber@peregrineenergysolutions.com>; Brandon Harrison <bharrison@peregrineenergysolutions.com>

Good Evening Melissa,

Following up on our previous email, we want to reemphasize our desire to work cooperatively with the County on the development of the Rogers Draw project. As such, based on discussions with our advisors, please see below our responses to the requested documentation related to the development of the Rogers Draw project:

### 1. Hazard Mitigation Analysis

1. A site-specific Hazard Mitigation Analysis (HMA) is currently under development using the template previously reviewed and approved by multiple Authorities Having Jurisdiction (AHJs) for similar BESS projects. We will submit the completed analysis along with the final site design package upon availability. The HMA will specifically include a comprehensive risk assessment addressing the concerns you have identified, including the impact on nearby schools and groundwater protection procedures, consistent with industry best practices for BESS projects.

### 2. Confirmation of Permits and Regulatory Approvals

1. Based on our review of applicable local, state and federal permitting and/or regulatory requirements, we are currently in compliance / in the process of complying with all such requirements. That being said, please provide the specific permitting / regulatory requirements that the County wants Peregrine to certify compliance under. Additionally, please provide the specific County ordinance or regulation that requires this general compliance certification. This was not included in prior correspondence or in the guidance provided during the County's initial review of the site plan we submitted to the County in 2023. Once the pathway is clearly defined by the County with reference to ordinances, we will readily respond.

### 3. FEMA Floodplain Requirements - 44 CFR 60.3(b)(3) / Flood Damage Prevention Ordinance – Development Permit

1. Pursuant to 44 CFR 60.3(b)(3), where FEMA (1) has established a Zone A and (2) has not produced water surface elevation data or identified a floodway, then the community (i.e., County) must "require that all new subdivision proposals and other proposed developments . . . greater than 50 lots or 5 acres . . . include within such proposals *base flood elevation data*." We have evaluated the floodplain boundaries and base flood elevation (BFE) data as part of our planning and civil engineering review. Preliminary analysis indicates that FEMA has already established BFEs for this area (see [FEMA ESTBFE Tool](#)). As such, under 44

CFR § 60.3(b), no flood study is required. Furthermore, all Rogers Draw project improvements are located entirely outside of the mapped floodplain.

2. The Gillespie County's Flood Damage Prevention Ordinance states that it applies to "all areas of special flood hazard" – which are the Zone A areas (or as those areas may be refined to be A, AE, etc.) (see [Ordinance, Art. III, § A](#)). Nowhere in the Ordinance does it state that *any* development on property that includes a Zone A requires a permit, even *if* no development work is in the Zone A. No development or improvement of the Rogers Draw project will take place in the "area of special flood hazard." As such, under the Flood Damage Prevention Ordinance, no development permit is required.
3. Please note our previous discussions regarding the development plans for the Rogers Draw project and the stated lack of permitting required as a result of all such development taking place entirely outside of the floodplain (see email exchanges on following dates: December 6, 2023, December 8, 2023, July 1, 2024 and December 17, 2024). Additionally, we have previously provided supporting exhibits regarding the planned development for the project with respect to the floodplain as part of our site plan submission to the Engineers Office. Let us know if you would like for us to reshare the same.

#### 4. HCUWCD Water Use Confirmation

1. The Rogers Draw project will not utilize groundwater or any private wells. The private wells located on the project property have been abandoned and plugged with paperwork filed with HCUWCD and TDLR. All fire suppression water will be provided by two 30,000-gallon cisterns, which will be filled and maintained via contracted water delivery. Accordingly, there is no anticipated impact to surrounding wells, and no HCUWCD review or approval is applicable.

#### 5. TxDOT ROW Access Permit

1. We have been in communication with TxDOT's Burnet Area Office and coordination is ongoing with the appropriate contacts at TxDOT. The ROW permit will be obtained and submitted in accordance with their process at the appropriate juncture in time pursuant to construction contracting and planning, and we will promptly provide a copy of the same to the County once it is issued.

Again, we hope to continue to work cooperatively with the County on the Rogers Draw project. If you have any questions about our responses or would otherwise like to meet to discuss the project, please let us know.

Please note that by providing the information above or any of the documents referenced above, Peregrine is not agreeing that it has a legal obligation to do so. Nor is Peregrine waiving any rights, claims or defenses, including the right to assert alternative responses or positions in the future. Nothing in this email shall be deemed an acceptance by Peregrine of any point or position set forth in any correspondence originating from the Commissioners Court of Gillespie County, the County Commissioners or any other County officials.

- Garrett

**Garrett Sabino | Developer**

P: 719.822.5582

E: [gsabino@peregrineenergysolutions.com](mailto:gsabino@peregrineenergysolutions.com)



P E R E G R I N E E N E R G Y

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**From:** Melissa Eckert <meckert@gillespiecounty.org>  
**Sent:** Monday, June 23, 2025 11:21 AM  
**To:** Garrett Sabino <gsabino@peregrineenergysolutions.com>  
**Cc:** Keith Kramer <kkramer@gillespiecounty.org>; Daniel Jones <djones@gillespiecounty.org>  
**Subject:** BESS Submission Requirements

Garrett,

As mentioned last Thursday, please submit the construction plans and development permit application for the ongoing development of the BESS site. In addition, the documentation below must be submitted for the BESS development:

This is the first BESS facility proposed in Gillespie County so we are actively looking through the relevant local, state, and federal regulations regarding these developments to do our due diligence in upholding public health, safety, and welfare. The County may require additional documents, plans, or specifications than what is listed below as more information becomes available to the County.

1. The developer must provide all the documentation listed in the Resolution passed by the Commissioners Court which is linked below. The Hazard Mitigation Analysis should include a Risk Assessment to identify the Hazards to be mitigated. This must include, but is not limited to, risk to the Elementary School and the Preschool, and contamination of groundwater.  
<https://www.gillespiecounty.org/upload/page/0034/docs/EXECUTED%20Harper%20BESS%20Resolution%202.24.2025.pdf>
2. The developer must submit a letter stating that all local, state, and federal permits and/or requirements related to BESS and ESS facilities have been met and approved, submit copies of all documentation, plans, reports and specifications used to satisfy the local, state, and federal permits and/or requirements, and submit copies of any approved permits or letters from the local, state, and federal agencies that all the agencies requirements have been met.
3. Per 44 CFR 60.3(b)(3), since the development is over 5 acres and partially within Zone A of the FEMA Floodplain, the developer either needs to provide a detailed flood study to establish the BFEs, or provide a recorded drainage easement across the entirety of the floodplain on the property. Future development of the tract is subject to the Flood Damage Prevention Ordinance in effect at the time the developer submits a complete floodplain development permit for the work and may be subject to additional permitting and requirements. Development is as defined as any man-made change to the land, see the Subdivision Ordinance for the full definition.
4. Provide a letter from the HCUWCD that the developer has provided credible evidence that the private well can provide the required flow needed for fire suppression without adversely affecting existing wells in the surrounding area. Adequate fire flow should be determined by the developer as a part of item 7 in the BESS Resolution linked in #1.

5. Provide an approved TxDOT ROW permit for the proposed access.

Thanks,



**Melissa Eckert, PE, CFM**  
Gillespie County Engineer  
830-307-6196 (office)  
830-307-2220 (cell)

## Automated Certificate of eService

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Rebecca Meek on behalf of William McKamie

Bar No. 13686800

rmeek@toase.com

Envelope ID: 108504745

Filing Code Description: Counter Claim/Cross Action/Interpleader/Intervention/Third Party

Filing Description: Gillespie County's Petition in Intervention And Application for Injunctive Relief

Status as of 12/1/2025 9:01 AM CST

### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Raggio		rraggio@toase.com	11/26/2025 1:17:36 PM	SENT
Rebecca Meek		rmeek@toase.com	11/26/2025 1:17:36 PM	SENT
Sara Neel		sneel@gillespiecounty.gov	11/26/2025 1:17:36 PM	SENT