

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 RESPONSE IN OPPOSITION TO DEFENDANT
ROGERS DRAW ENERGY STORAGE, LLC'S RULE 91a MOTION
TO DISMISS AND DEFENDANT B&WCR, INC.'S
RULE 91A MOTION TO DISMISS**

Intervenor Gillespie County, Texas, (the “County”) files this Response in Opposition to Defendant Rogers Draw Energy Storage, LLC’s (“Peregrine”) Rule 91a Motion to Dismiss and Defendant B&CWR, Inc.’s (“Cactus”) Rule 91a Motion to Dismiss, both of which were filed against Plaintiffs Victor Hollender, Bruce Neitzke, Esther Schneider, and Sarah Rivas (“Plaintiffs”). The County appears in this matter pursuant to its constitutional and statutory duties to protect public health, safety, and welfare, and not merely to advance private property interests. In light of the County’s Petition in Intervention, the County respectfully requests that this Court deny Defendants’ Rule 91a Motions, as Plaintiffs’ claims have a reasonable basis in both law and fact, and dismissal at this stage would be premature.

1.

Rule 91a authorizes dismissal only when a claim has no basis in law or fact. Tex. R. Civ. P. 91a; *See Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 655-56 (Tex. 2020). According to Rule 91a.1,

A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

Tex. R. Civ. P. 91a.1. Accepting the Plaintiffs' pleaded facts as true, and in light of the facts pleaded by the County in its Petition in Intervention, dismissal for a lack of basis in law is improper. Moreover, the facts pleaded by Plaintiffs are well-supported and certainly fall within the realm of reasonable belief, especially in light of the facts pleaded in the County's Petition in Intervention.

Defendant proposes to construct a lithium ion battery energy storage system ("BESS") facility (the "Rogers Draw BESS") in the unincorporated community of Harper, Texas, a rural area within Gillespie County. The Rogers Draw BESS presents unique and heightened risks that materially distinguish this case from those relied upon by Defendant. The County shares Plaintiffs' concerns with construction of the Rogers Draw BESS and believes that the perspective of these private landowners, in conjunction with the public interest represented by the County in its exercise of the police power to serve the public health, safety, and welfare, represents an important perspective on the claims at issue in this suit.

As set forth in the County's Petition in Intervention, the particular details regarding the construction of the Rogers Draw BESS raise specific and non-speculative safety

concerns shared by Plaintiffs and the County. The site is located in close proximity to the Harper ISD campus, serving approximately 600 students and 90 staff members. Harper lacks a municipal water supply. Fire protection depends entirely upon limited response capabilities that would be overwhelmed by a lithium ion battery fire. Gillespie County's volunteer fire departments lack specialized training and equipment to respond in such situations, which present unique suppression and re-ignition risks. In the event of a fire at the Rogers Draw BESS, there is a high likelihood of runoff and water contamination resulting from the enormous amount of water demanded by fire suppression activities, creating a risk to regional water sources served by the nearby Pedernales River. These concerns are not merely speculative fears: they are present, verifiable infrastructure considerations that raise significant and legitimate questions to provide a basis for Plaintiffs' claims, as well as for the County's.

At minimum, these specific, verifiable, and legitimate concerns support denial of Defendants' Rule 91a motions in order to allow this Court to fully explore the facts and issues at play in Plaintiffs' claims, as well as the County's claims. At this early stage, Rule 91a dismissal would not permit the Court to weigh competing expert views or resolve technical engineering disputes at the pleading stage. The County is entitled to develop a factual record, and as stated above, the perspective of the private landowner Plaintiffs will be a critical component of that factual record. Plaintiffs' facts as pleaded set forth a reasonable, non-speculative basis for their claims. Moreover, from a factual perspective, the details surrounding the construction of the Rogers Draw BESS—as well as its impact on Plaintiffs' properties and the County as a whole—are highly technical, and the County respectfully requests that this Court allow the record of those technical facts, including the

facts pertaining to the impact on Plaintiffs' properties, to develop to its fullest extent. Moreover, Plaintiffs' legal claims are so intertwined with those facts that the County believes dismissal of Plaintiffs' claims for a lack of legal basis at this stage would be premature. For these reasons, Defendants' Motions for Rule 91a dismissal should be denied.

PRAYER

WHEREFORE, Intervenor Gillespie County, Texas respectfully prays that the Court DENY Defendant Rogers Draw Energy Storage, LLC's Rule 91a Motion to Dismiss and Defendant B&CWR, Inc.'s ("Cactus") Rule 91a Motion to Dismiss and grant such other and further relief to which the County may be justly entitled.

Respectfully submitted,

/s/ William M. McKamie

William M. McKamie, Lead Counsel
State Bar No. 13686800
Email: mmckamie@toase.com

Rachel Raggio
State Bar No. 24126598
Email: rraggio@toase.com

Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Phone: 817-332-2580
Fax: 817-332-4740

Sara Neel
Gillespie County Attorney
State Bar No. 24077622
125 West Main, Suite L41
Fredericksburg, Texas 78624
Telephone: (830) 990-0675

Facsimile: (830) 992-2615
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
Anthony Arguijo
aarguijo@scottdoug.com
Shelby Hart-Armstrong
sharmstrong@scottdoug.com
SCOTT DOUGLASS & MCCONNICO LLP
303 Colorado Street, Suite 2400
Austin, Texas 78701

C. Dixon Mosty
Email: cdmosty@mostylaw.com
Richard C. Mosty
Email: 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
Jason Huebinger
jhuebinger@mcguirewoods.com
McGuire Woods LLP
845 Texas Ave, 24th Floor
Houston, TX 77002

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

William H. Ford
Email: bill.ford@fordmurray.com
Gregory A. Scrivener
Email: greg.scrivener@fordmurray.com

Kennedy Hatfield Asel
Email: hatfieldasel@fordmurray.com
FORD MURRAY, PLLC
10001 Reunion Place, Suite 640
San Antonio, Texas 78216

/s/ William M. McKamie

William M. McKamie

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Rebecca Meek on behalf of William McKamie

Bar No. 13686800

rmeek@toase.com

Envelope ID: 108512415

Filing Code Description: Response

Filing Description: Gillespie County's Response in Opposition to Defendant Rogers Draw Energy Storage, LLC's Rule 91a Motions to Dismiss

Status as of 12/1/2025 9:10 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Gregory A.Scrivener		greg.scrivener@fordmurray.com	11/26/2025 3:34:55 PM	SENT
Jeremiah Anderson	24040432	jjanderson@mcguirewoods.com	11/26/2025 3:34:55 PM	SENT
Alfred Huebinger	24065460	jhuebinger@mcguirewoods.com	11/26/2025 3:34:55 PM	SENT
Charles Mosty	24041532	cdmosty@mostylaw.com	11/26/2025 3:34:55 PM	SENT
Kennedy HatfieldAsel		hatfieldasel@fordmurray.com	11/26/2025 3:34:55 PM	SENT
Jennifer Juneau		jjuneau@scottdoug.com	11/26/2025 3:34:55 PM	SENT
Anthony Arguijo		aarguijo@scottdoug.com	11/26/2025 3:34:55 PM	SENT
Michael Suchosky		michael.suchosky@fordmurray.com	11/26/2025 3:34:55 PM	SENT
Jessi Abramson		jabramson@scottdoug.com	11/26/2025 3:34:55 PM	SENT
Carla Matheson		cmatheson@scottdoug.com	11/26/2025 3:34:55 PM	SENT