

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

**GILLESPIE COUNTY'S RESPONSE IN OPPOSITION TO DEFENDANT
ROGERS DRAW ENERGY STORAGE, LLC'S RULE 91a MOTION
TO DISMISS AND DEFENDANT B&CWR, 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

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**ATTORNEYS FOR INTERVENOR
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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing instrument has been served on the following counsel of record through the electronic filing manager in accordance with Rule 21a(a)(1) or (2) the Texas Rules of Civil Procedure on this 26th day of November, 2025.

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