

CAUSE NO. _____

1. *Leucosia* (Leucosia) *leucosia* (L.)

IN THE DISTRICT COURT OF

Plaintiffs,

V.

ROGERS DRAW ENERGY STORAGE,
LLC, B&CWR, INC., d/b/a CACTUS
CONSTRUCTION
Defendants.

GILLESPIE COUNTY, TEXAS

216TH JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND VERIFIED APPLICATION FOR
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs

(collectively, "Harper Residents") file this Original Petition and Verified Application for Temporary Injunction and Permanent Injunction against Defendant Rogers Draw Energy Storage, LLC ("Peregrine") and B&CWR, Inc. d/b/a Cactus Construction ("Cactus Construction").¹ In support of this Petition, the Harper Residents respectfully show the Court as follows.

I. INTRODUCTION

1. The power to avert disaster comes with a duty to avert disaster. Peregrine has that power in this case. But rather than avert disaster, Peregrine invites one, so now a group of affected residents must act. Peregrine has announced its intent and taken steps to build a fire hazard in Harper, Texas ("Harper"), less than 1,000 feet from Harper Independent School District's K-12 School and child day care center. Specifically,

¹ Defendant Rogers Draw Energy Storage, LLC is owned and controlled by Peregrine Energy Solutions and is thus identified as Peregrine for ease of reference.

Peregrine, with the help of Cactus Construction, plans to construct 88 storage containers and fill them with large lithium batteries in the heart of Harper.

2. Lithium batteries are known to cause fires, including catastrophic fires. The federal Transportation Security Administration does not permit passengers to bring even a small lithium battery—e.g., a small portable charger—in checked luggage on flights due to their known fire risks. But Peregrine plans to stack hundreds of massive lithium batteries—multiples larger than the small lithium batteries that worry the TSA—in the middle of a small, rural town, on the headwaters of the Pedernales River, and across the street from a school that instructs 588 of Harper's school-aged children.

3. Harper is an unincorporated community with a population of approximately 1,200 people. It did not ask for this danger, nor does it have the resources to protect itself and its residents from the type of fire event and damage that this battery storage system is capable of causing, including but not limited to fire dangers, property damage, water and soil contamination, and hazards to residents' health and safety. For this reason and others, the Commissioners Court of Gillespie County unanimously passed a resolution opposing the construction of battery energy storage systems like the one Defendants plan. But Defendants are nonetheless moving forward, simply because they think they can.

4. Peregrine's facility will necessarily interfere with the Harper Residents' use and enjoyment of their properties and threaten public safety. The only way to stop it is through the courts. The Harper Residents thus file this lawsuit to enjoin Defendants from constructing their proposed Rogers Draw battery energy storage system in Harper, Texas, hereinafter referred to as the "Rogers Draw BESS."

II. DISCOVERY CONTROL PLAN & RULE 47(C) STATEMENT

5. The Harper Residents intend to conduct discovery under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.
6. In accordance with Rule 47(c) of the Texas Rules of Civil Procedure, the Harper Residents state that they seek non-monetary relief only.

III. PARTIES

7. Plaintiff [REDACTED] is an individual who resides in Gillespie County, Texas, and owns a business less than one-eighth of a mile from the Rogers Draw BESS.

8. Plaintiff [REDACTED] is an individual who resides in Gillespie County, Texas, and resides less than one-half of a mile from the Rogers Draw BESS.

9. Plaintiff [REDACTED] is an individual who resides in Gillespie County, Texas and owns a home approximately twelve miles from the Rogers Draw BESS.

10. Plaintiff [REDACTED] is an individual who resides in Gillespie County, Texas, owns a home less than [REDACTED] from the Rogers Draw BESS, and has a child attending Harper Independent School District.

11. Defendant Rogers Draw Energy Storage, LLC is a limited liability company organized under the laws of Delaware and may be served through its registered agent, C T Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

12. Defendant B&CWR, Inc. d/b/a Cactus Construction is a Texas corporation and may be served through its registered agent, Clinton Wood, located at 180 KC 4732, Harper, Texas 78631.

IV. JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction over this case involving a request for injunctive relief to protect public safety and property in Gillespie County.

14. The Court has personal jurisdiction over Peregrine because Peregrine has engaged in continuous and systematic activities within Texas to render it at home in Texas. The Court has personal jurisdiction over Cactus Construction because it is a Texas corporation.

15. The Court has specific jurisdiction over Peregrine and Cactus Construction because Peregrine and Cactus Construction's liability in this case arises out of and/or relates to their conduct within, and purposeful contacts with, Texas.

16. Venue is proper in Gillespie County, Texas under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claims in this case occurred in Gillespie County, Texas. Venue is also proper in Gillespie County, Texas under Section 15.002(a)(3) because Cactus Construction's principal office is in Gillespie County, Texas.

V. BACKGROUND

17. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

18. Battery energy storage systems consist of rows of massive rechargeable lithium batteries housed in interconnected storage units. Using such batteries on a large scale creates significant fire safety concerns. For example, when those batteries overheat, it can trigger a chemical reaction known as "thermal runaway." The thermal runaway process typically begins with a fault in the battery, such as an internal short circuit caused by damage or manufacturing defects. This short circuit leads to a rapid

discharge of energy, which generates heat. This heat can cause the separator—a thin, porous material that keeps the positive and negative electrodes from touching—to melt. The melting of the separator allows the electrodes to make direct contact, causing a massive, uncontrolled short circuit. This releases a tremendous amount of energy, which in turn causes the other cells in the battery to heat up. The extreme heat can cause the electrolyte within the battery to decompose, releasing flammable gases for miles. When these gases mix with oxygen, they ignite, leading to a fire or an explosion. The fire itself generates more heat and oxygen, which can trigger thermal runaway in adjacent batteries, causing the fire to spread rapidly. Once this type of fire starts, there is little, if anything, firefighters can do to quell the fire. Fires at similar facilities have required evacuations within a one-mile radius, posing significant risks to the surrounding area. Moreover, such fires not only can harm human health, safety, and lives, but also harm the surrounding environment and properties, including contaminating soil and water for decades, thereby rendering ranchland and farmland less unusable or worthless.

19. Despite these dangers, Defendants plan to, and have taken steps to, construct one of these fire hazards right in the middle of Harper, close to its most vulnerable community: children. Cactus Construction has aided Peregrine every step of the way by helping with the construction and permitting of the Rogers Draw BESS.

20. Harper is a small, unincorporated community in Gillespie County with approximately 1,200 residents, with roughly half under eighteen years of age. It is located roughly 84 miles northwest of San Antonio. Harper does not have big-city resources. Its fire department consists entirely of volunteers. It lacks sufficient water

supplies. Further, Harper lacks its own specialized hazmat teams. The closest hazmat teams are located more than 90 minutes away in San Antonio. In the event of a major fire, Harper would have to rely on other departments and agencies miles away. Neither Harper nor Gillespie County has the resources to combat a fire at Peregrine's proposed facility or to conduct a large-scale evacuation on its own. Ultimately, a thermal runaway would threaten the lives and safety of Harper's residents and devastate their properties and livelihoods.

21. The dangers of Peregrine's proposed facility are real. Battery energy storage systems worldwide have repeatedly experienced failures. The Electric Power Research Institute maintains a database tracking such failures.² Counties and towns have imposed a moratorium on constructing such facilities due to the multiple incidents involving lithium batteries.³ And only months ago, Vistra Corp.'s Moss Landing battery-powered storage plant—which *had* been billed as a state-of-the-art facility with enhanced safety measures—experienced a failure resulting in a thermal runaway that burned for days and spewed toxic chemicals throughout the surrounding area.⁴ There are ample other examples of fires and thermal runaway occurring at these new, unregulated facilities throughout the United States.⁵

² Electric Power Research Institute, *BESS Failure Incident Database*, available at https://storagewiki.epri.com/index.php/BESS_Failure_Incident_Database.

³ See, e.g., Matthew Bliss, *Harvey County in Kansas enacts lengthy 2.5-year BESS moratorium*, ENERGY STORAGE NEWS (Jul. 18, 2025), available at <https://www.energy-storage.news/harvey-county-in-kansas-enacts-lengthy-2-5-year-bess-moratorium/>.

⁴ Jaxon Van Derbeken, *Moss Landing battery fire hit plant with older, vulnerable technology, expert says*, NBC BAY AREA (Feb. 5, 2025), available at <https://www.nbcbayarea.com/news/local/battery-facility-industry-storage-discussions/3784945/>.

⁵ Escondido, California: Kristina Davis, *Evacuations lifted for battery storage fire in Escondido*, THE SAN DIEGO UNION-TRIBUNE (Sept. 7, 2024), available at <https://www.sandiegouniontribune.com/2024/09/06/sdge-battery-fire-in-escondido-burns-into-second-day/>; Otay Mesa, California: Caleb Lunetta et al., *Firefighters extinguish 'unpredictable' blaze at battery storage facility in Otay Mesa* (May 17, 2024), THE SAN DIEGO UNION-TRIBUNE,

22. Below is a map showing the planned location of the Rogers Draw BESS:

Rogers Draw BESS Site



available at <https://www.sandiegouniontribune.com/2024/05/16/firefighters-extinguish-unpredictable-blaze-at-battery-storage-facility-in-otay-mesa/>; Chandler, Arizona: Ryan Randazzo and Perry Vandell, *Fire crews tend to massive, smoldering batter in Chandler facility*, AZ CENTRAL (Apr. 21, 2022), available at <https://www.azcentral.com/story/money/business/energy/2022/04/21/fire-crews-tend-massive-smoldering-battery-chandler-facility/7405430001/>.

23. The Rogers Draw BESS is sited directly on the headwaters of the Pedernales River, a tributary of the Colorado River, which is of fundamental importance to the Texas Hill Country. Should a fire occur, it will contaminate the Pedernales River, which is the source of drinking water for thousands of Gillespie County citizens. Further downstream, the Pedernales River connects to the Lower Colorado River System, and any pollution at the Rogers Draw BESS would contaminate the source of water for many other communities, like the cities of Austin and San Antonio. In addition to human consumption, the Pedernales River serves as a vital source of water and life for many unique species of flora and fauna, while also supporting local farming and livestock operations. Harm caused by the Rogers Draw BESS would wreak havoc on the lives of millions of downstream humans, plants, animals, and livelihoods that rely upon the Pedernales River.

24. Defendants cannot ensure that the Rogers Draw BESS will not cause a fire event. Indeed, Peregrine knows such a fire event can occur, and even anticipates one, touting its “advanced fire suppression systems” as the cure-all. But the Harper Residents do not want to live near a fire hazard, which would require them to evacuate—if they can—when a thermal runaway incident occurs. And the Harper Residents certainly do not want Harper’s children going to school and day care beside a facility that seemingly demands “12 layers of protection focused on the prevention of fires” or that needs plans for “detection, control, and notification” to an undisclosed, remote telephone switchboard, notifying an emergency response team hours away “in the event of an incident.” The parents of these children should not have to accept the

constant danger of a fire hazard, capable of catastrophic destruction, operating less than 1,000 feet from where their children learn and play during the school year.

25. The Harper Residents and the Harper community are not reassured by Peregrine's empty promise that it can control the uncontrollable. More than 941 Harper citizens have signed a petition objecting to the construction of the Rogers Draw BESS.

26. The Harper Residents are not alone. In Van Zandt County, a group of residents obtained a temporary injunction preventing the operation of a battery energy storage system. In Franklin County, residents have moved past the pleading stage and are conducting discovery in an effort to obtain a permanent injunction to halt the construction of a battery energy storage system. The message is clear—rural communities are not laboratories to test dangerous facilities and hope for the best. Instead, where disasters with devastating effects can be prevented, they should be.

27. The Harper Residents do not have to sit by and wait for a catastrophe. Texas law permits property owners to enjoin a prospective nuisance. See *Freedman v. Briarcroft Prop. Owners, Inc.*, 776 S.W.2d 212, 216 (Tex. App.—Houston [14th Dist.] 1989, writ denied) (“[A] court of equity is empowered to interfere by injunction to prevent a threatened injury where an act or structure will be a nuisance *per se*, or will be a nuisance for which there is no adequate remedy at law, or where a nuisance is imminent.”). Additionally, Texas law allows residents affected “or to be affected” by a public nuisance to enjoin the applicable activity. See Tex. Health & Safety Code § 343.013(a)–(b) (authorizing “a person affected or to be affected” by a public nuisance to obtain an injunction to “prevent, restrain, abate, or otherwise remedy” the nuisance).

The Harper Residents can utilize these remedies to prevent the imminent nuisance Peregrine plans and has taken steps to construct.

VI. CAUSES OF ACTION

A. Intentional Nuisance

28. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

29. Defendants intend to cause, and unless enjoined, will cause, a temporary and/or permanent nuisance to the Harper Residents and the Harper Residents' real estate for which there is no adequate remedy at law. Multiple of the Harper Residents own property within a one-mile radius of Peregrine's property. Defendants intend to cause a substantial interference with the Harper Residents' use and enjoyment of their properties—a nuisance—by constructing a hazardous facility in close proximity to their properties. It is reasonably certain that a nuisance will result from the Rogers Draw BESS as it is unsuited and unsafe for placement in the middle of Harper. The Harper Residents are entitled to injunctive relief to prevent the intended construction.

B. Negligent Nuisance

30. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

31. Defendants will, unless enjoined, negligently cause a temporary and/or permanent nuisance to the Harper Residents and the Harper Residents' real estate for which there is no adequate remedy at law. Multiple of the Harper Residents own property within a one-mile radius of Peregrine's property. Defendants owe a duty of ordinary care to do what a person of ordinary prudence in the same or similar

circumstances would do. Defendant's construction of a fire hazard in close proximity to neighboring residents would breach this duty and cause a substantial interference with the Harper Residents' use and enjoyment of their properties—constituting a nuisance. It is reasonably certain that a nuisance will result from the Rogers Draw BESS, as it is unsuited and unsafe for placement in the middle of Harper. The Harper Residents are entitled to injunctive relief to prevent the planned construction.

C. Public Nuisance

32. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

33. Defendants may not cause, permit, or allow a public nuisance. Tex. Health & Safety Code § 343.011(b). It is a public nuisance to maintain a building in a manner that constitutes a hazard to safety, health, or public welfare because it constitutes a fire hazard. *Id.* § 343.011(c)(5). Peregrine has announced its plan to construct and maintain the Rogers Draw BESS in Harper, Texas, an unincorporated part of Gillespie County. The Rogers Draw BESS, if constructed, would be a building that constitutes a hazard to safety, health, and public welfare because it constitutes a fire hazard. The facility is not regulated or permitted by any state agency. The Harper Residents are persons "affected or to be affected" by this public nuisance. *Id.* § 343.013(b). As such, they are entitled to seek injunctive relief to prevent, restrain, abate, or otherwise remedy the public nuisance. *Id.*

D. Attorney's Fees

34. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

35. The Harper Residents, if successful in this case, are entitled to an award of their reasonable attorney's fees and court costs pursuant to Tex. Health & Safety Code § 343.013(b) and any other applicable law or statute.

E. Application for a Temporary and Permanent Injunction

36. The Harper Residents reallege and incorporate by reference the foregoing paragraphs.

37. The Harper Residents seek a temporary and permanent injunction enjoining Defendants from constructing the Rogers Draw BESS in Harper, Texas.

38. The Harper Residents ask the Court to set their request for temporary injunction for a hearing, and upon the hearing, issue a temporary injunction against Defendants that will remain effective through a trial on the merits enjoining Defendants from constructing the Rogers Draw BESS in Harper, Texas.

39. The Harper Residents ask the Court, following a trial on the merits, to issue a permanent injunction enjoining Defendants from constructing the Rogers Draw BESS in Harper, Texas.

40. To obtain injunctive relief under equitable principles, the Harper Residents must show: (1) a claim against the Defendants, (2) a probable right to the relief sought, and (3) a probable, imminent, and irreparable injury in the interim. The construction of the Rogers Draw BESS is imminent and will impose a probable, imminent, and irreparable injury on the Harper Residents. Moreover, the Harper Residents have a probable right to their relief sought. Injunctive relief is appropriate under these circumstances and in the best interest of the Harper Residents.

VII. CONDITIONS PRECEDENT

41. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, the Harper Residents allege that all conditions precedent have been performed or have occurred.

VIII. JURY DEMAND

42. Pursuant to Rule 217 of the Texas Rules of Civil Procedure, the Harper Residents request a jury trial on issues triable by jury. Accordingly, the Harper Residents will tender the jury fee to the Clerk of the Court.

IX. PRAYER

43. For all of the reasons set forth above, the Harper Residents respectfully request that, upon hearing, the Court temporarily enjoin Defendants from constructing the Rogers Draw BESS in Harper, Texas, and that, upon final trial, the Court permanently enjoin Defendants from constructing the Rogers Draw BESS in Harper, Texas in order to preserve the status quo through the time of a final trial on the merits. The Harper Residents further request that the Court award them their reasonable and necessary attorney's fees and court costs and any and all other and further relief to which they are entitled.

Respectfully submitted,

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