

**SOAH DOCKET NO. 582-25-01778
TCEQ DOCKET NO. 2024-0670-MWD**

APPLICATION BY MUNICIPAL	§	BEFORE THE STATE OFFICE
OPERATIONS, LLC FOR NEW TEXAS	§	
POLLUTANT DISCHARGE	§	OF
ELIMINATION SYSTEM PERMIT NO.	§	
WQ0016171001	§	ADMINISTRATIVE HEARINGS

ALIGNED PROTESTANTS' MOTION FOR REHEARING

TO THE HONORABLE COMMISSIONERS:

Protestants Greater Edwards Aquifer Alliance (“GEAA”) and the City of Grey Forest (collectively, “Aligned Protestants”) hereby submit this Motion for Rehearing of the Commission’s October 28, 2025 Final Order granting the Application by Municipal Operations, LLC (“Applicant” or “Municipal Operations”) for Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0016171001 (hereinafter, the “Application”). Aligned Protestants move that the Commission set Municipal Operations’ Application for rehearing and, upon rehearing, deny Municipal Operations’ Application. For support, Aligned Protestants respectfully offer the following:

I. Introduction

On May 23, 2022, Municipal Operations filed its Application for TPDES Permit No. WQ0016171001 with the Texas Commission on Environmental Quality to authorize the discharge of treated wastewater at a volume of 1,000,000 gallons per day (mgd) from a domestic wastewater treatment facility (the “Facility”) in Bexar County, Texas. The Executive Director (“ED”) determined the Application to be administratively complete on August 30, 2022. On November 16, 2022, the ED declared that the Application was

technically complete and issued a draft permit. On August 14, 2024, the Commission granted Aligned Protestants' requests for a contested case hearing and referred the Application to the State Office of Administrative Hearings ("SOAH").¹

A preliminary hearing took place on November 21, 2024, via Zoom videoconference. A hearing on the merits took place from February 18 – 20, 2025, and the record closed on March 21, 2025. The ALJs provided their Proposal for Decision on May 19, 2025.

On October 22, 2025, the Commission convened a public meeting during which it voted to grant the Application and issue the TPDES Permit to Municipal Operations. The Commission's Order was signed on October 28, 2025, memorializing the decision and issuing the Permit to Municipal Operations.

Aligned Protestants urge the Commission to grant this Motion, reverse its previous decision, and deny the Permit for the reasons stated herein.

II. Summary

TCEQ's Final Order in this matter improperly allocated the burden of proof to the Aligned Protestants on many issues, and erred in granting Municipal Operations' requested permit. Perhaps most glaringly, the Final Order is premised upon a finding that Helotes Creek is not fishable/swimmable, despite the fact that the residents of Grey Forest,

¹ Finding of Fact 22 in the Commission's Final Order is erroneous in stating that the hearing requests were granted on August 4, 2024. FOF 22 is not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole. As discussed herein, this is hardly the only erroneous FOF in the Final Order.

including many who participated in this proceeding, frequently fish and swim within Helotes Creek.

The Commission's dissolved oxygen ("DO") analysis is flawed for multiple reasons. The Commission's conclusions relating to DO are premised upon conclusory opinions which lack any basis in the data relied upon, and are thus not probative on the issue. Furthermore, even if the data and opinions relied upon were true (which they are not), TCEQ has used findings relied upon predictions of DO that are below the applicable criteria as if they meet or exceed the applicable criteria, which amounts to an improper alteration of the criteria set forth by rule.

As to water quality concerns that go beyond compliance with DO criteria, TCEQ has failed to recognize the high aquatic life uses of Helotes Creek through the City of Grey



Forest, and has failed to account for the fishable swimmable nature of Helotes Creek. According to TCEQ, Kerry McEntire accomplished the impossible by catching a fish in Helotes Creek, since it is absolutely *not* fishable/swimmable.²

² Ex. GEAA-601; *see* COL 8, 11 & 12, finding water quality standard to be met premised upon finding that Helotes Creek cannot attain fishable/swimmable uses.

The Commission further violated its own rules requiring consideration of toxicity by refusing to consider the potential impacts of per- and polyfluoroalkyl substances (PFAS) despite their clear toxicity, as illustrated by the suit filed by the Texas Attorney General against 3M taking the position that it would be deceptive to claim that PFAS are not toxic. In this case, the Commission applied, as if it were binding in all cases, a general policy of that the consideration of PFAS is irrelevant to its water quality permitting toxicity regulations.

The Commission further erred in violating its own rules relating to the specific protection of wildlife. The Commission did so by improperly disregarding the possibility that karst invertebrates could be present in areas proximate to the discharge route, and failing to perform the case-specific review required to address endangered species.

The Commission also committed several errors in relation to the protection of groundwater. The Commission improperly applied in a binding manner, as if it were a rule, a policy that compliance with the Texas Surface Water Quality Standards (TSWQS) necessarily protects groundwater. Additionally, the Commission improperly failed to protect the quality of water in the Upper Trinity Aquifer, improperly placed the burden upon Aligned Protestants to demonstrate that their wells were located in the Upper Trinity Aquifer, and improperly placed the burden upon Aligned Protestants to demonstrate a migration pathway for contaminants. Due to the nature of the TSWQS, the Draft Permit contains no limit on the amount of nitrate which may be discharged. Yet, nitrate is a parameter of key concern in the groundwater context. Thus, mere reliance upon the TSWQS is inadequate to protect groundwater.

For these reasons, and others set forth below, the Commission should reconsider its grant of the Permit, and upon rehearing, the Commission should deny the Permit.

III. The Commission's Order violates Commission rules relating to dissolved oxygen.

The Applicant failed to demonstrate that its requested TPDES Permit would comply with the Texas Surface Water Quality Standards ("TSWQS") for dissolved oxygen, and the Commission erred in granting the Applicant's TPDES Permit despite a failure to demonstrate that the DO criteria would be met. Because the Commission failed to enforce an unambiguous numeric regulatory requirement—by utilizing an unapproved 0.20 mg/L "margin of safety" and failing to establish that the QUAL-TX model was reliable *in this instance*—the Commission's findings and conclusions regarding this issue are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion. The Commission's refusal to enforce its own rules and statutory mandates was an abuse of its discretion. Among the findings of fact ("FOF") and conclusions of law ("COL") that are in error are: FOF 41, 42 and 43 and COL 11.

A. The TSWQS impose mandatory numeric criteria for DO.

Texas Surface Water Quality Standards for DO are one of the few standards with numeric criteria. There are, for example, no numeric criteria in the TSWQS for 5-day

biochemical oxygen demand (BOD5), 5-day carbonaceous biochemical oxygen demand (CBOD5), or ammonia-nitrogen (NH3-N). However, the results of running the QUAL-TX model supposedly instruct TCEQ staff as to the proposed effluent limits for these narrative criteria in order to maintain requisite numeric DO levels.³ DO concentrations must be sufficient to support existing, designated, presumed, and attainable aquatic life uses. 30 Tex. Admin. Code § 307.4(h)(1). Setting aside whether the aquatic life uses (and their corresponding DO criteria) were properly assigned in Helotes Creek downstream of the outfall (they were not, and that issue is addressed below), the QUAL-TX model used by both the Applicant and ED predicts that DO will drop to 2.9 mg/L in the first pond approximately 0.15 miles downstream of the proposed outfall. This number is below the DO criteria of 3.0 mg/L at this location, which was set by the ED pursuant to the limited aquatic life use designation. This is openly not in conformance with the plain language of the TSWQS and Implementation Procedures (“IPs”), which are approved by the United States Environmental Protection Agency (EPA) and are mandatory standards.

Though the QUAL-TX model is approved by EPA for use by TCEQ when reviewing domestic TPDES applications, there is nothing in the Memorandum of Agreement or in the IPs that indicate EPA has approved the deviation from the numeric TSWQS. Said another way, the Commission does not have the discretion to deviate from the numeric TSWQS, yet that is what the Commission has done.

³ See Ex. ED-XL-1 at 7:15-19 (Lu Direct).

None of the Commission's findings of fact, including FOF 41 (finding the ED's standard practice is to consider a DO criterion to be met if the QUAL-TX model predicts a DO concentration within 0.2 mg/L of the assigned criterion), provide support for the conclusion that the proposed TPDES permit will comply with the TSWQS. Furthermore, FOF 42 (finding that the DO modeling prediction that the minimum DO concentrations will be met or exceeded for all water bodies) and FOF 43 (finding that the DO modeling complied with applicable regulations to ensure the permit would be protective of water quality) are in error because there is no support in the record. It is undisputed that the ED applied a minimum DO concentration criteria of 3.0 mg/L at the location of the first pond, and both the Applicant and ED predict that DO will drop to 2.9 mg/L at this location. Findings should be stated as the agency's findings and should relate to material basic facts. *Tex. Health Facilities Comm'n v. Charter Med.—Dallas, Inc.*, 665 S.W.2d 446, 451 (Tex. 1984). And they should resolve legitimate factual disagreements. *Id.*; Tex. Gov't Code § 2001.141. Thus, it is not enough to simply find that the requisite DO criterion in the TSWQS will be met.

Even if these findings of fact are interpreted as conclusions of law, the Commission's Final Order does not include findings of fact to support the conclusion that the DO modeling predicts that the DO criterion will be met or exceeded for all water bodies in the discharge route (FOF 42) or that the modeling complied with applicable regulations (FOF 43). Nor does the Commission's Final Order include findings to support COL 8 (finding that the prima facie presumption was not rebutted), nor COL 11 (concluding that

the effluent limits in the Draft Permit will comply with the TSWQS in 30 TAC Chapter 307).

“Substantial-evidence analysis entails two component inquiries: (1) whether the agency made findings of underlying facts that logically support the ultimate facts and legal conclusions establishing the legal authority for the agency’s decision or action and, in turn, (2) whether the findings of underlying fact are reasonably supported by evidence.” *HMW Special Util. Dist. v. Pub. Util. Comm’n*, No. 03-21-00234-CV, 2023 WL 2191329 at *3 (Tex. App.—Austin Feb. 24, 2023, pet. denied) (mem. op.) (quoting *AEP Tex. Commercial & Indus. Retail, Ltd. P’ship v. Public Util. Comm’n of Tex.*, 436 S.W.3d 890, 905 (Tex. App.—Austin 2014, no pet.)). The Commission’s Final Order fails to satisfy both of these two components with regard to the DO criteria in TSWQS.

Due to the Commission’s failure to comply with its own rules creating a dissolved oxygen criteria of 3.0 mg/L within the first pond downstream of the discharge, FOF 41, 42 and 43 and COL 8, 10, 11 and 12 in the Commission’s Final Order are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ’s authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

B. The undisputed evidence in the record establishes that the Applicant failed to verify that the QUAL-TX modeling results were reliable in this instance.

The IPs direct TCEQ to use site-specific hydraulic information “if it is available and of acceptable quality.”⁴ Upon judicial review of TCEQ decisions relating to water quality permitting, conformance with the IPs is an important consideration. *Save Our Springs All., Inc. v. Tex. Comm’n on Env’tl. Quality*, 713 S.W.3d 308, 321 (Tex. 2025) (“[T]he main issue turns on the proper construction and application of the antidegradation standards in 30 Texas Administrative Code section 307.5 and corresponding *implementation procedures*.” (emphasis added)). The explicit language of the rules and IPs is important, as a court will only defer to an agency’s interpretation of its rule if the rule is ambiguous. *Wal-Mart Stores, Inc. v. Xerox State & Local Solutions, Inc.*, 663 S.W.3d 569, 581 (Tex. 2023). The IPs do not instruct TCEQ to omit site-specific information from its consideration of DO simply because that site-specific information is not provided with the application or because not enough site-specific information is readily available to calibrate every parameter in the model. In fact, the evidentiary record shows that the TCEQ’s General Guidance document for the modeling review actually instructs the modeler to look for pertinent information, which could include “site specific hydraulic data, or additional maps that portray the area, or comments on inspection reports that may describe the receiving waters, etc.”⁵ TCEQ has not only failed to consider site-specific information, the agency has actually *refused* to consider site-specific information that was available for the reason that they would need

⁴ Ex. ED-ML-6 at 0108.

⁵ Ex. ED-XL-6 at 0502.

“all the information.”⁶ But there is no support in the IPs and EPA-approved documents for this approach.

Ultimately, witnesses for both the Applicant and the ED acknowledge that the uncalibrated QUAL-TX model does not accurately predict the concentration of DO that will be maintained in Helotes Creek. Still, neither the witness for the Applicant nor the ED attempted to verify whether the QUAL-TX modeling results were nevertheless reliable in order to predict that the concentration of DO would never fall below the requisite DO criteria. Thus, the evidence establishes that there is a reasonable potential that the discharge will result in a violation of the water quality standards, namely the numeric DO criteria. There is no evidence in the record to support the affirmative determination that the Applicant ensured that the DO criteria would be met.

Relatedly, the Commission’s Final Order does not include any findings of fact to support a conclusion that the DO criteria in Helotes Creek will be met. Finding of Fact 39 is made up of two findings. First, FOF 39 finds that in the absence of adequate site-specific width, depth, flow, and velocity data for the receiving water body, the ED uses standardized hydraulic coefficient assumptions downstream. This may be so, but this finding alone does not support a conclusion that the DO criteria in Helotes Creek will be met.

Second, FOF 39 finds that these “assumptions have been shown to be representative of Texas streams and have been approved by TCEQ and the EPA.” The IPs, which are approved by TCEQ and EPA, do not support this finding. The IPs plainly state that the

⁶ Tr. Vol. 3 at 123:7-19 (Lu Cross).

“equations using data collected during studies performed throughout the state, and the coefficients represent the *median values* from those data.”⁷ While some default rates may be “representative,” the stream hydraulic information is explicitly developed using *median* values. By definition, there will be streams in Texas with hydraulic characteristics having values on both sides of the median value. Therefore, TCEQ’s analysis cannot end there. But that is where it ends in the Commission’s Final Order.

In order to support the conclusion of law (COL 11) that the proposed discharge will achieve the minimum DO concentrations in compliance with the TSWQS in Chapter 307, the Commission would have needed to go further. The Commission must find that the actual hydraulic characteristics relied upon were representative of Helotes Creek (the evidence shows they were not) or that the results of using the default hydraulic characteristics were verified, nevertheless. A matter is not true merely because an expert says it is so. *Gammill v. Jack Williams Chevrolet, Inc.* 972 S.W.2d 713, 726 (Tex. 1998). Rather, where the analytical gap between the data and the opinion offered is simply too great, then an expert opinion is not reliable. *Id.* Bare, baseless opinions will not support a judgment even if there is no objection to their admission in evidence. *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009). Even when a basis is offered for an opinion, if that basis does not, on its face, support the opinion, the opinion is still conclusory. *Id.*

All parties agree that the default hydraulic characteristics were not representative of Helotes Creek. They represented statewide medians, rather than accurate characterizations

⁷ Ex. ED-ML-6 at 0108.

of Helotes Creek. The Final Order asserts that “these assumptions have been shown to be representative of Texas streams and have been approved by TCEQ and EPA.”⁸ But, there is no data showing that these assumptions are representative of *Helotes Creek* – the necessary showing in this case for the modeling results to be probative. Under these circumstances, it was incumbent on the Applicant to take the second step of verifying that the QUAL-TX modeling results were in fact reliable to provide accurate results *for Helotes Creek*. Because the Applicant did not perform this second step, there is no conclusion or factual finding that indicates how the Applicant’s evidence demonstrated compliance with the requirement to ensure DO criteria will be met. The analytical gap between this statewide data and the highly-specific conclusions as to the DO in Helotes Creek (*to the nearest tenth of a mg/L*) is so great that the opinions offered regarding the exact DO to be anticipated in Helotes Creek are simply conclusory, and cannot support a factual finding that the DO standards have been met. Of course, an agency cannot justify reliance upon conclusory opinions merely by adopting a standard practice of relying on conclusory opinions.

In sum, the Applicant had the burden of proof. The Commission’s failure to require the Applicant to meet its burden with regard to DO is arbitrary and capricious, an abuse of discretion, in violation of a statutory provision, in excess of its statutory authority, and violated the due process rights of the Aligned Protestants.

⁸ Final Order at FOF 39.

Due to the Commission's refusal to consider site-specific discharge route information (contrary to the Commission's IPs), and reliance on conclusory expert opinions to find and conclude that the DO criteria had been met, FOF 39, 40, 41, 42 and 43, as well as COL 8, 10, 11 and 12, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

IV. The Commission's Final Order also violates the Texas Surface Water Quality Standards for parameters other than dissolved oxygen.

A. When complied with, the Texas Surface Water Quality Standards (embodied at Chapter 307 of the TCEQ rules) protect existing uses, prevent degradation of water quality, and prevent toxic discharges.

TCEQ has a responsibility to ensure that each TPDES permit issued contains conditions sufficient to protect the TSWQS under Texas Water Code Chapter 26.

National Pollutant Discharge Elimination System (NPDES) permits are issued pursuant to authority delegated to the State of Texas by the EPA. For such a permit, TCEQ's regulations at 30 Tex. Admin. Code § 305.531(4) incorporate the federal regulations of 40 C.F.R. § 122.44. That incorporated regulation requires that each NPDES permit incorporate any requirements necessary to achieve the state's water quality standards. 40 C.F.R. § 122.44(d).

The TSWQS applicable to this permit include the Tier 1 anti-degradation review (30 Tex. Admin. Code § 307.5(b)(1)), Tier 2 anti-degradation review (30 Tex. Admin. Code § 307.5(b)(2)), the general criteria of the TSWQS (30 Tex. Admin. Code § 307.4) (which include prohibitions on excessive algal growth and require that surface waters be maintained in an aesthetically attractive condition), and the toxicity prohibitions of the TSWQS (30 Tex. Admin. Code § 307.6(b)(2),(4)).

1. Tier 1 Anti-degradation Review (Protection of Attainable Uses).

The Tier 1 anti-degradation review of 30 Tex. Admin. Code § 307.5(b)(1) requires that a draft permit maintain existing uses and water quality sufficient to maintain those existing uses. For purposes of this regulation, “existing uses” includes more than just the uses that the waters are capable of attaining in their current state. Rather, “existing uses” includes, “a use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.” 30 Tex. Admin. Code § 307.3(27). Thus, even if a water body has been degraded over time such that a previously attainable use is no longer supported by the actual conditions of the receiving waters, the permit must include conditions that will ensure achievement of that historically higher use.

2. Tier 2 Anti-degradation Review (Protection Against Degradation).

The Tier 2 anti-degradation review is intended to ensure that the protection of existing uses, required by Tier 1, does not become a floor to which all waters in the State sink. Thus, the Tier 2 review seeks to ensure that any degradation of high-quality waters is

specifically justified as necessary. In particular, 30 Tex. Admin. Code § 307.5(b)(2) provides that:

No activities subject to regulatory action that would cause degradation of waters that exceed fishable/swimmable quality are allowed unless it can be shown to the commission's satisfaction that the lowering of water quality is necessary for important economic or social development. Degradation is defined as a lowering of water quality by more than a *de minimis* extent, but not to the extent that an existing use is impaired. Water quality sufficient to protect existing uses must be maintained. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in and on the water.

Municipal Operations' proposed discharge would flow into Helotes Creek and then into Lower Leon Creek, Segment 1906 of the San Antonio River Basin, the first downstream classified receiving water. TCEQ Rule 307.10(1) has designated high aquatic life uses, primary contact recreation, and public water supply for Segment 1906. 30 Tex. Admin. Code § 307.10(1). Accordingly, the receiving waters of Lower Leon Creek are "fishable/swimmable," and subject to the requirements of a Tier 2 review. As discussed further below, the waters of Helotes Creek were also demonstrated to be fishable/swimmable.

3. General Criteria

The TSWQS at 30 Tex. Admin. Code § 307.4 also establish several general criteria for surface waters, including both narrative criteria and numeric criteria. These criteria apply to all surface water in the State and specifically apply to substances related to waste discharges or human activity. 30 Tex. Admin. Code § 307.4(a).

Among these general criteria, nutrients from permitted discharges "must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed or

attainable use.” 30 Tex. Admin. Code § 307.4(e). In addition, surface waters must not be toxic to humans or terrestrial or aquatic life. 30 Tex. Admin. Code § 307.4(d). Moreover, surface waters must be “maintained in an aesthetically attractive condition.” 30 Tex. Admin. Code § 307.4(b)(4). These general criteria also require dissolved oxygen concentrations sufficient to support existing, designated, and presumed aquatic life uses, which are determined further in 30 Tex. Admin. Code § 307.7. 30 Tex. Admin. Code § 307.4(h).

4. Specific Toxic Prohibitions

In addition to the prohibition on toxicity set forth in the general criteria, the TSWQS further specifically provide that water in the State subject to aquatic life use must not be chronically toxic to aquatic life. 30 Tex. Admin. Code § 307.6(b)(2). This rule also requires that water in the State must be maintained to preclude adverse toxic effects on aquatic life or terrestrial life. 30 Tex. Admin. Code § 307.6(b)(4).

B. The Commission’s Final Order violates the Tier 1 anti-degradation protections of the TSWQS at 30 Tex. Admin. Code § 307.5(b)(1).

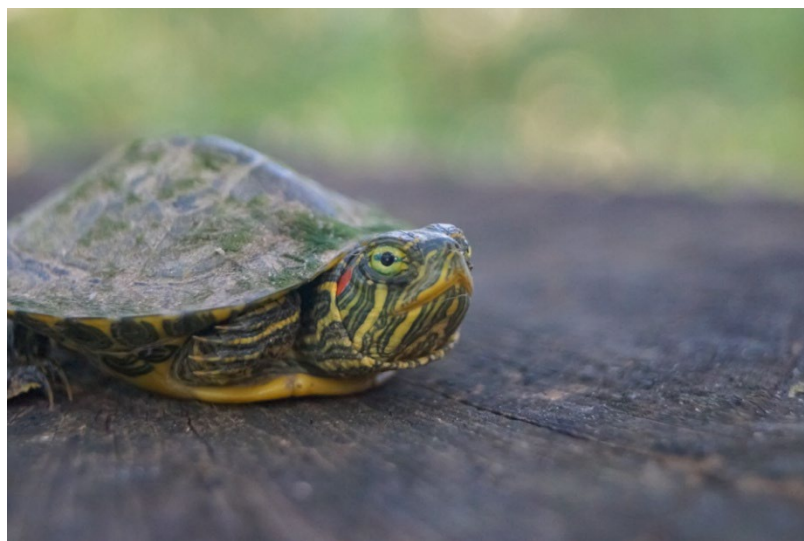
1. TCEQ erred in failing to recognize the high aquatic life uses of downstream portions of Helotes Creek.

TCEQ determined that Helotes Creek within Guajolote Ranch had minimal aquatic life use in Helotes Creek upstream of the unnamed tributary on the facility site, and limited aquatic life uses downstream from that point throughout the City of Grey Forest to the confluence of Helotes Creek with Lower Leon Creek/Segment 1906.⁹ This demonstrated

⁹ Final Order at FOF 36.

the Commission’s ability to separate water bodies into separate uses for separate portions of a water body.

But the Commission’s designation of the entirety of Helotes Creek downstream of as subject to only limited aquatic life use was in error. TCEQ’s Implementation Procedures note that “Unclassified intermittent streams with perennial pools are presumed to have a limited aquatic life use and corresponding dissolved oxygen criterion.”¹⁰ “Higher uses will be maintained where they are attainable.”¹¹ Water bodies with “limited” aquatic life uses are characterized by uniform habitat characteristics, with most regionally expected species absent, a low diversity of species, and a low species richness.¹² Helotes Creek demonstrates an abundance of species present – ranging from spotted bass, to crayfish, to sun perch, to multiple species of turtles, along with frogs.¹³



Red Eared Baby Slider Turtle near Helotes Creek¹⁴

¹⁰ Ex. ED-ML-6 at 0039 (Table 1) – 0040.

¹¹ *Id.* at 0040.

¹² *Id.* at 0039.

¹³ Ex. GEAA-600, 601, 602, 605, 606, 607, 608 & 610.

¹⁴ Ex. GEAA-607.



Crayfish caught in Helotes Creek¹⁵



**Spiny Softshell Turtle near Helotes
Creek¹⁶**

¹⁵ Ex. GEAA-607.

¹⁶ Ex. GEAA-610.



Rio Grande Leopard Frog near Helotes Creek¹⁷

Considering this richness of species, Helotes Creek through the City of Grey Forest should not have been categorized as subject to limited aquatic life use. Helotes Creek should have been evaluated as subject to the high aquatic life uses that exist within that waterbody. Due to the Commission's failure to recognize the high aquatic life uses of Helotes Creek, FOF 36, 37, 49 and 67 and COL 8, 10, 11 and 12 in the Commission's Final Order are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

¹⁷ Ex. GEAA-608.

2. TCEQ erred in failing to protect the high aquatic life uses of Helotes Creek in light of the impacts of excessive algal growth.

Dr. Lauren Ross explained how the proposed discharge could result in excessive algal growth when considering the similarities of the proposed discharge and the receiving waters to other discharges where problems have occurred.

The condition of the Lower San Gabriel River downstream of the City of Liberty Hill's wastewater discharge demonstrates the impact of a municipal wastewater discharge on algal growth in a similar Texas Hill Country stream:



Photograph DSCN1192 by Dr. Lauren Ross of the South Fork of the San Gabriel River Downstream from the City of Liberty Hill Municipal Wastewater Discharge taken on August 5, 2020.¹⁸

¹⁸ Ex. GEAA-112 at 1.

East Lick Creek downstream of the discharge of the West Cypress Hills subdivision is another similar Texas Hill Country stream that has also experienced excessive algal growth in response to the introduction of municipal wastewater:



Photograph DSC00989 by Dr. Lauren Ross of East Fork of Lick Creek downstream from West Cypress Hills Discharge taken on May 25, 2018.¹⁹

Dr. Ross, who has extensive experience analyzing water quality in these Texas Hill Country streams, testified that both the Lower San Gabriel River and East Lick Creek are similar to Helotes Creek and Lower Leon Creek because these waters are all characterized by flat, limestone streambeds and relatively shallow waters that receive adequate sunlight to encourage algal growth.²⁰

¹⁹ Ex. GEAA-112 at 2.

²⁰ Tr. Vol. 1 at 138:16 – 140:5.

During the hearing on the merits, Applicant’s biologist Paul Price called into question whether these Texas Hill Country streams are comparable and whether the receiving waters downstream of Municipal Operations’ proposed discharge would experience similarly excessive algal growth. Particularly, Dr. Price questioned whether excessive algal growth could occur in areas of Helotes Creek experiencing little to no streamflow.²¹ Dr. Price did recognize that, similar to the Lower San Gabriel River, Helotes Creek is characterized by large boulders, which have a tendency to cause algal plugs.²² He further admitted that these large boulders could trap patches of algae in the impounded areas of Helotes Creek. He simply did not think that the Commission should care about such algal growth:

Q: And so would your testimony be that . . . putting aside the dry areas . . . that there wouldn’t be significant algal growth in those areas similar to the picture we’re looking at [in the Lower San Gabriel River]?

A: There probably will be some that you could see, whoa, there’s a patch of algae, as you walk by the stream. But so what? It’s a natural—it’s a natural thing to happen.²³

However, Dr. Price did *not* explain why—if large algal patches are “natural” in Texas Hill Country streams—the current natural conditions of Helotes Creek and Lower Leon Creek are clear with no signs of excessive algal blooms, even in impounded areas. Dr. Price also failed to challenge that such conditions are *not* natural where phosphorus

²¹ Tr. Vol. 2 at 159:3-16.

²² *Id.*

²³ *Id.* at 159:17-25.

levels are as low as they are under current natural conditions within Helotes Creek, as Dr. Ross testified.²⁴

Dr. Price did, however, admit that the excessive algal blooms in the Lower San Gabriel River and East Lick Creek would *not* be considered “aesthetically pleasing” by the general public.²⁵ He testified that *he* would consider the conditions depicted in the above pictures of Helotes Creek downstream of the proposed discharge to be “aesthetically pleasing.”²⁶ He further testified that the general public would not want to wade or swim in the depicted algal conditions in the Lower San Gabriel River and East Lick Creek—in fact, he said his grandchildren would likely not want to swim there.²⁷ Dr. Price also admitted that thick algal mats could impede fishing.²⁸

The impact of increased phosphorus in Texas Hill Country streams is well documented and is demonstrated by the above pictures of excessive algal blooms in the Lower San Gabriel River and in East Lick Creek downstream of municipal wastewater discharges. With increased phosphorus concentrations, the dominant algae species shifts, allowing the growth of long strands of a type of algae known as “*Cladophora sp.*”²⁹ Furthermore, Dr. Ross testified that available data demonstrates “significant changes in benthic algae when total phosphorus concentrations in Texas Hill Country streams increase to more than 0.02 to 0.05 mg/L.”³⁰ Under ordinary conditions, Helotes Creek directly

²⁴ Ex. GEAA-100 at 16:12-21.

²⁵ Tr. Vol. 2 at 163:1-9.

²⁶ Tr. Vol. 2 at 166:6-8.

²⁷ *Id.* at 160:24 – 161:14.

²⁸ *Id.* at 161:13-23.

²⁹ Ex. GEAA-100 at 16:14-20.

³⁰ *Id.* at 16:23-26; Ex. GEAA-119, Figure 4.

downstream of the proposed discharge is dry outside of intermittent pools, meaning that the discharge will not undergo any dilution of phosphorus concentrations as it travels within this stretch of the discharge route.³¹

As described above, Applicant's own biologist admitted that the proposed discharge may cause algal plugs in intermittent pools in Helotes Creek. However, Dr. Price dismissed algal growth as a "natural" occurrence.³² This analysis is oversimplified and fails to recognize that increased phosphorus concentrations in wastewater promote the growth of *different* and *excessive* algae than would be present under "natural conditions." In fact, Dr. Price found that the algal conditions in the Lower San Gabriel River and East Lick Creek would not be considered "aesthetically pleasing" by the general public,³³ but was unable to significantly differentiate these water bodies from the impounded areas of Helotes Creek. The Applicant did not otherwise present *any* evidence sufficient to demonstrate that a total phosphorus limit of 0.15 mg/L would maintain the "aesthetically attractive" conditions of Helotes Creek in compliance with the General Texas Water Quality Criteria under 30 Tex. Admin. Code § 307.4(a)(4).

Furthermore, excessive algae growth leads to decreased species diversity and would affect the aquatic life uses and primary contact recreation uses of the receiving waters.

Research demonstrates a decline in species diversity when total phosphorus concentrations increase from less than 0.025 to 0.1 mg/L.³⁴ For this reason, Dr. Ross

³¹ Ex. GEAA-100 at 6-10.

³² Tr. Vol. 2 at 159:17-25.

³³ Tr. Vol. 2 at 163:1-9.

³⁴ Ex. GEAA-100 at 16:21-23; Ex. GEAA-118 at 5, Figure 1.

testified that “[t]he concentration of total phosphorus in Texas Hill Country streams like Helotes Creek should be maintained at 0.02 mg/L to maintain natural algae assemblages and to protect the most sensitive fish species.”³⁵ The conditions in the Lower San Gabriel River and East Lick Creek demonstrate how thick algal mats impede the ability of the general public to swim, wade, fish, and otherwise recreate in the receiving waters, as admitted by Dr. Price.³⁶ This alteration of the conditions of Helotes Creek so as to prevent the attainment of high aquatic life uses renders the issuance of the Permit in violation of the Tier 1 anti-degradation review of 30 Tex. Admin. Code § 307.5(b)(1).

Due to the Commission’s failure to adequately address the potential for the impacts of excessive algal growth upon the high aquatic life uses of Helotes Creek, FOF 10, 37, 45, 47 and 49, as well as COL 8, 10, 11 and 12, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ’s authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

³⁵ Ex. GEAA-100 at 16:26-28.

³⁶ Tr. Vol. 2 at 160:24 – 161:23.

C. **Due to the failure to conduct any Tier 2 anti-degradation review for Helotes Creek, the Commission's Final Order violates the Tier 2 anti-degradation protections of the TSWQS at 30 Tex. Admin. Code § 307.5(b)(2).**

TCEQ erred in neglecting to subject Helotes Creek to a Tier 2 anti-degradation review premised upon the mistaken characterization of Helotes Creek as not fishable/swimmable.

TCEQ's Tier 2 anti-degradation review applies to all waters that are fishable/swimmable. The evidence establishes beyond any dispute that Helotes Creek is both fishable and swimmable and, thus, should have been subjected to a Tier 2 anti-degradation review.

Kerry McEntire and others fish in Helotes Creek in the City of Grey Forest downstream of the proposed discharge for spotted bass, crayfish, and sun perch.³⁷ Mr. McEntire testified that whenever he goes fishing in Helotes Creek, he is virtually guaranteed to catch sun perch.³⁸

³⁷ See, generally, Ex. GEAA-600 at 10-13, 5:4-7, 6:18 – 7:7.

³⁸ Ex. GEAA-600 at 4-7.



Kerry McEntire with Spotted Bass caught in Helotes Creek³⁹



Sun Perch Caught in Helotes Creek⁴⁰

Consistent with the presence of this wildlife, and the associated fishing activities, Helotes Creek is “fishable.”

Furthermore, the uncontroverted evidence demonstrates that Helotes Creek is “swimmable.” Kerry McEntire offered unchallenged testimony that he learned to swim in Helotes Creek, that he has taught his children to swim in Helotes Creek, and that insects land on his feet while he is floating in the swimming hole along Helotes Creek.⁴¹

³⁹ Ex. GEAA-601.

⁴⁰ Ex. GEAA-605; Ex. GEAA-600 at 5:2-7.

⁴¹ Ex. GEAA-600 at 3:10-12, 5:11-14.

The TCEQ staff acknowledge that their aquatic life use determinations are preliminary, meaning they may be modified if new information is received.⁴² In this case, the additional information developed as a result of the hearing warranted treatment of the unnamed tributary as subject to no less than intermediate aquatic life use, and “fishable/swimmable.”

Because Helotes Creek was classified as not fishable/swimmable, the TCEQ performed no Tier 2 anti-degradation review whatsoever with regard to Helotes Creek. In other words, TCEQ failed to undertake any effort to ensure that the quality of water within Helotes Creek was not degraded.

Due to TCEQ’s failure to recognize Helotes Creek as fishable/swimmable, and TCEQ’s failure to perform any Tier 2 anti-degradation review of Helotes Creek, TCEQ’s decision violated 30 Tex. Admin. Code § 307.5(b)(2), and FOF 36, 37, 38, 43 and 51, as well as COL 8, 10, 11 and 12, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ’s authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

⁴² *Id.* at 1-2.

D. TCEQ's Tier 2 anti-degradation review was flawed for its failure to consider alternatives, and TCEQ erred in premising its decision upon consideration of a settlement agreement requiring beneficial reuse that is not required by the permit.

A wholistic review of the potential impact of the discharge upon Helotes Creek would have revealed that the impact of the discharge was greater than *de minimis*. The potential for algal growth discussed above is greater than *de minimis*. Had the required alternatives review been performed, a genuine consideration of the proposal to land apply the effluent by beneficial use (as set forth in Applicant's settlement with San Antonio Metropolitan Health District⁴³) would have been given public consideration. The full consequences of both options would have been subject to public scrutiny, with the public able to have input on the risks of each option, as well as the fact that neither option was necessary due to the speculative nature of the development. The beneficial reuse option reflected in the settlement agreement between Applicant and San Antonio Metropolitan Health creates its own risk of contamination of the underlying karst aquifer, and rapid movement of effluent into Helotes Creek and area wells. Applicant relied upon this settlement agreement in closing arguments and argument before the Commission. The consideration of this settlement agreement by the ALJs and the Commission without providing Aligned Protestants with the opportunity to respond violated Aligned Protestants' due process rights, and Aligned Protestants' right to present argument and

⁴³ See Attachment A (Settlement Agreement between Applicant and San Antonio Metropolitan Health District, Dec. 23, 2024).

evidence on each issue presented in a hearing, pursuant to Texas Government Code Section 2001.051(2).

Applicant's settlement by which it agreed to implement such beneficial reuse demonstrates that this was an alternative that should have been considered and fully evaluated under a proper Tier 2 analysis. FOF 8, 10, 11, 43, 47, 48, 51, 54 and 67, as well as COL 8, 10, 11 and 12 (reflecting TCEQ's failure to perform a Tier 2 anti-degradation review to determine whether the discharge was necessary in light of this alternative, and in light of the speculative nature of the development proposed to be served by the wastewater treatment plant producing the discharge, as well as the Commission's improper consideration of the settlement agreement in determining compliance with regulations other than Tier 2 anti-degradation requirements), were: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Aligned Protestants objected to the admission of testimony regarding this settlement agreement, as it was not part of the requirements of the permit, including testimony by Keith Arrant.⁴⁴ The ALJs overruled these objections by Order No. 3. That Order was in error for admitting discussion of this settlement agreement, as it was irrelevant since it is

⁴⁴ Aligned Protestants' Objections to and Motion to Strike Portions of Applicant and Executive Director's Prefiled Testimony and Exhibits, Feb. 7, 2025.

not a requirement of the permit. The ALJs relied upon this settlement agreement within the PFD.⁴⁵ The Commission's consideration of this settlement agreement, without incorporating compliance with the settlement agreement as a binding term of the permit, or as a required alternative to discharge, rendered FOF 43, 48, 49, 51 and 61, as well as COL 8, 10, 11 and 12: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

E. TCEQ's decision violates the general criteria of the TSWQS at 30 Tex. Admin. Code § 307.4.

- 1. The authorized discharge of phosphorus has a reasonable potential to result in excessive algal growth and not maintain the aesthetically attractive condition of the receiving waters, in violation of 30 Tex. Admin. Code § 307.4(b)(4) and (e).**

As discussed extensively above, the proposed discharge was shown to have the potential to cause excessive algal growth. Issuance of the Permit despite this potential was a violation of the general criteria of the TSWQS at 30 Tex. Admin. Code § 307.4. For this reason, FOF 45 and COL 8, 10, 11 and 12 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary

⁴⁵ See PFD at 1.

and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

2. The authorization of the discharge without any consideration of toxic PFAS violates 30 Tex. Admin. Code § 307.4(d).

While no specific regulatory standards exist for Contaminants of Emerging Concern (“CECs”), including PFAS, consideration of the impacts of toxic substances is necessary under the TCEQ general criteria found at 30 Tex. Admin. Code § 307.4(d): “Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.”

The impacts on human and aquatic health of one form of CECs, per- and polyfluoroalkyl substances (“PFAS”), in drinking water and surface water have been evaluated by the U.S. EPA. In April 2024, EPA established enforceable primary drinking water standards for CECs, including PFAS. 89 Fed. Reg. 32532. In December 2024, EPA established the Draft National Recommended Ambient Water Quality Criteria for PFAS. 89 Fed. Reg. 105041. EPA’s April 2024 Final Rule found that “animal toxicity studies have reported adverse health effects after oral HFPO-DA exposure, including liver and kidney toxicity and immune, hematological, reproductive, and developmental effects” and “may have an adverse effect on the health of persons.” *Id.* at 32544. EPA’s health advisories, which identify the concentration of chemicals in drinking water at or below which adverse health effects are not anticipated to occur, are: 0.004 parts per trillion (ppt) for perfluorooctanoic acid (PFOA), 0.02 ppt for perfluorooctane sulfonic acid (PFOS), and 2,000 ppt for potassium perfluorobutane sulfonate (PFBS). 87 Fed. Reg. 36848 (June 21,

2022). These EPA rules and guidance are relevant to surface quality analysis because, under this rule, CECs such as PFAS are properly considered toxic substances under TCEQ Rules 307.4(d) and 307.6.

The toxicity of PFAS has also been noted by the State of Texas in its suit against 3M Company, Corteva, Inc., DuPont De Nemours, Inc. and EIDP, Inc. f/k/a E.I. Du Pont de Nemours and Company.⁴⁶ In the Original Petition for that action, the State of Texas noted that, “3M has known for decades that the PFAS contained in its products, such as PFOS, are toxic and adversely affect the environment and human health.”⁴⁷ The State of Texas went on to state that:

PFAS are “persistent, bioaccumulative and **toxic**” (“PBT”), and exposure in humans may be associated with diseases such as cancer and decreased vaccine response. Further, PFAS, once introduced into the environment, accumulate in fish, game, and other animal and plant life, contaminate drinking water and other natural resources, and accumulate in the blood of humans.⁴⁸

As discussed above, the general criteria TSWQS in Chapter 307 of the TCEQ rules, at 307.4(d), provide that “Surface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” It is uncontested that the discharge will potentially contain PFAS.⁴⁹ Since PFAS are toxic, and TCEQ’s rules require that surface waters must not be toxic, a consideration of the impact of PFAS within the discharge is necessary in order to determine that the discharge

⁴⁶ Ex. GEAA-123 (Offer of Proof).

⁴⁷ Ex. GEAA-123 (Offer of Proof) at 22.

⁴⁸ Ex. GEAA-123 (Offer of Proof) at 3.

⁴⁹ Ex. GEAA-300 at 6.

does not have a reasonable potential to result in a violation of the TSWQS. Yet, TCEQ entered FOF 55, stating that, “Similar to PFAS, TCEQ has no rules regulating Contaminants of Emerging Concern,” and FOF 56, stating that, “TCEQ’s rules concerning toxicity do not regulate PFAS or CECs.” TCEQ erred in entering these findings, considering the relevance of PFAS.

Due to the harmful effects of PFAS, it is also impossible to determine that attainable uses of a water body will be protected as required under the Tier 1 anti-degradation review, and that a discharge will not cause degradation, as required under the Tier 2 anti-degradation review unless the impacts of PFAS are considered.

Applicant referenced a prior order of the TCEQ as establishing, “a clear policy and established precedent” that TCEQ does not regulate CECs as a matter of law, and TCEQ does not consider CECs (which would include PFAS) to be relevant or material to the issuance of a TPDES permit.⁵⁰ To the degree that the Commission relied upon this prior order as establishing general Commission policy, the Commission has engaged in relying upon an invalid rule.

Due to the Commission’s disregard for PFAS contained within the discharge, FOF 10, 11, 49, 51, 55, 56 and 68 as well as COL 5, 8, 10, 11 and 12 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ’s authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by

⁵⁰ Applicant’s Objections to the Direct Testimony and Exhibits of Protestants, Feb. 7, 2025, at 2, citing *An Order Granting the Application by Highland Lakes Midlothian I, LLC for TPDES Permit No. WQ0015999001*, TCEQ Docket No. 2023-0844-MWD, SOAH Docket No. 582-23-23818, Explanation of Changes at 12 (Aug. 5, 2024).

substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

3. The Commission erred in refusing to admit evidence relating to PFAS contamination.

As part of the prefiled testimony offered during the contested case hearing, Aligned Protestants offered Exhibit GEAA-123, which was a copy of Plaintiff's Original Petition in the matter of *State of Texas v. 3M Company; Corteva, Inc., DuPont de Nemours, Inc., and EIDP, Inc f/k/a E.I. Du Pont de Nemours and Company*, Docket No. DC-C202400996, 18th Judicial District, Johnson County, Texas.

This Exhibit was objected to by Applicant based on Texas Rule of Evidence 401, asserting that "TCEQ does not regulate PFAS in wastewater permitting cases despite the State of Texas' recent filing of this pending lawsuit."⁵¹ The ALJs sustained this objection by the ALJs' February 13, 2025 Order No. 3: Addressing Prehearing Matters. The ALJs reiterated this ruling during the hearing on the merits.⁵² The ALJs' decision to strike this Exhibit was in error, as the document is relevant to a determination of whether PFAS constitute a toxic pollutant, and the discharge of toxic pollutants must be addressed in the permitting process pursuant to 30 Tex. Admin. Code §§ 305.531(4), 307.1, 307.4(d) and 307.6.

⁵¹ Applicant's Objections to the Direct Testimony and Exhibits of Protestants, Feb. 7, 2025, at 27, *see also id.* at 2-3.

⁵² Tr. Vol. 1 at 120.

Because Exhibit GEAA-123 was relevant, and the ALJs improperly struck the Exhibit as irrelevant, the ALJs' Order No. 3 striking the Exhibit, the ALJs' reiteration of that ruling, the Commission's adoption of that ruling, FOF 49, 51, 54 and 61, and COL 8, 10 and 15 (on which Exhibit GEAA-123 would have been relevant) are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

V. The Commission's Final Order violates the Commission's rules relating to groundwater, and the Commission improperly excluded evidence relating to groundwater impacts of the facility and discharge.

A. Applicable Law

Under Texas Water Code § 26.401(c)(1), it is State policy that "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard."

30 Tex. Admin. Code § 309.12 further requires that the "[t]he commission may not issue a permit for a new facility . . . unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of water in the state." In making this determination, the same rule provides that the Commission may consider several factors, including "groundwater conditions such

as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions.” 30 Tex. Admin. Code § 309.12(2).

B. Groundwater Context

Dr. Ron Green provided extensive testimony that groundwater in the area of the proposed discharge is particularly sensitive to groundwater contamination. The receiving waters are located in the Contributing Zone of the Edwards Aquifer, which is hydraulically connected to the Recharge Zone, allowing minimally diluted contaminants to travel rapidly through the system at a rate of approximately one mile per day.⁵³ Helotes Creek shortly downstream of the discharge crosses a fault,⁵⁴ which may serve as a conduit for the movement of contaminants in the discharge into the groundwater.⁵⁵

Due to this high transport rate, contaminants—including pathogens—will have limited time to be mitigated before reaching nearby groundwater wells, posing a significant risk to drinking water supplies.⁵⁶ Dr. Green noted that wells used for domestic supply at the Ann Toepperwein household and the Lynette Toepperwein Munson household are located within ½ mile of where Helotes Creek exits Guajolote Ranch, meaning that effluent discharged upstream of these wells could arrive at the wells within 1-2 days of the time of discharge.⁵⁷ Such domestic wells in the area are typically developed in the Upper Glen Rose (a component of the Trinity Aquifer) given that this aquifer has freshwater at a depth

⁵³ Ex. GEAA-200 at 5:15-21.

⁵⁴ Ex. GEAA-203.

⁵⁵ Ex. GEAA-200 at 7:13-18.

⁵⁶ Ex. GEAA-200 at 5:21-24.

⁵⁷ Ex. GEAA-200 at 11:14-17.

shallower than the Lower Glen Rose Aquifer.⁵⁸ His site inspection confirmed the presence of fractured bedrock and faults in the creek bed, which serve as conduits for contaminants to enter the aquifer.⁵⁹

Both the shallow domestic wells and the deeper Grey Forest Utility wells are at risk of contamination. The shallow wells, such as those owned by the Toepperwein household, are in a karst aquifer where the potential exists for a close connection with the downstream waters.⁶⁰ This creates a high likelihood that recharge that occurs in the creek bed will reach the groundwater wells near the creek bed.⁶¹ While the wells owned by GFU are completed to a greater depth, the potential still exists for contaminants from the discharge to reach these wells due to the faults located between the wells and the discharge point.⁶² This could occur in less than 24 hours.⁶³ The GFU wells are located within ¼ mile of Helotes Creek, “meaning that the contaminants will not have far to travel in order to move from the creekbed to the wells” in Dr. Green’s words.⁶⁴

⁵⁸ Ex. GEAA-200 at 10:8-15.

⁵⁹ *Id.* at 7:21-8:10.

⁶⁰ Ex. GEAA-200 at 11:1-6.

⁶¹ Ex. GEAA-200 at 11:7-9.

⁶² Ex. GEAA-200 at 12:10-24.

⁶³ Ex. GEAA-200 at 12:23-24.

⁶⁴ Ex. GEAA-200 at 12:22-23.

C. Commission Errors Relating to Groundwater

- 1. The Commission's decision that the Permit was adequately protective of groundwater was based on a "policy," never adopted by rule, that compliance with the TSWQS also ensures that groundwater will not be degraded.**

The Commission's Final Order includes a finding that "The discharge's compliance with the TSWQS, which ensure that the surface water will be protected and not degraded, also ensures that groundwater will not be degraded."⁶⁵ This is more accurately considered a conclusion of law, rather than a finding of fact, as it sets forth a policy determination by the Commission. There is no support for this conclusion, particularly given that such "policy" has never been adopted by rule, and nitrate is a potentially harmful contaminant in groundwater which was not the subject of any regulation by the Commission's application of the TSWQS in this case.

The surface water quality standards establish no limit on contaminants relevant to the protection of groundwater quality, and thus fail to protect groundwater quality. As one example, the TSWQS as applied in this case allow the discharge of nitrate with no limit on the concentration or amount of nitrate discharged.⁶⁶ Nitrate is a contaminant subject to a primary drinking water standard of 10 mg/L, but in studies, nitrates in lower concentrations have been linked to increased risk of colorectal, bladder, and breast cancer, thyroid disease, diabetes, and birth defects.⁶⁷ In addition, as discussed above, PFAS can be toxic, but TCEQ's application of the TSWQS involves no consideration of PFAS. This lack of

⁶⁵ Final Order at FOF 61.

⁶⁶ Ex. GEAA-100 at 26:12-25.

⁶⁷ Ex. GEAA-100 at 27:6-11.

regulation of PFAS in surface water is another way by which the application of the TSWQS fails to ensure protection of groundwater quality. This is particularly of concern given that the Edwards Aquifer Authority has performed sampling of groundwater wells in the area that shows PFAS to already be present within those wells.⁶⁸

The Commission's reliance upon a general policy that compliance with the TSWQS ensures that groundwater will not be degraded constitutes reliance upon an invalid rule, which also has no basis in the record. For this reason, FOF 61 and COL 8, 10 and 15 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

2. The Commission erred in failing to protect the quality of *all* groundwater, based, in part, upon the improper exclusion of evidence that relevant wells were in the Upper Trinity.

The Commission's Final Order includes a finding of fact that, "Domestic drinking water wells in the vicinity of the discharge are completed in the Middle Trinity Aquifer."⁶⁹ This conclusion was based on nothing more than speculation by Applicant's witness as to the decisions that a well-driller almost a century ago would have made.⁷⁰ This Finding of

⁶⁸ Ex. GF-8 at 17-18 (Offer of Proof).

⁶⁹ Final Order at FOF 59.

⁷⁰ PFD at 72, relying on testimony by Applicant's expert witness that historical local wells were likely completed into Middle Trinity because Upper Trinity in area was an unreliable drinking water source and his survey of modern wells had indicated that all but one modern well was completed in Middle Trinity. This witness had no personal knowledge of the depth of the wells at issue.

Fact was also premised upon a record which had excluded Aligned Protestants' Exhibit GF-8, the deposition of F. Paul Bertetti.

Mr. Bertetti is the Senior Director of Aquifer Science, Research and Modeling at the Edwards Aquifer Authority ("EAA").⁷¹ He testified by deposition that the EAA had performed sampling of groundwater wells in the Grey Forest area, completed in both the Upper Trinity and Lower Trinity, as well as a combination thereof.⁷² He noted that many wells in the area are drilled to depths without specific units to which they are open and collect water from.⁷³ This testimony by Mr. Bertetti indicated that the wells in the area are not completed in a fashion so that they are only "open" to the formation at their depth of completion, as a properly-completed modern well would be. Rather, this testimony indicates that a well completed, for example, into the Middle Trinity Aquifer may still be drawing water from both the Middle Trinity and the Upper Trinity Aquifer.

Mr. Bertetti also offered testimony that PFAS has been detected in the sampling of groundwater wells in the area of the groundwater wells of concern in this case.⁷⁴

This testimony was obtained by Aligned Protestants' deposition of Mr. Bertetti. During that deposition, the counsel for Municipal Operations was given the opportunity to question Mr. Bertetti, but chose to use that opportunity to engage in persistent harassing

⁷¹ Ex. GF-8 at 7 (Offer of Proof).

⁷² Bertetti Dep. at 16 (Attachment A to this Motion).

⁷³ Ex. GF-8 at 16-17 (Offer of Proof).

⁷⁴ Ex. GF-8 at 17-18 (Offer of Proof); *see also* Attachment B to this Motion (Complete Deposition of F. Paul Bertetti, Feb. 10, 2025).

examination of the witness, which led to the counsel for Mr. Bertetti ending the deposition.⁷⁵

Applicant moved to strike Mr. Bertetti's deposition based upon the fact that the deposition had been terminated by Mr. Bertetti's counsel,⁷⁶ even though Applicant had made no efforts to pursue further questioning of Mr. Bertetti. The ALJs granted this Motion, and ruled that they would exclude his deposition testimony, and exclude questioning based upon that document.⁷⁷

The Commission erred in premising its finding that groundwater would be protected in light of the alleged fact that the groundwater wells owned by Aligned Protestants were located in the Middle Trinity Aquifer. Even if it was true that Aligned Protestants' wells all draw solely from the Middle Trinity Aquifer (the speculative testimony from Applicant's witnesses did not support such a finding), TCEQ rules require the protection of *all* groundwater – not just the groundwater where protesting parties own wells. Because the Commission failed to address the protection of groundwater located within the Upper Trinity Aquifer (based upon speculative testimony that was not probative evidence), FOF 61 and COL 8, 10 and 15 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable

⁷⁵ Bertetti Dep. at 40-51 (Attachment B to this Motion).

⁷⁶ Municipal Operations, LLC's Motion to Strike Deposition Testimony of Paul Bertetti, Feb. 18, 2025.

⁷⁷ Tr. Vol. 2 at 9.

and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Furthermore, the deposition testimony of Mr. Bertetti was relevant and material, and the fact that Applicant's counsel chose to engage in harassing questioning of Mr. Bertetti did not justify the exclusion of the deposition of Mr. Bertetti. Accordingly, the ALJs' exclusion of that deposition, and the Commission's adoption of that exclusion, as well as FOF 59, 60 and 61 and COL 8, 10 and 15 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

VI. Issuance of the Permit violated the Commission's rules requiring protection of wildlife.

A. Applicable Law

Independent of the protection of existing and attainable uses, the Water Quality Standards also contain general criteria which require the protection of wildlife. In particular, 30 Tex. Admin. Code § 307.6(4) provides that, "[w]ater in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three." When approving Texas' delegated authority to issue Texas Pollutant Discharge Elimination System permits, the EPA noted that this

standard, “requires [TCEQ] to impose case-specific conditions in TPDES permits to protect aquatic and aquatic-dependent species (including listed species) from the toxic effects of discharges when Texas’ other toxic criteria and implementation procedures provide insufficient protection.” State Program Requirements; Approval of Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas, 63 Fed. Reg. 51164, 51197 (Sept. 24, 1998).

B. The Commission’s decision failed to protect impacted wildlife by disregarding the impacts of PFAS.

As noted above, the Commission refused to consider the impacts of PFAS in any way. This refusal to consider the impacts of PFAS rendered the Commission unable to make a finding that the water would not be toxic to wildlife, as required by 30 Tex. Admin Code § 307.6(4). Due to this failure, FOF 55, 56, 64, 66, 67 and 68 and COL 8, 10, 11 and 12 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ’s authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

C. The Commission erred in failing to perform a case-specific evaluation of impacts upon endangered species, instead relying upon a 1998 U.S. Fish and Wildlife Service Biological Opinion.

The endangered species review identified by the Commission in its Final Order is premised upon a 1998 biological opinion of the USFWS, and looked only to aquatic or aquatic dependent species in priority watersheds of critical concern. This is relied upon in

the Commission's Final Order as a reason to excuse the consideration of karst invertebrates, based upon a finding that karst invertebrates are not aquatic or aquatic dependent species.

As previously observed by the Environmental Protection Agency, 30 Tex. Admin. Code § 307.6(4) protects all wildlife, including terrestrial wildlife and requires a case-specific analysis of the potential impact of a discharge upon endangered species. The mere protection of "limited" aquatic life uses, as was performed for the receiving waters of Helotes Creek, does not implement this rule for such species. The Commission's lack of any case-specific evaluation of the potential impact of the discharge upon endangered karst invertebrates is a violation of 30 Tex. Admin. Code § 307.6(4). Accordingly, FOF 56, 62, 64, 66 and 67, as well as COL 8, 10, 11 and 12, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

D. The Commission's determination that karst invertebrates will not be adversely impacted by the discharge failed to recognize and address the potential presence of karst invertebrates along the discharge route, and was thus in error.

The Commission's Final Order errs in concluding that the Draft Permit's maintenance of aquatic life uses protects aquatic life, terrestrial life, and wildlife, including endangered species. The record fails to support a finding that the Draft Permit is protective of wildlife, including the endangered karst invertebrates.

The Applicant's Endangered Species Habitat Assessment Report performed by Pape-Dawson specifically states that "surface expression of karst invertebrate habitat was identified during the field visit."⁷⁸ In this assessment, Pape-Dawson identified solution channels in the vicinity of the discharge route including those designated as S-07, S-08, and S-09.⁷⁹ Applicant's investigation noted that both S-07 and S-08 extended down vertically.⁸⁰ The Executive Director's Standards Reviewer, Ms. Labrie, conceded that the possibility existed that solution cavity S-07 potentially extended to below the surface of the streambed of Helotes Creek.⁸¹

Dr. Price himself did not rule out the potential for karst invertebrates to have a significant likelihood of encountering or being adversely affected by the discharge.⁸² He testified that the karst habitat features on the property may or may not have animals living in them, such as the spiders and beetles that have received attention in this matter.⁸³ Dr. Price admitted that he had no idea as to whether the karst features identified by Pape-Dawson extended to a depth below the level of the stream receiving the discharge.⁸⁴ Dr. Price admitted that he did not know how far karst features 7, 8, and 9 are from the receiving streambed.⁸⁵

⁷⁸ App. Ex. 10 at APP000404.

⁷⁹ App. Ex. 10 at 418.

⁸⁰ App. Ex. 10 at 403.

⁸¹ Tr. Vol. 3 at 73:3-17.

⁸² App. Ex. 20 at 14:27 – 15:1.

⁸³ Tr. Vol. 2 at 145:24 – 146:2.

⁸⁴ Tr. Vol. 2 at 142:9-11.

⁸⁵ Tr. Vol. 2 at 148:14-19.

Applicant's expert Steve Paulson asserted in his direct testimony that the features identified by Pape-Dawson were "upstream and upslope of the discharge point."⁸⁶ Yet, under cross-examination, Mr. Paulson claimed that the discharge point is "probably" at the lowest point on the property.⁸⁷ He questioned the accuracy of the depiction of the location of the discharge point within the adjacent landowners map in the Application, and said that the location shown on the adjacent landowners map in the Application is not consistent with his understanding of the location of the discharge point.⁸⁸ At the same time, he, too, stated that he did not know how far beneath the ground the solution channels identified by Pape-Dawson extended.⁸⁹ When pressed to identify the location of the discharge point, Mr. Paulson said that "I'm not going to comment" and went on to say that "it doesn't really matter because wastewater does not affect these species."⁹⁰ In short, Mr. Paulson's opinion that species within the solution cavities would not be impacted was based upon a misunderstanding of the relative location of the solution channels and the discharge point, and a conclusory opinion that the wastewater would not harm the species.

Given that karst invertebrates are potentially present in areas impacted by the proposed discharge, FOF 62, 64, 66 and 67, as well as COL 8, 10, 11 and 12, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the

⁸⁶ App. Ex. 8 at 9:28-31.

⁸⁷ Tr. Vol. 1 at 276:20-23.

⁸⁸ Tr. Vol. 1 at 280:14-21, 282:8 – 283.7.

⁸⁹ Tr. Vol. 1 at 277:22 – 278:2.

⁹⁰ Tr. Vol. 1 at 285:2-7.

record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

VII. The Commission's findings of fact are conclusory, and do not adequately resolve the legitimate factual disputes presented in this matter.

When adopting findings of fact, the findings of the agency must be based on the evidence. Tex. Gov't Code § 2001.141(c). Findings of fact that set forth statutory language must include explicit underlying fact findings. *Id.* Findings should be stated as the agency's findings and should relate to material basic facts. *Charter Med.—Dallas*, 665 S.W.2d at 451. And the findings should resolve legitimate factual disagreements. *Id.* A mere recital of testimony or summations of evidence is inadequate. *Id.* Nor is it enough to simply find that the requisite information was included in the permit application. *Id.*

The record in this case presented numerous factual disputes that are not addressed in the Commission's Final Order with adequate specificity.

For example, as to the Tier 1 anti-degradation review, the Commission's Final Order simply states, by FOF 49, in a conclusory manner, that the ED properly conducted a Tier 1 review for all water bodies. This does not address and resolve the factual dispute as to whether Helotes Creek should be considered to be of high aquatic life uses, which is a legitimate factual disagreement in this matter. Similarly, the Commission failed to address the evidence that Helotes Creek is fishable/swimmable, and thus should be subjected to a Tier 2 review.

Furthermore, the Final Order wholly fails to resolve disputes as to the potential impact of PFAS.

This inadequacy renders FOF 37, 49, 55, 66 and 67 and COL 8, 10, 11 and 12: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

VIII. The Commission's finding that the Draft Permit complies with the Commission's nuisance odor rules violates TCEQ Rule 309.13(e)(1).

The Permit does not meet the buffer zone requirements of the TCEQ rules. Under, TCEQ Rule 309.13(e)(1), "[l]agoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line." 30 Tex. Admin. Code § 309.13(e)(1). The Application states that the wastewater will be treated by "anaerobic selectors."⁹¹ Since these are units with zones of anaerobic activity, this unit should be subject to a buffer zone distance of 500 feet as required by 30 Tex. Admin. Code § 309.13(e)(1). Yet, it was only subjected to a buffer zone requirement of 150 feet.

Because the proper buffer zone was not required for the anaerobic selectors at the facility, FOF 69 and 70, as well as COL 8 and 13, are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6)

⁹¹ See Applicant Ex. 1, Administrative Record Tab D, at 239.

arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

IX. The Commission improperly allocated the burden upon the parties.

Texas Government Code Section 2003.047(i-1)-(i-3) sets out the procedure for the presentation of evidence at the SOAH hearing. So, the permit applicant—here, Municipal Operations—may rely on the administrative record for its initial presentation of evidence (i.e., its direct case), and benefits from a prima facie demonstration once the administrative record is filed.

A protesting party may then rebut the prima facie demonstration by presenting evidence that (1) relates to an issue that was submitted to SOAH by TCEQ when the matter was referred, and (2) demonstrates that one or more provisions of the draft permit violate a state or federal requirement.

If the protesting party rebuts the prima facie demonstration, then, the applicant must present additional evidence to support its case.

Because the permit applicant maintains the burden of proof throughout this process, a protesting party's burden is akin to a burden of production.⁹² If a protesting party satisfies this burden of production, then, the prima facie demonstration no longer applies with regard

⁹² See 40 Tex. Reg. 9688 (Dec. 25, 2015) (explaining, in regard to TCEQ rules implementing SB709, that while the burden of proof remains with the applicant, that burden can be met “by the submittal of the administrative record to and its admittance into the evidentiary record by SOAH, subject to rebuttal as provided in new Texas Government Code § 2003.047(i-2). In addition, SB 709 does not establish the evidentiary standard for any party in a [contested case hearing], nor does it provide any direction to SOAH or the commission to establish a new standard for the rebuttal demonstration in new Texas Government Code § 2003.047(i-2). Because [contested case hearings] are similar to non-jury civil trials in district court, the evidentiary standard in [contested case hearings] for permit applications is ‘preponderance of the evidence.’”).

to the contested issue, and the permit applicant may not rely on the prima facie presumption based on the filing of the administrative record. More is required.

The ALJ is then tasked with making findings of fact, conclusions of law, and any ultimate findings, all of which must be separately stated. Tex. Gov't Code § 2003.047(l); Tex. Health & Safety Code § 361.0832(a). The Commission thereafter must issue a final decision that also includes findings of fact and conclusions of law, separately stated. Tex. Gov't Code § 2001.141. The requirements for these findings are discussed above.

In this case, on a number of contested issues, the ALJs failed to correctly implement the parties' relative legal burdens, relieving Municipal Operations of its burden of proof by a preponderance of the evidence on issues where the prima facie demonstration was rebutted by Aligned Protestants' evidence. The ALJs then presented the Commission with a Proposed Order that failed to engage with the evidence presented and resolve the factual disputes based on the evidence.

Among other issues, the ALJs, and the Commission, improperly imposed a burden of persuasion upon Aligned Protestants on issues related to groundwater impacts (wherein the Commission placed the burden on Aligned Protestants to prove that impacted wells were in the Upper Trinity, and prove a migration pathway even though Applicant's witness said such a pathway could exist), as well as impacts upon wildlife (wherein the Commission place the burden upon Aligned Protestants to prove that endangered species were present in impacted areas), and surface water impacts (particularly those related to the modeling of dissolved oxygen). This misallocation of the burden of proof rendered FOF 13, 37, 39, 43, 49, 59, 60, 61, 62, 64, 66, 67 and 69 and COL 8, 10, 11, 12, 13 and 15: (1)

in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

X. Conclusion

For the reasons stated above, FOF 8, 10, 11, 13, 22, 36, 37, 38, 39, 41, 42, 43, 45, 47, 48, 49, 51, 54, 55, 56, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69 and 70 and COL 5, 8, 10, 11, 12, 13 and 15 are: (1) in violation of constitutional or statutory provisions; (2) in excess of TCEQ's authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and (6) arbitrary and capricious and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Aligned Protestants respectfully request that the Commission set Municipal Operations' Application for rehearing and, upon rehearing, deny Municipal Operations' Application. Aligned Protestants further request such other and further relief to which they may be justly entitled.

Respectfully submitted,

/s/ Eric Allmon
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CERTIFICATE OF SERVICE

I do hereby certify that, on November 24, 2025, a true and correct copy of the foregoing document was served upon the following parties via electronic service.

/s/ Eric Allmon

Eric Allmon

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ATTACHMENT A

SETTLEMENT AGREEMENT

STATE OF TEXAS
COUNTY OF BEXAR

The Parties to this Settlement Agreement are Municipal Operations, LLC (“Municipal Operations”), a limited liability company organized pursuant to Texas law, and the San Antonio Metropolitan Health District (“Metro Health”), an administrative department of the City of San Antonio (collectively, the “Parties”).

RECITALS

1. On or around May 23, 2022, Municipal Operations filed an application with the Texas Commission on Environmental Quality (“TCEQ”) for Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0016171001, that would authorize the discharge of treated domestic effluent from a Wastewater Treatment Plant (“WWTP”) serving a new residential subdivision in Bexar County, Texas (the “site”).
2. Metro Health opposed Municipal Operations’ application and requested that the TCEQ grant a contested case hearing. The TCEQ docketed this matter as TCEQ Docket No. 2024-0670-MWD, granted Metro Health’s request and referred the case to the State Office of Administrative Hearings (“SOAH”) where Metro Health was named a party.
3. The Parties acknowledge that the SOAH proceeding would reflect bona fide disputes and controversies between the Parties concerning the issues relating to Municipal Operations’ TPDES application.
4. The Parties desire to avoid further annoyance, cost, delay, and uncertainty associated with the SOAH proceeding and have accordingly entered into this agreement to fully settle all issues concerning Municipal Operations’ TPDES permit application. Therefore, in order to fully and finally compromise and settle all claims that have been or could have been asserted in the SOAH proceeding, the Parties hereby enter into this Settlement Agreement.

TERMS OF AGREEMENT

In consideration of the mutual promises and agreements contained in this Settlement Agreement, the Parties agree as follows:

1. Within three (3) business days following the effective date of this Agreement, Metro Health will file with SOAH and the TCEQ and serve on all parties in TCEQ Docket No. 2024-0670-MWD, a request to withdraw its hearing request as an affected person and party with prejudice, thereby withdrawing its opposition to Municipal Operations’ TPDES application. Metro Health agrees to not pursue any additional legal action before any state or federal agency or before any court regarding this TPDES permit application.

2. Municipal Operations will employ a Class A operator who will be responsible for the operation and maintenance of the WWTP and collection system during the permit term. Municipal Operations will request that this requirement be included in its TPDES permit after permit issuance through a minor amendment.
3. Prior to discharging any effluent from the WWTP, Municipal Operations will obtain and maintain authorization for beneficial reuse of the treated wastewater effluent generated by the WWTP under title 30 Texas Administrative Code Chapter 210. Municipal Operations further agrees that the quality of reuse water will meet Type 1 standards as required by Title 30 Texas Administrative Code Section 210.33, and that reuse water will only be used on common areas within the development and not on property owned by individual homeowners. Municipal Operations will reuse the treated effluent during the permit term to the maximum extent practicable.
4. When constructing and operating the reuse water system, Municipal Operations will comply with the San Antonio Water System's ("SAWS") Cross Connection and Backflow Prevention requirements to prevent contamination of the potable water system and will allow SAWS access to the reuse system at all times for inspection and testing..
5. Municipal Operations will ensure a minimum of 4 inches of soil in areas used for beneficial reuse by irrigation of treated effluent during the permit term. Importing of soil will only be required in areas where the existing condition does not already consist of a minimum of 4 inches of soil.
6. Municipal Operations will monitor the WWTP and lift stations 24 hours per day/7 days per week via SCADA or equivalent system, or auto-dialer equipment during the permit term.
7. Municipal Operations will maintain a 24-hour answering service as well as on-call staff to receive and respond to after-hours calls during the permit term.
8. Municipal Operations will provide all field vehicles with GPS monitoring equipment allowing operations staff to expedite response time during the permit term.
9. Municipal Operations' personnel will be on site within one hour of being notified of an operational issue to diagnose and/or cure any operational issue as necessary.
10. Municipal Operations will design and construct wet wells for the sanitary sewer facilities of sufficient capacity to contain, at a minimum, sixty (60) minutes of peak design flow.
11. Municipal Operations will provide emergency contact information to SA Metro Health and SAWS.
12. This Agreement is solely for the benefit of the Parties hereto. There are no third-party beneficiaries of this Agreement. This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement constitutes an admission on any issue by any party.

13. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

14. Any breach of the provisions of paragraphs 1 through 11 of this Settlement Agreement shall constitute a material breach of this Settlement Agreement for which the Parties may seek appropriate injunctive relief in a court of competent jurisdiction, including, but not limited to, repayment of the reasonable attorneys' fees necessary for enforcement of this Settlement Agreement.

15. The Parties recognize that this Settlement Agreement is made solely to avoid the burdens and expense of additional and protracted litigation.

16. The Parties acknowledge that they have been advised to consult with an attorney before signing this Settlement Agreement and that they have consulted with and been represented by their attorneys. The Parties further acknowledge that they (i) have carefully read this Settlement Agreement in its entirety and have had an opportunity to consider fully the terms of this Settlement Agreement for a reasonable amount of time; (ii) fully understand the significance of all the terms and conditions of this Settlement Agreement; (iii) are signing it voluntarily and of their own free will; (iv) assent to all of the terms and conditions contained herein; and (v) are not relying on any representations or promises not set forth herein in signing this Settlement Agreement, but solely upon their own investigations.

17. The Parties represent and warrant that they are authorized and entitled to sign this Settlement Agreement, that no other person or entity has any interest in the matters released in this Settlement Agreement, and that the Parties own and have not sold, pledged or hypothecated, assigned or transferred or purported to sell, pledge, hypothecate, assign or transfer to any person or entity all or any portion of the matters or claims released in this Settlement Agreement.

18. This Settlement Agreement represents the only agreement between the Parties concerning Municipal Operations' TPDES permit pending in TCEQ Docket No. 2024-0670-MWD and supersedes all prior settlement agreements, whether written or oral, relating thereto. This Settlement Agreement is a complete and fully integrated agreement and may not be modified except by a subsequently executed document signed by all the Parties.

19. Any waiver of any term or condition of this Settlement Agreement shall not operate as a waiver of any other term or condition, nor shall any failure to enforce a provision of this Settlement Agreement operate as a waiver of such provision or of any other provision of this Settlement Agreement.

20. Should any provision of this Settlement Agreement, or its application, to any extent be held invalid or unenforceable, the remainder of this Settlement Agreement, and its application, excluding such invalid or unenforceable provisions, shall not be affected by such exclusion and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

21. No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the Parties, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

22. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Bexar County, Texas.

23. Venue for any suit arising hereunder shall be in Bexar County, Texas.

24. Municipal Operations considers the provisions of this Settlement Agreement as confidential information excepted from the Public Information Act. SA Metro Health, the City of San Antonio, and SAWS will respond to any public information act requests regarding the Settlement Agreement pursuant to the procedure set out in Texas Government Code § 552.305.

25. This Settlement Agreement is effective upon signature by all Parties.

APPROVED:

Municipal Operations, LLC

By: 
Title: Office

Date: 12/24/2024

City of San Antonio

By: 
for Claude A. Jacob, DrPH, MPH
Health Director
San Antonio Metropolitan Health District

Date: 12-23-24

ATTACHMENT B

SOAH DOCKET NO. 582-25-01778
TCEQ DOCKET NO. 2024-0670-MWD

APPLICATION BY MUNICIPAL	§	BEFORE THE STATE OFFICE
OPERATIONS LLC FOR NEW	§	
TEXAS POLLUTANT DISCHARGE	§	OF
ELIMINATION SYSTEM PERMIT	§	
NO. WQ0016171001	§	ADMINISTRATIVE HEARINGS

REMOTE ORAL DEPOSITION OF

F. PAUL BERTETTI

FEBRUARY 10, 2025

REMOTE ORAL DEPOSITION OF F. PAUL BERTETTI,
produced as a witness at the instance of Greater Edwards
Aquifer Alliance and the City of Grey Forest, and duly
sworn, was taken in the above-styled and -numbered cause
on February 10, 2025, from 2:04 p.m. to 3:16 p.m.,
before Angela L. Mancuso, CSR No. 4514, in and for the
State of Texas, reported by machine shorthand, the
witness being located in San Antonio, Texas, pursuant to
Notice and any provisions stated on the record.

R E M O T E A P P E A R A N C E S

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1 FOR THE GREATER EDWARDS AQUIFER ALLIANCE AND THE CITY OF
2 GREY FOREST:

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9 ALSO PRESENT:

10 Jordan Crago, Protestants' Expert
11 Ron Green, Protestants' Expert
12 Kaveh Khorzad
13 Gwyneth Lonergan, Allmon Legal Assistant
14 Richard Mott
15 Lauren Ross, Protestants' Expert
16 Sheridan Thompson
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EXHIBITS

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REPORTER'S NOTE:

Quotation marks are used for clarity and do not necessarily reflect a direct quote.

1 "THE REPORTER: I am Angela L. Mancuso,
2 Texas CSR 4514. I am located in Keller, Texas, and
3 taking this deposition by machine shorthand. The
4 witness is located in San Antonio, Texas."

5 P R O C E E D I N G S

6 (February 10, 2025, 2:04 p.m.)

7 THE REPORTER: Would counsel please state
8 appearances.

9 MR. ALLMON: Yes, I guess I can go ahead
10 as the one who has noticed the deposition. This is Eric
11 Allmon. I'm here on behalf of Greater Edwards Aquifer
12 Alliance and the City of Grey Forest.

13 MS. GILBERT: Helen Gilbert, on behalf of
14 Applicant, Municipal Operations LLC.

15 MR. ECKHART: Brad Eckhart, on behalf of
16 the Executive Director. With me is Fernando Salazar
17 Martinez.

18 MR. MERCER: This is Josiah Mercer, on
19 behalf of the Office of Public Interest Counsel. I have
20 Jennifer Jamison with me as well.

21 MS. TREJO: This is Deborah Trejo,
22 representing Paul Bertetti, not a party to this matter.

23 MR. CONOLY: This is Wyatt Conoly, also
24 representing Paul Bertetti, not a party to this matter.

25 (Witness sworn by reporter)

1 F. PAUL BERTETTI,
2 having been first duly sworn, testifies as follows:

3 EXAMINATION

4 BY MR. ALLMON:

5 Q. Good afternoon, Mr. Bertetti. How are you?

6 A. Good, sir. How are you today?

7 Q. Doing well. Thank you for taking time out of
8 your day to be here with us.

9 Have you been deposed before?

10 A. No, I have not.

11 Q. Okay. Just a few things. If I ask a question
12 that you don't understand, please feel free to ask me to
13 clarify. I want to try and make sure, as much as
14 possible, that we're on the same page as the question
15 I'm asking, so that it matches up with the answer you
16 provide.

17 And I know -- sometimes we have to be careful,
18 particularly on Zoom, not to talk over each other. It
19 just makes the court reporter's job a bit easier.

20 And this isn't a marathon. So feel free at
21 any point, if you need a break, to let me know. I don't
22 anticipate this will be a long deposition, so that may
23 be moot. But if you need a break, just let me know. I
24 would only ask that you not seek a break while we have a
25 question pending. If you could ask -- if you could wait

1 for a point there when we're in between questions, that
2 would be appreciated.

3 So could you state your name for the record?

4 A. Yes. My name is Franklin Paul Bertetti. I go
5 by Paul Bertetti.

6 Q. Okay. And who do you work for?

7 A. I work for the Edwards Aquifer Authority.

8 Q. And what's your position?

9 A. I'm the Senior Director of Aquifer Science
10 Research and Modeling at the Edward Aquifer Authority.

11 Q. And how long have you been in that position?

12 A. I've been in this position for approximately
13 six years.

14 Q. Okay. Did you hold another position with the
15 Edwards Aquifer Authority?

16 A. I did. I started out as the research manager.

17 Q. And how long were you in that position?

18 A. Approximately one year.

19 Q. Okay. And what are your responsibilities in
20 your current position?

21 A. I manage the Aquifer Science Research Program
22 and the staff associated with aquifer science. I also
23 manage our modeling program and the staff associated
24 with the modeling program.

25 Q. And what type of activities does the Aquifer

1 Science Program engage in?

2 A. In general, we conduct research to better
3 understand and characterize the aquifer system. That
4 includes our Groundwater Quality Monitoring Program,
5 field-based research activities, inter-formational flow
6 research, and vulnerability research.

7 We also conduct research at our Field Research
8 Park, where we're looking at various land management
9 activities and their potential influence on aquifer
10 recharge and groundwater quality.

11 Q. And I think you said that you had some
12 supervision authority over a program other than the
13 Aquifer Science Program?

14 A. Correct. We have a team of modelers. That's
15 another set of our staff that also contributes to both
16 modeling our research activities but also the general
17 aquifer water numerical model. We also model -- the
18 team also conducts research to support the Edwards
19 Aquifer Habitat Conservation Plan Incidental Take permit
20 renewal process that is currently underway.

21 Q. Okay. I'm going to go ahead and share my
22 screen, just to try and orient us a little bit here. Do
23 you have before you now a map?

24 A. I do.

25 Q. Do you recognize this?

1 A. Yes. It looks like an outline of the Edwards
2 Aquifer and its components, along with the EAA
3 jurisdictional boundary.

4 Q. Okay. Do you see an area marked as Artesian
5 Zone here?

6 A. I do. It appears to be a beige color on the
7 map.

8 Q. And what does -- when we talk about the
9 artesian zone of the Edwards Aquifer, what is that?

10 A. Generally, the artesian zone refers to the
11 component of the aquifer that is underground and
12 confined. It's a confined nature in which it has
13 multiple layers of geological units above the aquifer
14 units in that area, and as result, recharge from the
15 recharge zone builds up pressure within the artesian
16 zone.

17 Typically, we have artesian-related wells,
18 when they penetrate the aquifer system in that area.
19 "Artesian" refers to water levels that are greater than
20 the elevation of the aquifer, the uppermost aquifer
21 strata. If the artesian pressure goes above the
22 surface, then you can have a flowing artesian well.

23 An example of a flowing artesian component
24 would be, like, Comal Springs, in which water is flowing
25 out of the aquifer system due to the artesian pressure

1 in the aquifer.

2 Q. And I see an area depicted as the Recharge
3 Zone there as well. Do you see that?

4 A. Yes, sir.

5 Q. And what's the recharge zone of the aquifer?

6 A. Recharge zone is the area where Edwards
7 Aquifer rocks are exposed at the surface. Typically, it
8 is the area in which the aquifer receives recharge.

9 Q. And I also see the Contributing Zone there.
10 Can you describe what the contributing zone
11 represents?

12 A. The contributing zone is the area north of the
13 recharge zone, where other unit rocks outcrop, for
14 instance, the Glen Rose Limestone. Runoff from
15 precipitation and spring discharge in the contributing
16 zone typically contributes to flowing streams that cross
17 the recharge zone, and that contributes to recharge in
18 the Edwards Aquifer system.

19 Q. As we look at the Edwards Aquifer, what kind
20 of behavior do we see in terms of the speed with which
21 water can flow in the Edwards Aquifer?

22 A. The rate of flow in the aquifer varies quite a
23 bit. It can be as much as a few thousand feet per day
24 to a few tens of feet per day. That's quite variable,
25 depending on where in the zone that you are and what

1 part of the aquifer that you're in.

2 Q. Does that have any consequences for the
3 dilution of contaminants within the aquifer?

4 A. I'm not sure the rate of flow has consequences
5 for dilution as much as the rapidity of recharge and
6 nearness of the surface to the flow of the zones might
7 impact -- and the nature of the aquifer matrix might
8 impact its ability to dilute or filter water.

9 Q. How does the nature of the aquifer matrix
10 influence the ability or the nature of contaminants to
11 dilute in the aquifer?

12 A. The aquifer is a karstic system in which there
13 are significant secondary porosity and conduits that
14 form, as a result of dissolution of limestone in the
15 recharge zone, components like sinkholes and fractures
16 and fault depressions, and also additional porosity due
17 to dissolution of limestone enable for infiltration into
18 the rock. Infiltration in those channels or conduits
19 can be relatively rapid.

20 Q. When you talked about additional infiltration
21 in addition to that from some of the conduits you
22 mentioned, so if one were looking at a stream and didn't
23 see any type of obvious recharge feature such as a fault
24 or a sinkhole, can there still be infiltration occurring
25 within that stream?

1 A. Yes.

2 Q. And how would that happen?

3 A. A lot of recharge occurs in fractures within
4 the rock and force essentially secondary porosity that's
5 available. Often those are covered by silt or other
6 components, so they're not directly visible in
7 streambeds.

8 Q. Now, as we look in, say, the contributing
9 zone, what types of -- what aquifers are there that
10 would be at the surface in the contributing zone that
11 lay underneath the Edwards members?

12 A. The majority of the contributing zone,
13 although it varies depending on location, is composed of
14 the Glen Rose Limestone, both the upper and lower units,
15 also exposures of the Edwards Limestone and other rocks.

16 Q. Are those elements of the Trinity Aquifer?

17 A. The Glen Rose Limestone makes up parts of the
18 Trinity Aquifer, yes.

19 Q. What's the difference between the upper and
20 the middle and the lower portions of the Trinity
21 Aquifer?

22 A. The Upper Trinity Aquifer is composed
23 primarily of the Upper Glen Rose unit. The Middle
24 Trinity Aquifer is primarily composed of the Lower
25 Glen Rose unit and the Cow Creek Limestone, which lies

1 underneath the Lower Glen Rose.

2 Q. And is the behavior of groundwater in the
3 Upper Trinity similar to that that we've discussed in
4 the Edwards Aquifer?

5 A. For the most part, yes.

6 MS. TREJO: Excuse me. I just want to go
7 on the record to make a general objection that
8 Mr. Bertetti is not disclosed as an expert witness in
9 this case, and you are asking him to opine on a lot of
10 things which he's not a disclosed expert witness to do.
11 So I'd like to just have that as a recurring objection
12 throughout.

13 I don't know -- I mean, there has been no
14 qualification. I don't believe he's been noticed or
15 identified as an expert witness in this matter. So I'm
16 not -- I'm not sure that any of this is admissible,
17 but -- and I'm not a party -- we're not a party in this
18 matter, but I am concerned with you asking him a whole
19 series of questions about his opinions on things, when,
20 you know, that is not a role he is serving.

21 Fact questions and what is the components of
22 the members of one aquifer or another are
23 well-established facts. But you are getting into an
24 awful lot of opinions, so if I could just have a running
25 objection as to the scope of the questions calling for

1 expert opinion.

2 MR. ALLMON: Of course. That's noted.
3 We don't plan to present him as an expert in the case.
4 The witnesses have already been filed. We're not
5 presenting him as an expert witness. But I respect the
6 objection.

7 Q. So as we look at the -- in your work, have you
8 looked at what nature of connections may exist between
9 the Upper Trinity and the Middle Trinity?

10 A. We have not done a lot of work to evaluate
11 connections between the Upper and Middle Trinity
12 Aquifer, no.

13 Q. Have you done work to look at connections
14 between the Edwards Aquifer and the Upper Trinity?

15 A. Yes.

16 Q. And what's the nature of that work?

17 A. We are interested in learning the locations,
18 the potential locations, and magnitude of water transfer
19 between the Trinity Aquifer system and the Edwards
20 Aquifer system.

21 Q. Okay. Now, I'm going to share another
22 exhibit, just to orient ourselves to a particular area
23 of interest.

24 Do you have before you now another aerial
25 photograph?

1 A. I do. It's entitled Municipal Operations LLC,
2 Map 2.

3 Q. And do you see here the city of Grey Forest
4 outlined in yellow?

5 A. I do.

6 Q. Are you familiar with this area?

7 A. Partially. I'm not extremely familiar, but,
8 yes, I'm aware of Grey Forest in that location.

9 Q. Has the Edwards Aquifer Authority done any
10 groundwater well sampling in this area?

11 A. We have, yes.

12 Q. And what type of groundwater well sampling was
13 done in this area?

14 A. We have sampled wells for a range of analytes
15 that might be related to our research to look at the
16 interactions between the Trinity and the Edwards
17 Aquifers.

18 Q. And what were those analytes?

19 A. Typically, we sample for major ions, trace
20 elements, minor elements, trace and minor elements. We
21 also take field parameters at the sampling point,
22 isotopes of water and carbon, in addition to nutrients,
23 if applicable. We also sample for compounds of
24 interest, (indiscernible), PFAS, or per- and
25 polyfluoralkyl substances.

1 Q. Do you include sampling for bacteria?

2 A. Yes. Yes, we do.

3 Q. And that may well fit within one of the
4 categories you described. I'm just not necessarily
5 familiar with all of the terms.

6 A. No, I did not mention that.

7 Q. Okay. And roughly how many wells in this area
8 have the Edwards Aquifer Authority conducted sampling
9 in?

10 A. To the best of my knowledge, we have sampled
11 on the order of eight to a dozen wells over the last
12 five or six years, but I don't recall exactly the
13 number. And I don't recall if they all would be within
14 that Grey Forest area. They might be in the greater
15 Grey Forest and Helotes region.

16 Q. Okay. Do you know what aquifer those wells
17 were in?

18 A. It's difficult to say, exactly. Most of the
19 wells are completed either in the Upper Glen Rose or the
20 Middle Trinity, Upper Trinity or Middle Trinity, or some
21 combination thereof. There is not a lot of well control
22 in that area.

23 Q. Okay. When you say "not a lot of well
24 control," what does that mean?

25 A. Many wells are drilled to a depth without a

1 lot of specific information on the units to which they
2 are open and collect water from, and so it's very
3 difficult to verify the actual unit, unless there is
4 good recorded data.

5 Q. What types of contaminants were observed in
6 those wells once you did the testing?

7 A. It depends on the well. Typically, we get
8 responses for a range of major ions and metals,
9 including some -- including results for almost all of
10 our isotope results. From a contaminant standpoint or
11 potential contaminant standpoint, we do see some hits
12 for the PFAS compounds in many of the samples. Some of
13 the metals might be classified as that. Most of those
14 are naturally occurring.

15 Q. Did you come across any nutrients in the
16 wells?

17 A. We did. Sometimes we have indications of
18 nitrate, possibly phosphorus. I do not recall. I
19 wouldn't characterize those as contaminants at this
20 point.

21 Q. Okay. Did you come across any bacteria in any
22 of the wells?

23 A. I believe there have been some results for
24 positive coliform and/or E. coli in those wells. I
25 don't recall the number or frequency.

1 Q. You mentioned coming across PFAS in some
2 wells.

3 Did you-all make any considerations for what
4 the source of that may be?

5 A. No.

6 Q. Okay. Do you have any -- did you draw any
7 conclusions as to what the source of those PFAS might
8 be?

9 A. We do not have specific information about the
10 source of any PFAS. We're currently attempting to
11 characterize the magnitude of the concentrations and the
12 spatial distribution of PFAS in the system.

13 Q. Did you draw any conclusions as to what types
14 of things might be the source of those PFAS?

15 A. There are many sources for PFAS. PFAS are
16 man-made chemical compounds. But, no, we don't have any
17 direct information on the source of PFAS in any of those
18 wells.

19 Q. So if they're man-made, would it -- would you
20 anticipate that the source would be of anthropogenic
21 origin?

22 A. Yes.

23 Q. And did y'all make any effort to determine
24 what types of sources there may be for bacteria that was
25 observed?

1 A. No, not at this time. I believe some wells
2 may have had counts that were high enough to do source
3 tracking, but we have not done that to this point.

4 Q. Is that something that the district is
5 considering?

6 A. We have -- we have considered it. We have not
7 done that at this point.

8 Q. All right. Do you have any recollection as to
9 where the PFAS were observed?

10 A. I believe for the wells that we sampled for
11 PFAS, that PFAS are detected in nearly all the wells.

12 Q. So when you say "nearly all the wells," that's
13 nearly all the wells here in the Grey Forest area?

14 A. Correct. There may be a well without direct
15 results. I don't recall, explicitly. But typically
16 wells in this region have detections of PFAS almost all
17 the time.

18 Q. Have you done sampling for PFAS in other areas
19 of the Edwards Aquifer?

20 A. Yes.

21 Q. And do you find PFAS in all areas of the
22 Edwards Aquifer?

23 A. No.

24 Q. Is this the only area of the Edwards Aquifer
25 where you have found PFAS?

1 A. Well, these wells are primarily in the Trinity
2 Aquifer system. We have detections of PFAS in the
3 Edwards Aquifer system as well.

4 Q. Is there any particular geographic area where
5 those detections have been made?

6 A. Yes.

7 Q. And what's that area?

8 A. We see the largest concentrations and the most
9 consistent detections in the Edwards Aquifer Recharge
10 Zone in northern Bexar County.

11 Q. And where is that located in relationship to
12 the Grey Forest area?

13 A. The Grey Forest area in western Bexar County
14 is just north a couple of miles of the Edwards Aquifer
15 Recharge Zone. I don't know the exact distance.

16 Q. Do you recall what concentrations of PFAS were
17 observed?

18 A. They vary quite a bit by individual compound,
19 and I don't know if we have completed enough analysis to
20 say with any consistency. The numbers typically range
21 from detectable at unquantifiable levels, but with
22 positive detections, to something on the order of ten
23 parts per trillion.

24 Q. And do you recall where the wells that were
25 sampled were located relative to surface water streams?

1 A. I do not. I do not have that information yet.
2 That's not something I've seen to this point.

3 Q. Now, you said that nutrients were observed in
4 some of the wells?

5 A. Correct.

6 Q. Were those similar to observations that were
7 made in other wells through the Edwards Aquifer?

8 A. Yes.

9 Q. Did you make any -- did you or the district
10 try and draw any conclusions as to what the source of
11 those nutrients was?

12 A. We are currently investigating sources of
13 components like nitrate throughout the aquifer system.
14 Don't think we've got to the point where we can draw any
15 conclusions about particular sources. It's a matter of
16 uncertainty and some interest by others.

17 Q. Now, did you draw any conclusions of whether
18 there were any drinking water concerns in light of the
19 PFAS that were observed?

20 A. No, not yet.

21 Q. Do you recall what the range of depths were in
22 the wells that were sampled?

23 A. Are you speaking in terms of the Grey Forest
24 area?

25 Q. Yeah, the Grey Forest area, yeah.

1 A. Yes. I don't recall directly. At this time I
2 think the range was something between 150 and 400 feet,
3 but I am uncertain of those numbers.

4 Q. Okay. Did you make any analysis of the
5 presence of faults in this area relative to the wells
6 that were sampled?

7 A. We have not done any direct measurements of
8 faults in the area. There are maps that already exist.

9 Q. Do you -- does the Edwards Aquifer Authority
10 have any testing sites near Cibolo Creek?

11 A. We do have sites near Cibolo Creek but -- and
12 the eastern part of the county of Cibolo Creek, so I
13 don't think we have any direct testing sites near Cibolo
14 Creek in that area. We do have wells in the recharge
15 zone that we do monitor periodically.

16 Q. And have PFAS been observed in those testing
17 sites on Cibolo Creek more on the eastern side of Bexar
18 County?

19 A. We have had detections in some of the wells of
20 the eastern part of the county, yes.

21 Q. Have you performed -- has the Edwards Aquifer
22 Authority performed any dye tracer studies in the area
23 of Grey Forest?

24 A. Not during my tenure at the Edwards Aquifer
25 Authority, and I am generally unaware of previous

1 testing in that area.

2 Q. Are you aware of any testing done by others?

3 A. I am not aware of dye tracer testing in the
4 Grey Forest area done by others at this point.

5 Q. Okay. Do you know, relative to the city of
6 Grey Forest, where the wells that you sampled, kind of
7 what compass direction they were from the city, in
8 general?

9 A. Generally, we have sampled within the city
10 box as indicated on this map, Municipal Operations LLC,
11 Map 2. We have had some surface and well samples
12 upstream along Helotes Creek. We've had some samples to
13 the west and slightly to the east along Lee Creek and
14 Chimenea Creek. So in those areas -- I think we have
15 sampled wells in all of those areas.

16 Q. And were all of those groundwater sampling
17 from wells?

18 A. No. They range from groundwater and surface
19 water samples.

20 Q. When we've talked so far, were your answers --
21 were those entirely regarding the well, the groundwater
22 sampling?

23 A. That is correct.

24 Q. What types of testing have been done of the
25 surface water there in Helotes Creek?

1 A. When we sample surface water, we sample for
2 the same -- for the same range of analytes. So that
3 would include major and minor elements, trace metals,
4 water isotopes, isotopes with carbon, and nutrients and
5 coliform bacteria and PFAS, depending on the year of the
6 sampling.

7 Q. And when you say "depending on the year," what
8 does that depend on?

9 A. PFAS sampling ramped up after my arrival at
10 EAA. We started in 2017, and because of costs and other
11 factors, we increased our sampling rate over the years.
12 So samples collected in, say, 2018 and 2019 had varying
13 numbers of PFAS analyzed. So some samples in the
14 previous four or five years were not -- PFAS were not
15 included in the sample suite.

16 Q. In the surface water sampling performed there
17 in Helotes Creek, has PFAS been observed?

18 A. In recent samples, yes, PFAS have been
19 detected in the surface waters.

20 Q. Were they observed in prior samples where PFAS
21 was an analyte that was evaluated?

22 A. To my recollection, yes.

23 Q. Was -- so have they been present, when
24 analyzed for, at all times when that sampling was done?

25 A. To the best of my recollection, yes.

1 Q. And has bacteria been detected in those
2 surface water samples?

3 A. It has. That has -- the amounts have varied,
4 and I do not recall specifics on when or how much has
5 been detected.

6 Q. All right. So, I guess, does that mean you
7 don't recall as to whether those levels were above or
8 below the water quality standards?

9 A. That's correct. I would have to -- I would
10 have to look up that information.

11 Q. And were nutrients observed in any of those
12 samples?

13 A. Yes.

14 Q. Do you recall at what level those nutrients
15 were observed at?

16 A. No, I do not. We did complete a scoping study
17 in 2018 and '19 to look at nutrient concentrations
18 associated with periphyton in the surface waters in and
19 around Helotes.

20 Q. And did you draw any conclusions as a result
21 of that study?

22 A. Generally some of the results were mixed, but
23 there were nutrients that were detected as part of that
24 process.

25 Q. Do you recall at what level nutrients were

1 detected?

2 A. Not particularly. I think that varied,
3 depending on the condition of the stream at the time it
4 was sampled. It's always difficult with ephemeral
5 stream flow and trying to separate stagnant versus
6 non-stagnant conditions. The primary focus of that
7 study was to evaluate the technique, so that was our
8 main focus of the results.

9 Q. For any of the contaminants we've discussed,
10 were there seasonal patterns in the levels that were
11 observed?

12 A. We do not have enough samples to make that
13 determination.

14 MR. ALLMON: I'm going to take just a
15 five-minute break, and we can come back. We may well be
16 done here.

17 (Recess from 2:37 p.m. to 2:42 p.m.)

18 MR. ALLMON: Thank you, Mr. Bertetti.

19 First, I'll note for the court reporter it is
20 my intent to have the first map of the Edwards Aquifer
21 marked as Exhibit 1 to this deposition and the second
22 map, the Municipal Operations map, marked as Exhibit 2
23 to the deposition. My legal assistant will be sending
24 that to you later.

25 I think I may have just a few more questions

1 for you, Mr. Bertetti.

2 MS. GILBERT: Hey, Eric, I want to chime
3 in real quick.

4 MR. ALLMON: Sure.

5 MS. GILBERT: That second exhibit is not
6 the Municipal Operations exhibit. That was prepared by
7 the Executive Director, I think.

8 MR. ALLMON: I was just saying it's
9 labeled Municipal Operations. I wasn't implying that
10 was prepared by Municipal Operations.

11 MS. GILBERT: Just clarifying.

12 MR. ALLMON: Sure. That's fine.

13 BY MR. ALLMON:

14 Q. Mr. Bertetti, we discussed sampling of surface
15 water by the Edwards Aquifer Authority. Do you recall
16 that?

17 A. Yes, sir.

18 Q. And I think we discussed that there were some
19 PFAS observed in some of those samples.

20 A. Yes, sir.

21 Q. Was that sampling performed in both the water
22 column and the sediment or one or the other?

23 A. No. We only have sampled from the water
24 column.

25 Q. Okay. So that PFAS that was present would

1 have been present in the water column itself. Would
2 that be correct?

3 A. That's correct. We filter samples, so it
4 would be dissolved constituents.

5 MR. ALLMON: All right. That's all of my
6 questions for you today. I do appreciate your time.

7 THE WITNESS: Very good, sir.

8 MR. ALLMON: I guess I pass the witness.
9 I'll see if anyone else has questions for you.

10 MS. GILBERT: Applicant has questions. I
11 think I heard OPIC say no questions. So I'll just ask,
12 Fernando or Brad, do you have questions?

13 MR. ECKHART: The ED has no questions.

14 MS. GILBERT: Okay. Then it looks like
15 it's just me.

16 EXAMINATION

17 BY MS. GILBERT:

18 Q. Hello, Mr. Bertetti. Can you hear me okay?

19 A. Yes, I can. Thank you.

20 Q. And have I pronounced your name properly?

21 A. Yes, ma'am.

22 Q. Okay. Well, it's nice to meet you. Sorry
23 it's not in person. And because it's not in person, I
24 need to ask you a couple of questions about where you
25 are and how you got here.

1 So -- and just to the extent that Mr. Allmon
2 didn't cover all this, of course, if you don't
3 understand something about my question, please feel free
4 to ask me to rephrase it. If you can't hear me, I'll
5 just try to enunciate and vocalize better, that kind of
6 thing. If you need to take a break, just let me know.

7 A. Yes, ma'am.

8 Q. You are obligated to -- you are under oath,
9 and you are obligated to answer my questions truthfully.
10 You can't not answer my questions just because you don't
11 like them or the other attorneys object to my questions.
12 You have to do your best to answer my questions.

13 Do you understand?

14 A. I understand.

15 Q. Okay. Primarily I'd like to know why you're
16 here today.

17 A. I received a subpoena a week before last to
18 appear for this deposition.

19 Q. Did you receive the subpoena out of the blue,
20 or did somebody call you ahead of time and let you know
21 you were going to get it?

22 A. I think I received a phone call ahead of time
23 to let me know that a subpoena might be coming.

24 Q. And who was it that reached out to you?

25 A. I think the first phone call was from Annalisa

1 and -- from the Greater Edwards Aquifer Alliance.

2 Q. Annalisa Peace. Is that correct?

3 A. Yes, ma'am.

4 Q. What was the nature of your participation as
5 explained by Annalisa?

6 A. She said would I be willing to give a
7 deposition, and I agreed so. The specifics were not
8 discussed, if I recall. My understanding was they
9 wanted background information about the wastewater
10 discharge permit in the Grey Forest area.

11 Q. When you talk about the wastewater discharge
12 permit, you're talking about the subject matter of this
13 proceeding, the municipal --

14 A. Yes, ma'am.

15 Q. -- permit?

16 Had you heard about the permit application
17 before that call with Ms. Peace?

18 A. Yes, I have. I'm generally aware of it, but I
19 haven't been following it very closely because I'm not
20 involved in that process.

21 Q. So going back to that phone call, did
22 Ms. Peace or anybody else with GEAA or Mr. Allmon's
23 office provide you sample question-and-answers for the
24 kinds of issues that we'd be going over today?

25 A. No, ma'am.

1 Q. Did your attorneys prepare you for your
2 deposition today, Ms. Trejo or Mr. Conoly?

3 A. I had conversations with them to outline the
4 process of the deposition.

5 Q. Okay. Just kind of the housekeeping stuff or
6 the substantive portions?

7 MS. TREJO: I'm going to object. Hold
8 on. I'm going to make an objection because you are
9 calling for privileged information. You're asking for
10 confidential communications, what was discussed in
11 deposition prep.

12 MS. GILBERT: Let me clarify.

13 MS. TREJO: I'm instructing my -- hold
14 on. I'm instructing my client not to answer.

15 Q. So let's back up, Mr. Bertetti. Something I'm
16 a little confused by. Is Mr. Allmon's statement -- by
17 the way, were you provided a copy of Mr. Allmon's
18 response to our motion to quash your deposition?

19 A. (Shaking head from side to side).

20 Q. No?

21 A. I have not seen that.

22 Q. Were you aware that Mr. Allmon said that
23 Mr. Bertetti is not being deposed as a representative of
24 the Edwards Aquifer Authority? Were you aware of that?

25 A. I guess I was generally aware that that was

1 their indication when they were going to subpoena me,
2 yes, something like that.

3 Q. I'm sorry. Was whose indication?

4 A. My -- if I recall correctly, I was initially
5 told, I think, during that process that they were asking
6 me not as an official representative of EAA.

7 Q. But in your personal capacity?

8 A. That was my understanding.

9 MS. TREJO: Object because -- object to
10 form.

11 Q. That's fine. You can go ahead and answer the
12 question, Mr. Bertetti.

13 A. That was my understanding.

14 Q. And that was conveyed to you by Ms. Peace or
15 Mr. Allmon or somebody else?

16 A. Either Ms. Peace or Mr. Allmon, in the
17 conversation before I received the subpoena.

18 Q. Okay. I had understood that you only talked
19 to Ms. Peace.

20 So you also talked to Mr. Allmon?

21 A. That is correct.

22 Q. Okay. What did you talk to Mr. Allmon about,
23 specifically?

24 A. He said -- I'm not -- I'm not exactly sure I
25 recall explicitly. I think it was would I be available

1 during that following week for a deposition, and that he
2 wasn't going to ask me about expertise in wastewater
3 discharge, because I made it clear that I did not have
4 expertise in wastewater discharge.

5 Q. But he also -- you just mentioned that he said
6 you would only be called in your personal capacity, not
7 as a representative of EAA. Correct?

8 A. That was my understanding, yes.

9 Q. Okay. So you covered the fact that you were
10 not testifying about wastewater discharge permits and
11 that you were being called in your personal capacity.

12 Did you speak about anything else with
13 Mr. Allmon?

14 A. No, ma'am.

15 Q. How long was the conversation?

16 A. Less than five minutes.

17 Q. Okay. Was it by phone or email?

18 A. By phone.

19 Q. Okay. So are you in your office at the EAA
20 today?

21 A. Yes, ma'am.

22 Q. Okay. Are you participating on a computer
23 owned by the EAA right now?

24 A. Yes, ma'am.

25 Q. And, you know, I should have asked, and I

1 apologize. I can see your office is a lot neater than
2 mine.

3 But do you have anything in front of you,
4 like, maps or pre-filed testimony or your phone that you
5 might be receiving text messages on while we're
6 speaking? Anything like that?

7 A. I have my phone.

8 Q. Okay. Are you receiving text messages during
9 this deposition?

10 A. I have received a text message from Deborah
11 Trejo during the deposition.

12 Q. Okay. So Ms. Trejo said earlier, as an
13 initial and ongoing objection, that the EAA wasn't a
14 party here and you weren't disclosed as an expert. Do
15 you recall that statement?

16 A. Yes, ma'am.

17 Q. Does EAA have a policy about its employees
18 participating in depositions in their personal capacity
19 while they're in the office, like, sort of employee
20 handbook-type deal or some regulations?

21 MS. TREJO: I'm objecting as to form, but
22 I'm also objecting as to presuming the fact that
23 Mr. Allmon's assertion about the nature of
24 Mr. Bertetti's appearance is in fact accurate.

25 While Mr. -- whatever the -- Mr. Bertetti is

1 an employee of the EAA. He has testified about things
2 that -- he was asked about things he's done in his job
3 as an EAA employee. So whatever assertion was made
4 about Mr. Bertetti being called and subpoenaed to
5 testify is not an established fact. So the question
6 I'm -- objecting to the form of the question on multiple
7 grounds, but that's among them.

8 Q. Okay. So that was pretty lengthy,
9 Mr. Bertetti. Do you remember my question?

10 A. No. Could you repeat it, please. Thank you.
11 I apologize.

12 Q. I'm not sure I remember it, either.

13 MS. TREJO: You asked about whether there
14 is an EAA policy.

15 MS. GILBERT: Yeah, yeah, yeah.

16 Q. Right. And I'd still like to know that.

17 Mr. Bertetti, are you aware of any EAA policy
18 that pertains to employees participating in depositions
19 in their personal capacity?

20 A. I'm not aware of a specific policy one way or
21 the other. I did communicate with my supervisors and
22 the EAA executive management regarding this particular
23 request for deposition, so they were aware of this.

24 Q. Did you have to elicit their approval?

25 A. I believe that I was told that I was not

1 prohibited from participating as an individual, but they
2 also did not object to this process.

3 Q. Okay. Understood. I understand you're in
4 your EAA office and you're participating on an EAA
5 computer.

6 Are you taking vacation time right now, or is
7 this just part of your working day being deposed in the
8 EAA offices?

9 A. This is part of my working day.

10 Q. Are you being paid for your deposition?

11 A. I am currently being paid because I'm working.

12 Q. Okay. Do you know if your attorneys are being
13 paid to defend your deposition today?

14 A. I do not.

15 Q. Ms. Trejo?

16 A. No, I do not.

17 Q. In talking to your management or supervisors,
18 did you discuss any policies the EAA might have about
19 announcing some position in ongoing litigation between
20 separate third parties?

21 MS. TREJO: I'm going to object to the
22 form of the question. I'll also object to the extent
23 you're calling for a privileged conversation that may
24 have involved counsel --

25 Q. Let me clarify --

1 (Overtalk)

2 Q. Let me clarify, Mr. Bertetti. I'm not asking
3 you what you discussed with your attorneys. I'm asking
4 you what you discussed with your management that did not
5 include attorneys.

6 What do you understand the EAA's policy is
7 about getting involved in ongoing litigation between
8 parties, where they're not a party?

9 MS. TREJO: Same objections.

10 Q. So my -- my discussions included the general
11 manager, Roland Ruiz; our deputy general manager, Marc
12 Friberg, who I believe is an attorney; and my
13 supervisor, Mr. Mark Hamilton.

14 MS. TREJO: So I'm instructing the
15 witness to not answer any communications at which Marc
16 Friberg was present.

17 Q. Mr. Bertetti, how many wastewater discharge
18 cases before the State Office of Administrative Hearings
19 has the Edwards Aquifer Authority participated in? Do
20 you know?

21 A. I do not know.

22 Q. Okay. I think you mentioned you've been there
23 in your current capacity for, what, six years or seven
24 years?

25 A. I've been employed at EAA for seven and a half

1 years.

2 Q. Okay. What did you do before that?

3 A. I worked at Southwest Research Institute.

4 Q. Okay. And did you participate in the 2020
5 report that Ron Green authored?

6 A. I was not a participant in that report.

7 Q. Okay. Are you a member of GEAA?

8 A. I contribute to GEAA, yes.

9 Q. You financially contribute to GEAA. Correct?

10 A. Yes, ma'am.

11 Q. Do you contribute to GEAA in any other ways?

12 A. No, ma'am.

13 Q. Are your supervisors aware that you contribute
14 to GEAA?

15 A. I believe they are, yes.

16 Q. Were they aware of that before your deposition
17 today? Did you specifically make them aware of that
18 before your deposition?

19 A. I know that my direct supervisor is
20 specifically aware of that, yes, and prior to this
21 deposition, yes.

22 Q. Have you been remunerated for your authorship,
23 I guess, with Dr. Green in the various publications that
24 you've co-authored?

25 A. I'm not sure I understood the first part of

1 that question.

2 Q. Have you been paid for any of the publications
3 that you've co-authored with Dr. Green?

4 A. No, not -- not directly. I co-authored
5 publications as part of my employment.

6 Q. I see. Okay. Not personally, then. Correct?

7 A. Correct.

8 Q. How long have you known Dr. Green?

9 MS. TREJO: Objection; relevance, form.

10 Q. You can go ahead.

11 A. I have known Dr. Green since about 1992.

12 Q. Okay. And did you talk to Dr. Green about
13 your deposition today?

14 A. No, I did not.

15 Q. Did you talk to him about the proposed
16 wastewater discharge permit?

17 A. I believe we have had conversations about
18 that, yes, but not (inaudible).

19 THE REPORTER: I'm sorry. I didn't hear
20 the end of that.

21 "I believe we have had conversations about
22 that, yes, but not" --

23 THE WITNESS: That's it.

24 A. I believe we had conversations about that,
25 yes.

1 Q. I'm not asking you to go into painful detail,
2 but what was the subject matter of the conversation,
3 other than the fact that the application had been filed?

4 MS. TREJO: Objection; relevance, form.

5 Q. Did you talk about PFAS? Did you talk about
6 odors? Did you talk about groundwater contamination?

7 A. The majority of our conversations about that,
8 to the best of my recollection, would have been
9 technical in nature, how the system might perform and
10 the relative condition of the system.

11 Q. What do you mean by "system"? The MBR?

12 A. The groundwater system and the surface
13 groundwater interactions.

14 Q. The groundwater system being the subsurface
15 strata or the City of Grey Forest water wells?

16 A. In general, groundwater strata of the Upper,
17 Middle Trinity Aquifers and the Edwards Aquifer.

18 Q. Do you know how far away the closest public
19 wells are to the outfall, proposed outfall?

20 A. No, I do not.

21 Q. Have you reviewed the application?

22 A. I have not.

23 Q. Have you reviewed any pre-filed testimony?

24 A. I have not.

25 Q. Like, for example, have you reviewed Ron

1 Green's testimony or Lauren Ross's testimony?

2 A. I have not.

3 Q. Okay. By the way, do you know Lauren Ross?

4 A. I do not.

5 Q. You don't know her from her involvement in the
6 Liberty Hill matter?

7 A. No, ma'am.

8 Q. Okay. You spoke about the Liberty Hill
9 permit. Correct?

10 A. No, ma'am. I'm not aware about the Liberty
11 Hill permit.

12 Q. Did you participate in a Texas Water Symposium
13 in April of 2024 relating to managed wetlands and water
14 quality in the Hill Country?

15 A. Are you referring to the symposium in
16 Kerrville?

17 Q. Yes.

18 A. If that's what you're referring to, yes, I did
19 participate in that.

20 Q. Okay. You didn't talk about the City of
21 Liberty Hill's wastewater permit?

22 A. I may -- I do not recall directly, but I may
23 have discussed the potential results from that, but I'm
24 not sure I spoke about it directly.

25 Q. Results --

1 A. I'm relatively unfamiliar with that.

2 Q. Okay. Results being the nutrient limit that
3 was imposed by the TCEQ in the permit?

4 A. I don't recall that. I am aware that there
5 were potentially lowered -- requirements for lower
6 discharge concentrations. That's the extent of my
7 knowledge of the Liberty case.

8 Q. Is that something that you've advocated either
9 personally or in your capacity with EAA?

10 A. No, ma'am.

11 Q. Does the EAA, to your knowledge -- not asking
12 for a legal conclusion. I'm just asking, do you know if
13 the EAA has authority to regulate water quality?

14 MS. TREJO: Objection; form.

15 Q. Mr. Bertetti, you can answer the question.

16 A. Yes. Can you repeat that, please.

17 Q. Do you know if the EAA has authority to
18 regulate water quality within its jurisdictional
19 boundaries?

20 A. I am unclear as to what the extent of the
21 authority is. I know that we have a requirement to
22 monitor water quality and to evaluate that. I know that
23 the board has passed rules on limiting coal tar
24 application surface systems near the springs. If that
25 is a function of regulating water quality, then that's

1 the case. Generally, water quality issues for the
2 Edwards Aquifer are regulated by the Texas Commission on
3 Environmental Quality.

4 Q. Do you understand that to be under Chapter 213
5 of the commission's rules?

6 A. What do I understand to be under 213?

7 Q. The TCEQ's rules relating to the Edwards
8 Aquifer.

9 A. If that's where they are, then -- I'm not
10 familiar for sure if that is where those rules are
11 located.

12 Q. Have you never reviewed the TCEQ's Edwards
13 rules?

14 A. I have.

15 MS. TREJO: Form.

16 A. I'm not -- not familiar with their location in
17 the statute.

18 Q. Okay. Have you ever attended the annual
19 Edwards hearing/meeting that the commission's required
20 to have under the water code?

21 MS. TREJO: Objection; relevance.

22 A. No, I have not attended that meeting.

23 Q. Do you know what I'm talking about? They're
24 held in San Antonio, they're held in Austin, wherever
25 the Edwards Recharge, Contributing, or Transition Zone

1 is?

2 MS. TREJO: Objection; form.

3 A. Normally that's not part of my area of
4 responsibility. So, no, I have not attended them.

5 Q. Have you taken any positions personally or in
6 your capacity with EAA that surface wastewater
7 discharge -- strike that question.

8 In your personal capacity or with the EAA,
9 have you ever taken a position that discharges of
10 treated wastewater should be prohibited over the
11 contributing zone?

12 MS. TREJO: Objection; form and
13 relevance.

14 A. No, I have not taken a position that
15 wastewater discharges should be prohibited over the
16 contributing zone.

17 Q. Do you have an opinion about it?

18 A. Say again.

19 Q. Do you have an opinion about it?

20 MS. TREJO: Objection; form.

21 A. My opinion is that wastewater discharges
22 should be treated to have the best-quality effluent as
23 possible.

24 Q. Okay. So discharges may be allowed so long as
25 they have appropriate standards, but they shouldn't be

1 prohibited entirely; is that what you're saying?

2 MS. TREJO: Objection; form and
3 relevance.

4 A. My personal opinion, based on my experience,
5 is that I do not have evidence to support prohibiting
6 discharge entirely over the contributing zone.

7 Q. Were you aware that your co-author,
8 Dr. Green -- by the way, do you consider yourselves to
9 be friends personally, professionally?

10 MS. TREJO: Objection; relevance.
11 Objection; form.

12 I mean, how much longer is this going to go
13 on? Because we didn't seek a protective order because
14 this was represented to be a very short thing about some
15 very high-level things. But this is sort of ranging
16 into you on a fishing expedition for everything that
17 Mr. Bertetti thinks and all his relations and all his
18 friends. He does have a job to do.

19 We may have to instruct -- we may have to --

20 MS. GILBERT: Deborah --

21 MS. TREJO: -- go to the ALJ and seek a
22 protective order for this becoming harassing and an
23 undue burden.

24 MS. GILBERT: Deborah, we filed a motion
25 to quash this deposition. We don't believe

1 Mr. Bertetti's testimony is relevant to this proceeding.
2 You're right; he wasn't disclosed as a witness.
3 However, his name appears on many of the publications
4 that Ron Green has identified. And PFAS and nutrients
5 are very germane to this hearing. We agree with you.
6 We don't think Mr. Bertetti should be here, either. But
7 I didn't schedule his deposition today. Eric Allmon
8 did. And Eric represented that it would be a short
9 deposition. It was also notified from day to day until
10 it's concluded.

11 So with that, I'd like to conclude the
12 deposition. And the longer that you object to the form
13 of every single question, I guess we're going to be here
14 longer.

15 But everything that Mr. Bertetti -- I mean,
16 obviously you can predict that Mr. Bertetti's deposition
17 will be used at hearing, with Mr. Green and the other
18 experts. And so whether he's there in person or not in
19 person, his words in this deposition today will be put
20 forward as some sort of support for more regulation of
21 PFAS or nutrients or other analytes. And so this is
22 very germane to the subject matter. And this was the
23 Protestants, City of Grey Forest, where Mr. Bertetti
24 testified earlier today EAA has done all this sampling
25 including certain hits and sampling of PFAS.

1 MS. TREJO: Okay. So your position is
2 it's not relevant and not admissible, but you're now
3 seeking to do all this testimony about why it's not
4 relevant.

5 MS. GILBERT: I'm not the person that
6 makes that ruling. You know that the --

7 MS. TREJO: So I think at this point -- I
8 think at this point we -- I need to have my witness --
9 we need to seek relief from the tribunal, because at
10 this point it is becoming harassing and an undue burden.
11 We're entitled to seek relief for a protective order if
12 a deposition becomes harassing or an undue burden.

13 So I think if this is continuing and you're
14 going to, you know, subject Mr. Bertetti to this, you
15 know, barrage of questions of all these different
16 background topics, then --

17 MS. GILBERT: I'm asking --

18 MS. TREJO: -- we're well outside the
19 scope of what was represented to him that the deposition
20 was going to be about.

21 MS. GILBERT: I never talked to
22 Mr. Bertetti about --

23 (Overtalk)

24 MS. GILBERT: -- what this deposition was
25 about. Clearly, Mr. Allmon or the GEAA representatives

1 did. Okay. I was asking him and about to get to his
2 position and the Edwards Aquifer Authority's position on
3 the contributing zone.

4 Dr. Green has been very emphatic in his
5 pre-filed testimony that the contributing zone has no
6 distinction apart from the recharge zone. And as you
7 know, discharges over the recharge zone are prohibited.
8 So it's very important that I understand what the EAA's
9 position about Chapter 213 and those prohibitions is.

10 And to the extent that this witness has
11 co-authored publications with Dr. Green, and Dr. Green
12 has made those printouts, and Dr. Green is going to be
13 offered as an expert witness, it is important for me to
14 know the basis of Mr. Bertetti's knowledge.

15 MS. TREJO: Right.

16 MS. GILBERT: I'll withdraw the question
17 about his friendship with Dr. --

18 MS. TREJO: I think this has gone way,
19 way, way too far, and I think that to the extent that
20 you're now trying to establish the EAA's positions on a
21 whole series of things, which was not part of what
22 Mr. Allmon asked about -- you're trying to establish all
23 kinds of testimony right now from Mr. Bertetti about the
24 EAA and its positions on this and that. That's
25 really --

1 MS. GILBERT: He's here on behalf of the
2 EAA today, notwithstanding Eric's statements in his
3 motion or his response to the motion.

4 MS. TREJO: Mr. Bertetti works for the
5 EAA.

6 (Overtalk)

7 MS. GILBERT: It's very unusual --

8 MS. TREJO: Okay. Let's just --

9 (Overtalk)

10 MS. TREJO: -- and I will file a motion
11 for protective order with the ALJ to seek relief from
12 any further deposition testimony from Mr. Bertetti.

13 This has gone well beyond what the scope of
14 the questions asked were, and now you're getting into
15 whole other areas.

16 MS. GILBERT: There is no scope of
17 questions established, Deborah. I'm allowed --

18 MS. TREJO: We are entitled to seek
19 relief to not have our client deposed. And this has
20 now, I think, gone into a whole other thing where you're
21 trying to collaterally bring in all this testimony.

22 MS. GILBERT: The Protestant --

23 MS. TREJO: It's improper, and it seems
24 to have risen to the level of being harassment of the
25 witness.

1 MS. GILBERT: So let me just establish
2 that the Protestant, who represents a party to which
3 Mr. Bertetti has made financial contribution and is a
4 member of, can ask the witness questions. But I'm not
5 allowed to ask questions about the contributing and
6 recharge zone of the Edwards Aquifer, over whose
7 jurisdiction you are singularly given responsibility,
8 and the Protestants are? That's incomprehensible.

9 MS. TREJO: I'm not going to argue with
10 you right now. I don't think that serves any purpose.
11 I think that you have exceeded what is reasonable in
12 terms of the scope of the questions you were asking
13 Mr. Bertetti, and I think it is harassing. We are a
14 third party. We are not part of this dispute. We are
15 not a party to the contested case.

16 You are not -- you are asking a whole lot of
17 questions that are not related to, you know, the very
18 much more narrow questions that were asked before.

19 MS. GILBERT: Hey, Deborah, they all go
20 to the fact initially --

21 (Overtalk)

22 MS. GILBERT: -- that he offered --

23 (Overtalk)

24 MS. TREJO: Mr. Bertetti, let's jump off
25 the call. We're leaving the deposition at this point.

1 We will file a motion for protective order at the ALJ.

2 Paul, I'll wait for you to get off, and then
3 I'll get off.

4 (The witness and Ms. Trejo leave Zoom)

5 THE REPORTER: Are we off the record?

6 MR. ALLMON: I think that we seem to be
7 done here for today.

8 (Proceedings adjourned at 3:16 p.m.)

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CHANGES AND SIGNATURE

WITNESS NAME: F. PAUL BERTETTI
DEPOSITION DATE: FEBRUARY 10, 2025
PAGELINE CHANGE/REASON

I, F. PAUL BERTETTI, have read the foregoing
deposition and hereby affix my signature that same is

1 true and correct, except as noted above.

2

3

SIGNATURE OF WITNESS

4 STATE OF _____ x

5 COUNTY OF _____ x

6

7 Before me, _____, on this day

8 personally appeared F. PAUL BERTETTI, known to me (or

9 proved to me under oath or through _____)

10 (description of identity card or other document) to be

11 the person whose name is subscribed to the foregoing

12 instrument and acknowledged to me that they executed the

13 same for the purposes and consideration therein

14 expressed.

15 GIVEN UNDER MY HAND AND SEAL of office this

16 _____ day of _____, 2025.

17

18

19

20 (Seal)

Notary Public in and for the
State of _____.

21

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SOAH DOCKET NO. 582-25-01778
TCEQ DOCKET NO. 2024-0670-MWD

APPLICATION BY MUNICIPAL § BEFORE THE STATE OFFICE
OPERATIONS LLC FOR NEW §
TEXAS POLLUTANT DISCHARGE § OF
ELIMINATION SYSTEM PERMIT §
NO. WQ0016171001 § ADMINISTRATIVE HEARINGS

REPORTER'S CERTIFICATION

REMOTE ORAL DEPOSITION OF F. PAUL BERTETTI

FEBRUARY 10, 2025

I, Angela L. Mancuso, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, F. PAUL BERTETTI, located in
San Antonio, Texas, was duly sworn by the officer and
that the transcript of the oral deposition is a true
record of the testimony given by the witness;

That the original deposition was delivered to
Ms. Deborah C. Trejo for examination and signature by
the witness;

I further certify that the signature of the
deponent was requested by the deponent or a party before
the completion of the deposition and that the signature
is to be before any notary public and returned within 20
days from date of receipt of the transcript. If
returned, the attached Changes and Signature page
contains any changes and the reasons therefor.

1 I further certify that I am neither attorney or
2 counsel for, nor related to or employed by, any of the
3 parties to the action in which this deposition is taken,
4 and further that I am not a relative or employee of any
5 attorney or counsel employed by the parties hereto, or
6 financially interested in the action, and that I
7 reported this deposition from my office in Keller,
8 Texas.

9 Certified to by me on this the 14th day of
10 February, 2025.

11 
12

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