

SOAH DOCKET NO. 582-14-3427
TCEQ DOCKET NO. 2013-2228-MWD

APPLICATION OF DHJB § BEFORE THE STATE OFFICE
DEVELOPMENT, LLC FOR § OF
A MAJOR AMENDMENT TO § ADMINISTRATIVE HEARINGS
TPDES PERMIT NO. WQ0014975001 §

PROTESTANT’S NOTICE OF NEWLY DISCOVERED RELEVANT INFORMATION

TO THE HONORABLE SARAH RAMOS, ADMINISTRATIVE LAW JUDGE:

COME NOW, Mrs. Patricia Graham, Mr. Terrell Graham, and the Greater Edwards Aquifer Alliance (“Protestants”), and file this Notice of Newly Discovered Evidence. Protestants wish to bring the following to the Honorable ALJ’s attention:

I. NEWLY DISCOVERED INFORMATION

From time to time, Protestants review the website of the TCEQ to check for updates, and in the course of such review yesterday, Protestants observed an entry under the Johnson Ranch’s Edwards Aquifer Permit 13-12082002 (program ID 2702.04),¹ held by DHJB partnership (CN602996472):

Tracking No.	Type	Value	Start Date	End Date
19013441	Encountered Feature Type	Solution Cavity	02/13/15	02/17/15
19013442	Encountered Feature Notice Date	02/09/2015	02/09/2015	02/17/2015
19013443	Encountered Feature Plan Received Date	02/13/2015	02/13/2015	02/17/2015
19013444	Encountered Feature Letter Sent Date	02/20/2015	02/20/2015	02/20/2015

¹ The TCEQ approval letter for this EAPP was admitted as Protestants’ Exhibit 5.

A true and correct copy of the TCEQ pages is attached at Exhibit A to this Notice. A second entry, nearly identical to this one, documents the existence of a second recharge feature, also a solution cavity. The entry under the Edwards Aquifer Permit indicates that these two recharge features were encountered on the site of the Johnson Ranch approximately 2-3 weeks ago and the Applicant reported them to the TCEQ, as required by their permit. Evidence concerning the existence of recharge features was a contested issue in the Contested Case proceeding.

A. The Existence of Recharge Features on the site of the Johnson Ranch Calls into Question the Testimony of Applicant Witness Dr. Kemble White.

In his Prefiled testimony, Dr. White stated: “Based upon my research and onsite investigations of the area, however, it is my opinion that the Johnson Ranch property is not actually within the recharge zone.” DHJB Ex. 4.0 – 009. In their closing arguments, the Applicant quoted Dr. White:

Based upon the investigations and research we conducted and documented in Exhibits DHJB 4.2 through 4.10, inclusive, the characteristics of the Glen Rose Aquifer are such that infiltration beyond the root zone would be minimal and the ability to produce effluent which did reach the Upper Trinity would be unlikely, particularly given the distance of the wells from the Johnson Ranch discharge route.

Applicant Closing Argument at 20. The only argument that Applicant’s made with respect to the possibility of groundwater contamination was from Dr. White’s testimony, quoted above.

B. The Existence of Recharge Features on the site of the Johnson Ranch Bolsters the Testimony of Protestants’ witness Mr. George Rice, and also the Recommendation of OPIC related to Referred Issue 3.

The Protestants are concerned about the infiltration of contaminants, through recharge features, to their groundwater used for drinking and also to the Edwards Aquifer generally. Mr. George Rice testified, “Karst aquifers are vulnerable to contamination because water, and any contaminants it contains, can rapidly enter the aquifers through caves, sinkholes, and fractures.”

Prefiled Testimony of George Rice at 4. With respect to the dry creek, Mr. Rice explained, “The bed appeared to be quite permeable. Much of the creek bed was composed of cobbles, gravel, and coarse sand (alluvium). Many rocks in the creek bed were ‘honeycombed.’” *Id.* at 11. The discovery by the Applicant of recharge features on the Johnson Ranch bolsters the likelihood that there is permeable rock and similar features which could transmit the DHJB wastewater rapidly in the subsurface to the underlying groundwater.

Referred Issue 3 concerned the siting regulations and requirements. Protestants urged that groundwater considerations were among such requirements. In its Closing Arguments, OPIC recommended that, “[d]ue to the proximity of the proposed facility to the Edwards Aquifer Recharge Zone and its location above the Glen Rose/Trinity Aquifer,” that TCEQ was required to consider the possibility of groundwater contamination in its permit amendment review. OPIC Closing Argument at 11.

C. The Honorable ALJ Should be Made Aware of the Existence of this Relevant Information.

At this time, Protestants have no further details regarding this new information. However, Protestants call these recent entries to the ALJ’s attention because, they are relevant to the testimony presented at the hearing, and they may assist the judge in rendering a decision in this case. Protestants recognize this Notice is coming shortly before the PFD issuance, but have exercised diligence in submitting it to the ALJ as quickly after discovery as possible.

II. CONCLUSION

For these reasons, Protestants respectfully request that the ALJ take notice of the “Recharge Feature” entry submitted to the TCEQ on behalf of DHJB partnership regarding discoveries on the Johnson Ranch.

Respectfully submitted,

IRVINE & CONNER, PLLC

by: /s/ Charles W. Irvine

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CERTIFICATE OF SERVICE

On this 6th day of March, 2015, a true and correct copy of the foregoing instrument was electronically filed with SOAH and served on all attorneys of record by the undersigned via email and/or regular U.S. mail.

/s/ Charles W. Irvine

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EXHIBIT A

Central Registry

Detail of: **Edwards Aquifer Permit 13-12082002**

For: **JOHNSON RANCH (RN105332522)**

NE CORNER OF HWY 281 AND FM 1863

Permit Status: **ACTIVE**

Held by: **DH JB PARTNERSHIP LTD (CN602996472)**

OWNER [View Compliance History](#)

Mailing Address: Not on file

Legal	Description	Start Date	End Date	Type	Status	Status Date
13-12082002	EDWARDS AQUIFER	08/20/2012		PERMIT	APPROVED	01/27/2013

Tracking No.	Type	Value	Start Date	End Date
16485794	Plan Type	WPAPMOD	08/20/2012	
16485795	File number	2702.04	08/20/2012	
16485796	Fee Amount	8000.00 \$	08/20/2012	

Physical	Description	Start Date	Type	Status	Status Date
JOHNSON RANCH		08/20/2012	EDWARDS AQUIFER SITE	SEE LEGAL STATUS	08/20/2012

Tracking No.	Type	Value	Start Date	End Date
16485798	Project Area	287.75 ACRES	08/20/2012	
16485799	Permanent BMP Name	BMP	08/20/2012	
19013440	Encountered Feature Name	1	02/13/2015	02/17/2015
19013445	Encountered Feature Name	2	02/13/2015	02/17/2015

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Mailing Address: Not on file

ENCOUNTERED FEATURE NAME - 1 - 02/13/2015 - 02/17/2015- Tracking No. 19013440

Tracking No.	Type	Value	Start Date	End Date
19013441	Encountered Feature Type	SOLUTION CAVITY	02/13/2015	02/17/2015
19013442	Encountered Feature Notice Date	02/09/2015	02/09/2015	02/17/2015
19013443	Encountered Feature Plan Received Date	02/13/2015	02/13/2015	02/17/2015
19013444	Encountered Feature Letter Sent Date	02/20/2015	02/20/2015	02/20/2015

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Mailing Address: Not on file

ENCOUNTERED FEATURE NAME - 2 - 02/13/2015 - 02/17/2015- Tracking No. 19013445

Tracking No.	Type	Value	Start Date	End Date
19013446	Encountered Feature Type	SOLUTION CAVITY	02/13/2015	02/17/2015
19013447	Encountered Feature Notice Date	02/09/2015	02/09/2015	02/17/2015
19013448	Encountered Feature Plan Received Date	02/13/2015	02/13/2015	02/17/2015
19013449	Encountered Feature Letter Sent Date	02/20/2015	02/20/2015	02/20/2015

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