

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:27 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: J. Aldredge to TCEQ re Hearing Request Comment on SAWS App. 13098 - New
Braunfels Utilities.pdf

PM
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From: tgregory@lglawfirm.com <tgregory@lglawfirm.com>
Sent: Monday, September 20, 2021 3:14 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: James Aldredge

E-MAIL: tgregory@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 6155325828

FAX:

COMMENTS: Please see attached comment letter requesting a contested case hearing.

Mr. Aldredge's Direct Line: (512) 322-5859
jaldredge@lglawfirm.com

September 20, 2021

Ms. Laurie Gharis
Chief Clerk
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

**VIA ELECTRONIC FILING AND
FIRST-CLASS MAIL**

Re: New Braunfels Utilities Comments, Hearing Requests, and Public Meeting Request
on San Antonio Water System Application for Water Use Permit No. 13098

Dear Ms. Gharis:

New Braunfels Utilities ("NBU") respectfully submits the following written comments on the application filed by San Antonio Water System ("SAWS") for Water Use Permit No. 13098 (the "Application"). NBU requests a contested case hearing on the Application and the Executive Director's preliminary decision on the Application along with the initial draft Permit No. 13098 (the "Draft Permit"). Further, NBU also requests that TCEQ hold a public meeting on the Application because the unique nature of the authorizations requested therein will potentially create far-reaching effects on surface and groundwater rights throughout the Guadalupe River Basin. Please add me to your official mailing list for this matter.

Please also note the following contact information provided in accordance with TCEQ Rule 55.251(c)

James T. Aldredge, on behalf of NBU
816 Congress Ave., Ste. 1900
Austin, Texas 78701
Telephone: (512) 322-5859
Fax: (512) 472-0532

Background and Overview of Application

The San Antonio and Guadalupe River Basins are hydrologically unique for two primary reasons: (1) flows of state water within both basins are inextricably connected with and influenced by conditions in and spring flows from the Edwards Aquifer, and (2) the San Antonio River Basin—unlike any other in Texas—is tributary to a separate and distinct basin, the Guadalupe River Basin. These characteristics, when considered in the light of the requests made by SAWS in the Application, raise numerous issues of first impression for the Commission. And the potential

effects of the authorizations SAWS requests in the Application on water rights in the Guadalupe Basin cannot be fully understood without considerably more research, analysis, and modeling through a stakeholder process like a public meeting and contested case hearing.

The Texas Legislature has found that “the Edwards Aquifer is a unique and complex hydrological system” that “has a hydrologic interrelationship to the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins” and “is vital to the general economy and welfare of this state.” Act of May 30, 1993, 73rd Leg., R.S., ch. 626, §§ 1.01, .06, 1993 Tex. Gen. Laws 2350, 2355-56 [hereinafter *EAA Act*]. For those reasons, among others, the Legislature declared the Edwards Aquifer to be a distinct natural resource that is unique in Texas. *Id.* at 2350. Accordingly, the Legislature vested in the Edwards Aquifer Authority the power to, among other things, certify lawful use and reuse of water produced from the Edwards Aquifer. *Id.* at 2359-60. In addition, the Legislature has required that water withdrawn from the Edwards Aquifer “must be used within the boundaries of the [Edwards Aquifer] Authority.” *Id.* at 2366. Notwithstanding these scientific and legal realities, TCEQ’s rules governing surface water rights permitting, use, and reuse at Chapters 295 and 297 contain no acknowledgement or consideration of how use of water produced from the Edwards Aquifer might influence water availability and exercise of rights within the San Antonio and Guadalupe Basin.

SAWS requests that TCEQ—for the first time ever that NBU is aware of—authorize SAWS to discharge up to 260,991 acre-feet of water per year into one river basin and then divert and use that water in a separate river basin that is not an adjacent coastal basin. Such an activity would be physically impossible in any other two river basins in the state. A proposed authorization to convey water downstream from one basin into another raises important questions of how such an authorization will affect the long-standing system of prior appropriation and senior priority within the Guadalupe River Basin.

According to TCEQ’s public notice, the Application proposes only a short diversion reach at the extreme bottom of the Guadalupe River immediately upstream of its discharge to San Antonio Bay, yet the Application proposes to use water under the proposed permit in several counties well upstream of the diversion reach—including several counties that straddle the San Antonio and Guadalupe River Basins. The place of use designation appears to relate to the original Application request to set aside 50,000 acre-feet of permitted return flows per year for instream uses within the San Antonio and Guadalupe Rivers and freshwater inflows into San Antonio Bay. However, TCEQ staff determined that TCEQ lacks authority to grant such authorization. Consequently, the Draft Permit includes no provisions for the maintenance of instream flows and freshwater inflows, despite the fact that Water Code Section 11.042(b) expressly authorizes TCEQ to include special conditions “to help maintain instream uses and freshwater inflows to bays and estuaries.” It is unclear from the Application whether the proposed place of use will include use of water resources within the Guadalupe River Basin upstream of the proposed diversion reach. This ambiguity could potentially create unforeseen impacts on Guadalupe River Basin rights. In addition, NBU is concerned that the lack of protection of instream uses and freshwater inflows

may further adversely affect water rights within the Guadalupe Basin, including those rights owned by NBU.

The Application and Draft Permit propose and incorporate a complex Accounting Plan by which SAWS would track and account for discharges, diversions, and losses associated with the proposed bed-and-banks authorization. NBU is concerned that the Accounting Plan as currently proposed has been developed based on incomplete data relating to loss factors, travel times, and other calculations in the San Antonio and Guadalupe River Basins. In addition, NBU believes that a substantial portion of the return flows proposed for diversion in the Application constitute what TCEQ has previously classified as “historic” return flows. The Draft Permit includes no reference to the historic nature of SAWS’s return flows. That issue may be an important and determining factor in evaluating whether the proposed Accounting Plan and Draft Permit accurately reflect preexisting Water Availability Model information maintained by TCEQ for the San Antonio and Guadalupe River Basins.

The Application asserts that the water proposed for diversion “would not be present in the San Antonio River, but for actions taken by SAWS.” In light of the Legislature’s findings in the EAA Act, NBU does not agree and believes that statement fails to consider and is not an accurate reflection of Edwards Aquifer and surface water dynamics. The aforementioned uniqueness of the Application requires additional consideration of this important issue. The potentially far-reaching and significant impact the Draft Permit, if issued, may have on surface and groundwater rights and interests throughout the Guadalupe River Basin requires full stakeholder engagement and participation through a public meeting and contested case hearing process.

Effect of Draft Water Use Permit No. 13098 on NBU’s Rights

NBU is the municipally owned utility for the City of New Braunfels (the “City”), a home-rule municipality, and provides water, wastewater, and electric utility services to the citizens and customers of the City. NBU is governed by a Board of Trustees appointed by the New Braunfels City Council, which is authorized by the City to exercise complete control and authority for the electric, water, and sewer utilities systems serving the City and to adopt policies and direction necessary for exercising those duties.

NBU is the owner of record of several water rights permits, including, but not limited to, Certificate of Adjudication (“COA”) Nos. 18-3823, 18-3824, and 18-3830, as amended (collectively referred to herein as the “NBU Certificates”). The table below generally summarizes the consumptive use authorizations and the priority dates for the NBU Certificates:

NBU Certificates	Use	Priority
18-3823	Divert and use not to exceed 1,289 acre-feet of water per annum from the Guadalupe River for municipal, industrial, agriculture, and recreational purposes.	June 29, 1914; February 21, 2002

18-3824	Divert and use not to exceed 5,658 acre-feet of water per annum from the Guadalupe River for municipal, industrial, agriculture, and recreational purposes.	June 29, 1914; December 7, 1989; February 21, 2002
18-3830	Divert and use not to exceed 5 acre-feet of water per annum from the Guadalupe River for municipal, industrial, agriculture, and recreational purposes.	June 29, 1914; February 21, 2002

NBU's authorized diversion of water under the NBU Certificates is directly affected by flows in the Comal and Guadalupe Rivers. Under the NBU Certificates, NBU may not divert water at a rate that exceeds 30.15 cubic feet per second or the current flows in the Comal River, whichever is less. Under the NBU Certificates, NBU must limit the diversion of water to times when the streamflow of the Guadalupe River equals or exceeds 113 cubic feet per second at the USGS gage on the Guadalupe River above that river's confluence with the Comal River. Implementation of the activities proposed by SAWS in the Application and the Draft Permit could directly affect NBU's rights to divert water within the Guadalupe River Basin and threatens to altogether interrupt a major component of NBU's overall water supply.

The NBU Certificates also all contain a special condition (the "Special Condition") that provides the following:

The diversion and use of water under this Certificate will be subordinate to all previously existing water rights of the Guadalupe-Blanco River Authority (GBRA) upstream of the Applicant's diversion point on the Guadalupe River and also subordinate to any future amendments to existing rights of GBRA and to any future or additional right of GBRA, with respect to impounding water and/or diverting and/or using water from Canyon Reservoir.

The Special Condition imbedded in the NBU Certificates is important here because effects of the Application on water rights owned by GBRA necessarily also affects NBU's water rights. GBRA owns interests in significant water rights with diversion points downstream of the confluence of the Guadalupe and San Antonio Rivers and upstream of the diversion reach defined in the Draft Permit. NBU also has contractual rights through water supply contracts with GBRA to water stored by GBRA in Canyon Reservoir. NBU is concerned that granting the Application will force GBRA to alter how it uses its water resources in the Guadalupe River Basin in a way that depletes firm-yield availability of Canyon Reservoir water to which NBU has legal rights for its municipal water supply.

In addition, the largest freshwater springs complex in Texas—Comal Springs—is located within the corporate limits of New Braunfels. Comal Springs have historically discharged on average 316 cubic feet of water per second from the Edwards Aquifer into the Comal River. In 2017, NBU established the Headwaters at the Comal non-profit organization to protect and

conserve Comal Springs and develop community and educational resources relating to them. NBU has invested considerable resources in preserving this uniquely important natural, economic, and cultural resource—one upon which NBU and other water suppliers downstream in the Guadalupe Basin rely to provide safe and reliable water supply to a rapidly growing region. As a steward of these springs whose flows depend greatly on deliberate and appropriate regulation and protection of natural resources, NBU is also uniquely interested in and affected by the Application.

NBU's primary diversion point on the Guadalupe River is approximately 115 miles from the upstream point of SAWS's requested diversion reach. However, considering the potential effects the Draft Permit will have on spring and surface water flows upstream in the Guadalupe River Basin, there is practically no distance between the natural resources affected by the Application and NBU's diversion points and places of use.

Request for Public Meeting and Contested Case Hearing

As explained herein, the complex nature of the natural resources potentially affected if TCEQ issues the Draft Permit demands full stakeholder participation and input prior to TCEQ's decision on whether to grant the relief sought in the Application. TCEQ rules and applicable statutes provide two processes to achieve that. First, NBU requests that TCEQ hold a public meeting pursuant to TCEQ Rule 55.253(c). Based on the Legislature's finding that the Edwards Aquifer is vital to the general economy and welfare of this state, there necessarily is a significant degree of public interest in assuring that, if TCEQ issues the Draft Permit, the final permit includes all special conditions and other provisions necessary to protect groundwater and surface water interests that rely on Edwards Aquifer spring flows in both the San Antonio and Guadalupe River Basins.

Separately, TCEQ commissioners have held that applications to use the bed and banks of a state watercourse under Texas Water Code Section 11.042(b) are subject to a contested case hearing under Chapter 55, Subchapter G of the Commission's rules. Subchapter G requires that a request for a contested case hearing shall be granted if the request is timely made by an affected person consistent with applicable administrative requirements in TCEQ rules and is pursuant to a right to hearing authorized by law. An affected person includes entities that have a personal justiciable interest affected by the Application in a manner not common to members of the general public. As explained herein, NBU has such a justiciable interest and is, therefore, an affected person. Further, TCEQ's Notice of an Application for a Water Use Permit Application No. 13098 requires that all hearing requests must be submitted by September 20, 2021. This request, therefore, is timely.

Accordingly, NBU respectfully requests that its request for a contested case hearing on the Application and the associated Draft Permit be granted as required under TCEQ Rule 55.255(b). My mailing address, phone number, and fax number are noted herein. New Braunfels Utilities also reserves the right to raise and pursue any and all issues that may be relevant to its interests in the event of a contested case hearing.

Ms. Laurie Gharis
September 20, 2021
Page 6 of 6

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Aldredge', written in a cursive style.

James T. Aldredge

copies: Ryan Kelso, New Braunfels Utilities
Connie Lock, New Braunfels Utilities

Melissa Schmidt

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Victoria.pdf

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From: tgregory@lglawfirm.com <tgregory@lglawfirm.com>
Sent: Monday, September 20, 2021 3:12 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: James Aldredge

E-MAIL: tgregory@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend

ADDRESS: 816 CONGRESS AVE Suite 1900
AUSTIN TX 78701-2442

PHONE: 6155325828

FAX:

COMMENTS: Please see attached comment letter requesting a contested case hearing.

Mr. Aldredge's Direct Line: (512) 322-5859
jaldredge@lglawfirm.com

September 20, 2021

Ms. Laurie Gharis
Chief Clerk
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA ELECTRONIC FILING AND
FIRST-CLASS MAIL

Re: City of Victoria Comments, Hearing Requests, and Public Meeting Request
on San Antonio Water System Application for Water Use Permit No. 13098

Dear Ms. Gharis:

The City of Victoria ("City" or "Victoria") respectfully submits the following written comments on the application filed by San Antonio Water System ("SAWS") for Water Use Permit No. 13098 (the "Application"). Victoria requests a contested case hearing on the Application and the Executive Director's preliminary decision on the Application along with the initial draft Permit No. 13098 (the "Draft Permit"). Further, the City also requests that TCEQ hold a public meeting on the Application because the unique nature of the authorizations requested therein will potentially create far-reaching effects on surface water rights throughout the Guadalupe River Basin. Please add me to your official mailing list for this matter.

Please also note the following contact information provided in accordance with TCEQ Rule 55.251(c):

James T. Aldredge, on behalf of City of Victoria
816 Congress Ave., Ste. 1900
Austin, Texas 78701
Telephone: (512) 322-5859
Fax: (512) 472-0532

Background and Overview of Application

The San Antonio and Guadalupe River Basins are hydrologically unique for two primary reasons: (1) flows of state water within both basins are inextricably connected with and influenced by conditions in and spring flows from the Edwards Aquifer, and (2) the San Antonio River Basin—unlike any other in Texas—is tributary to a separate and distinct basin, the Guadalupe River Basin. These characteristics, when considered in the light of the requests made by SAWS in the Application, raise numerous issues of first impression for the Commission. And the potential

effects of the authorizations SAWS requests in the Application on water rights in the Guadalupe Basin cannot be fully understood without considerably more research, analysis, and modeling through the stakeholder process provided by a public meeting and contested case hearing.

SAWS requests that TCEQ—for the first time ever that Victoria is aware of—authorize the use of the bed and banks of one river basin to convey up to 260,991 acre-feet per year of groundwater-based return flows into, and reuse the same within, another river basin that is not an adjacent coastal basin. Such an activity would be physically impossible in any other two river basins in the state. A proposed authorization to convey water downstream from one basin into another raises important questions of how such an authorization will affect the long-standing system of prior appropriation and senior priority within the Guadalupe River Basin.

According to TCEQ's public notice, the Application proposes only a short diversion reach at the extreme bottom of the Guadalupe River immediately upstream of its discharge to San Antonio Bay, yet the Application proposes to use water under the proposed permit in several counties well upstream of the diversion reach—including Victoria County, where Victoria is permitted to use Guadalupe River water. The place of use designation appears to relate to the original Application request to set aside 50,000 acre-feet of permitted return flows per year for instream uses within the San Antonio and Guadalupe Rivers and freshwater inflows into San Antonio Bay. However, TCEQ staff determined that TCEQ lacks authority to grant such authorization. Consequently, the Draft Permit includes no provisions for the maintenance of instream flows and freshwater inflows, despite the fact that Water Code Section 11.042(b) expressly authorizes TCEQ to include special conditions "to help maintain instream uses and freshwater inflows to bays and estuaries." It is unclear from the Application whether the proposed place of use will include use of water resources within the Guadalupe River Basin upstream of the proposed diversion reach. This ambiguity could potentially create unforeseen impacts on Guadalupe River Basin rights. In addition, Victoria is concerned that the lack of protection of instream uses and freshwater inflows may further adversely affect water rights within the Guadalupe Basin, including those rights owned by the City.

The Application and Draft Permit propose and incorporate a complex Accounting Plan by which SAWS would track and account for discharges, diversions, and losses associated with the proposed bed-and-banks authorization. Victoria is concerned that the Accounting Plan as currently proposed has been developed based on incomplete data relating to loss factors and calculations in the San Antonio and Guadalupe River Basins.

Finally, the Guadalupe-Blanco River Authority ("GBRA") owns water rights permits that authorize a system of reservoirs and diversions throughout the lower Guadalupe River Basin. Those rights include diversion authorizations downstream of the confluence of the San Antonio and Guadalupe Basins. Victoria is concerned that the Draft Permit, if issued, could affect how GBRA manages its sources of supply in a way that will alter typical stream lows in the Guadalupe River at Victoria's diversion points. As explained below, those changes will directly affect Victoria's ability to divert water for its municipal supply. The aforementioned uniqueness of the Application and the natural resources it affects demands that the TCEQ give additional consideration to these important issues. The potentially far-reaching and significant impact the

proposed permit may have on surface water rights and interests throughout the Guadalupe River Basin requires full stakeholder engagement and participation through a public meeting and contested case hearing process.

Effect of Draft Water Use Permit No. 13098 on Victoria’s Rights

Victoria is a home-rule municipality that provides water and wastewater utility services to the citizens and customers of the City. Victoria is the owner of record of several water rights permits, including Certificate of Adjudication Nos. 18-3844, 18-3858, 18-3860, 18-3862, all as amended, along with Water Use Permit Nos. 3606, 4117, and 5466, also as amended (collectively referred to herein as the “Victoria Water Rights”). The table below generally summarizes the consumptive use authorizations and the priority dates for the Victoria Water Rights:

Victoria Water Rights	Use	Priority
WRPERM 3606	Divert and use not to exceed 4,676 acre-feet of water per year from the Guadalupe River for municipal, industrial, mining, and agriculture purposes.	June 10, 1978
ADJ 18-3844	Divert and use not to exceed 608 acre-feet of water per year from the Guadalupe River for municipal, industrial, mining, and agriculture purposes.	August 16, 1918
ADJ 18-3858	Divert and use not to exceed 1,000 acre-feet of water per year from the Guadalupe River for municipal, industrial, mining, and agriculture purposes.	June 27, 1958
ADJ 18-3860	Divert and use not to exceed 260 acre-feet of water per year from the Guadalupe River for municipal purposes.	August 15, 1951
ADJ 18-3862	Divert and use not to exceed 262.7 acre-feet of water per year from the Guadalupe River for municipal, industrial, mining, and agriculture purposes.	December 12, 1951
WRPERM 4117	Divert and use not to exceed 200 acre-feet of water per year from the Guadalupe River for municipal, industrial, mining, and agriculture purposes.	April 2, 1984
WRPERM 5466	Divert and use not to exceed 20,000 acre-feet of water per annum from the Guadalupe River for municipal purposes and off-channel storage.	May 28, 1993

Victoria’s authorized diversions of water under the Victoria Water Rights are directly affected by flows in the Guadalupe River. Under the Victoria Water Rights, the City may only divert water when flows measured at a USGS gage on the Guadalupe River at Victoria are higher than a minimum streamflow requirement that varies seasonally. Implementation of the activities

proposed by SAWS in the Application and the Draft Permit could affect Victoria's rights to divert water from the Guadalupe River because, as explained herein, those flows are influenced by SAWS's production of water from the Edwards Aquifer and water transit activities conducted by GBRA. Reduction in Guadalupe River flows increases the frequency of Victoria's minimum flow cut-off requirement during times of drought.

The City is also concerned that the unique nature of SAWS's requested authorization and ambiguities in the Draft Permit relating to SAWS's proposed place of use could affect Victoria's senior priority in the Guadalupe River Basin. That is particularly so considering that Victoria's place of use in the Guadalupe River Basin appears to overlap with SAWS's request to use water in Victoria County. At a minimum, additional special conditions should be incorporated into the Draft Permit to adequately protect Victoria's vested interests.

Request for Public Meeting and Contested Case Hearing

As explained herein, the complex nature of the natural resources potentially affected if TCEQ issues the Draft Permit demands full stakeholder participation and input prior to TCEQ's decision on whether to grant the relief sought in the Application. TCEQ rules and applicable statutes provide two processes to achieve that. First, Victoria requests that TCEQ hold a public meeting pursuant to TCEQ Rule 55.253(c). Victoria believes there is a significant degree of public interest in assuring that, if the TCEQ issues the Draft Permit, the final permit includes all special conditions and other provisions necessary to protect surface water interests that rely on Edwards Aquifer spring flows in both the San Antonio and Guadalupe River Basins.

Separately, TCEQ commissioners have held that applications to use the bed and banks of a state watercourse to convey and divert groundwater under Texas Water Code Section 11.042(b) are subject to a contested case hearing under Chapter 55, Subchapter G of the Commission's rules. Subchapter G requires that a request for a contested case hearing shall be granted if the request is timely made by an affected person consistent with applicable administrative requirements in TCEQ rules and is pursuant to a right to hearing authorized by law. An affected person includes entities that have a personal justiciable interest affected by the Application in a manner not common to members of the general public. As explained herein, Victoria has such a justiciable interest and is, therefore, an affected person. Further, TCEQ's Notice of an Application for a Water Use Permit Application No. 13098 requires that all hearing requests must be submitted by September 20, 2021. This request, therefore, is timely.

Accordingly, Victoria respectfully requests that its request for a contested case hearing on the Application and the associated Draft Permit be granted as required under TCEQ Rule 55.255(b). My mailing address, phone number and fax number are noted herein. The City of Victoria also reserves the right to raise and pursue any and all issues that may be relevant to its interests in the event of a contested case hearing.

Ms. Laurie Gharis
September 20, 2021
Page 5

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'James T. Aldredge', written in a cursive style.

James T. Aldredge

copy: Thomas Gwosdz, City of Victoria

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:33 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: 2021.09.20 GBRA CCH Request SAWS WR PERM 13098.pdf

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From: molly.cagle@bakerbotts.com <molly.cagle@bakerbotts.com>
Sent: Monday, September 20, 2021 3:59 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: Molly Cagle

E-MAIL: molly.cagle@bakerbotts.com

COMPANY: BAKER BOTTS LLP

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AUSTIN TX 78701-4082

PHONE: 5123222535

FAX: 5123223635

COMMENTS: See attached letter.

APPLICATION NO. 13098

APPLICATION OF § BEFORE THE
SAN ANTONIO WATER SYSTEM § TEXAS COMMISSION ON
FOR WATER USE PERMIT NO. 13098 § ENVIRONMENTAL QUALITY

**GUADALUPE-BLANCO RIVER AUTHORITY'S
PLEA TO THE JURISDICTION, REQUEST FOR CONTESTED CASE HEARING,
AND COMMENTS ON THE DRAFT PERMIT**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Guadalupe-Blanco River Authority (“GBRA”) and asks the Texas Commission on Environmental Quality (“TCEQ”) to dismiss the above-referenced application (the “Application” or “SAWS’s Application”) of the San Antonio Water System (“SAWS”) or, in the alternative, to grant GBRA a contested case hearing on the Application. GBRA also provides herein¹ various comments on the Draft Water User Permit 13098, as proposed by the TCEQ Executive Director.

GBRA’s request for dismissal of the Application is framed as a Plea to the Jurisdiction, appropriate because the Commission does not have authority under Texas Water Code §11.042(b) to grant a request to reuse Edwards-Aquifer-derived effluent in the manner requested by SAWS. SAWS’s Application fails to quantify the portion of its effluent that is derived from other, non-Edwards, sources,² and without that information, the entire application should be dismissed, allowing SAWS the opportunity to revise its application.

Because the facts and law supporting the Plea to the Commission’s Jurisdiction are so integrally tied to the substance of the Application, GBRA first addresses the Application, and why

¹ GBRA provides these comments both in this document and in Exhibit 1, Declaration of Samuel K. Vaughn (Sept. 20, 2021).

² Exhibit 1 at ¶ 12-13.

GBRA has standing to oppose the Application, and then presents the grounds for dismissal in support of the Plea.

I. BACKGROUND

Throughout its Application, SAWS pretends its application is an ordinary request for a bed and banks permit to convey and reuse return flows derived from privately owned groundwater. It most certainly is not. Most of the groundwater at issue here is **Edwards Aquifer water**.³ Water from the Edwards Aquifer supports springflows that feed the Guadalupe and San Antonio Rivers. Edwards water is not “developed water” and is therefore ineligible for authorization under Texas Water Code § 11.042(b).

Edwards Aquifer water is subject to a unique statutory framework because the Texas Legislature recognized what SAWS ignores:

...that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state.⁴

Recognizing the unique characteristics of the Edwards Aquifer, and the important competing interests this precious resource supports, the Texas Legislature carefully balanced the interplay between groundwater usage, spring flows, and established surface water rights. The “deal” struck by the legislature in 1993 treated Edwards water differently from other water resources in the State. In particular, the key elements of the balance are that: (1) once Edwards water is discharged into

³ To the extent SAWS’s return flows are derived from sources other than the Edwards Aquifer, a TCEQ-issued bed and banks, and out-of-basin use, authorization may be available for those discharges following the submission of an appropriate application.

⁴ Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350 (“EAA Act”), at § 1.01.

a watercourse, it becomes surface water, subject to the laws and rules established for Texas surface water rights and, independently, (2) Edwards water can be used and reused only within the boundaries of the EAA. In other words, the invented doctrine of “indirect reuse” is unavailable for Edwards water. Given the demands placed on Edwards Aquifer water, and the need to maintain springflows for surface water rights, the use and reuse of Edwards water is also geographically limited.

The deal reflected by the EAA Act does not *mandate* return flows to a watercourse. Indeed, Edwards water may eventually be used and reused within the EAA boundaries to the point that there simply are no return flows. But that eventuality of 100% direct reuse, if it occurs, will be gradual and stepwise, allowing those who rely on surface water, and Texas’ long-established seniority system, to plan and adjust over time. Ignoring or violating the careful balance embodied in the EAA Act, and removing Edwards water entirely from the surface water priority system, has dramatic adverse impacts on GBRA and other surface water right holders in the Guadalupe basin. For example, SAWS’s Application, if approved, would instantly remove Edwards water from the Guadalupe River Basin priority system and escalate the price tag for GBRA’s Lower Basin Storage Project⁵ by nearly \$60,000,000 to achieve the same firm supply under the GBRA-Dow Run-of-River Rights.⁶ Expanding the geographical boundary of the areas that may be served by Edwards Aquifer water similarly upsets the balance established by the Legislature by placing greater demands on the aquifer, with no reciprocal replacement for losses in surface water supplies.

⁵ GBRA’s Lower Basin Storage Project will be located below the confluence of the Guadalupe and San Antonio Rivers and has a designed firm yield of approximately 100,000 acre-feet.

⁶ Exhibit I at ¶ 10.

TCEQ “is charged by the legislature with primary responsibility for conservation of resources and protection of Texas’ environment,”⁷ which includes the implementation of sound water policy. Significantly, in implementing the state’s water policy, the legislature has given TCEQ the discretion, **but not the obligation**, to grant bed and banks permits for most water sources.⁸ And, in considering whether to exercise that discretion, TCEQ *must* take into account and impose special conditions that address the impact of authorizing a bed and banks permit on, among other things, “existing permits, certified filings, or certificates of adjudication.”⁹ Here, the Commission should reject SAWS’s attempt to become, effectively, the most senior, most downstream water right in the Guadalupe River Basin, to the specific detriment of GBRA and others with senior, adjudicated rights to surface water in the Guadalupe River Basin.

II. REQUEST FOR CONTESTED CASE HEARING

Subject to its Plea to the Jurisdiction, GBRA requests a contested case hearing on the Application. The name, mailing address, phone, and fax number of GBRA are as follows:

GBRA
Attn: Kevin Patteson, General Manager and CEO
933 East Court Street
Seguin, Texas 78155-5872
(830) 379-5822
(830) 379-9718 (fax)

GBRA is a governmental agency and body politic and corporate, created in 1933 by special act of the Legislature for the purposes of Section 59 of Article 16 of the Constitution of the State of Texas,¹⁰ including (i) the control, storing, preservation, and distribution of storm and flood waters, the waters of rivers and streams, including the Guadalupe and Blanco Rivers and their

⁷ TCEQ Sunset Self-Evaluation Report, SFR-123/21, at 5 (Sept. 2021), https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER_9-01-21.pdf.

⁸ See Tex. Water Code § 11.042(b), (c). As explained herein, TCEQ lacks jurisdiction under Section 11.042 with respect to Edwards water.

⁹ Tex. Water Code § 11.042(c).

¹⁰ TEX. REV. CIV. STAT. ANN. art. 8280-106.

tributaries, for irrigation, power, and all other useful purposes, (ii) the reclamation and irrigation of arid, semi-arid and other lands needing irrigation, (iii) the reclamation and drainage of overflowed lands, and other lands needing drainage, (iv) the conservation and development of the forests, water and hydro-electric power of the State of Texas, (v) the navigation of inland waters, and (vi) the preservation and conservation of all such natural resources of the State. GBRA stewards the water resources in its ten-county statutory district, which consists of Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt, Victoria, Calhoun, and Refugio counties.

As set forth below, GBRA is an affected person, as defined by Title 30, Section 55.256 of the Texas Administrative Code. GBRA has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by SAWS's Application. GBRA's interests are not common to the general public.

a. The Application Addresses Edwards Aquifer Water

As recognized by the Fifth Circuit, “[d]epending on the amount that recharge exceeds pumping, water leaves Edwards naturally at two large springs, San Marcos Springs and Comal Springs,” and enters the Guadalupe River. *Sierra Club v. Babbitt*, 995 F.2d 571, 573 (5th Cir. 1993). Without SAWS and others pumping the Edwards, the water in the Edwards Aquifer naturally makes its way into the Guadalupe River through several major springs.¹¹ Accordingly, what happens to the Edwards Aquifer directly impacts what happens in the Guadalupe River. This interconnection between the Edwards Aquifer and Guadalupe River, and the effects of Edwards pumping (by SAWS and others) on spring flows into the Guadalupe River, has, over time, led to:

¹¹ See, e.g., Exhibit 1 at ¶ 26-29; *Sierra Club v. City of San Antonio*, 112 F.3d 789, 791 (5th Cir. 1997) (“The aquifer discharges water into the Guadalupe River Basin at the San Marcos and Comal Springs.”); Gunnar Brune, *Springs of Texas*, Vol. I (1981) (noting that well pumping in the Edwards Aquifer decreases springflows at San Antonio, San Pedro, Comal, and San Marcos Springs).

a series of lawsuits¹² in the early 1990s; the creation of the Edwards Aquifer Authority (“EAA”); the development of a habitat conservation plan to protect endangered species dependent upon the springflows; and the issuance of an incidental take permit in January 2015.

Today, SAWS pumps water from the Edwards Aquifer, supplies it to customers for use, collects it as wastewater, treats it, and then either reuses effluent through direct recycling systems (i.e., purple pipe) or discharges it to the San Antonio River, which is a tributary of the Guadalupe River. By its Application, SAWS proposes to discharge and then remove Edwards-Aquifer-derived effluent at a discharge reach over 150 miles¹³ downstream in Calhoun County, at the mouth of the Guadalupe River, past GBRA’s permitted salt water barrier.¹⁴ As described below, because of the interconnection between the Edwards Aquifer and the Guadalupe River, SAWS’s Application affects GBRA, and GBRA’s senior water rights, in a manner different from the general public. SAWS’s Application also violates the EAA Act.

b. GBRA has Senior Water Rights in the Guadalupe River

Since its creation nearly 90 years ago, GBRA has focused on economic development and protection of natural resources and the environment in its ten-county statutory district. One of GBRA’s most important functions is to provide adequate water supplies to meet the growing demands of citizens, industries, and businesses within its district. To be adequate, a water supply must be “firm,” meaning that the supply must be reliable each and every day throughout a drought at least as severe as the most-severe drought of record in the region.

¹² *Id.* at 791-793 (describing some of the litigation surrounding the formation of the EAA).

¹³ TCEQ Interoffice Memorandum from Kenneth Coonrod, Aquatic Scientist, Resource Protection Team, to Sarah Henderson, Project Manager, Water Rights Permitting Team, Re: San Antonio Water System WRPER 13098, at 3 (Mar. 24, 2021).

¹⁴ SAWS has applied to use water under Permit 13098 in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties. SAWS Bed and Banks Supplemental Info. at 1 (Dec. 26, 2013). Of these, only Bexar County is within the EAA boundaries, and three of the counties—Calhoun, Refugio and Victoria—lie within GBRA’s jurisdictional boundaries. See <https://www.edwardsaquifer.org/eea/history/jurisdiction/> (map of EAA boundaries).

GBRA maintains multiple water rights along the Guadalupe River to provide water to its customers within its 10-county district. Those water rights¹⁵ are upstream of SAWS's proposed diversion reach under its application for Permit 13098, and include (but are not limited to) the following:

- (a) **Canyon Water Right** - Certificate of Adjudication No. 18-2074, as amended, authorizes GBRA to maintain Canyon Dam and Reservoir, store inflows in the Reservoir with priority dates of March 19, 1956 and June 14, 1999, and divert and use from the Reservoir an average of 90,000 acre-feet of stored water annually for municipal, industrial, and agricultural purposes. Under the Certificate, GBRA is authorized to use the bed and banks of the Guadalupe River to deliver the stored water for diversion from the River downstream of Canyon Reservoir. Canyon Reservoir provides critical water supplies to over a dozen municipal, industrial, power generation, and agriculture users—including SAWS—across GBRA's district.¹⁶
- (b) **GBRA-Dow Run-of-River Rights and Lower Basin Storage** - GBRA owns jointly with Union Carbide Corporation, a subsidiary of The Dow Chemical Company, the following six Certificates of Adjudication: Certificates of Adjudication Nos. 18-5173, 18-5174, 18-5175, 18-5176, 18-5177, and 18-5178. GBRA also owns Certificate of Adjudication No. 18-3863B. Together, these seven Certificates of Adjudication authorize diversion of 175,501 acre-feet of water per year from the run-of-river flow of the Guadalupe River with priority dates ranging from February 3, 1941 to January 7, 1952. The water is diverted from the Guadalupe River by gravity-flow diversion works located downstream of the confluence of Guadalupe and San Antonio Rivers, and just upstream of GBRA's Saltwater Barrier and Diversion Dam, authorized under GBRA's Certificate of Adjudication No. 18-5484. After diversion from the Guadalupe River, the water is conveyed via GBRA's Canal System in Calhoun County and used for municipal, industrial, agricultural, mining, and stock raising purposes. To firm up the supply of water available from the run-of-river flow of the Guadalupe River, the seven Certificates of Adjudication identified above also authorize the construction of up to 150,000 acre-feet of off-channel storage in Calhoun, Refugio, and Victoria Counties and the storage of water diverted under the Certificates in such off-channel storage.

GBRA received authorization in 2014 from the TCEQ to construct this off-channel storage. The initial phase of the project is designed to result in a firm supply of approximately 100,000 acre-feet of water per year, utilizing the GBRA Canal System and the seven Certificates of Adjudication identified above.

¹⁵ Exhibit 1 at ¶ 8-9.

¹⁶ South Central Texas Regional Water Planning Group, 2021 South Central Texas Regional Water Plan Volume 2, at 5.4-9 (Nov. 5, 2020), https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/L/RegionL_2021RWP_V2.pdf

- (c) **Mid-Basin Permit** – On September 1, 2020, TCEQ issued¹⁷ GBRA a new surface water right, Permit No. 12378, to appropriate, divert and use for municipal and industrial purposes up to 75,000 acre-feet of water annually from the unappropriated flows of the Guadalupe River at a rate of diversion up to 500 cfs. The permit further authorizes the construction of up to 125,000 acre-feet of off-channel storage in Gonzales County and to firm up the run-of-river supply by storing the water in the off-channel storage. The point of diversion from the Guadalupe River will be located in Gonzales County, within the segment of the Guadalupe River downstream of the confluence of the Guadalupe and San Marcos Rivers. The permit carries a December 23, 2009 priority date.
- (d) **Luling Water Rights** – GBRA supplies water to the Cities of Luling and Lockhart under Certificates of Adjudication Nos. 18-3896, 18-3600, and 18-5234, as amended. These authorizations allow GBRA to divert and use up to 4,572 acre-feet of water per year from the San Marcos River for municipal and industrial purposes.

c. Edwards Aquifer is Tributary to the Guadalupe River, thus not “Developed Water”

Bed and banks authorizations available under Water Code § 11.042(b) for sewage effluent derived from privately-owned groundwater are based on the presumption or determination that the effluent is “developed waters” that TCEQ may exclude from the state-water priority system. *See Guelker v. Hidalgo Cnty. WCID No. 6*, 269 S.W.2d 551, 555 (Tex. Civ. App.—San Antonio 1954, writ ref’d n.r.e.) (noting that “developed or captured waters” fall outside the state-supervised prior appropriation system for surface water). “Developed waters are new waters added to a stream or other source of water supply by reason of artificial work.” Hutchins, *The Texas Law of Water Rights*, at 541 (1961).¹⁸ A “careful use of the term would exclude water tributary to a stream” which, while perhaps facilitated in reaching the stream by artificial works, “would reach the stream eventually irrespective of them. Such water is not new water; the time of its arrival is simply hastened.” *Id.*

¹⁷ One protesting party has challenged TCEQ’s issuance of the Mid-Basin Permit in Travis County District Court.

¹⁸ Hutchins cites to and quotes the definition of “developed water” found in the then-existing rules of the Texas Board of Water Engineers, a predecessor of TCEQ:

“Developed Water is water that in its natural state does not augment a water supply, but that is added to a water supply or is otherwise made available for use by means of artificial works.”

Water in the Edwards Aquifer is truly “tributary to” the Guadalupe River stream system—this water would flow into the Guadalupe River eventually, via springflow, without artificial intervention. That is why the Texas Legislature treated the Edwards differently from other aquifers in the State. Because Edwards water is governed by the EAA Act, the Commission lacks jurisdiction to grant bed and banks authorization under Water Code 11.042(b) for sewage effluent derived from Edwards water.¹⁹ This effluent, once discharged from a wastewater treatment plant, is not *new* to the surface water system, and therefore, it is not properly deemed “developed water.” It must be viewed as state water, subject to the state’s prior-appropriation system.

d. Edwards Water is Unique Hydrologically and Legally

In SB 1477 (1993), the Texas Legislature found the Edwards Aquifer to be a body of water unlike any other in Texas – “a unique and complex hydrologic system” and “a distinctive natural resource in this state.” EAA Act § 1.01. Accordingly, to regulate withdrawals and water use, the Legislature created the Edwards Aquifer Authority, a “special regional management district” and provided for “the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.” EAA Act § 1.06(a). Under the EAA Act, the Legislature restricted reuse of water from the Edwards. The definition of “reuse” found at Section 1.03(19) of the EAA Act makes clear that any reuse of Edwards water must occur before the unconsumed water returns to a body of state-owned water:

“Reuse” means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use *and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.* (emphasis added).

¹⁹ To the extent that TCEQ staff reference Edwards-derived effluent in the Hydrology Review of SAWS’s Application, the statement “SAWS’ groundwater-based return flows would not be considered to be part of the natural flow of tributaries of the San Antonio River, the San Antonio River, and the Guadalupe River,” is incorrect. TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

The Legislature thus made indirect reuse unavailable for Edwards-Aquifer-derived effluent.

Under SAWS's Application for bed and banks authorization under Water Code § 11.042(b), SAWS's unconsumed Edwards water would not be reused "before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water," as required by Section 1.03(19) of the EAA Act. It would be discharged, allowed to flow over a hundred and fifty river miles downstream, then removed (ignoring the priority system) from the tidally-influenced portion of the Guadalupe River. The statutory limitation on "reuse" imposed by the EAA Act reflects the fact that SAWS's Edwards-derived return flows, despite originating underground like other groundwater, are, in fact, the very same waters that feed the Guadalupe River system.

As the Texas Legislature has confirmed, Edwards Aquifer is not like other groundwater. EAA Act § 1.06. The Edwards is so highly interconnected with the Guadalupe River system that there is no doubt either scientifically or legally that water in the Edwards is truly tributary to the Guadalupe River system and, therefore, that Edwards-derived effluent discharged into the Guadalupe River and its tributaries is not "developed water."²⁰ Water in the Edwards Aquifer would reach the Guadalupe River naturally via Comal and San Marcos Springs²¹ if SAWS did not perform the artificial acts of pumping the water out of the Aquifer and then discharging the remaining effluent. In fact, the Edwards is so interconnected with surface streams that in rules adopted in 1992 (17 Tex. Reg. 6601 (September 25, 1992)), the Texas Water Commission ("TWC"), a predecessor of TCEQ, made the following specific findings:

²⁰ There may be other groundwater in Texas that TCEQ finds, in a Water Code section 11.042(b) proceeding, to be sufficiently tributary to a surface stream to require a determination that effluent derived from the groundwater is not developed water and, therefore, that all reuse of the effluent must occur before discharge. In the EAA Act, the Texas Legislature decided that issue and removed it from TCEQ's jurisdiction with respect Edwards water.

²¹ Because of the confluence between the San Antonio and Guadalupe Rivers, water from San Pedro Springs also contributes flow to the Guadalupe River, downstream, and SAWS's pumping from the EAA similarly impacts flows at San Pedro Springs.

“Through its ‘recharge zone,’ the Edwards Aquifer captures and diverts flows of major surface streams in the upper portion of the Nueces and San Antonio River Basins. These surface streams provide approximately 80% of the ‘recharge’ to the aquifer. Water ‘recharging’ the aquifer continues to flow downgradient, generally moving west to east to northeast, through the confined and known boundaries of the aquifer, eventually erupting at several springs.” *Id.* at 6606.

“These springs include the state’s two largest natural springs at New Braunfels and San Marcos.” *Id.* at 6603.

It is estimated that spring flow from Comal and San Marcos Springs alone provides 21 to 32% of the total annual flow, and up to 70% of the total flow during droughts, of the Guadalupe River at Victoria.” *Id.*

“The water in the aquifer can move very easily where the size and number of solution openings are large and connected with few restrictions. Movement rates of more than 2,100 feet per day have been measured over short distances. As a comparison, a movement rate of one foot per day is generally considered very fast in other aquifers in Texas.” *Id.* at 6605.

The 1992 TWC Edwards rules were struck down by summary judgment by a Travis County district court on the ground that the TWC was without authority to declare the water in the Edwards to be state water. While the appeal from this judgment was pending, the 1993 Texas Legislature passed SB 1477, creating the EAA and declaring the Edwards not to be an underground river but, rather, a body of water unlike any other in Texas. In response to the passage of the EAA Act, the TWC repealed its Edwards rules.

What is important here is that the fact findings set forth in the preamble to the TWC 1992 Edwards rules were before the legislature in 1993 when it passed the EAA Act, and, since then, neither the TWC nor any of its successors (including TCEQ) has ever disavowed any of the relevant scientific findings.²² Those findings explain, in detail, the hydrologic interconnection between the Edwards and surface streams.

²² Even though the Edwards was declared by the Texas Legislature not to be an underground stream, as a matter of law, the physical characteristics of the Edwards that underpinned the 1992 TWC Edwards rules reflect a continued hydrological reality contacting the Edwards Aquifer with spring flows and surface waters of the Guadalupe River and its tributaries.

And because the availability of water under GBRA's water rights depends upon the Guadalupe River Basin's surface water flows and the legislative deal embodied in the EAA Act, GBRA is affected by any proposal to breach that deal or remove Edwards water from the Guadalupe River system, including SAWS's current request to claim and remove Edwards-derived effluent at the mouth of the Guadalupe River for distribution outside the EAA boundaries, without regard for GBRA's senior water rights.

e. **Because the Application Removes Edwards Water from the Guadalupe River Outside the Prior-Appropriation System, GBRA is Adversely Affected by the Application in a Manner Not Common to the General Public**

SAWS has requested authorization to remove 360 cfs—260,991 acre-feet per year—from the mouth of the Guadalupe River, without regard for GBRA's or others' senior water rights. Indeed, TCEQ recognized that 158 water rights would be negatively impacted by SAWS's Application.²³ While TCEQ characterized the impact as minimal, in fact, GBRA stands to lose firm water supplies—with serious impacts to GBRA's customers—both in the lower basin and elsewhere if TCEQ issues Permit 13098 because, among other things, the draft permit for Water Right No. 13098 provides that “[t]he groundwater based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights.” Draft Permit 13098 at ¶ 4.

The GBRA-Dow Run-of-River water rights, located below the confluence of the Guadalupe and San Antonio Rivers, are senior to most of the water rights in the Basin. But, if successful in its Application, SAWS would operate outside the prior appropriation system and effectively supersede GBRA's senior rights. In times of drought, SAWS would be able to insist on 360 cfs of surface water flow downstream of GBRA's senior diversion point, notwithstanding

²³ TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

that a significant portion of this is *Edwards* water that, if present in the watercourse by spring flow or wastewater discharge, should be available to GBRA under its senior surface water rights.

If granted, Permit 13098 would require GBRA to pass water downstream of its most senior diversion points. Particularly during dry conditions, GBRA would be adversely affected²⁴ by SAWS's out-of-priority removal²⁵ of all Edwards-derived effluent downstream of GBRA's diversion points. The Application's adverse impacts on GBRA are distinct from those of the general public and include:

- Permit 13098 would reduce the firm yield from GBRA's Canyon Reservoir because GBRA would have to pass more inflows through Canyon Reservoir to compensate for the reduction in water supplies available under GBRA's downstream, senior water rights, and/or GBRA might release additional water from storage in Canyon Reservoir if and to the extent there was any additional stored water that could be released;²⁶
- Permit 13098 would also reduce the firm yield of the surface water component of the GBRA Mid-Basin Project by requiring GBRA to pass flow downstream from Gonzales to meet the demands of senior GBRA water rights that are impacted by SAWS's out-of-priority removal of water at the mouth of the river;
- If SAWS is entitled to indirect reuse of Edwards water, outside of the priority system and beyond the EAA boundaries at the mouth of the Guadalupe River, any other pumper of Edwards water could obtain such expansive authorization from

²⁴ Exhibit 1 at ¶ 6-7.

²⁵ Under the terms of Texas Water Code § 11.042(b), and consistent with the prohibition in Section 11.0235 on water rights issued solely for environmental flows, TCEQ may only issue a bed and banks permit to an entity that will "*subsequently divert* and reuse... existing return flows derived from privately owned groundwater." (emphasis added)

²⁶ Exhibit 1 at ¶ 11.

TCEQ in the future, decimating the Guadalupe River and, particularly, GBRA's senior water rights that depend on the Guadalupe River and its tributaries;

- The proposed accounting plan inadequately addresses channel losses from the point of SAWS's discharges to the proposed diversion point at the mouth of the Guadalupe River;²⁷
- SAWS's proposed diversion location at the mouth of the Guadalupe River is tantamount to waste, which is prohibited by law.²⁸ TCEQ defines "waste" as "[t]he diversion of water if the water is not used for a beneficial purpose" as well as "the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose."²⁹ TCEQ further specifies that "[w]aste may include, but not be limited to...the diversion or use of water in any manner that causes or threatens to cause pollution of water..."³⁰ By transporting fresh water effluent to the mouth of the Guadalupe River, where it is allowed to become saline *before* the SAWS's proposed diversion, SAWS's application proposes a waste of surface water;³¹
- To the extent that SAWS claims that allowing Edwards-derived effluent to flow to the bay is not waste or benefits the bay, this is a tacit admission that SAWS seeks Water Use Permit 13098 for only instream flows, not other beneficial uses, and has no intention of "diverting" return flows at the bay. Section 11.042(b)—which

²⁷ See Exhibit 1 at ¶ 15-18, ¶ 23-25.

²⁸ TCEQ may grant a water right application "only if... the applicant has provided evidence that reasonable diligence will be used to avoid waste..." Tex. Water Code § 11.134(b)(4).

²⁹ 30 TAC § 297.1(58) (definition of "waste").

³⁰ *Id.*

³¹ See Exhibit 1 at ¶ 19-22.

applies only to privately-owned groundwater, not Edwards-derived effluent—would still require SAWS to “discharge *and then subsequently divert* and reuse” return flows.³² Without a diversion,³³ there can be no 11.042(b) authorization, and Texas law precludes TCEQ from issuing a water right solely for environmental flows;³⁴

- SAWS’s Application will have severe and adverse impacts on GBRA’s ability to operate its Saltwater Barrier, which provides the necessary hydrologic head for water to flow from the Guadalupe River into GBRA’s canal system and supply GBRA customers.³⁵ In particular, if SAWS is entitled to 360 cfs of flow at a point below the Saltwater Barrier at times of low flow, SAWS could make a priority call that, in order to be met, would require GBRA to deflate the Saltwater Barrier, potentially causing saltwater intrusion, and further impacting GBRA’s water rights and ability to serve its customers; and
- SAWS’s application would effectively create a most senior water right at the mouth of the Guadalupe River that could call on any water rights holders upstream in the Guadalupe or San Antonio River basins to pass water to its diversion location in times of low flows. SAWS’s out-of-priority water right at the mouth of the river would cause water rights holders senior to GBRA to make calls against GBRA’s water rights and would cause GBRA to make senior water rights calls against other, more junior water rights located upstream of GBRA’s diversion points.

³² Tex. Water Code § 11.042(b).

³³ Any attempt by SAWS to avoid the statutory “diversion” requirement by relying on expansion or development of existing channels would simply highlight the fact that this Application seeks to accomplish what the law does not allow.

³⁴ Tex. Water Code § 11.0235(d)

³⁵ See Exhibit 1 at ¶ 19-22.

In addition, even for the non-Edwards component of SAWS's Application, GBRA is an affected person entitled to a contested case hearing in this matter. GBRA has water rights, as described herein, that will be affected by SAWS's Application. TCEQ has authority to, and should, impose "special conditions that may address the impact of the discharge, conveyance, and diversion on existing permits, certified filings, or certificates of adjudication," including GBRA's. Tex. Water Code § 11.042(c).

III. GBRA'S PLEA TO THE JURISDICTION

GBRA files this Plea to the Jurisdiction because the EAA Act means what it says: reuse of Edwards water must take place before discharge to a watercourse, and use and reuse of Edwards groundwater is geographically limited to the area within the EAA boundary. *See* EAA Act §§ 1.03(19), 1.34. Because of these statutory limitations, the Commission lacks jurisdiction to issue Permit 13098, to the extent that it authorizes SAWS to indirectly reuse Edwards-derived effluent or to use Edwards water outside the boundaries of the EAA. Given that SAWS's Application attempts to use Section 11.042(b) to authorize indirect reuse of Edwards-derived effluent, in contravention of the EAA Act, the Commission should dismiss SAWS's Application in its entirety. In the alternative, the Commission should dismiss the portion of the Application that violates the EAA Act's statutory restrictions and consider only SAWS's request to convey and indirectly reuse non-Edwards-derived effluent.

1. The Commission lacks jurisdiction to authorize the indirect reuse of Edwards-derived effluent

SAWS's Application seeks a "bed and banks" authorization for Edwards-derived effluent, but Section 11.042(b) conflicts with the specific statutory restrictions in the EAA Act. Under Texas Water Code Section 11.042(b), TCEQ generally has discretionary authority, but no mandate, to permit an applicant to reuse effluent derived from privately-owned groundwater by

using the bed and banks of a State watercourse to transport the effluent from the point of discharge to the point of diversion without surrendering ownership of the effluent. Such a bed and banks reuse authorization, if granted by TCEQ, is a statutory exception to the important general rule under Texas water law that all privately-owned waters become property of the State as soon as they are discharged or otherwise flow into a public river system.³⁶

But Section 11.042(b) does not apply to SAWS's request to indirectly reuse Edwards water. The EAA Act expressly states that it "prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction." EAA Act § 1.08(a). And the EAA Act defines "reuse" as direct reuse only, restricting authorized "reuse" of Edwards water to use "before the water is discharged or otherwise allowed to flow into a...body of state-owned water." EAA Act § 1.03(19). Accordingly, Section 11.042(b) does not govern SAWS's request to reuse Edwards-derived effluent. The EAA Act does, and it does not authorize TCEQ to issue Permit 13098 for indirect reuse of Edwards effluent.

In its Application, San Antonio proposes to retrieve discharged Edwards effluent at the mouth of the Guadalupe River, 150 miles downstream from where the City discharges it into the San Antonio River.³⁷ Obviously, there is enormous inefficiency associated with this proposal, including water loss due to evaporation and seepage, the significant expenses required to desalinate the effluent (before providing it to municipal, industrial, and irrigation users) that SAWS allowed to become brackish by diverting it at the bay, as well as the energy required to transport the water back uphill to San Antonio. SAWS could, instead, directly reuse its Edwards-derived effluent without running afoul of the EAA Act. But only under a Section 11.042(b) authorization can the

³⁶ See, e.g., *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 822 (Tex. 2012) (discussion Section 11.042(b) as an important exception from the general rule that groundwater discharged to a watercourse becomes surface water).

³⁷ TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

City claim to “reuse” its Edwards-derived effluent and thus assert a right to the water that is superior to GBRA’s senior State water rights.

If water from the Edwards Aquifer were regulated in the same way as other groundwater in this state, then SAWS’s bed and banks “reuse” application would be subject to TCEQ’s general statewide jurisdiction under Water Code §11.042(b) to rule on such an application. But it is not. Rather, the EAA Act governs the Edwards water and, under this specific legislation, TCEQ lacks jurisdiction under Water Code § 11.042(b) to authorize the indirect reuse of the Edwards-derived effluent SAWS discharges to the river.

2. The Commission lacks jurisdiction to authorize use of treated wastewater derived from the Edwards Aquifer anywhere outside the boundaries of the EAA.

In violation of the EAA Act, SAWS’s Application seeks authorization from the Commission to use Edwards-derived treated wastewater outside the boundaries of the EAA. The Texas Legislature expressly limited where Edwards water may be used: “[w]ater withdrawn from the aquifer must be used within the boundaries of the authority.” EAA Act § 1.34(b). With this restriction, the Legislature plainly recognized the significant shortage of firm water within the boundaries of the EAA and made the policy decision to require that Edwards water remain within the boundaries of the EAA. Despite this facial, statutory restriction, SAWS’s Application nevertheless seeks to use Edwards-derived treated wastewater in portions of the Guadalupe and San Antonio River Basins well beyond the boundaries of the EAA, including in Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties.

TCEQ lacks jurisdiction to issue such an authorization.³⁸ Once Edwards-derived effluent is discharged into a State water-course, as a matter of law, it becomes State water, subject to State-

³⁸ Even on the limited occasions when the TCEQ has allowed indirect reuse of Edwards water, without regard to the restriction in the EAA Act, it has done so for only minimal volumes of water, all of which were used within the EAA boundaries. See *City of San Marcos v. TCEQ*, 128 S.W.3d 264, 278 (Tex. App.—Austin 2004, pet. denied).


issued water rights in accordance with their respective priorities. As further support, GBRA notes the legal principle that specific laws prevail over general laws. Thus, the EAA Act prevails over general law (e.g., Chapter 11 of the Texas Water Code) to require that all Edwards Aquifer water, if lawfully reused (i.e., before being discharged into a body of State-owned water), must be so used within the boundaries of the EAA.³⁹

IV. PRAYER

GBRA respectfully requests that the Commission grant GBRA's Plea to the Jurisdiction and dismiss SAWS's Application for authorization to indirectly reuse Edwards-derived effluent and/or to reuse Edwards Aquifer water outside the EAA boundaries. Subject to GBRA's Plea to the Jurisdiction, GBRA requests that the Commission hold a contested case hearing on SAWS's Application and that GBRA be admitted as a party to the hearing.

Dated: September 20, 2021

Respectfully submitted,

By: 
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*Attorneys for Guadalupe-Blanco River
Authority*

³⁹ See also EAA Act § 1.08(a).

EXHIBIT 1
DECLARATION OF SAMUEL K. VAUGH

APPLICATION NO. 13098

APPLICATION OF § BEFORE THE
SAN ANTONIO WATER SYSTEM § TEXAS COMMISSION ON
FOR WATER RIGHT PERMIT § ENVIRONMENTAL QUALITY
13098 §
§

DECLARATION OF SAMUEL K. VAUGH

My name is Samuel Kent Vaugh. I am over 18 years of age, of sound mind, and capable of making this declaration. The facts in this declaration are within my personal knowledge and are true and correct.

1. I am a Vice President and Professional Associate with HDR Engineering, Inc. (“HDR”). My experience includes more than 40 years of work in the field of water resources engineering, including experience with water rights, river basin hydrology, environmental flows, regional water supply planning, reservoir system modeling, conjunctive management of groundwater and surface water resources, project feasibility analyses, dam design, statistical analyses, and stormwater management master planning.
2. Professional achievements include development of river basin scale models for simulation of water rights and calculation of water supply reliability subject to hydrologic, regulatory, and operational constraints, development of regional water plans and project feasibility studies, expert witness testimony in regulatory and legal proceedings, and service with multiple expert science teams providing recommendations to the State of Texas and stakeholder groups on environmental flows.
3. I hold a Bachelor of Science in Civil Engineering from Rice University and a Master of Science in Engineering (Water Resources) from The University of Texas at Austin. I chair the Senate Bill 3 (SB3) environmental flow process Basin and Bay Expert Science Teams (BBESTs) for the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays and for the Nueces River and Corpus Christi and Baffin Bays. In addition, I was a member of the original Edwards Aquifer Area Expert Science Subcommittee for the Edwards Aquifer Recovery Implementation Program which led to the approved Edwards Aquifer Habitat Conservation Plan.
4. I have provided professional services for applicants or other interested parties relevant to approximately 28 applications for new or amended surface water rights in Texas.
5. I have prepared this declaration in support of the Guadalupe-Blanco River Authority’s (“GBRA’s”) Request for Contested Case Hearing related to the San Antonio Water System’s (SAWS’s) application for Water Use Permit No. 13098, which would authorize the use of the bed and banks of the Guadalupe River and its tributaries to deliver 260,991 acre-feet per year (acft/yr) of treated effluent from nine permitted discharge points to a diversion reach of Guadalupe River extending from the State Highway 35 crossing to the mouth of the South Guadalupe River at Guadalupe Bay. Waters diverted at a maximum

rate of 360.53 cubic feet per second (cfs) would be authorized for use for municipal, industrial, agricultural, mining, and instream purposes in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties.

Background on GBRA's Water Rights and SAWS's Application

6. In essence, SAWS's application seeks to authorize SAWS to retain control over use of the wastewater that it treats from the points of discharge into a state watercourse to a proposed diversion reach located in the Guadalupe delta. SAWS treats wastewater derived from the Edwards and other aquifers including the Simsboro, Carrizo, Wilcox, and Trinity. Wastewater from these sources comprised over 95 percent of that discharged by SAWS in 2020. By means of this application, SAWS seeks to use the bed and banks of the Guadalupe River and its tributaries to transport its historically-discharged treated wastewater outside of Texas' priority system for surface water rights all the way to its proposed diversion reach at the very bottom of the basin. As drafted, Water Use Permit 13098 would make treated effluent quantities previously discharged by SAWS and currently available to surface water rights, and potentially the Guadalupe Estuary, to be unavailable to anyone except SAWS. Finally, SAWS proposes to construct diversion works at the mouth of the Guadalupe River and deliver water therefrom for a variety of purposes of use in multiple counties from Bexar County to the Gulf Coast.
7. Approval of SAWS's application will reduce the reliable supply of state water available to surface water rights on the Guadalupe River and its tributaries from the points of discharge in Bexar County to Guadalupe Bay. Most significantly affected will be the senior surface water rights held by GBRA and Dow Chemical Company (Dow) that divert from the Guadalupe River immediately downstream of the confluence between the San Antonio and Guadalupe Rivers. New shortages caused by approval of SAWS's application impacting these very senior water rights would also result in new shortages to junior water rights upstream of GBRA because they would have to pass flows for GBRA's senior rights during severe drought.
8. I have worked with GBRA for more than 25 years seeking to ensure that its water rights are appropriately portrayed in water availability planning and regulatory models. Furthermore, I have provided technical support to GBRA in amending eight of its existing water rights, obtaining one new appropriation, and processing a pending application for a new appropriation.
9. GBRA holds the following water rights (among others):
 - a. Lower Basin Water Rights with total authorized diversion of 175,501 acft/yr:
 - i. Certificate of Adjudication No. 18-5173, as amended
 - ii. Certificate of Adjudication No. 18-5174, as amended
 - iii. Certificate of Adjudication No. 18-5175, as amended
 - iv. Certificate of Adjudication No. 18-5176, as amended
 - v. Certificate of Adjudication No. 18-5177, as amended
 - vi. Certificate of Adjudication No. 18-5178, as amended

- vii. Certificate of Adjudication No. 18-3863, as amended
 - viii. Certificate of Adjudication No. 18-5484
- b. Canyon Reservoir Water Rights with total authorized diversion of 120,000 acft/yr limited to 450,000 acft in any 5-year period:
 - i. Certificate of Adjudication No. 18-2074, as amended
 - c. San Marcos River / Luling Water Rights with total authorized diversion of 4,572 acft/yr:
 - i. Certificate of Adjudication No. 18-3896, as amended
 - ii. Water Use Permit No. 3600, as amended
 - iii. Water Use Permit No. 5234, as amended
 - d. Mid-Basin Water Right with total authorized diversions of 75,000 acft/yr:
 - i. Water Use Permit No. 12378

Preliminary Evaluation of Impact of SAWS's Application on GBRA's Water Rights and Water Supply Planning

- 10. According to my preliminary calculations, SAWS's Application could have the following impacts on GBRA's Lower Basin Water Rights:
 - a. Firm supply without off-channel storage could be reduced by between 50 and 75 percent.
 - b. The cost of constructing off-channel storage to restore the firm supply lost (as a result of Water Use Permit 13098) would exceed \$40,000,000.¹
 - c. If Water Use Permit 13098 is approved, the cost of constructing off-channel storage to obtain a firm yield of 100,000 acft/yr would increase by between \$43,000,000 and \$70,000,000, or roughly 77 and 125 percent.
 - d. Deflation of GBRA's Saltwater Barrier (authorized by Certificate of Adjudication No. 18-5484) to allow passage of flows for diversions under SAWS's Application could impair GBRA's ability to operate its gravity diversion system and increase the risk of saltwater intrusion. During severe drought, the changed operation of GBRA's Saltwater Barrier in order to pass flows to SAWS's diversion reach under Water Use Permit 13098 could potentially impact essential water supplies for GBRA's municipal and industrial customers.
- 11. At any time when SAWS's Application causes increased shortages for GBRA's Lower Basin Water Rights, upstream water rights junior to GBRA's rights will also suffer

¹ HDR Engineering, Inc., *Lower Basin Water Supply Project, Preliminary Technical Evaluation of Diversion, Storage, & Transmission Facilities*, DRAFT, Guadalupe-Blanco River Authority, January 29, 2018.

increased shortages. The full firm yield of Canyon Reservoir is presently under contract with GBRA customers. SAWS's application would reduce the firm yield by approximately 1,800 acft/yr. Other water rights holders along the river will similarly experience shortages induced by SAWS's Application.

Issues with the San Antonio Water System Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application No. 13098 (SAWS Accounting Plan)

12. SAWS's Application requests authorization under Texas Water Code 11.042 for both Edwards Aquifer-derived effluent and other water sources.
13. The SAWS Accounting Plan should separately track the percentage of its effluent stream that is sourced from the Edwards Aquifer due to its unique nature and difference from other sources identified as groundwater. Analysis of SAWS 2020 Distribution Report indicates that 72.0%, 23.3%, and 4.7% of its effluent stream was obtained from the Edwards Aquifer, groundwater, and surface water sources, respectively.
14. Review of the WAM Conveyance Loss Coefficient for Reach 2 specified in the SAWS Accounting Plan (i.e., 19.48%) reveals that losses have only been included for the San Antonio River segment from Elmendorf to Goliad. Goliad is some 67 miles upstream of the GBRA Saltwater Barrier and the proposed SAWS diversion reach begins ~2.7 miles below the GBRA Saltwater Barrier. As Elmendorf is more than 203 river miles upstream of the Saltwater Barrier, SAWS is neglecting losses occurring in over a third (69.7/205.7) of the river segment between Elmendorf and their proposed diversion reach. The Accounting Plan's failure to adequately account for all conveyance losses would have SAWS regularly calling for more water to be passed by GBRA and others than would be authorized by Permit 13098.
15. The SAWS Accounting Plan assumes that diversions to Calaveras Reservoir under Certificate of Adjudication No. 19-2162 are drawn from SAWS effluent without consideration of downstream senior water rights. This is inconsistent with Certificate of Adjudication No. 19-2162, which has a priority date and states that "not to exceed 60,000 acre-feet per annum of the unappropriated public waters of the San Antonio River, including sewage effluent released upstream from the point of diversion" are authorized to be diverted to Calaveras Reservoir." The SAWS Accounting Plan should clearly state that diversion and use of effluent allocated to Certificate of Adjudication No. 19-2162 will be accomplished only after honoring senior downstream water rights. SAWS's failure, in its Accounting Plan, to honor rights senior to the April 25, 1967 priority date in Certificate of Adjudication No. 19-2162 would impact the firm supply of GBRA's Lower Basin Rights, without off-channel storage, by more than 16,000 acft/yr and the firm yield of GBRA's Canyon Reservoir by more than 600 acft/yr.
16. The SAWS Accounting Plan assumes that there is no priority date associated with the diversion and use of effluent under Water Use Permit Nos. 5705, 12054, and 13129. However, each of these permits has an associated priority date. The SAWS Accounting Plan must state that diversion and use of effluent allocated to Water Use Permit Nos. 5705,

12054, and 13129 will be accomplished only after honoring senior downstream water rights.

17. SAWS's Accounting Plan fails to account for the travel time required for treated effluent to flow downstream to the specified diversion reach. Travel time varies with the magnitude of streamflow, but assuming an average velocity of 2 feet per second, water would take more than six days to travel from Elmendorf to SAWS's proposed diversion reach. Failure to account for such travel time could have SAWS calling for more water to be passed by GBRA and others on a given day than would be authorized by Permit 13098 in the event that SAWS stops or reduces its treated effluent discharges .
18. SAWS's Accounting Plan fails to compute a maximum daily diversion rate within the proposed diversion reach that corresponds to SAWS's eligible groundwater-based discharges estimated to arrive at the diversion reach on that day. This is required pursuant to the Special Condition in paragraph 5(D) of draft Permit No. 13098. Failure to provide a maximum diversion rate applicable to each day in the Accounting Plan could have SAWS calling for more water to be passed by GBRA and others on a given day than would be authorized by Permit 13098.

Operational Issues with Diversions from the Proposed Diversion Reach

19. The diversion reach included in draft Water Use Permit No. 13098 is located in the Guadalupe delta, begins approximately 2.7 miles downstream of GBRA's saltwater barrier and diversion dam, is entirely under tidal influence, and is subject to saltwater intrusion (particularly under low freshwater inflow conditions).
20. In order for the applicant to divert freshwater under all inflow and tidal conditions, installation of a saltwater barrier and diversion dam would be required.
21. Under some inflow and tidal conditions, it is possible that specialized diversion works could accomplish the diversion of freshwater without a saltwater barrier.
22. If the applicant does not intend to divert freshwater under all inflow conditions, additional information is needed in the SAWS Accounting Plan to define the conditions under which the applicant intends to divert.

The Maximum Diversion Rate in Draft Water Use Permit No. 13098 Should Be Reduced

23. The requested annual use of 260,991 acft/yr appearing in paragraph 1 of draft Water Use Permit No. 13098 is based on the sum of the authorized annual discharges of SAWS's wastewater treatment plants.
24. The requested maximum diversion rate of 360.53 cfs appearing in paragraph 3(B) of draft Water Use Permit No. 13098 appears to be calculated as the uniformly temporally distributed equivalent of the annual requested use of 260,991 acft/yr.
25. After accounting for all channel losses from points of discharge to the proposed diversion reach via the bed and banks of the Guadalupe River and its tributaries, an annual diversion

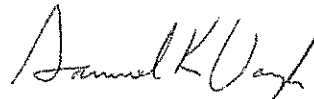
of 260,991 acft/yr of SAWS treated effluent is physically impossible and the specified maximum diversion rate should be reduced commensurately.

The Edwards Aquifer Contributes Flow to the Guadalupe River

26. The Edwards Aquifer contributes significant base flow to the Guadalupe and San Antonio Rivers through various springs, including Comal Springs (the largest in Texas), San Marcos Springs (the second largest in Texas), San Antonio Springs, and San Pedro Springs.
27. Absent production from the Edwards Aquifer by SAWS and others, Edwards water would have flowed from Comal, San Marcos, San Antonio, San Pedro, and other springs into tributaries of the Guadalupe River (including the San Antonio River) and been available on a priority basis to surface water rights along these streams.
28. The Edwards Aquifer component of SAWS's Application for treated effluent would unquestionably be part of the natural flow of these streams through discharge from Comal, San Marcos, San Antonio, and San Pedro Springs absent interception of such waters through production by SAWS's wells.
29. Simulations using the Edwards Aquifer model used to formulate the approved Edwards Aquifer Habitat Conservation Plan (EAHCP) and the TCEQ Guadalupe – San Antonio River Basin Water Availability Model (GSA WAM) show that Edwards production under Edwards Aquifer Authority rules and the EAHCP would reduce the combined natural streamflow passing the U.S. Geological Survey gaging stations on the Guadalupe River at Victoria and the San Antonio River at Goliad by a long-term average of 10 percent. During a drought year like 1956, however, such Edwards production would reduce the combined natural streamflow passing these locations by over 37 percent.

My name is Samuel Kent Vaugh, my date of birth is July 5, 1959, and my business address is 4401 West Gate Blvd, Suite 400, Austin Texas 78745, in Travis County. I declare under penalty of perjury that the foregoing is true and correct.

Executed in La Plata County, State of Colorado, on the 20th day of September, 2021.



Samuel K. Vaugh

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:32 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: 2021.09.20 Invista CCH Request SAWS WR Perm 13098.pdf

H

From: molly.cagle@bakerbotts.com <molly.cagle@bakerbotts.com>
Sent: Monday, September 20, 2021 3:50 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: Molly Cagle

E-MAIL: molly.cagle@bakerbotts.com

COMPANY: BAKER BOTTS LLP

ADDRESS: 98 SAN JACINTO BLVD Suite 1500
AUSTIN TX 78701-4082

PHONE: 5122322253

FAX: 5123223635

COMMENTS: See attached letter.

APPLICATION NO. 13098

APPLICATION OF § BEFORE THE
SAN ANTONIO WATER SYSTEM § TEXAS COMMISSION ON
FOR WATER USE PERMIT NO. 13098 § ENVIRONMENTAL QUALITY

INV NYLON CHEMICALS AMERICAS, LLC 'S
REQUEST FOR CONTESTED CASE HEARING

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, INV Nylon Chemicals Americas, LLC (“INVISTA”) and respectfully asks the Texas Commission on Environmental Quality (“TCEQ”) to grant INVISTA a contested case hearing on the application by the San Antonio Water System (“SAWS”) for Water Use Permit 13098 (“the Application” or “SAWS’s Application”).

In accordance with 30 Texas Administrative Code Section 55.201(d), the name, mailing address, phone, and fax number of INVISTA are as follows:

Bill Oswald
Koch Companies Public Sector, LLC
701 Brazos Suite 650
Austin, TX 78701
Ph (512) 476-1148
Fax (512) 322-3676
With copies to John Sadlier and Mark Vickery

INVISTA, a subsidiary of Koch Industries, Inc., owns and operates a manufacturing facility in Victoria, Texas that has a long history of involvement and investment in the local community. In addition to being a global leader in the manufacture of nylon intermediate chemicals, the site recently completed a ~\$250 million project to upgrade its manufacturing technology and increase production of adiponitrile, a key ingredient for nylon, which is used in industries like automotive production, electronics and electrical connectors, automotive air bag fiber, specialty apparel fibers and high-performance coatings. This new technology will help to

further increase the productivity volume of the site and enhance the long-term viability of the site's operations which currently employees approximately 450 Texans with an estimated compensation payroll of approximately \$45 million.

INVISTA's operations depend upon access to water. And, as a water rights holder with senior surface water rights on the Guadalupe River, INVISTA has personal justiciable interest affected by SAWS's Application that is not common to members of the general public. See 30 Tex. Admin. Code § 55.201(d)(2). Specifically, INVISTA owns the majority portion of a surface water right, Certificate of Adjudication Number 18-3861 (as amended), in the lower Guadalupe – San Antonio River Basin authorizing diversions totaling 55,000 acre-feet per year (acft/yr). This Certificate of Adjudication was originally issued to E.I. du Pont de Nemours and Company during the adjudication of the Lower Guadalupe River Segment of the Guadalupe River Basin.¹ The INVISTA water right has a consumptive portion, totaling 30,250 acft/yr, and a non-consumptive portion, totaling 24,750 acft/yr. INVISTA's right under Certificate of Adjudication 18-3861 has a priority date of August 16, 1948, is authorized for industrial use, and has a maximum instantaneous diversion rate of 137.5 cfs. The water right is located upstream of the confluence of the Guadalupe and San Antonio Rivers.

Water available to INVISTA for diversion under this right is governed by the complex interactions of natural, anthropogenic, and legal factors including rainfall, runoff, springflow, evaporation, aquifer recharge, diversions by other water right owners, reservoir operations, off-channel storage, treated effluent from municipal and industrial water users, terms and conditions of water rights, and the prior appropriation doctrine as enforced by the South Texas Watermaster of the TCEQ. Now, INVISTA's water right is threatened by the Application.

¹ *In Re: The Adjudication of Water Rights in the Lower Guadalupe River Segment, Guadalupe River Basin, and a portion of the Lavaca-Guadalupe Coastal Basin*, Victoria County Dist. Ct., No. 84-2-32534C (May 25, 1984).


SAWS's Application seeks authorization to use the bed and banks of the San Antonio and Guadalupe Rivers to transport discharged, treated, groundwater-based and Edwards-derived effluent from its wastewater treatment plants in Bexar County all the way to the mouth of the Guadalupe River, below INVISTA's diversion point. This adversely affects INVISTA in two ways: first, SAWS's application includes a request to authorize the transport and "indirect reuse" of Edwards-derived effluent, which is different from all other Texas sources of underground water in that, but for pumping of the Edwards Aquifer, Edwards water would emerge naturally from springs to feed the Guadalupe and San Antonio Rivers, thus becoming surface water. In other words, Edwards water is not "developed water" and is not subject to authorization by TCEQ under Texas Water Code § 11.042(b). Second, SAWS's requested diversion reach for Water Right 13098—at the mouth of the Guadalupe River—uniquely harms senior water rights like INVISTA's because, by placing its diversion below the confluence of the San Antonio and Guadalupe Rivers, SAWS would have effectively the most senior water right in the San Antonio or Guadalupe River basins, allowing it to make a "call" on all senior surface water rights holders upstream of it, in either basin, and require even 1948 water rights holders like INVISTA to pass water downstream to SAWS's diversion reach in times of low flows.

Without an authorization from TCEQ, SAWS's effluent that is discharged to the San Antonio River or one of its tributaries becomes state water and is subject to the doctrine of prior appropriation. If TCEQ issues Water Use Permit 13098 as drafted, SAWS would effectively control the use of its discharged treated effluent—including effluent that is not "groundwater" but Edwards water—beyond the framework of the prior appropriation system for surface water rights, thus injuring the reliability of INVISTA's senior water right along the Guadalupe River.

Because INVISTA is affected by SAWS's request both to indirectly reuse Edwards-derived effluent and to operate its diversion downstream of INVISTA's 1948 water right, INVISTA is an affected person and respectfully requests that the Commission hold a hearing on the Application and that INVISTA be admitted as a party to the hearing.

Dated: September 20, 2021

Respectfully submitted,

By: 
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Paulina Williams
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Attorneys for INVISTA

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:31 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: 2021.09.20 GBRA CCH Request SAWS WR PERM 13098.pdf

H

From: molly.cagle@bakerbotts.com <molly.cagle@bakerbotts.com>
Sent: Monday, September 20, 2021 3:49 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: Molly Courtney Cagle

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AUSTIN TX 78701-4082

PHONE: 5123222535

FAX: 5123223635

COMMENTS: See attached letter.

APPLICATION NO. 13098

APPLICATION OF	§	BEFORE THE
SAN ANTONIO WATER SYSTEM	§	TEXAS COMMISSION ON
FOR WATER USE PERMIT NO. 13098	§	ENVIRONMENTAL QUALITY

**GUADALUPE-BLANCO RIVER AUTHORITY'S
PLEA TO THE JURISDICTION, REQUEST FOR CONTESTED CASE HEARING,
AND COMMENTS ON THE DRAFT PERMIT**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Guadalupe-Blanco River Authority ("GBRA") and asks the Texas Commission on Environmental Quality ("TCEQ") to dismiss the above-referenced application (the "Application" or "SAWS's Application") of the San Antonio Water System ("SAWS") or, in the alternative, to grant GBRA a contested case hearing on the Application. GBRA also provides herein¹ various comments on the Draft Water User Permit 13098, as proposed by the TCEQ Executive Director.

GBRA's request for dismissal of the Application is framed as a Plea to the Jurisdiction, appropriate because the Commission does not have authority under Texas Water Code §11.042(b) to grant a request to reuse Edwards-Aquifer-derived effluent in the manner requested by SAWS. SAWS's Application fails to quantify the portion of its effluent that is derived from other, non-Edwards, sources,² and without that information, the entire application should be dismissed, allowing SAWS the opportunity to revise its application.

Because the facts and law supporting the Plea to the Commission's Jurisdiction are so integrally tied to the substance of the Application, GBRA first addresses the Application, and why

¹ GBRA provides these comments both in this document and in Exhibit 1, Declaration of Samuel K. Vaughn (Sept. 20, 2021).

² Exhibit 1 at ¶ 12-13.

GBRA has standing to oppose the Application, and then presents the grounds for dismissal in support of the Plea.

I. BACKGROUND

Throughout its Application, SAWS pretends its application is an ordinary request for a bed and banks permit to convey and reuse return flows derived from privately owned groundwater. It most certainly is not. Most of the groundwater at issue here is **Edwards Aquifer water**.³ Water from the Edwards Aquifer supports springflows that feed the Guadalupe and San Antonio Rivers. Edwards water is not “developed water” and is therefore ineligible for authorization under Texas Water Code § 11.042(b).

Edwards Aquifer water is subject to a unique statutory framework because the Texas Legislature recognized what SAWS ignores:

...that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the state.⁴

Recognizing the unique characteristics of the Edwards Aquifer, and the important competing interests this precious resource supports, the Texas Legislature carefully balanced the interplay between groundwater usage, spring flows, and established surface water rights. The “deal” struck by the legislature in 1993 treated Edwards water differently from other water resources in the State. In particular, the key elements of the balance are that: (1) once Edwards water is discharged into

³ To the extent SAWS’s return flows are derived from sources other than the Edwards Aquifer, a TCEQ-issued bed and banks, and out-of-basin use, authorization may be available for those discharges following the submission of an appropriate application.

⁴ Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350 (“EAA Act”), at § 1.01.

a watercourse, it becomes surface water, subject to the laws and rules established for Texas surface water rights and, independently, (2) Edwards water can be used and reused only within the boundaries of the EAA. In other words, the invented doctrine of “indirect reuse” is unavailable for Edwards water. Given the demands placed on Edwards Aquifer water, and the need to maintain springflows for surface water rights, the use and reuse of Edwards water is also geographically limited.

The deal reflected by the EAA Act does not *mandate* return flows to a watercourse. Indeed, Edwards water may eventually be used and reused within the EAA boundaries to the point that there simply are no return flows. But that eventuality of 100% direct reuse, if it occurs, will be gradual and stepwise, allowing those who rely on surface water, and Texas’ long-established seniority system, to plan and adjust over time. Ignoring or violating the careful balance embodied in the EAA Act, and removing Edwards water entirely from the surface water priority system, has dramatic adverse impacts on GBRA and other surface water right holders in the Guadalupe basin. For example, SAWS’s Application, if approved, would instantly remove Edwards water from the Guadalupe River Basin priority system and escalate the price tag for GBRA’s Lower Basin Storage Project⁵ by nearly \$60,000,000 to achieve the same firm supply under the GBRA-Dow Run-of-River Rights.⁶ Expanding the geographical boundary of the areas that may be served by Edwards Aquifer water similarly upsets the balance established by the Legislature by placing greater demands on the aquifer, with no reciprocal replacement for losses in surface water supplies.

⁵ GBRA’s Lower Basin Storage Project will be located below the confluence of the Guadalupe and San Antonio Rivers and has a designed firm yield of approximately 100,000 acre-feet.

⁶ Exhibit 1 at ¶ 10.

TCEQ “is charged by the legislature with primary responsibility for conservation of resources and protection of Texas’ environment,”⁷ which includes the implementation of sound water policy. Significantly, in implementing the state’s water policy, the legislature has given TCEQ the discretion, **but not the obligation**, to grant bed and banks permits for most water sources.⁸ And, in considering whether to exercise that discretion, TCEQ *must* take into account and impose special conditions that address the impact of authorizing a bed and banks permit on, among other things, “existing permits, certified filings, or certificates of adjudication.”⁹ Here, the Commission should reject SAWS’s attempt to become, effectively, the most senior, most downstream water right in the Guadalupe River Basin, to the specific detriment of GBRA and others with senior, adjudicated rights to surface water in the Guadalupe River Basin.

II. REQUEST FOR CONTESTED CASE HEARING

Subject to its Plea to the Jurisdiction, GBRA requests a contested case hearing on the Application. The name, mailing address, phone, and fax number of GBRA are as follows:

GBRA
Attn: Kevin Patteson, General Manager and CEO
933 East Court Street
Seguin, Texas 78155-5872
(830) 379-5822
(830) 379-9718 (fax)

GBRA is a governmental agency and body politic and corporate, created in 1933 by special act of the Legislature for the purposes of Section 59 of Article 16 of the Constitution of the State of Texas,¹⁰ including (i) the control, storing, preservation, and distribution of storm and flood waters, the waters of rivers and streams, including the Guadalupe and Blanco Rivers and their

⁷ TCEQ Sunset Self-Evaluation Report, SFR-123/21, at 5 (Sept. 2021), https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER_9-01-21.pdf.

⁸ See Tex. Water Code § 11.042(b), (c). As explained herein, TCEQ lacks jurisdiction under Section 11.042 with respect to Edwards water.

⁹ Tex. Water Code § 11.042(c).

¹⁰ TEX. REV. CIV. STAT. ANN. art. 8280-106.

tributaries, for irrigation, power, and all other useful purposes, (ii) the reclamation and irrigation of arid, semi-arid and other lands needing irrigation, (iii) the reclamation and drainage of overflowed lands, and other lands needing drainage, (iv) the conservation and development of the forests, water and hydro-electric power of the State of Texas, (v) the navigation of inland waters, and (vi) the preservation and conservation of all such natural resources of the State. GBRA stewards the water resources in its ten-county statutory district, which consists of Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt, Victoria, Calhoun, and Refugio counties.

As set forth below, GBRA is an affected person, as defined by Title 30, Section 55.256 of the Texas Administrative Code. GBRA has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by SAWS's Application. GBRA's interests are not common to the general public.

a. The Application Addresses Edwards Aquifer Water

As recognized by the Fifth Circuit, “[d]epending on the amount that recharge exceeds pumping, water leaves Edwards naturally at two large springs, San Marcos Springs and Comal Springs,” and enters the Guadalupe River. *Sierra Club v. Babbitt*, 995 F.2d 571, 573 (5th Cir. 1993). Without SAWS and others pumping the Edwards, the water in the Edwards Aquifer naturally makes its way into the Guadalupe River through several major springs.¹¹ Accordingly, what happens to the Edwards Aquifer directly impacts what happens in the Guadalupe River. This interconnection between the Edwards Aquifer and Guadalupe River, and the effects of Edwards pumping (by SAWS and others) on spring flows into the Guadalupe River, has, over time, led to:

¹¹ See, e.g., Exhibit 1 at ¶ 26-29; *Sierra Club v. City of San Antonio*, 112 F.3d 789, 791 (5th Cir. 1997) (“The aquifer discharges water into the Guadalupe River Basin at the San Marcos and Comal Springs.”); Gunnar Brune, *Springs of Texas*, Vol. I (1981) (noting that well pumping in the Edwards Aquifer decreases springflows at San Antonio, San Pedro, Comal, and San Marcos Springs).

a series of lawsuits¹² in the early 1990s; the creation of the Edwards Aquifer Authority (“EAA”); the development of a habitat conservation plan to protect endangered species dependent upon the springflows; and the issuance of an incidental take permit in January 2015.

Today, SAWS pumps water from the Edwards Aquifer, supplies it to customers for use, collects it as wastewater, treats it, and then either reuses effluent through direct recycling systems (i.e., purple pipe) or discharges it to the San Antonio River, which is a tributary of the Guadalupe River. By its Application, SAWS proposes to discharge and then remove Edwards-Aquifer-derived effluent at a discharge reach over 150 miles¹³ downstream in Calhoun County, at the mouth of the Guadalupe River, past GBRA’s permitted salt water barrier.¹⁴ As described below, because of the interconnection between the Edwards Aquifer and the Guadalupe River, SAWS’s Application affects GBRA, and GBRA’s senior water rights, in a manner different from the general public. SAWS’s Application also violates the EAA Act.

b. GBRA has Senior Water Rights in the Guadalupe River

Since its creation nearly 90 years ago, GBRA has focused on economic development and protection of natural resources and the environment in its ten-county statutory district. One of GBRA’s most important functions is to provide adequate water supplies to meet the growing demands of citizens, industries, and businesses within its district. To be adequate, a water supply must be “firm,” meaning that the supply must be reliable each and every day throughout a drought at least as severe as the most-severe drought of record in the region.

¹² *Id.* at 791-793 (describing some of the litigation surrounding the formation of the EAA).

¹³ TCEQ Interoffice Memorandum from Kenneth Coonrod, Aquatic Scientist, Resource Protection Team, to Sarah Henderson, Project Manager, Water Rights Permitting Team, Re: San Antonio Water System WRPER 13098, at 3 (Mar. 24, 2021).

¹⁴ SAWS has applied to use water under Permit 13098 in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties. SAWS Bed and Banks Supplemental Info. at 1 (Dec. 26, 2013). Of these, only Bexar County is within the EAA boundaries, and three of the counties—Calhoun, Refugio and Victoria—lie within GBRA’s jurisdictional boundaries. See <https://www.edwardsaquifer.org/eaahistory/jurisdiction/> (map of EAA boundaries).

GBRA maintains multiple water rights along the Guadalupe River to provide water to its customers within its 10-county district. Those water rights¹⁵ are upstream of SAWS's proposed diversion reach under its application for Permit 13098, and include (but are not limited to) the following:

- (a) **Canyon Water Right** - Certificate of Adjudication No. 18-2074, as amended, authorizes GBRA to maintain Canyon Dam and Reservoir, store inflows in the Reservoir with priority dates of March 19, 1956 and June 14, 1999, and divert and use from the Reservoir an average of 90,000 acre-feet of stored water annually for municipal, industrial, and agricultural purposes. Under the Certificate, GBRA is authorized to use the bed and banks of the Guadalupe River to deliver the stored water for diversion from the River downstream of Canyon Reservoir. Canyon Reservoir provides critical water supplies to over a dozen municipal, industrial, power generation, and agriculture users—including SAWS—across GBRA's district.¹⁶
- (b) **GBRA-Dow Run-of-River Rights and Lower Basin Storage** - GBRA owns jointly with Union Carbide Corporation, a subsidiary of The Dow Chemical Company, the following six Certificates of Adjudication: Certificates of Adjudication Nos. 18-5173, 18-5174, 18-5175, 18-5176, 18-5177, and 18-5178. GBRA also owns Certificate of Adjudication No. 18-3863B. Together, these seven Certificates of Adjudication authorize diversion of 175,501 acre-feet of water per year from the run-of-river flow of the Guadalupe River with priority dates ranging from February 3, 1941 to January 7, 1952. The water is diverted from the Guadalupe River by gravity-flow diversion works located downstream of the confluence of Guadalupe and San Antonio Rivers, and just upstream of GBRA's Saltwater Barrier and Diversion Dam, authorized under GBRA's Certificate of Adjudication No. 18-5484. After diversion from the Guadalupe River, the water is conveyed via GBRA's Canal System in Calhoun County and used for municipal, industrial, agricultural, mining, and stock raising purposes. To firm up the supply of water available from the run-of-river flow of the Guadalupe River, the seven Certificates of Adjudication identified above also authorize the construction of up to 150,000 acre-feet of off-channel storage in Calhoun, Refugio, and Victoria Counties and the storage of water diverted under the Certificates in such off-channel storage.

GBRA received authorization in 2014 from the TCEQ to construct this off-channel storage. The initial phase of the project is designed to result in a firm supply of approximately 100,000 acre-feet of water per year, utilizing the GBRA Canal System and the seven Certificates of Adjudication identified above.

¹⁵ Exhibit 1 at ¶ 8-9.

¹⁶ South Central Texas Regional Water Planning Group, 2021 South Central Texas Regional Water Plan Volume 2, at 5.4-9 (Nov. 5, 2020), https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/L/RegionL_2021RWP_V2.pdf

- (c) **Mid-Basin Permit** – On September 1, 2020, TCEQ issued¹⁷ GBRA a new surface water right, Permit No. 12378, to appropriate, divert and use for municipal and industrial purposes up to 75,000 acre-feet of water annually from the unappropriated flows of the Guadalupe River at a rate of diversion up to 500 cfs. The permit further authorizes the construction of up to 125,000 acre-feet of off-channel storage in Gonzales County and to firm up the run-of-river supply by storing the water in the off-channel storage. The point of diversion from the Guadalupe River will be located in Gonzales County, within the segment of the Guadalupe River downstream of the confluence of the Guadalupe and San Marcos Rivers. The permit carries a December 23, 2009 priority date.
- (d) **Luling Water Rights** – GBRA supplies water to the Cities of Luling and Lockhart under Certificates of Adjudication Nos. 18-3896, 18-3600, and 18-5234, as amended. These authorizations allow GBRA to divert and use up to 4,572 acre-feet of water per year from the San Marcos River for municipal and industrial purposes.

c. Edwards Aquifer is Tributary to the Guadalupe River, thus not “Developed Water”

Bed and banks authorizations available under Water Code § 11.042(b) for sewage effluent derived from privately-owned groundwater are based on the presumption or determination that the effluent is “developed waters” that TCEQ may exclude from the state-water priority system. *See Guelker v. Hidalgo Cnty. WCID No. 6*, 269 S.W.2d 551, 555 (Tex. Civ. App.—San Antonio 1954, writ ref’d n.r.e.) (noting that “developed or captured waters” fall outside the state-supervised prior appropriation system for surface water). “Developed waters are new waters added to a stream or other source of water supply by reason of artificial work.” Hutchins, *The Texas Law of Water Rights*, at 541 (1961).¹⁸ A “careful use of the term would exclude water tributary to a stream” which, while perhaps facilitated in reaching the stream by artificial works, “would reach the stream eventually irrespective of them. Such water is not new water; the time of its arrival is simply hastened.” *Id.*

¹⁷ One protesting party has challenged TCEQ’s issuance of the Mid-Basin Permit in Travis County District Court.

¹⁸ Hutchins cites to and quotes the definition of “developed water” found in the then-existing rules of the Texas Board of Water Engineers, a predecessor of TCEQ:

“Developed Water is water that in its natural state does not augment a water supply, but that is added to a water supply or is otherwise made available for use by means of artificial works.”

Water in the Edwards Aquifer is truly “tributary to” the Guadalupe River stream system—this water would flow into the Guadalupe River eventually, via springflow, without artificial intervention. That is why the Texas Legislature treated the Edwards differently from other aquifers in the State. Because Edwards water is governed by the EAA Act, the Commission lacks jurisdiction to grant bed and banks authorization under Water Code 11.042(b) for sewage effluent derived from Edwards water.¹⁹ This effluent, once discharged from a wastewater treatment plant, is not *new* to the surface water system, and therefore, it is not properly deemed “developed water.” It must be viewed as state water, subject to the state’s prior-appropriation system.

d. Edwards Water is Unique Hydrologically and Legally

In SB 1477 (1993), the Texas Legislature found the Edwards Aquifer to be a body of water unlike any other in Texas – “a unique and complex hydrologic system” and “a distinctive natural resource in this state.” EAA Act § 1.01. Accordingly, to regulate withdrawals and water use, the Legislature created the Edwards Aquifer Authority, a “special regional management district” and provided for “the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.” EAA Act § 1.06(a). Under the EAA Act, the Legislature restricted reuse of water from the Edwards. The definition of “reuse” found at Section 1.03(19) of the EAA Act makes clear that any reuse of Edwards water must occur before the unconsumed water returns to a body of state-owned water:

“Reuse” means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use *and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.* (emphasis added).

¹⁹ To the extent that TCEQ staff reference Edwards-derived effluent in the Hydrology Review of SAWS’s Application, the statement “SAWS’ groundwater-based return flows would not be considered to be part of the natural flow of tributaries of the San Antonio River, the San Antonio River, and the Guadalupe River,” is incorrect. TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

The Legislature thus made indirect reuse unavailable for Edwards-Aquifer-derived effluent.

Under SAWS's Application for bed and banks authorization under Water Code § 11.042(b), SAWS's unconsumed Edwards water would not be reused "before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water," as required by Section 1.03(19) of the EAA Act. It would be discharged, allowed to flow over a hundred and fifty river miles downstream, then removed (ignoring the priority system) from the tidally-influenced portion of the Guadalupe River. The statutory limitation on "reuse" imposed by the EAA Act reflects the fact that SAWS's Edwards-derived return flows, despite originating underground like other groundwater, are, in fact, the very same waters that feed the Guadalupe River system.

As the Texas Legislature has confirmed, Edwards Aquifer is not like other groundwater. EAA Act § 1.06. The Edwards is so highly interconnected with the Guadalupe River system that there is no doubt either scientifically or legally that water in the Edwards is truly tributary to the Guadalupe River system and, therefore, that Edwards-derived effluent discharged into the Guadalupe River and its tributaries is not "developed water."²⁰ Water in the Edwards Aquifer would reach the Guadalupe River naturally via Comal and San Marcos Springs²¹ if SAWS did not perform the artificial acts of pumping the water out of the Aquifer and then discharging the remaining effluent. In fact, the Edwards is so interconnected with surface streams that in rules adopted in 1992 (17 Tex. Reg. 6601 (September 25, 1992)), the Texas Water Commission ("TWC"), a predecessor of TCEQ, made the following specific findings:

²⁰ There may be other groundwater in Texas that TCEQ finds, in a Water Code section 11.042(b) proceeding, to be sufficiently tributary to a surface stream to require a determination that effluent derived from the groundwater is not developed water and, therefore, that all reuse of the effluent must occur before discharge. In the EAA Act, the Texas Legislature decided that issue and removed it from TCEQ's jurisdiction with respect Edwards water.

²¹ Because of the confluence between the San Antonio and Guadalupe Rivers, water from San Pedro Springs also contributes flow to the Guadalupe River, downstream, and SAWS's pumping from the EAA similarly impacts flows at San Pedro Springs.

“Through its ‘recharge zone,’ the Edwards Aquifer captures and diverts flows of major surface streams in the upper portion of the Nueces and San Antonio River Basins. These surface streams provide approximately 80% of the ‘recharge’ to the aquifer. Water ‘recharging’ the aquifer continues to flow downgradient, generally moving west to east to northeast, through the confined and known boundaries of the aquifer, eventually erupting at several springs.” *Id.* at 6606.

“These springs include the state’s two largest natural springs at New Braunfels and San Marcos.” *Id.* at 6603.

It is estimated that spring flow from Comal and San Marcos Springs alone provides 21 to 32% of the total annual flow, and up to 70% of the total flow during droughts, of the Guadalupe River at Victoria.” *Id.*

“The water in the aquifer can move very easily where the size and number of solution openings are large and connected with few restrictions. Movement rates of more than 2,100 feet per day have been measured over short distances. As a comparison, a movement rate of one foot per day is generally considered very fast in other aquifers in Texas.” *Id.* at 6605.

The 1992 TWC Edwards rules were struck down by summary judgment by a Travis County district court on the ground that the TWC was without authority to declare the water in the Edwards to be state water. While the appeal from this judgment was pending, the 1993 Texas Legislature passed SB 1477, creating the EAA and declaring the Edwards not to be an underground river but, rather, a body of water unlike any other in Texas. In response to the passage of the EAA Act, the TWC repealed its Edwards rules.

What is important here is that the fact findings set forth in the preamble to the TWC 1992 Edwards rules were before the legislature in 1993 when it passed the EAA Act, and, since then, neither the TWC nor any of its successors (including TCEQ) has ever disavowed any of the relevant scientific findings.²² Those findings explain, in detail, the hydrologic interconnection between the Edwards and surface streams.

²² Even though the Edwards was declared by the Texas Legislature not to be an underground stream, as a matter of law, the physical characteristics of the Edwards that underpinned the 1992 TWC Edwards rules reflect a continued hydrological reality contacting the Edwards Aquifer with spring flows and surface waters of the Guadalupe River and its tributaries.

And because the availability of water under GBRA's water rights depends upon the Guadalupe River Basin's surface water flows and the legislative deal embodied in the EAA Act, GBRA is affected by any proposal to breach that deal or remove Edwards water from the Guadalupe River system, including SAWS's current request to claim and remove Edwards-derived effluent at the mouth of the Guadalupe River for distribution outside the EAA boundaries, without regard for GBRA's senior water rights.

e. **Because the Application Removes Edwards Water from the Guadalupe River Outside the Prior-Appropriation System, GBRA is Adversely Affected by the Application in a Manner Not Common to the General Public**

SAWS has requested authorization to remove 360 cfs—260,991 acre-feet per year—from the mouth of the Guadalupe River, without regard for GBRA's or others' senior water rights. Indeed, TCEQ recognized that 158 water rights would be negatively impacted by SAWS's Application.²³ While TCEQ characterized the impact as minimal, in fact, GBRA stands to lose firm water supplies—with serious impacts to GBRA's customers—both in the lower basin and elsewhere if TCEQ issues Permit 13098 because, among other things, the draft permit for Water Right No. 13098 provides that “[t]he groundwater based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights.” Draft Permit 13098 at ¶ 4.

The GBRA-Dow Run-of-River water rights, located below the confluence of the Guadalupe and San Antonio Rivers, are senior to most of the water rights in the Basin. But, if successful in its Application, SAWS would operate outside the prior appropriation system and effectively supersede GBRA's senior rights. In times of drought, SAWS would be able to insist on 360 cfs of surface water flow downstream of GBRA's senior diversion point, notwithstanding

²³ TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

that a significant portion of this is *Edwards* water that, if present in the watercourse by spring flow or wastewater discharge, should be available to GBRA under its senior surface water rights.

If granted, Permit 13098 would require GBRA to pass water downstream of its most senior diversion points. Particularly during dry conditions, GBRA would be adversely affected²⁴ by SAWS's out-of-priority removal²⁵ of all Edwards-derived effluent downstream of GBRA's diversion points. The Application's adverse impacts on GBRA are distinct from those of the general public and include:

- Permit 13098 would reduce the firm yield from GBRA's Canyon Reservoir because GBRA would have to pass more inflows through Canyon Reservoir to compensate for the reduction in water supplies available under GBRA's downstream, senior water rights, and/or GBRA might release additional water from storage in Canyon Reservoir if and to the extent there was any additional stored water that could be released;²⁶
- Permit 13098 would also reduce the firm yield of the surface water component of the GBRA Mid-Basin Project by requiring GBRA to pass flow downstream from Gonzales to meet the demands of senior GBRA water rights that are impacted by SAWS's out-of-priority removal of water at the mouth of the river;
- If SAWS is entitled to indirect reuse of Edwards water, outside of the priority system and beyond the EAA boundaries at the mouth of the Guadalupe River, any other pumper of Edwards water could obtain such expansive authorization from

²⁴ Exhibit 1 at ¶ 6-7.

²⁵ Under the terms of Texas Water Code § 11.042(b), and consistent with the prohibition in Section 11.0235 on water rights issued solely for environmental flows, TCEQ may only issue a bed and banks permit to an entity that will "*subsequently divert* and reuse... existing return flows derived from privately owned groundwater." (emphasis added)

²⁶ Exhibit 1 at ¶ 11.

TCEQ in the future, decimating the Guadalupe River and, particularly, GBRA's senior water rights that depend on the Guadalupe River and its tributaries;

- The proposed accounting plan inadequately addresses channel losses from the point of SAWS's discharges to the proposed diversion point at the mouth of the Guadalupe River;²⁷
- SAWS's proposed diversion location at the mouth of the Guadalupe River is tantamount to waste, which is prohibited by law.²⁸ TCEQ defines "waste" as "[t]he diversion of water if the water is not used for a beneficial purpose" as well as "the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose."²⁹ TCEQ further specifies that "[w]aste may include, but not be limited to...the diversion or use of water in any manner that causes or threatens to cause pollution of water..."³⁰ By transporting fresh water effluent to the mouth of the Guadalupe River, where it is allowed to become saline *before* the SAWS's proposed diversion, SAWS's application proposes a waste of surface water;³¹
- To the extent that SAWS claims that allowing Edwards-derived effluent to flow to the bay is not waste or benefits the bay, this is a tacit admission that SAWS seeks Water Use Permit 13098 for only instream flows, not other beneficial uses, and has no intention of "diverting" return flows at the bay. Section 11.042(b)—which

²⁷ See Exhibit 1 at ¶ 15-18, ¶ 23-25.

²⁸ TCEQ may grant a water right application "only if... the applicant has provided evidence that reasonable diligence will be used to avoid waste..." Tex. Water Code § 11.134(b)(4).

²⁹ 30 TAC § 297.1(58) (definition of "waste").

³⁰ *Id.*

³¹ See Exhibit 1 at ¶ 19-22.

applies only to privately-owned groundwater, not Edwards-derived effluent— would still require SAWS to “discharge *and then subsequently divert* and reuse” return flows.³² Without a diversion,³³ there can be no 11.042(b) authorization, and Texas law precludes TCEQ from issuing a water right solely for environmental flows;³⁴

- SAWS’s Application will have severe and adverse impacts on GBRA’s ability to operate its Saltwater Barrier, which provides the necessary hydrologic head for water to flow from the Guadalupe River into GBRA’s canal system and supply GBRA customers.³⁵ In particular, if SAWS is entitled to 360 cfs of flow at a point below the Saltwater Barrier at times of low flow, SAWS could make a priority call that, in order to be met, would require GBRA to deflate the Saltwater Barrier, potentially causing saltwater intrusion, and further impacting GBRA’s water rights and ability to serve its customers; and
- SAWS’s application would effectively create a most senior water right at the mouth of the Guadalupe River that could call on any water rights holders upstream in the Guadalupe or San Antonio River basins to pass water to its diversion location in times of low flows. SAWS’s out-of-priority water right at the mouth of the river would cause water rights holders senior to GBRA to make calls against GBRA’s water rights and would cause GBRA to make senior water rights calls against other, more junior water rights located upstream of GBRA’s diversion points.

³² Tex. Water Code § 11.042(b).

³³ Any attempt by SAWS to avoid the statutory “diversion” requirement by relying on expansion or development of existing channels would simply highlight the fact that this Application seeks to accomplish what the law does not allow.

³⁴ Tex. Water Code § 11.0235(d)

³⁵ See Exhibit 1 at ¶ 19-22.

In addition, even for the non-Edwards component of SAWS's Application, GBRA is an affected person entitled to a contested case hearing in this matter. GBRA has water rights, as described herein, that will be affected by SAWS's Application. TCEQ has authority to, and should, impose "special conditions that may address the impact of the discharge, conveyance, and diversion on existing permits, certified filings, or certificates of adjudication," including GBRA's. Tex. Water Code § 11.042(c).

III. GBRA'S PLEA TO THE JURISDICTION

GBRA files this Plea to the Jurisdiction because the EAA Act means what it says: reuse of Edwards water must take place before discharge to a watercourse, and use and reuse of Edwards groundwater is geographically limited to the area within the EAA boundary. *See* EAA Act §§ 1.03(19), 1.34. Because of these statutory limitations, the Commission lacks jurisdiction to issue Permit 13098, to the extent that it authorizes SAWS to indirectly reuse Edwards-derived effluent or to use Edwards water outside the boundaries of the EAA. Given that SAWS's Application attempts to use Section 11.042(b) to authorize indirect reuse of Edwards-derived effluent, in contravention of the EAA Act, the Commission should dismiss SAWS's Application in its entirety. In the alternative, the Commission should dismiss the portion of the Application that violates the EAA Act's statutory restrictions and consider only SAWS's request to convey and indirectly reuse non-Edwards-derived effluent.

1. The Commission lacks jurisdiction to authorize the indirect reuse of Edwards-derived effluent

SAWS's Application seeks a "bed and banks" authorization for Edwards-derived effluent, but Section 11.042(b) conflicts with the specific statutory restrictions in the EAA Act. Under Texas Water Code Section 11.042(b), TCEQ generally has discretionary authority, but no mandate, to permit an applicant to reuse effluent derived from privately-owned groundwater by

using the bed and banks of a State watercourse to transport the effluent from the point of discharge to the point of diversion without surrendering ownership of the effluent. Such a bed and banks reuse authorization, if granted by TCEQ, is a statutory exception to the important general rule under Texas water law that all privately-owned waters become property of the State as soon as they are discharged or otherwise flow into a public river system.³⁶

But Section 11.042(b) does not apply to SAWS's request to indirectly reuse Edwards water. The EAA Act expressly states that it "prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction." EAA Act § 1.08(a). And the EAA Act defines "reuse" as direct reuse only, restricting authorized "reuse" of Edwards water to use "before the water is discharged or otherwise allowed to flow into a...body of state-owned water." EAA Act § 1.03(19). Accordingly, Section 11.042(b) does not govern SAWS's request to reuse Edwards-derived effluent. The EAA Act does, and it does not authorize TCEQ to issue Permit 13098 for indirect reuse of Edwards effluent.

In its Application, San Antonio proposes to retrieve discharged Edwards effluent at the mouth of the Guadalupe River, 150 miles downstream from where the City discharges it into the San Antonio River.³⁷ Obviously, there is enormous inefficiency associated with this proposal, including water loss due to evaporation and seepage, the significant expenses required to desalinate the effluent (before providing it to municipal, industrial, and irrigation users) that SAWS allowed to become brackish by diverting it at the bay, as well as the energy required to transport the water back uphill to San Antonio. SAWS could, instead, directly reuse its Edwards-derived effluent without running afoul of the EAA Act. But only under a Section 11.042(b) authorization can the

³⁶ See, e.g., *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 822 (Tex. 2012) (discussion Section 11.042(b) as an important exception from the general rule that groundwater discharged to a watercourse becomes surface water).

³⁷ TCEQ Interoffice Memorandum from Kathy Alexander to Sarah Henderson, Hydrology Review, at 3 (Mar. 24, 2021).

City claim to “reuse” its Edwards-derived effluent and thus assert a right to the water that is superior to GBRA’s senior State water rights.

If water from the Edwards Aquifer were regulated in the same way as other groundwater in this state, then SAWS’s bed and banks “reuse” application would be subject to TCEQ’s general statewide jurisdiction under Water Code §11.042(b) to rule on such an application. But it is not. Rather, the EAA Act governs the Edwards water and, under this specific legislation, TCEQ lacks jurisdiction under Water Code § 11.042(b) to authorize the indirect reuse of the Edwards-derived effluent SAWS discharges to the river.

2. The Commission lacks jurisdiction to authorize use of treated wastewater derived from the Edwards Aquifer anywhere outside the boundaries of the EAA.

In violation of the EAA Act, SAWS’s Application seeks authorization from the Commission to use Edwards-derived treated wastewater outside the boundaries of the EAA. The Texas Legislature expressly limited where Edwards water may be used: “[w]ater withdrawn from the aquifer must be used within the boundaries of the authority.” EAA Act § 1.34(b). With this restriction, the Legislature plainly recognized the significant shortage of firm water within the boundaries of the EAA and made the policy decision to require that Edwards water remain within the boundaries of the EAA. Despite this facial, statutory restriction, SAWS’s Application nevertheless seeks to use Edwards-derived treated wastewater in portions of the Guadalupe and San Antonio River Basins well beyond the boundaries of the EAA, including in Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties.

TCEQ lacks jurisdiction to issue such an authorization.³⁸ Once Edwards-derived effluent is discharged into a State water-course, as a matter of law, it becomes State water, subject to State-

³⁸ Even on the limited occasions when the TCEQ has allowed indirect reuse of Edwards water, without regard to the restriction in the EAA Act, it has done so for only minimal volumes of water, all of which were used within the EAA boundaries. See *City of San Marcos v. TCEQ*, 128 S.W.3d 264, 278 (Tex. App.—Austin 2004, pet. denied).

issued water rights in accordance with their respective priorities. As further support, GBRA notes the legal principle that specific laws prevail over general laws. Thus, the EAA Act prevails over general law (e.g., Chapter 11 of the Texas Water Code) to require that all Edwards Aquifer water, if lawfully reused (i.e., before being discharged into a body of State-owned water), must be so used within the boundaries of the EAA.³⁹

IV. PRAYER

GBRA respectfully requests that the Commission grant GBRA's Plea to the Jurisdiction and dismiss SAWS's Application for authorization to indirectly reuse Edwards-derived effluent and/or to reuse Edwards Aquifer water outside the EAA boundaries. Subject to GBRA's Plea to the Jurisdiction, GBRA requests that the Commission hold a contested case hearing on SAWS's Application and that GBRA be admitted as a party to the hearing.

Dated: September 20, 2021

Respectfully submitted,

By:  _____
Molly Cagle

Texas Bar No. 03591800
molly.cagle@bakerbotts.com
Paulina Williams
Texas Bar No. 24066295
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(512) 322-2501 (fax)

*Attorneys for Guadalupe-Blanco River
Authority*

³⁹ See also EAA Act § 1.08(a).

EXHIBIT 1

DECLARATION OF SAMUEL K. VAUGH

APPLICATION NO. 13098

APPLICATION OF § BEFORE THE
SAN ANTONIO WATER SYSTEM § TEXAS COMMISSION ON
FOR WATER RIGHT PERMIT § ENVIRONMENTAL QUALITY
13098 §
§

DECLARATION OF SAMUEL K. VAUGH

My name is Samuel Kent Vaugh. I am over 18 years of age, of sound mind, and capable of making this declaration. The facts in this declaration are within my personal knowledge and are true and correct.

1. I am a Vice President and Professional Associate with HDR Engineering, Inc. (“HDR”). My experience includes more than 40 years of work in the field of water resources engineering, including experience with water rights, river basin hydrology, environmental flows, regional water supply planning, reservoir system modeling, conjunctive management of groundwater and surface water resources, project feasibility analyses, dam design, statistical analyses, and stormwater management master planning.
2. Professional achievements include development of river basin scale models for simulation of water rights and calculation of water supply reliability subject to hydrologic, regulatory, and operational constraints, development of regional water plans and project feasibility studies, expert witness testimony in regulatory and legal proceedings, and service with multiple expert science teams providing recommendations to the State of Texas and stakeholder groups on environmental flows.
3. I hold a Bachelor of Science in Civil Engineering from Rice University and a Master of Science in Engineering (Water Resources) from The University of Texas at Austin. I chair the Senate Bill 3 (SB3) environmental flow process Basin and Bay Expert Science Teams (BBESTs) for the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays and for the Nueces River and Corpus Christi and Baffin Bays. In addition, I was a member of the original Edwards Aquifer Area Expert Science Subcommittee for the Edwards Aquifer Recovery Implementation Program which led to the approved Edwards Aquifer Habitat Conservation Plan.
4. I have provided professional services for applicants or other interested parties relevant to approximately 28 applications for new or amended surface water rights in Texas.
5. I have prepared this declaration in support of the Guadalupe-Blanco River Authority’s (“GBRA’s”) Request for Contested Case Hearing related to the San Antonio Water System’s (SAWS’s) application for Water Use Permit No. 13098, which would authorize the use of the bed and banks of the Guadalupe River and its tributaries to deliver 260,991 acre-feet per year (acft/yr) of treated effluent from nine permitted discharge points to a diversion reach of Guadalupe River extending from the State Highway 35 crossing to the mouth of the South Guadalupe River at Guadalupe Bay. Waters diverted at a maximum

rate of 360.53 cubic feet per second (cfs) would be authorized for use for municipal, industrial, agricultural, mining, and instream purposes in Bexar, Calhoun, Goliad, Karnes, Refugio, Victoria, and Wilson Counties.

Background on GBRA's Water Rights and SAWS's Application

6. In essence, SAWS's application seeks to authorize SAWS to retain control over use of the wastewater that it treats from the points of discharge into a state watercourse to a proposed diversion reach located in the Guadalupe delta. SAWS treats wastewater derived from the Edwards and other aquifers including the Simsboro, Carrizo, Wilcox, and Trinity. Wastewater from these sources comprised over 95 percent of that discharged by SAWS in 2020. By means of this application, SAWS seeks to use the bed and banks of the Guadalupe River and its tributaries to transport its historically-discharged treated wastewater outside of Texas' priority system for surface water rights all the way to its proposed diversion reach at the very bottom of the basin. As drafted, Water Use Permit 13098 would make treated effluent quantities previously discharged by SAWS and currently available to surface water rights, and potentially the Guadalupe Estuary, to be unavailable to anyone except SAWS. Finally, SAWS proposes to construct diversion works at the mouth of the Guadalupe River and deliver water therefrom for a variety of purposes of use in multiple counties from Bexar County to the Gulf Coast.
7. Approval of SAWS's application will reduce the reliable supply of state water available to surface water rights on the Guadalupe River and its tributaries from the points of discharge in Bexar County to Guadalupe Bay. Most significantly affected will be the senior surface water rights held by GBRA and Dow Chemical Company (Dow) that divert from the Guadalupe River immediately downstream of the confluence between the San Antonio and Guadalupe Rivers. New shortages caused by approval of SAWS's application impacting these very senior water rights would also result in new shortages to junior water rights upstream of GBRA because they would have to pass flows for GBRA's senior rights during severe drought.
8. I have worked with GBRA for more than 25 years seeking to ensure that its water rights are appropriately portrayed in water availability planning and regulatory models. Furthermore, I have provided technical support to GBRA in amending eight of its existing water rights, obtaining one new appropriation, and processing a pending application for a new appropriation.
9. GBRA holds the following water rights (among others):
 - a. Lower Basin Water Rights with total authorized diversion of 175,501 acft/yr:
 - i. Certificate of Adjudication No. 18-5173, as amended
 - ii. Certificate of Adjudication No. 18-5174, as amended
 - iii. Certificate of Adjudication No. 18-5175, as amended
 - iv. Certificate of Adjudication No. 18-5176, as amended
 - v. Certificate of Adjudication No. 18-5177, as amended
 - vi. Certificate of Adjudication No. 18-5178, as amended

- vii. Certificate of Adjudication No. 18-3863, as amended
- viii. Certificate of Adjudication No. 18-5484
- b. Canyon Reservoir Water Rights with total authorized diversion of 120,000 acft/yr limited to 450,000 acft in any 5-year period:
 - i. Certificate of Adjudication No. 18-2074, as amended
- c. San Marcos River / Luling Water Rights with total authorized diversion of 4,572 acft/yr:
 - i. Certificate of Adjudication No. 18-3896, as amended
 - ii. Water Use Permit No. 3600, as amended
 - iii. Water Use Permit No. 5234, as amended
- d. Mid-Basin Water Right with total authorized diversions of 75,000 acft/yr:
 - i. Water Use Permit No. 12378

Preliminary Evaluation of Impact of SAWS's Application on GBRA's Water Rights and Water Supply Planning

10. According to my preliminary calculations, SAWS's Application could have the following impacts on GBRA's Lower Basin Water Rights:
- a. Firm supply without off-channel storage could be reduced by between 50 and 75 percent.
 - b. The cost of constructing off-channel storage to restore the firm supply lost (as a result of Water Use Permit 13098) would exceed \$40,000,000.¹
 - c. If Water Use Permit 13098 is approved, the cost of constructing off-channel storage to obtain a firm yield of 100,000 acft/yr would increase by between \$43,000,000 and \$70,000,000, or roughly 77 and 125 percent.
 - d. Deflation of GBRA's Saltwater Barrier (authorized by Certificate of Adjudication No. 18-5484) to allow passage of flows for diversions under SAWS's Application could impair GBRA's ability to operate its gravity diversion system and increase the risk of saltwater intrusion. During severe drought, the changed operation of GBRA's Saltwater Barrier in order to pass flows to SAWS's diversion reach under Water Use Permit 13098 could potentially impact essential water supplies for GBRA's municipal and industrial customers.
11. At any time when SAWS's Application causes increased shortages for GBRA's Lower Basin Water Rights, upstream water rights junior to GBRA's rights will also suffer

¹ HDR Engineering, Inc., *Lower Basin Water Supply Project, Preliminary Technical Evaluation of Diversion, Storage, & Transmission Facilities*, DRAFT, Guadalupe-Blanco River Authority, January 29, 2018.

increased shortages. The full firm yield of Canyon Reservoir is presently under contract with GBRA customers. SAWS's application would reduce the firm yield by approximately 1,800 acft/yr. Other water rights holders along the river will similarly experience shortages induced by SAWS's Application.

Issues with the San Antonio Water System Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application No. 13098 (SAWS Accounting Plan)

12. SAWS's Application requests authorization under Texas Water Code 11.042 for both Edwards Aquifer-derived effluent and other water sources.
13. The SAWS Accounting Plan should separately track the percentage of its effluent stream that is sourced from the Edwards Aquifer due to its unique nature and difference from other sources identified as groundwater. Analysis of SAWS 2020 Distribution Report indicates that 72.0%, 23.3%, and 4.7% of its effluent stream was obtained from the Edwards Aquifer, groundwater, and surface water sources, respectively.
14. Review of the WAM Conveyance Loss Coefficient for Reach 2 specified in the SAWS Accounting Plan (i.e., 19.48%) reveals that losses have only been included for the San Antonio River segment from Elmendorf to Goliad. Goliad is some 67 miles upstream of the GBRA Saltwater Barrier and the proposed SAWS diversion reach begins ~2.7 miles below the GBRA Saltwater Barrier. As Elmendorf is more than 203 river miles upstream of the Saltwater Barrier, SAWS is neglecting losses occurring in over a third (69.7/205.7) of the river segment between Elmendorf and their proposed diversion reach. The Accounting Plan's failure to adequately account for all conveyance losses would have SAWS regularly calling for more water to be passed by GBRA and others than would be authorized by Permit 13098.
15. The SAWS Accounting Plan assumes that diversions to Calaveras Reservoir under Certificate of Adjudication No. 19-2162 are drawn from SAWS effluent without consideration of downstream senior water rights. This is inconsistent with Certificate of Adjudication No. 19-2162, which has a priority date and states that "not to exceed 60,000 acre-feet per annum of the unappropriated public waters of the San Antonio River, including sewage effluent released upstream from the point of diversion" are authorized to be diverted to Calaveras Reservoir." The SAWS Accounting Plan should clearly state that diversion and use of effluent allocated to Certificate of Adjudication No. 19-2162 will be accomplished only after honoring senior downstream water rights. SAWS's failure, in its Accounting Plan, to honor rights senior to the April 25, 1967 priority date in Certificate of Adjudication No. 19-2162 would impact the firm supply of GBRA's Lower Basin Rights, without off-channel storage, by more than 16,000 acft/yr and the firm yield of GBRA's Canyon Reservoir by more than 600 acft/yr.
16. The SAWS Accounting Plan assumes that there is no priority date associated with the diversion and use of effluent under Water Use Permit Nos. 5705, 12054, and 13129. However, each of these permits has an associated priority date. The SAWS Accounting Plan must state that diversion and use of effluent allocated to Water Use Permit Nos. 5705,

12054, and 13129 will be accomplished only after honoring senior downstream water rights.

17. SAWS's Accounting Plan fails to account for the travel time required for treated effluent to flow downstream to the specified diversion reach. Travel time varies with the magnitude of streamflow, but assuming an average velocity of 2 feet per second, water would take more than six days to travel from Elmendorf to SAWS's proposed diversion reach. Failure to account for such travel time could have SAWS calling for more water to be passed by GBRA and others on a given day than would be authorized by Permit 13098 in the event that SAWS stops or reduces its treated effluent discharges .
18. SAWS's Accounting Plan fails to compute a maximum daily diversion rate within the proposed diversion reach that corresponds to SAWS's eligible groundwater-based discharges estimated to arrive at the diversion reach on that day. This is required pursuant to the Special Condition in paragraph 5(D) of draft Permit No. 13098. Failure to provide a maximum diversion rate applicable to each day in the Accounting Plan could have SAWS calling for more water to be passed by GBRA and others on a given day than would be authorized by Permit 13098.

Operational Issues with Diversions from the Proposed Diversion Reach

19. The diversion reach included in draft Water Use Permit No. 13098 is located in the Guadalupe delta, begins approximately 2.7 miles downstream of GBRA's saltwater barrier and diversion dam, is entirely under tidal influence, and is subject to saltwater intrusion (particularly under low freshwater inflow conditions).
20. In order for the applicant to divert freshwater under all inflow and tidal conditions, installation of a saltwater barrier and diversion dam would be required.
21. Under some inflow and tidal conditions, it is possible that specialized diversion works could accomplish the diversion of freshwater without a saltwater barrier.
22. If the applicant does not intend to divert freshwater under all inflow conditions, additional information is needed in the SAWS Accounting Plan to define the conditions under which the applicant intends to divert.

The Maximum Diversion Rate in Draft Water Use Permit No. 13098 Should Be Reduced

23. The requested annual use of 260,991 acft/yr appearing in paragraph 1 of draft Water Use Permit No. 13098 is based on the sum of the authorized annual discharges of SAWS's wastewater treatment plants.
24. The requested maximum diversion rate of 360.53 cfs appearing in paragraph 3(B) of draft Water Use Permit No. 13098 appears to be calculated as the uniformly temporally distributed equivalent of the annual requested use of 260,991 acft/yr.
25. After accounting for all channel losses from points of discharge to the proposed diversion reach via the bed and banks of the Guadalupe River and its tributaries, an annual diversion

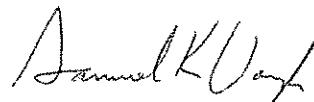
of 260,991 acft/yr of SAWS treated effluent is physically impossible and the specified maximum diversion rate should be reduced commensurately.

The Edwards Aquifer Contributes Flow to the Guadalupe River

26. The Edwards Aquifer contributes significant base flow to the Guadalupe and San Antonio Rivers through various springs, including Comal Springs (the largest in Texas), San Marcos Springs (the second largest in Texas), San Antonio Springs, and San Pedro Springs.
27. Absent production from the Edwards Aquifer by SAWS and others, Edwards water would have flowed from Comal, San Marcos, San Antonio, San Pedro, and other springs into tributaries of the Guadalupe River (including the San Antonio River) and been available on a priority basis to surface water rights along these streams.
28. The Edwards Aquifer component of SAWS's Application for treated effluent would unquestionably be part of the natural flow of these streams through discharge from Comal, San Marcos, San Antonio, and San Pedro Springs absent interception of such waters through production by SAWS's wells.
29. Simulations using the Edwards Aquifer model used to formulate the approved Edwards Aquifer Habitat Conservation Plan (EAHCP) and the TCEQ Guadalupe – San Antonio River Basin Water Availability Model (GSA WAM) show that Edwards production under Edwards Aquifer Authority rules and the EAHCP would reduce the combined natural streamflow passing the U.S. Geological Survey gaging stations on the Guadalupe River at Victoria and the San Antonio River at Goliad by a long-term average of 10 percent. During a drought year like 1956, however, such Edwards production would reduce the combined natural streamflow passing these locations by over 37 percent.

My name is Samuel Kent Vaugh, my date of birth is July 5, 1959, and my business address is 4401 West Gate Blvd, Suite 400, Austin Texas 78745, in Travis County. I declare under penalty of perjury that the foregoing is true and correct.

Executed in La Plata County, State of Colorado, on the 20th day of September, 2021.



Samuel K. Vaugh

Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:29 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: TCEQ.Ltr.09.2021.RequestforContestedCaseHearing.App.No.13098.pdf

H

From: dcrocker@duanecrockerlaw.com <dcrocker@duanecrockerlaw.com>
Sent: Monday, September 20, 2021 3:38 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: MR Duane G. Crocker

E-MAIL: dcrocker@duanecrockerlaw.com

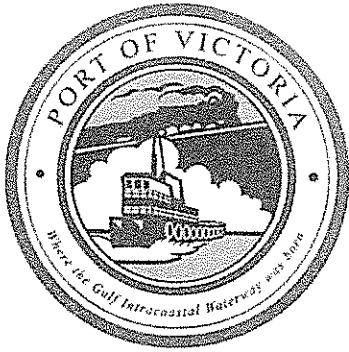
COMPANY: The Law Office of Duane G. Crocker, PC

ADDRESS: PO BOX 2661
VICTORIA TX 77902-2661

PHONE: 3615748898

FAX:

COMMENTS: Please see attached request for contested case hearing submitted on behalf of the Victoria County Navigation District pertaining to Water Use Permit Application No. 13098. Applicant - San Antonio Water System.



September 20, 2021

Robby Burdge
Chairman

Byron Burris, II
Vice-Chairman

Donald Pozzi
Secretary

Annie L. Cullen
Commissioner

John H. Gilley, IV
Commissioner

Sean Stibich
Executive Director

Duane G. Crocker
Legal Counsel

Texas Commission on Environmental Quality
Office of the Chief Clerk
P.O. Box 13087
Austin, Texas 78711

Sent Electronically to: <https://www14.tceq.texas.gov/epic/eComment/>

Re: Water Use Permit Application No.13098; Request for Contested Case
Hearing by the Victoria County Navigation District; Applicant –
San Antonio Water System

Dear Texas Commission on Environmental Quality:

By way of introduction, I am the outside General Counsel for the Victoria County Navigation District. I am writing at the behest of the Victoria County Navigation District to formally request a contested case hearing on Water Use Permit Application No. 13098 filed by San Antonio Water System.

The Victoria County Navigation District holds TCEQ Water Use Permit No. 3606B, allowing for the construction and operation of an off-channel reservoir and the diversion of water from the Guadalupe River into said reservoir on the Victoria County Navigation District's property. Said property is identified as follows: 1,813.133 acres of land, more or less, within a portion of the Polito Castillo League, Abstract 17, Victoria County, Texas. The distance of said property relative to the proposed diversion range identified in Application 13098 is approximately 20 to 27.5 miles.

Based on information presently available, it appears that the diversion from the Guadalupe River sought by the referenced Applicant will negatively impact the Victoria County Navigation District's permitted water use rights granted by Permit Number 3606B by reducing the volume of available water to be realized and used under said permit. Questions and issues exist with regards to Application No. 13098 including, without limitation, those related to the calculations used by the Applicant to determine the potential availability of the requested groundwater-based return flows and those related to evaporation and absorption rates between the discharge and diversion points referenced in said Application. These questions and issues require a contested case hearing.

The undersigned, Duane Crocker, shall be responsible for receiving all official communications documents related to this matter for the Victoria County Navigation District. My contact information is as follows:

VICTORIA COUNTY
NAVIGATION DISTRICT

1934 FM 1432
Victoria, TX 77905
Ph: 361-570-8855
Fax: 361-570-8854

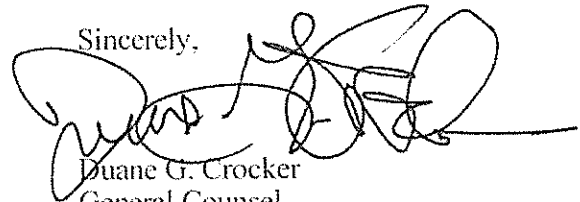
www.portofvictoria.com



The Law Office of Duane G. Crocker, PC
121 S. Main St., Ste. 300 (77901)
P.O. Box 2661
Victoria, Texas 77902
O: (361) 574-8898
E-mail: dcrocker@duanecrockerlaw.com

Please be advised that the Victoria County Navigation District hereby requests a contested case hearing on Water Use Permit Application No. 13098 filed by the San Antonio Water System.

Sincerely,



Duane G. Crocker
General Counsel
Victoria County Navigation District



It's real.

September 15, 2021

CERTIFIED #: 7016 0340 0001 0288 8563

Texas Commission on Environmental Quality
Office of the Chief Clerk
MC-105, TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

NRPERM
90846

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2021 SEP 17 AM 9:42
CHIEF CLERKS OFFICE

Re: REQUEST FOR A CONTESTED CASE HEARING - WATER USE PERMIT APPLICATION NO. 13098

Dear Executive Director,

Please accept this correspondence as the City of Seguin's (the City) formal request for a contested case hearing of the San Antonio Water System's (SAWS) water use permit application number 13098. This written request is submitted pursuant to Title 30 of the Texas Administrative Code Part 1, Chapter 55, Subchapter G, Rule 55.251.

The City makes this request as an affected person. Please address all official communications and documents to the following:

Rick Cortes, Deputy City Manager
City of Seguin
205 N. River, Seguin Texas, 78155
Office: 830-386-2513
Email: rcortes@seguintexas.gov

REVIEWED
SEP 23 2021
By [Signature]

H

The City, with a population of 30,712 owns and operates a public water system (TX0940002) serving an area in and around the city of Seguin Texas in Guadalupe county. The City holds an exclusive right to provide retail water service with boundaries defined by the City's certificate of convenience and necessity (CCN). Customers dependent on the City to provide drinking water service include but are not limited to over 7500 industrial, commercial, and residential accounts. In addition to residential customers relying on the City's drinking water service, other critical accounts include CPS Energy's Rio Nogales electrical power generation facility, Niagara, Guadalupe Regional Medical Center, Davita Kidney Care, Tyson Foods, and New Braunfels Utility.

CPS Energy's Rio Nogales electric power generation facility relies on Seguin's water system to provide water necessity to produce electricity. Through the City's reliable infrastructure and water supply, CPS

It's real.

Energy has never been unable to operate and remained fully functional during the challenges of winter storm Uri during the week of February 13, 2021.

Niagara owns and operates a bottling facility in Seguin and relies on the City's water supply. Niagara provides bottled drinking water across the nation. The Seguin facility responds to national disasters providing necessary drinking water. The most recent example is the Hurricane Ida response in southern Louisiana.

Guadalupe Regional Medical Center (GMRC) is jointly owned by the City of Seguin and Guadalupe County. GMRC is a not-for-profit community hospital dedicated to providing advanced medicine to the Seguin community of Guadalupe County. This facility relies on the City's water supply and was able to maintain its service for the duration of winter storm Uri and throughout the COVID19 pandemic.

Davita Kidney Care operates a dialysis center in Seguin also relying on the City's water supply to provide critical care to patients depending on their dialysis service.

Tyson Foods is the world's second largest processor and marketer of chicken, beef, pork, and prepared foods. Tyson has relied on the City's reliable surface water since 1989. Their ability to operate in Seguin offers stable employment and has allowed Tyson to donate more than 100 million pounds of protein for hunger relief across the nation.

New Braunfels Utilities (NBU) serves a population of over 90,000. The City of Seguin provides treated surface water as a part of their water portfolio. Seguin's water supply adds diversity to NBU's water supply thus aiding in the protection of critical water resources such as the Edward's aquifer, the ground water source of Comal Springs which is the largest spring system in the American southwest.

The City's water supply is comprised in part from water rights to the Guadalupe River pursuant to Certificate of Adjudication 18-3839 as amended. Priority dates for this certificate are June 24, 1914 and April 25, 1977. This certificate of adjudication is issued subject to senior and superior water rights in the Guadalupe River Basin. The City, as owner of this certificate, is authorized to divert and use not to exceed 7000 ac-ft of water per annum from the Guadalupe River for municipal purposes. In addition and pursuant to Certificate of Adjudication 18-3839D, the City is authorized to divert and use not to exceed 200 ac-ft of water per annum from the Guadalupe River for municipal purposes. The maximum combined diversion rate is 23 cfs.

The City's diversion is located at a point on the Guadalupe River near the southwest corner of a tract addressed as 603 West River Dr., Seguin, TX 78155. This point is approximately 101 straight line miles from the proposed diversion point identified in the SAWS water use permit application 13098.

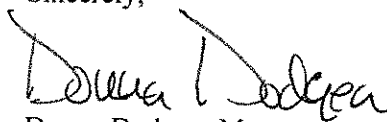
The City's request for a contested case hearing is made because of the activity as described in the SAWS water use permit application 13098 as written will affect the City's water supply and ability to distribute water within its CCN in a manner not common to the members of the general public. Specifically, conditions within the reach of the Guadalupe River describe by the SAWS application as their diversion

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point do not always satisfy the rate of diversion criteria and would create a potential priority call to users within the San Antonio and Guadalupe River basins. When this occurs, Seguin will be impacted on its ability to divert water to supply its critical customers. Additionally, section 4 of the application exempts SAWS from priority calls from senior water rights in effect making SAWS the most senior water rights holder within both the San Antonio and Guadalupe River basin. This would give SAWS the ability to make priority calls on all other users in both river basins regardless of those users' priority dates. Lastly, all SAWS groundwater-based return flows are within the San Antonio River Basin and impacts are restricted to this basin and the reach of the Guadalupe River below the confluence of the San Antonio and Guadalupe rivers. However, the conditions of the SAWS proposed diversion impacts users upstream of this confluence of the two rivers. The City basis its request for a contested case hearing on these facts created by the SAWS water use permit application number 13098 and its effect of the City's ability to serve its critical customers.

The City's concerns could be mitigated by confining the SAWS point of diversion to an area within the San Antonio River Basin upstream of the confluence of the San Antonio and Guadalupe rivers and in an area within Bexar County where all their groundwater-based return flows occur. In addition, the City's concerns could be mitigated by specifically prohibiting SAWS from making a priority call on any diversion occurring within the Guadalupe River Basin.

Sincerely,



Donna Dodgen, Mayor

City of Seguin

Office: 830.401-2307

ddodgen@seguintexas.gov



MAYOR
City of Seguin
205 N. River St.
Seguin, Texas 78155

It's real.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CHIEF CLERKS OFFICE

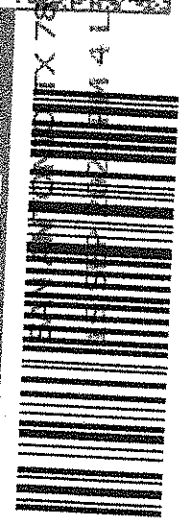
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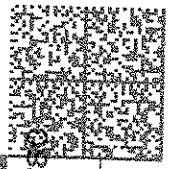
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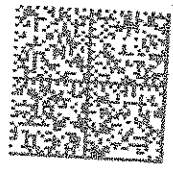
CERTIFIED MAIL



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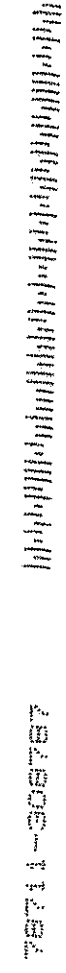


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Texas Commission on Environmental Quality
Office of the Chief Clerk
MC-105, TCEQ
P.O. Box 13087
Austin, Texas 78711-3087





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SEP 24 2021 H

By GAW

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2021 SEP 22 PM 2:34

CHIEF CLERKS OFFICE

September 20, 2021

Office of the Chief Clerk
Texas Commission on Environmental Quality
Notice Team MC 105
P.O. Box 13087
Austin TX 78711-3087

*Via Electronic Filing
and CMRRR 7017 1000 0000 3893 6940*

**RE: Comments and Request of Union Carbide Corporation for a Contested Case Hearing
Regarding Application No. 13098**

Dear Sir/Madam:

Union Carbide Corporation ("UCC"), a wholly owned subsidiary of The Dow Chemical Company, submits the following comments and request for a Contested Case Hearing regarding the above-referenced application.

Request for Contested Case Hearing

We request a Contested Case Hearing.

Contact Information for UCC

Carlos J. Moreno
Counsel
The Dow Chemical Company
332 SH 332E, 4A016
Lake Jackson, TX 77566
(979) 238-0407

Applicant's Name and Permit Number

San Antonio Water System, Application No. 13098

UCC will be Affected by the Application in Ways not Common to the General Public

UCC is the owner of the Seadrift Operations site (the "Site") located on Highway 185 in North Seadrift, Texas. The manufacturing processes at the Seadrift site require use of freshwater. In fact, freshwater availability is critical to the Site's financial viability as well as for its environmental, health and safety performance. To fulfill this requirement, UCC wholly owns water rights and shares water rights with the Guadalupe-Blanco River Authority, which authorize UCC to use water from the Guadalupe River.

**Comment and Request for
Contested Case Hearing**

September 20, 2021

Page 2

History has shown that during periods of drought, there is limited availability of freshwater in the Guadalupe River Basin. In addition, the need for protection against saltwater intrusion during these low flow periods further restricts UCC's ability to obtain the water that it is entitled to and that is critical to its operations. Therefore, any new appropriations or expansions of use in upstream water rights adversely affects UCC's water rights and its ability to sustain manufacturing operations.

As currently drafted, the proposed bed and banks permit for the San Antonio Water System ("SAWS"), Application No. 13098, would allow the removal of more than 260,000 acre-feet of groundwater-based effluent from the Guadalupe River Basin. These types of groundwater-based effluents are a significant contributor to the streamflow in the Guadalupe. Therefore, approval of this permit application will immediately jeopardize UCC's senior water rights on the Guadalupe River Basin during a drought of record.

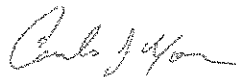
In addition, the modeling basis of SAWS's permit application is unclear to UCC. The draft permit also does not appear to include specific requirements to support minimum instream flows in the Guadalupe River. Finally, it is unclear how the draft permit would restrict SAWS's ability to move its diversion point in the future.

Location and Distance of UCC Property Relative to the Proposed Activity

The diversion point for Union Carbide's Seadrift Operations manufacturing site is located approximately 3 linear miles of the upper/upstream boundary for SAWS's proposed diversion point.

If you have any questions or require additional information, please contact Carlos Moreno at cmoreno3@dow.com. Thank you for your cooperation in this matter.

Sincerely,



Carlos Moreno
Counsel
The Dow Chemical Company and
representing under Service Agreement Union Carbide
Corporation
332 SH 332E, 4A016
Lake Jackson, TX 77566

cc: Submitted electronically at <https://www.t4.tceq.texas.gov/epic/ecomment> (WRPERM 13098)

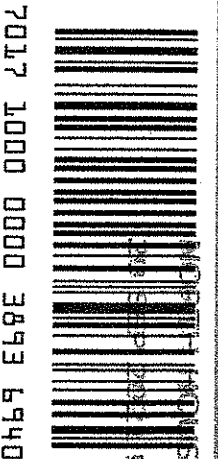


The Dow Chemical Company
 332 SH 332 E
 Texas Innovation Center
 Lake Jackson, TX 77566
 USA

TEXAS
 COMMISSION
 ON ENVIRONMENTAL QUALITY

2011 SEP 22 11 23 AM

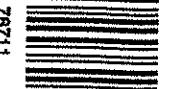
CHIEF CLERKS OFFICE



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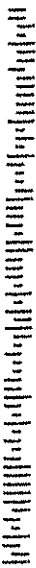


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Office of the Chief Clerk
 Texas Commission on Environmental Quality
 Notice Team MC 105
 P.O. Box 13087
 Austin TX 78711-3087

78711-3087



Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:21 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: SAWS Comment and Notice re. WRPERM 13098 09_20_212.pdf

H

From: cmoreno3@dow.com <cmoreno3@dow.com>
Sent: Monday, September 20, 2021 1:23 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: MR Carlos Moreno

E-MAIL: cmoreno3@dow.com

COMPANY: The Dow Chemical Company

ADDRESS: 332 SH 332 E Texas Innovation Center, APB Building, 4A016
Lake Jackson TX 77566

PHONE: 9792380407

FAX:

COMMENTS: Dear Sir/Madam: Union Carbide Corporation ("UCC"), a wholly owned subsidiary of The Dow Chemical Company, submits the following comments and request for a Contested Case Hearing regarding the above-referenced application. Request for Contested Case Hearing We request a Contested Case Hearing. Contact Information for UCC

Carlos J. Moreno Counsel The Dow Chemical Company 332 SH 332E, 4A016 Lake Jackson, TX 77566 (979) 238-0407
Applicant's Name and Permit Number San Antonio Water System, Application No. 13098 UCC will be Affected by the
Application in Ways not Common to the General Public UCC is the owner of the Seadrift Operations site (the "Site")
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and safety performance. To fulfill this requirement, UCC wholly owns water rights and shares water rights with the
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Carlos Moreno Counsel The Dow Chemical Company and representing under Service Agreement Union Carbide
Corporation 332 SH 332E, 4A016 Lake Jackson, TX 77566



September 20, 2021

Office of the Chief Clerk
Texas Commission on Environmental Quality
Notice Team MC 105
P.O. Box 13087
Austin TX 78711-3087

*Via Electronic Filing
and CMRRR 7017 1000 0000 3893 6940*

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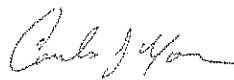
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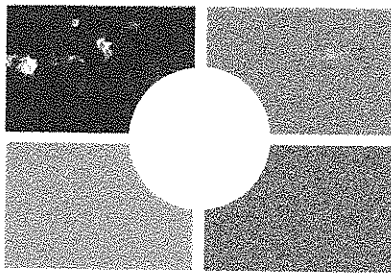
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Sincerely,



Carlos Moreno
Counsel
The Dow Chemical Company and
representing under Service Agreement Union Carbide
Corporation
332 SH 332E, 4A016
Lake Jackson, TX 77566

cc: Submitted electronically at <https://www14.tceq.texas.gov/epic/ecomment> (WRPERM 13098)



**RUSSELL
RODRIGUEZ
HYDE
BULLOCK**

A TEXAS LIMITED LIABILITY PARTNERSHIP

1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
www.txlocalgovlaw.com
Office: 512.930.1317
Fax: 866.929.1641

Partners:

Arturo D. Rodriguez, Jr.
George E. Hyde
Bradford E. Bullock
Caroline A. Kelley

Senior Associates:

Jonathan W. Needle

Of Counsel:

Karrie H. Marling

Email: arodriguez@txlocalgovlaw.com

REVIEWED

September 20, 2021

SEP 24 2021

By GCW

H

CHIEF CLERKS OFFICE

2021 SEP 24 PM 2:25

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED NO. 7018 0680 0002 2556 9366;
ELECTRONIC SUBMISSION VIA www.tceq.gov;
AND FACSIMILE VIA (512) 239-3311**

Texas Commission on Environmental Quality
Office of the Chief Clerk
MC105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application of San Antonio Water Systems for a Water
Use Permit Proposed Permit No. 13098; Public
Comments; Request for a Contested Case Hearing

To the Texas Commission on Environmental Quality:

The undersigned represents the City of San Marcos, Texas ("City" or "San Marcos") regarding the above-referenced Water Use permit application ("Application"). Please accept this letter as the City's notice of its opposition to the Application submitted by San Antonio Water Systems ("Applicant" or "SAWS"). The City hereby requests a public meeting and a contested case hearing on the Application. In accordance with the published notice dated August 17, 2021, the City provides the following information:

1. Your name, address, phone number:

The City may be notified of any developments in this case by providing notice to:

Arturo D. Rodriguez, Jr.
Russell Rodriguez Hyde Bullock, LLP
1633 Williams Drive, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)

2. Applicant information:

San Antonio Water Systems for Proposed Water Permit No. 13098.

3. The City requests a public meeting and a contested case hearing on the Application.

4. Specific description of how you would be adversely affected by the facility in a way not common to the general public:

The City has water rights that are affected by the Application. The City holds water right permit nos. 1744, 3867, and 5092 in the Guadalupe River basin. The oldest priority date for the City's water rights is August 15, 1904. Further, the City has a water purchase contract with the Guadalupe-Blanco River Authority (GBRA), who is authorized to impound water in the Canyon Reservoir in Comal County, Texas. The City's contract for water with GBRA is based on permit no. 1886. The City may utilize a minimum of 10,000 acre feet of water per year from its contractual arrangement with GBRA. As a senior water right holder and contractual holder of an interest in surface water in the Guadalupe River basin, the City has established that it has a personal justiciable interest that is different from the interest of the public at large. Further, the City is a regional provider of water to a large number of municipal customers.

As a senior water right holder and contractual holder of an interest in surface water in the Guadalupe River basin, the City has an interest protected by law under its water rights permits. Further, the City has an interest in protecting its water resources from impairment by other water users to the detriment of the City's customers, water users, and the general public.

The City is concerned that the transportation of 260,000 acre-feet of groundwater to be diverted 100 miles downstream or released into San Antonio Bay has adverse impacts to water suppliers in the Guadalupe River basin. Further, the City is concerned with the manner in which SAWS will calculate and account for the 260,000 acre feet of water.

Further, SAWS's reuse scheme appears to take available groundwater from the Edwards Aquifer to regions beyond the reach of the Edwards Aquifer which violates Section 1.34(b) of the Edwards Aquifer Act. Said section provides that "Water withdrawn from the aquifer must be used within the boundaries of the authority." The Application seeks to remove said groundwater miles from the boundaries of the authority.

The City believes that the Application does not conform to applicable State requirements. The City is likewise concerned that the proposed permit and accounting plan does not adequately account for and ensure that state water will be passed. The City is concerned with the proposed measuring requirements, water quality, and the impact of the evaporative losses on senior water rights.

The City is an affected person with a justiciable interest greater than that of the general public as SAWS's permit will impair the health and safety of the City's customers, its senior water rights, downstream environmental flows, and the Guadalupe River basin.

5. The location and distance of your property relative to the proposed facility:

The City's water rights are upstream. The nearest City facility is approximately 40 miles from the proposed facility.

The City reserves the right to raise and pursue any and all issues that may be relevant to their interests in the event of a contested case hearing.

If we may be of further assistance or provide additional information, please contact me at 512-930-1317.

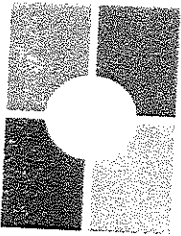
Sincerely,

A handwritten signature in black ink that reads "Arturo D. Rodriguez, Jr." followed by a stylized monogram "ARW".

Arturo D. Rodriguez, Jr.

Arturo D. Rodriguez, Jr.

RRHB, LLP
1633 Williams Drive
Bldg 2, Suite 200
Georgetown, TX 78628



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Texas Commission on Environmental Quality **RECEIVED**

Office of the Chief Clerk

MC105

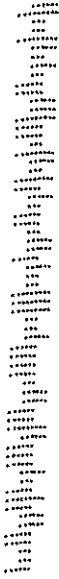
P.O. Box 13087

Austin, Texas 78711-3087

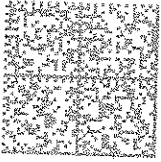
SEP 24 2021

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Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, September 21, 2021 8:34 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-
WWW-WRAS
Subject: FW: Public comment on Permit Number WRPERM 13098
Attachments: pld210920 Protest by San Marcos1.pdf

PM
H

From: jnewlin@txlocalgovlaw.com <jnewlin@txlocalgovlaw.com>
Sent: Monday, September 20, 2021 4:46 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WRPERM 13098

REGULATED ENTY NAME WRPERM 13098

RN NUMBER: RN107107526

PERMIT NUMBER: WRPERM 13098

DOCKET NUMBER:

COUNTY: BEXAR, CALHOUN, GOLIAD, KARNES, REFUGIO, VICTORIA, WILSON

PRINCIPAL NAME: SAN ANTONIO WATER SYSTEM

CN NUMBER: CN600529069

FROM

NAME: Arturo D Rodriguez, JR

E-MAIL: jnewlin@txlocalgovlaw.com

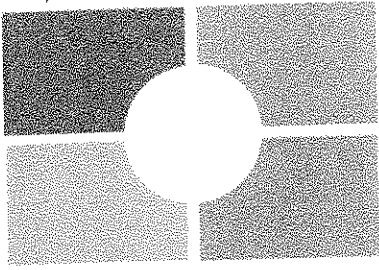
COMPANY: Russell Rodriguez Hyde Bullock, LLP

ADDRESS: 1633 WILLIAMS DR STE 200
GEORGETOWN TX 78628-3659

PHONE: 5129301317

FAX: 8669291641

COMMENTS: See attached letter.



**RUSSELL
RODRIGUEZ
HYDE
BULLOCK**

A TEXAS LIMITED LIABILITY PARTNERSHIP

1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
www.txlocalgovlaw.com
Office: 512.930.1317
Fax: 866.929.1641

Partners:

Arturo D. Rodriguez, Jr.
George E. Hyde
Bradford E. Bullock
Caroline A. Kelley

Senior Associates:

Jonathan W. Needle

Of Counsel:

Karrie H. Marling

Email: arodriguez@txlocalgovlaw.com

September 20, 2021

**VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED NO. 7018 0680 0002 2556 9366;
ELECTRONIC SUBMISSION VIA www.tceq.gov;
AND FACSIMILE VIA (512) 239-3311**

Texas Commission on Environmental Quality
Office of the Chief Clerk
MC105
P.O. Box 13087
Austin, Texas 78711-3087

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The City reserves the right to raise and pursue any and all issues that may be relevant to their interests in the event of a contested case hearing.

If we may be of further assistance or provide additional information, please contact me at 512-930-1317.

Sincerely,

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