

Executive Summary – Enforcement Matter – Case No. 63800

New Braunfels Utilities

RN101607786

Docket No. 2023-0431-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Kuehler Road North, 1922 Kuehler Road, New Braunfels, Comal County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: November 22, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$18,750

Name of SEP: The Guadalupe-Blanco River Trust (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): December 13, 2022

Complaint Information: Emergency response.

Date(s) of Investigation: December 15, 2022 through February 13, 2023

Date(s) of NOE(s): March 21, 2023

Executive Summary – Enforcement Matter – Case No. 63800

New Braunfels Utilities

RN101607786

Docket No. 2023-0431-MWD-E

Violation Information

Failed to prevent an unauthorized discharge of sewage into or adjacent to any water in the state [30 TEX. ADMIN. CODE § 305.125(1) and (4), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010232003, Permit Conditions No. 2.g].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By December 21, 2022, the Respondent ceased the unauthorized discharge, repaired the broken force main, removed and properly disposed of the dead fish, disinfected the affected area, and implemented measures to prevent future recurrence.

Technical Requirements:

The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Madison Stringer, Enforcement Division, Enforcement Team 7, MC 219, (512) 239-1126; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

TCEQ SEP Coordinator: Stuart Beckley, Enforcement Division, MC 219, (512) 239-3565

SEP Third-Party Administrator: The Guadalupe-Blanco River Trust, 933 East Court Street, Seguin, Texas 78155

Respondent: Ryan Kelso, Chief Executive Officer, New Braunfels Utilities, 263 Main Plaza, New Braunfels, Texas 78130-6110

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	20-Mar-2023	Screening	22-Mar-2023	EPA Due	
	PCW	12-May-2023				

RESPONDENT/FACILITY INFORMATION

Respondent	New Braunfels Utilities
Reg. Ent. Ref. No.	RN101607786
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	63800	No. of Violations	1
Docket No.	2023-0431-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Madison Stringer
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$25,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
---------------------------	------	-------------------	--------------------------------	-----

Notes	No adjustment for Compliance History.
--------------	---------------------------------------

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
--------------------	----	------	--------------------	-------------------	-----

Notes	The Respondent does not meet the culpability criteria.
--------------	--

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$6,250
--	-------------------	----------

Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
-------------------------	------	---------------------	-------------------	-----

Total EB Amounts	\$5	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$5,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,750
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
--------------	--

Final Penalty Amount	\$18,750
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,750
-----------------------------------	-------------------------------	----------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	------------------	-------------------	-----

Reduces the Final Assessed Penalty by the indicated percentage.

Notes	No deferral is recommended for Findings Orders.
--------------	---

PAYABLE PENALTY	\$18,750
------------------------	----------

Screening Date	22-Mar-2023	Docket No.	2023-0431-MWD-E	PCW
Respondent	New Braunfels Utilities			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	63800			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN101607786			
Media	Water Quality			
Enf. Coordinator	Madison Stringer			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date	22-Mar-2023	Docket No.	2023-0431-MWD-E	PCW
Respondent	New Braunfels Utilities	Policy Revision 5 (January 28, 2021)		
Case ID No.	63800	PCW Revision February 11, 2021		
Reg. Ent. Reference No.	RN101607786			
Media	Water Quality			
Enf. Coordinator	Madison Stringer			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and (4), Tex. Water Code § 26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010232003, Permit Conditions No. 2.g			
Violation Description	Failed to prevent an unauthorized discharge of sewage into or adjacent to any water in the state. Specifically, on December 13, 2022, approximately 21,750 gallons of untreated wastewater discharged from the Solms lift station and into the Dry Comal Creek, killing approximately 337 fish.			
		Base Penalty	\$25,000	

>> Environmental, Property and Human Health Matrix

OR		Release	Harm		
		Major	Moderate	Minor	
	Actual	x			
	Potential				Percent 100.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes: Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$0

\$25,000

Violation Events

Number of Violation Events	1	8	Number of violation days
----------------------------	---	---	--------------------------

daily				
weekly				
monthly	x			
quarterly				
semiannual				
annual				
single event				

One monthly event is recommended, calculated from the date of the unauthorized discharge (December 13, 2022) to the date of compliance (December 21, 2022).

Violation Base Penalty \$25,000

Good Faith Efforts to Comply

	25.0%		
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary	x		
N/A			
Notes	Respondent achieved compliance by December 21, 2022.		

Reduction \$6,250

Violation Subtotal \$18,750

Economic Benefit (EB) for this violation

Estimated EB Amount	Statutory Limit Test
\$5	

Violation Final Penalty Total \$18,750

This violation Final Assessed Penalty (adjusted for limits) \$18,750

Economic Benefit Worksheet

Respondent New Braunfels Utilities
Case ID No. 63800
Reg. Ent. Reference No. RN101607786
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$5,000	13-Dec-2022	21-Dec-2022	0.02	\$5	n/a	\$5
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated Remediation/Disposal cost to cease the unauthorized discharge, repair the broken force main, remove and properly dispose of the dead fish, disinfect the affected area, and implemented measures to prevent future recurrence. Date required is the date of discharge, and final date is the date of compliance.						

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							

Approx. Cost of Compliance \$5,000

TOTAL \$5



Compliance History Report

Compliance History Report for CN600522957, RN101607786, Rating Year 2024 which includes Compliance History (CH) components from September 1, 2019, through August 31, 2024.

Customer, Respondent, or Owner/Operator: CN600522957, New Braunfels Utilities **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN101607786, KUEHLER ROAD NORTH **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 08 - Sewage Treatment Facilities

Location: 1922 KUEHLER ROAD, NEW BRAUNFELS, COMAL COUNTY, TEXAS

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

WASTEWATER PERMIT WQ0010232003 **WASTEWATER EPA ID** TX0088170

WASTEWATER AUTHORIZATION R10232003

Compliance History Period: September 01, 2019 to August 31, 2024 **Rating Year:** 2024 **Rating Date:** 09/01/2024

Date Compliance History Report Prepared: May 16, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 16, 2019 to May 16, 2024

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Madison Stringer **Phone:** (512) 239-1126

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	June 19, 2019	(1585629)	Item 12	May 15, 2020	(1661265)
Item 2	July 15, 2019	(1594371)	Item 13	June 17, 2020	(1667792)
Item 3	August 19, 2019	(1600665)	Item 14	July 17, 2020	(1674740)
Item 4	September 20, 2019	(1607577)	Item 15	July 23, 2020	(1650918)
Item 5	October 18, 2019	(1614449)	Item 16	September 16, 2020	(1681510)
Item 6	November 19, 2019	(1620238)	Item 17	October 19, 2020	(1694444)
Item 7	December 19, 2019	(1627587)	Item 18	November 19, 2020	(1715940)
Item 8	January 17, 2020	(1635218)	Item 19	December 18, 2020	(1715941)
Item 9	February 18, 2020	(1641833)	Item 20	January 19, 2021	(1715942)
Item 10	March 19, 2020	(1648347)	Item 21	February 16, 2021	(1729013)
Item 11	April 17, 2020	(1654699)	Item 22	March 16, 2021	(1729014)
			Item 23	April 16, 2021	(1729015)
			Item 24	May 18, 2021	(1741808)

Item 25	June 16, 2021	(1741809)	Item 42	November 16, 2022	(1870641)
Item 26	July 19, 2021	(1752861)	Item 43	December 14, 2022	(1876497)
Item 27	August 18, 2021	(1758269)	Item 44	January 18, 2023	(1883309)
Item 28	September 17, 2021	(1767542)	Item 45	February 14, 2023	(1891125)
Item 29	October 19, 2021	(1778056)	Item 46	April 19, 2023	(1906497)
Item 30	November 17, 2021	(1784787)	Item 47	May 17, 2023	(1913650)
Item 31	December 10, 2021	(1791819)	Item 48	June 16, 2023	(1920259)
Item 32	January 27, 2022	(1783508)	Item 49	July 14, 2023	(1927226)
Item 33	March 14, 2022	(1814545)	Item 50	August 18, 2023	(1934188)
Item 34	April 19, 2022	(1821113)	Item 51	September 18, 2023	(1940361)
Item 35	May 19, 2022	(1829950)	Item 52	October 17, 2023	(1947167)
Item 36	May 31, 2022	(1812174)	Item 53	November 20, 2023	(1952855)
Item 37	June 16, 2022	(1836260)	Item 54	December 12, 2023	(1962628)
Item 38	July 18, 2022	(1843446)	Item 55	January 18, 2024	(1969215)
Item 39	August 18, 2022	(1849610)	Item 56	February 13, 2024	(1978281)
Item 40	September 14, 2022	(1857378)	Item 58	March 14, 2024	(1984854)
Item 41	October 14, 2022	(1863733)			

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NEW BRAUNFELS UTILITIES
RN101607786

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2023-0431-MWD-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding New Braunfels Utilities (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located at 1922 Kuehler Avenue in New Braunfels, Comal County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation at the Facility conducted on December 15, 2022 through February 13, 2023, an investigator documented that on December 13, 2022, approximately 21,750 gallons of untreated wastewater discharged from the Solms lift station and into the Dry Comal Creek, killing approximately 337 fish.
3. The Executive Director recognizes that by December 21, 2022, the Respondent ceased the unauthorized discharge, repaired the broken force main, removed and properly disposed of the dead fish, disinfected the affected area, and implemented measures to prevent future recurrence.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to prevent an unauthorized discharge of sewage into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (4), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010232003, Permit Conditions No. 2.g.
3. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$18,750 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, \$18,750 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A" - incorporated herein by reference). The Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: New Braunfels Utilities, Docket No. 2023-0431-MWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete the SEP as set forth in Conclusion of Law No. 4. The amount of \$18,750 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of

the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.

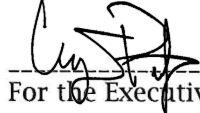
3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



11/22/2024

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the OAG for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date

10/01/24

Ryan Kelso

Name (Printed or typed)
Authorized Representative of
New Braunfels Utilities

Title

CEO

☐ If mailing address has changed, please check this box and provide the new address below:

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.

Attachment A
Docket Number: 2023-0431-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	New Braunfels Utilities
Payable Penalty Amount:	\$18,750
SEP Offset Amount:	\$18,750
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	The Guadalupe-Blanco River Trust
Project Name:	<i>Shorebird and Waterfowl Habitat Conservation and Restoration Project</i>
<u>Location of SEP:</u> Aransas, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Caldwell, Calhoun, Comal, DeWitt, Fayette, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Kendall, Kerr, Lavaca, Live Oak, Medina, Nueces, Real, Refugio, San Patricio, Travis, Victoria, and Wilson Counties	

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Guadalupe-Blanco River Trust** for the *Shorebird and Waterfowl Habitat Conservation and Restoration Project*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to conduct due diligence, purchase conservation easements from private landowners, conduct restoration activities, and provide property stewardship.

After a property has been identified for conservation easement acquisition, the Third-Party Administrator shall submit a proposal to TCEQ that includes property owner information, metes and bounds, purchase price, amount of SEP Offset Amount to be used for due diligence and purchase, deed encumbrance language, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, the Third-Party Administrator may use the SEP Offset Amount for approved due diligence activities and purchase of the conservation easement. The Third-Party Administrator shall address and remedy all encumbrances to the property title, including mortgages and other liens, prior to closing on the conservation easement purchase. The Third-Party Administrator shall not sell conservation easements or any other land interests acquired with the SEP Offset Amount. The Third-Party Administrator shall record a copy of each conservation easement in the county deed records within 15 days of closing. After a conservation easement is acquired, the Third-Party Administrator shall use the SEP Offset Amount for property stewardship to ensure that the terms of the easement are followed. Property stewardship activities include monitoring the property, compliance enforcement, and

providing continual resources to the property owner. The SEP Offset Amount shall not be used for any legal fees associated with property stewardship. The Third-Party Administrator certifies that the conservation easements purchased for this Project will not be part of a mitigation project.

The Third-Party Administrator shall also use the SEP Offset Amount for habitat restoration and enhancement, including planting native species, removal of invasive species, and grading. Restoration activities will be conducted by a contractor and will take place on public land managed by entities such as the Texas Parks and Wildlife Department and U.S. Fish and Wildlife Services or private property protected by a conservation easement. Restoration activities will take place on former wetlands with effectively drained hydric soil map units, filled areas with no development, impounded areas, excavated areas, or farmed wetlands as well as degraded wetlands that are partially drained, impounded, excavated, farmed, or contain tidal restrictions. Prior to starting restoration activities, the Third-Party Administrator shall submit a proposal to TCEQ that includes the exact property location and description, property owner information, specific restoration activities to be conducted, amount of the SEP Offset Amount to be used for restoration activities, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, the Third-Party Administrator may use the SEP Offset Amount for the approved restoration activities. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely to settle this enforcement action. The Respondent shall not profit from this SEP.

b. Environmental Benefit

This Project is needed because important wildlife habitats for wetland-dependent and other species are under threat from an expanding human footprint into previously undeveloped areas. Conserving properties through conservation easements will ensure that those lands are permanently protected from environmentally harmful activities and use. Restoring habitats through native plantings, removal of invasive species, and grading will protect water quality and provide habitat for native birds and other aquatic and coastal species, such as the whooping crane, piping plover, reddish egret, sooty tern, white-faced ibis, white-tailed hawk, black-spotted newt, sheet frog, and northern Aplomado falcon. Potential property acquisition areas have been identified and prioritized as the highest quality habitat based on data derived from the U.S. Fish and Wildlife Service with input from Texas Parks and Wildlife Department, Ducks Unlimited, Gulf Coast Bird Observatory, and the International Crane Foundation. Protection of these strategic sites will also protect and improve both water quality and quantity through increased filtration into groundwater sources and increased filtration of pollutants. Potential restoration activity areas have been identified and prioritized based on maps of historic wetlands from the National Wetland Inventory and local wetland maps that have been detailed by U.S. Fish and Wildlife Services through the Coastal Prairie Conservation Initiative.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **The Guadalupe-Blanco River Trust SEP** and shall mail the contribution with a copy of the Agreed Order to:

The Guadalupe-Blanco River Trust SEP
Attention: Executive Director
933 East Court Street
Seguin, Texas 78155

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

New Braunfels Utilities
Docket No. 2023-0431-MWD-E
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.