

Renee Lyle

From: PUBCOMMENT-OCC
Sent: Wednesday, November 8, 2023 12:59 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0016297001
Attachments: SMRF Contested Case Hearing BL 12 Holdings JK Ranch WQ0016297001.pdf

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From: victoria@sosalliance.org <victoria@sosalliance.org>
Sent: Wednesday, November 8, 2023 12:55 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016297001

REGULATED ENTY NAME JK RANCH WWTP

RN NUMBER: RN111669537

PERMIT NUMBER: WQ0016297001

DOCKET NUMBER:

COUNTY: CALDWELL

PRINCIPAL NAME: BL 12 HOLDINGS LLC

CN NUMBER: CN606108637

NAME: Victoria Rose

EMAIL: victoria@sosalliance.org

COMPANY: Save Our Springs Alliance

ADDRESS: 4701 W GATE BLVD Ste. D-401
AUSTIN TX 78745-1479

PHONE: 5124772320

FAX:

COMMENTS: Please find SMRF's contested case hearing request for this permit in the attached PDF.

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087 – MC 105
Austin, Texas 787011 – 3087

November 8, 2023

Via: Online Submission Form

Re: Request for Contested Case Hearing on the Application and Draft Permit of B12 Holdings LLC for Proposed TPDES Permit No. WQ0016297001

Dear Ms. Gharis:

The San Marcos River Foundation (SMRF) requests a contested case hearing on the application and draft permit of B12 Holdings LLC for new proposed TPDES Permit No. WQ0016297001.

I. Background.

B12 Holdings LLC (“the Applicant”) has applied for a new TPDES permit No. WQ0016297001 (“the draft permit”) to authorize discharge of 850,000 gallons per day of wastewater into Callihan Creek, thence to the Lower San Marcos River Segment 1808 of the Guadalupe River Basin.

II. The San Marco River Foundation Meets the Requirements to be Considered an “Affected Person” in Order to Contest the Draft Permit.

SMRF meets the requirements set out in 30 T.A.C. § 55.205 for a group or association to be considered an “affected person” for the purposes of requesting a contested case hearing.

SMRF is a non-profit organization that was established to protect public access to and to preserve the San Marcos River and its tributaries. To carry out this mission, SMRF works to protect the flow of aquifer fed springs into the San Marcos River, improve the water quality of the river, protect the beauty of the river and nearby parks, and protect streams what flow into the San Marcos River. A large part of SMRF’s work involves water quality monitoring and scientific studies aimed at improving the quality of effluent discharged from wastewater facilities, and SMRF regularly participates in the wastewater permitting process. SMRF’s work and mission directly encompass protecting the receiving waters for the Draft Permit since the receiving waters for the Draft Permit flow into the San Marcos River, and the issuance of the Draft Permit will harm SMRF’s interest in the protection of water quality, aquatic life, property values, recreation, conservation, and aesthetic beauty of the San Marcos River. SMRF submitted timely comments on August 29, 2023, detailing the ways in which the Draft Permit will harm these interests and the receiving waters, and participated in the public meeting held for the draft permit.

SMRF has members who would otherwise have standing to request a contested case hearing for the Draft Permit in their own right. Among these is SMRF member Joe Banda.

Joe Banda is a SMRF member who owns real property and lives at 120 Honey's Trail, Fentress TX 78622 which is within one mile of the treatment plant associated with the draft permit. Mr. Banda's economic, property, aesthetic, recreation, and personal health and safety interests will be harmed by the draft permit. And Mr. Banda has concerns about the effect of the draft permit on the receiving waters, odor related to the plant, and the impact of the treatment plant on land values. Mr. Banda is also concerned about traffic near his home related to the plant, the lack of reuse of wastewater, the amount of discharge, the high levels of phosphorus, impact to wildlife and Mr. Banda's livestock, impact to the San Marcos River, lack of 24/7 monitoring of the plant and discharge, and the low class of the operator for the treatment plant. Mr. Banda's phone number is 512-203-0292; Mr. Banda does not have an email address; Mr. Banda's mailing address is P.O. Box 57, Fentress TX 78622.

For these reasons, SMRF is an "affected person" entitled to a contested case hearing on the application and Draft Permit. 30 T.A.C. § 55.205

III. The TCEQ Executive Director Did Not Sufficiently Address the Issues Raised by SMRF, and SMRF Requests a Contested Case Hearing on These Issues.

SMRF remains concerned about the impacts of the draft permit on the receiving waters in light of, and among other concerns, the high levels of nutrients in the wastewater effluent. The following relevant and material issues were timely raised by SMRF during the comment period for the Draft Permit and were not sufficiently addressed by the TCEQ Executive Director ("ED"). SMRF reiterates the concerns and comments raised during the comment period as the basis for this request for a contested case hearing, and to further show that the ED did not adequately address SMRF's comments.

These issues were raised by SMRF and were not adequately addressed in the ED's Response to Comments ("RTC"):

1. Whether the draft permit complies with the Texas Surface Water Quality Standards.
2. Whether the draft permit complies with the applicable antidegradation requirements.
3. Whether the draft permit is protective of human health.
4. Whether the draft permit will prevent nuisance odors.
5. Whether all applicable notice requirements were complied with and whether the notices contained accurate information.

This request for Contested Case Hearing identifies specific comments made by SMRF related to the above issues (as numbered by the ED), the ED's corresponding response in her RTC, and the factual basis of each dispute, as well as any related disputed issues of law.

Issue 1: Whether the draft permit complies with the Texas Surface Water Quality Standards.

Comment 1, 3, 5, 11, 14.

SMRF commented that the effluent limits in the draft permit are not stringent enough to protect water quality under the Texas Surface Water Quality Standards. SMRF commented that pollution from the draft permit will be worse under low flow conditions. SMRF commented that the draft permit should have effluent limits no less stringent than 5 mg/L 5-day Carbonaceous Biochemical Oxygen Demand (CBOD5), 5 mg/L Total Suspended Solids (TSS), 2 mg/L ammonia nitrogen, and 0.5 mg/L Total Phosphorus (TP), although lower would of course be better. SMRF also commented that the use of chlorine disinfection will harm water quality.

The ED responded by reciting the process that TCEQ follows when evaluating TPDES permits and by stating that the draft permit was evaluated under the process so that it would comply with the applicable rules.

The response is insufficient because it failed to address SMRF's concerns that the effluent limits in the draft permit are not protective of water quality. At this point, SMRF does not dispute that TCEQ followed its IPs.

Issue 2: Whether the draft permit complies with the applicable antidegradation requirements.

Comment 1, 3, 5, 11, 14. SMRF commented that the effluent limits in the draft permit are not stringent enough to protect water quality under the applicable antidegradation rules. SMRF also commented that TCEQ should have conducted Tier 2 antidegradation analysis. SMRF also commented that degradation will be worse under low flow conditions. The effluent limitations must be no less stringent than 5 mg/L 5-day Carbonaceous Biochemical Oxygen Demand (CBOD5), 5 mg/L Total Suspended Solids (TSS), 2 mg/L ammonia nitrogen, and 0.5 mg/L Total Phosphorus (TP), although lower would of course be better. SMRF also commented that the use of chlorine disinfection will harm water quality.

The ED responded by reciting the process that TCEQ follows when evaluating TPDES permits and by stating that the draft permit was evaluated under the process so that it would comply with the applicable rules. The ED also responded that water quality in the receiving waters was not sufficient to warrant a Tier 2 antidegradation analysis

The response is insufficient because it failed to address SMRF's concerns that the effluent limits in the draft permit are not protective of water quality in a way that will protect existing uses and comply with antidegradation rules. At this point, SMRF does not dispute that TCEQ followed its IPs. The ED's response on the Tier 2 antidegradation analysis is inadequate because the San Marcos River supports native fish and terrestrial life and has contact recreation.

Issue 3: Whether the draft permit is protective of human health.

Comment 2, 4, 5, 11, 14.

SMRF commented that the draft permit is not protective of human health due to contamination of groundwater, bacteria, nitrogen, and increased algae growth. SMRF also commented that the use of chlorine disinfection will harm water quality.

The ED replied that the draft permit complies with the TSWQS so the draft permit will be protective of human health.

This response is inadequate because SMRF disputes whether the draft permit complies with the TSWQS.

Issue 4: Whether the draft permit will prevent nuisance odors.

Comment 8.

SMRF commented that the wastewater discharge will cause nuisance odors.

The ED replied that the Applicant will comply with all buffer requirements related to nuisance odor.

This response is inadequate because the nuisance odors associated with the draft permit that SMRF complains of will come from increased algal growth associated with the draft permit and the smell of the effluent.

Issue 5: Whether all applicable notice requirements were complied with and whether the notices contained accurate information.

Comment 9.

SMRF commented that links under the Alternative Language Notice section in the Notice of Application and Preliminary Decision did not, as of August 28, 2023, include information on the draft permit as the notice claimed.

The ED responded with information about the types of notices required for a TPDES permit.

This response is not adequate because it did not address SMRF's concern that the notice contained inaccurate information and did not meet requirements.

IV. Conclusion.

SMRF respectfully requests a contested case hearing on the application and draft permit of BL 12 Holdings LLC for new proposed TPDES Permit No. WQ0016297001. SMRF requests that the TCEQ Commissioners refer the case to the State Office of Administrative Hearings on the issues listed and discussed above. SMRF continues to urge the Applicant and TCEQ to provide for the re-use of wastewater effluent and/or to apply for a TLAP permit to avoid the discharge of treated sewage into the sensitive receiving waters.

Thank you for considering SMRF's comments and concerns associated with the application and draft permit and for considering SMRF's Contested Case Hearing Request. Please use the contact information below for all communications with SMRF on this matter.

Sincerely,
/s/ Victoria Rose
Victoria Ann Rose
State Bar No. 24131088
victoria@sosalliance.org

Bill Bunch
State Bar No. 03342520
bill@sosalliance.org

Save Our Springs Alliance
4701 Westgate Blvd.
Bldg. D, Suite 401
Austin, Texas 78745
Tel.: 512-477-2320
Fax: 512-477-6410

Attorneys for San Marcos River Foundation

TCEQ Registration Form

August 29, 2023

BL 12 Holdings LLC PROPOSED WATER QUALITY PERMIT WQ0016297001

PLEASE PRINT

Name: Virginia Parker

Mailing Address: 1061 Martindale Falls Rd

Physical Address (if different): _____

City/State: Martindale TX Zip: 78655

This information is subject to public disclosure under the Texas Public Information Act

Email: virginia@sanmarcosriver.org

Phone Number: (210) 860-4575

- Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? San Marcos River Foundation

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.

Misty Botello

From: PUBCOMMENT-OCC
Sent: Tuesday, August 29, 2023 2:33 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0016297001

From: virginia@sanmarcosriver.org <virginia@sanmarcosriver.org>
Sent: Tuesday, August 29, 2023 8:38 AM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0016297001

REGULATED ENTY NAME JK RANCH WWTP

RN NUMBER: RN111669537

PERMIT NUMBER: WQ0016297001

DOCKET NUMBER:

COUNTY: CALDWELL

PRINCIPAL NAME: BL 12 HOLDINGS LLC

CN NUMBER: CN606108637

NAME: Virginia Parker

EMAIL: virginia@sanmarcosriver.org

COMPANY: San Marcos River Foundation

ADDRESS: PO BOX 1393
SAN MARCOS TX 78667-1393

PHONE: 2108604575

FAX:

COMMENTS: These comments are on behalf of the San Marcos River Foundation regarding the Application and Draft Permit for Proposed TPDES Permit No. WQ0016297001. TCEQ has conducted a Tier 1 antidegradation analysis for the Draft Permit. A. The Draft Permit Will Violate the Texas Surface Water Quality Standards and Antidegradation Rules. Elevated levels of Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids (TSS), nitrogen and phosphorus from treated wastewater, like the levels allowed in the Draft Permit, causes increased algal growth, proliferation of cyanotoxins, increased murkiness in water, and large decreases in dissolved oxygen. U.S. ENVIRONMENTAL PROTECTION AGENCY, A COMPILATION OF COST DATA ASSOCIATED WITH THE IMPACTS AND

CONTROL OF NUTRIENT POLLUTION (2015). The discharge of pollutants allowed in the Draft Permit will impair water quality in the receiving waters consistent with the above listed impacts of wastewater effluent, harm the existing biological communities, and impair any agricultural, fishing, and contact and noncontact recreation uses of the receiving waters. Further, SMRF is particularly concerned by the high levels of total phosphorus in the wastewater effluent permitted in the Draft Permit given the well documented detrimental impacts associated with increasing phosphorus levels in a phosphorus limited ecosystems.¹ The harmful impacts associated with the pollution from the Draft Permit are of great concern since the receiving waters are often in low or no flow conditions, exacerbating the harmful impacts of the pollution. The Draft Permit will allow wastewater sewage containing high levels of nutrients and other pollutants to be discharged into the San Marcos River, impairing the uses of the iconic Texas river. The San Marcos River is an important feature of the Texas Hill Country and currently supports active recreational use by thousands every day in summer, good fishing, and several water intakes for public and private water supplies. Use of the San Marcos River for fishing and recreation will be impaired with the increased nutrients, algae, odors, and spills that will occur if Draft Permit is issued. The Draft Permit will also likely result in nuisance odors in the San Marcos River and Callihan Creek. TCEQ needs to consider these negative impacts to surface water quality and how they will affect landowners and the recreational and tourism economy dependent upon an attractive and safe San Marcos River. In addition to the negative impacts on the surface water downstream of the discharge, there is the strong possibility that groundwater will be contaminated once the wastewater discharge reaches the San Marcos River, as the San Marcos River crosses alluvial aquifers and seeps underground through gravel. Should this occur, the wastewater discharge would introduce bacteria and nitrogen into public and private wells in the area, creating a public health risk.

B. The Notice in the Notice of Application and Preliminary Decision for the Draft Permit is Insufficient. The Spanish Language Notice for the Draft Permit is insufficient. The links in the Notice of Application and Preliminary Decision that were provided under the heading of Alternative Language Notice take the internet user to a web page where the internet user should be able to find information in Spanish for pending permit applications. However, the web page did not, as of August 28, 2023, have the information for the Draft Permit. The application information and permit documents in Spanish must be at the website indicated in the notice in order for the Spanish speaking public to have proper notice of the Draft Permit. Also, since the location of the outfall has been moved, the Notice of Receipt of Application is now insufficient and must be reissued.

C. Without More Stringent Effluent Limits, the Draft Permit Will Lower Water Quality. The Draft Permit must include a more stringent pollution parameter for total phosphorus and include a limit on total nitrogen in order to protect human health and the health of wildlife. The Draft Permit, if issued, should set effluent limits no less stringent than 5-5-2-0.15 for all phases of the discharge.² However, even more stringent effluent levels are achievable and should be in place to better protect wildlife and human health. A 2007 report by the U.S. Environmental Protection Agency (EPA), the agency found that wastewater treatment plants are capable of treating wastewater to reduce total phosphorus levels well below .5 mg/L. U.S. EPA, ADVANCED WASTEWATER TREATMENT TO ACHIEVE LOW CONCENTRATION OF PHOSPHORUS (2007). Moreover, the impacts from increased phosphorus can be eliminated altogether with the implementation of a zero-discharge system. 2 5-5-2-0.15 is a shorthand referenced for effluent parameters of 5 mg/L CBOD, 5 mg/L TSS, 2 mg/L Ammonia Nitrogen, and 0.15 mg/L Total Phosphorus. In addition to more stringent effluent limitations, the Draft Permit also needs to include a limit on total nitrogen to adequately protect against adverse ecological and human health effects. Although the Draft Permit has a limit on ammonia nitrogen, studies show that this is not an effective surrogate for controlling other forms of nitrogen in wastewater, including nitrates. Exposure to nitrates in humans can lead to a potentially fatal condition in infants known as blue baby syndrome, and exposure to nitrates in livestock and wildlife can lead to nitrate toxicity. Moreover, the EPA has set maximum contaminant levels for nitrates in drinking water at 10 mg/L. Although potable water suppliers are responsible for treating drinking water to the applicable standards, recreational users of the receiving waters, including the San Marcos River, may ingest raw water unintentionally or humans might be exposed by drinking water from groundwater wells drawn from alluvial aquifers. Since the negative ecological and human health impacts of phosphorus enrichment and nitrogen pollution of the receiving waters can be mitigated through more stringent, yet achievable, standards or by using a zero-discharge system, the Draft Permit, if issued, must include a more stringent phosphorus limit and impose a limit on total nitrogen or instead require the use of a zero-discharge system.

D. The Proposed Discharge is Not Protective of Wildlife or Human Health. The Draft Permit poses significant risk to aquatic and terrestrial wildlife. In addition to the risks associated with increased algal blooms and cyanotoxins, wildlife is at risk from the impacts linked with excessive nitrate consumption. Isaza et al., Living in Polluted Waters: A Meta- Analysis of the Effects of Nitrate and Interactions with Other Environmental Stressors on Freshwater Taxa, 261 ENVIRONMENTAL POLLUTION 1 (2020). Moreover, the

Draft Permit, if issued, should require the wastewater treatment plant to treat wastewater with UV disinfection as the chlorine disinfection authorized by the Draft Permit has been found to be toxic to wildlife. The risks posed to aquatic and terrestrial wildlife by the Draft Permit are significant and apply to humans as well, and TCEQ has failed to fully evaluate them. The wildlife in the San Marcos River continues to require high-quality, clear water. Wildlife such as otters, fish, sensitive mussels, benthic creatures, and other invertebrates need clean water to survive and reproduce. Additionally, the Comal Springs Riffle Beetle, Texas Blind Salamander, San Marcos Salamander, and the Fountain Darter, all endangered species, can be found in the impacted segment of the San Marcos River and require high-quality clear water in order to recover. Further, several Texas freshwater mussel species found in the San Marcos River, are currently being considered for listing under the Endangered Species Act and are currently listed as threatened under Texas state law. To avoid or minimize adverse impacts to the aquatic and terrestrial wildlife dependent on the San Marcos River and Callihan Creek, the Draft Permit, if issued, must include more stringent effluent requirements and consider increasing dissolved oxygen to protect aquatic life uses or include reuse provisions.

E. TCEQ Should Have Conducted a Tier 2 Antidegradation Analysis. TCEQ should have conducted a Tier 2 antidegradation analysis because the San Marcos River is designated as having primary contact recreation, public water supply, and high aquatic life use. SMRF also asks that TCEQ redo the technical review of the Application and Draft Permit since the location of the outfall has significantly moved since the review and initial notices. It is important that TCEQ's analysis of the Draft Permit is accurate.

F. TCEQ and the Applicant Should Consider Re-Use Rather than Discharge. Setting more stringent treatment standards would support the inclusion of a re-use provision in the Draft Permit. The higher quality treated wastewater can be sold for irrigation or industry, making it a valuable commodity for the Applicant. For example, treated wastewater can also be reused in landscape irrigation, gray water systems, and cooling towers, and presents a much better option than groundwater. There are many other uses for good quality treated wastewater, uses better than polluting the San Marcos River. With water prices skyrocketing and demand for water rising steeply, including a reuse provision in the Draft Permit would be a win-win to meet the growing demand for treated wastewater and lessen the impacts of wastewater pollution in the San Marcos River. Having good quality wastewater, a small lake for storing some of it, and a re-use provision in the Draft Permit, if issued, will make treated wastewater a valuable commodity for the Applicant, while also helping to protect those downstream of the wastewater treatment plant.