

**DOCKET NO. 2024-0414-MWD**

<b>APPLICATION BY</b>	§	<b>BEFORE THE TEXAS COMMISSION</b>
<b>B12 HOLDINGS LLC FOR NEW</b>	§	
<b>TEXAS POLLUTION DISCHARGE</b>	§	<b>ON ENVIRONMENTAL QUALITY</b>
<b>ELIMINATION SYSTEM PERMIT NO.</b>	§	
<b>WQ0016297001</b>	§	

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**SAN MARCOS RIVER FOUNDATION’S REPLY ON CONTESTED CASE HEARING  
REQUESTS FOR PROPOSED TPDES WQ0016297001**

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**I. INTRODUCTION**

The San Marcos River Foundation (SMRF) files this reply to respond to the arguments against granting SMRF’s contested case hearing request for B12 Holdings, LLC’s new proposed TPDES Permit No. WQ0016297001 in the B12 Holdings, LLC’s (the Applicant) Response to Hearing Requests.

**II. FACTUAL BACKGROUND**

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 Callahan Creek, thence to the Lower San Marcos River in Segment 1810 of the Guadalupe River Basin. Segment 1801 designated uses of primary contact recreation, public water supply, and high aquatic life use which are important to protect from degradation.

**A. Procedural Background**

SMRF filed timely comments on the application and draft permit that raised relevant and material issues that were not sufficiently addressed by the TCEQ Executive Director’s (ED) Response to Comments. SMRF then filed a timely Request for Contested Case Hearing on the Application and draft permit of the Applicant for Proposed TPDES Permit No. WQ0016297001 (“Contested Case Hearing Request”) that contained facts establishing SMRF as an affected person so that SMRF’s concerns regarding the impacts of the draft permit on nearby surface waters can be addressed and resolved through the contested case hearing process.

In response to SMRF’s timely Contested Case Hearing Request, the ED filed the Executive Director’s Response to Hearing Requests (ED’s RHR) and OPIC filed a response to SMRF’s Contested Case Hearing Request. Both recommended that the TCEQ Commissioners grant SMRF’s Contested Case Hearing Request.

The Applicant also filed B12 Holdings, LLC’s Response to Hearing Requests (Applicant’s RHR) disputing SMRF’s contested case request. The Applicant asked that the TCEQ Commissioner’s deny SMRF’s Contested Case Hearing Request based on concerns of whether Mr. Banda was indeed a SMRF member and whether Mr. Banda was actually concerned about the proposed permit. SMRF is happy to assuage the Applicant’s concerns and provide documentation of Mr.

Banda's membership status with SMRF and discuss the circumstances surrounding his comments on the proposed permit.

## **B. SMRF and Its Members**

As set out in SMRF's Contested Case hearing request, 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 that 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.

As set out in SMRF's original contested case hearing request, 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. A confirmation of Mr. Banda's membership to SMRF is in Figure 1 of Attachment A to this reply. 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.

Mr. Banda gave oral comments at the public meeting held for the proposed permit. Mr. Banda also submitted written comments before the end of the public meeting. When asked about the Applicant's claim that Mr. Banda's written comments were not actually his comments, Virginia Parker, SMRF's Executive Director, explained that "Joe's daughter and I were helping him write the notes since he doesn't write well (or at all? I can't remember), but he wanted to make all of those comments. I did physically write it down for him though, since he needed the assistance." The bottom line is that Mr. Banda, as a downstream landowner and member of SMRF, is concerned about the impacts of the proposed permit on water quality.

## **III. CONCLUSION**

For the reasons stated above, SMRF is an affected person, and all issues raised by SMRF should be referred to SOAH. The Applicant's objections to granting SMRF affected person status are unfounded, and as detailed in this reply, failed to explain why SMRF should not be granted

affected person status or why the issues raised by SMRF should not be referred to SOAH. Accordingly, SMRF respectfully requests that the TCEQ Commissioners grant SMRF's Contested Case Hearing Request on the issues presented in the request.

Sincerely,  
/s/ Victoria Rose  
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### **CERTIFICATE OF SERVICE**

I certify that on April 1, 2024, the "SAN MARCOS RIVER FOUNDATION'S REPLY ON CONTESTED CASE HEARING REQUESTS FOR PROPOSED TPDES WQ0016297001" was filed with the TCEQ's Office of the Chief Clerk and a copy was sent to the Applicant, TCEQ Executive Director, Public Interest Counsel, and the other requestors at the address specified on the mailing list.

/s/ Victoria Rose  
Victoria Rose

# ATTACHMENT 1

The screenshot displays a web interface for 'Opportunity Membership'. At the top, there is a header with the 'Opportunity Membership' logo and two buttons: '+ Follow' and 'Quick Up'. Below the header is a 'Related List Quick Links' section containing eight links: 'Contact Roles (1)', 'iATS Transactions (0)', 'iATS Customer Codes (0)', 'Payments (1)', 'GAU Allocations (0)', 'Notes (0)', 'Files (0)', and 'Stage History (1)'. The main content area is divided into three tabs: 'Details', 'Related', and 'Activity', with 'Details' being the active tab. The 'Details' section is organized into two columns of fields, each with an edit icon (pencil). The left column includes: Opportunity Name (Membership), Account Name (Banda, Joe Household), Primary Contact (Joe Banda), Amount (\$35.00), Close Date (7/26/2023), Lead Source, Type, and Description. The right column includes: Private (checkbox), Primary Campaign Source, Recurring Donation, Stage (Posted), Probability (%) (100%), Batch, Acknowledgment Status (Acknowledged), and Acknowledgment Date (8/1/2023). Below these fields is a section titled 'Member Information' with a dropdown arrow. It contains: Membership Start Date, Membership End Date, Member Level (Annual), and Membership Origin (New).

**Figure 1.** Screenshot provided by Rachel Sanborn, SMRF’s Director of Operations, from SMRF’s database of members showing that Joe Banda is a member of SMRF.