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ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

SOAH DOCKET NO. 582-23-10368
TCEQ DOCKET NO. 2022-1731-MWD

APPLICATION BY	§	BEFORE THE STATE OFFICE
R040062, LP	§	OF
FOR	§	ADMINISTRATIVE HEARING
TPDES PERMIT NO. WQ0016008001	§	

R040062, LP'S MOTION REGARDING PREFILED TESTIMONY

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE

COMES NOW, R040062, LP ("Applicant") and files this Motion Regarding Prefiled Testimony and, in support thereof, would respectfully show the following:

On July 6, 2023, Applicant filed a Motion for Summary Disposition requesting that the Administrative Law Judge grant its Motion for Summary Disposition on all referred issues in this case on the basis that the prefiled testimony presented by the protestants puts forth no substantive evidence challenging the Applicant's prima facie demonstration and that therefore there is no genuine issue as to any material fact based on the uncontroverted evidence in the record and Applicant is entitled to summary disposition in this case as a matter of law.

The ALJ's Order Adopting Procedural Schedule established a deadline of July 7th for the Applicant to file direct testimony. Consistent with that Order, Applicant hereby presents prefiled testimony of David Tuckfield and Janet Sims. Applicant presents this prefiled testimony contingent on the ALJ's ruling on Applicant's Motion for Summary Disposition and without intending to present any evidence into the record pursuant to the attached prefiled testimony except to the extent such evidence becomes necessary pursuant to the ALJ's ruling on Applicant's Motion for Summary Disposition. Consistent with that position, Applicant asserts that the presentation of this prefiled testimony should not create a factual issue to the extent one does not already exist pursuant to the existing record in the proceeding.

Applicant hereby files the prefiled testimony of David Tuckfield set forth at **Exhibit A** and the prefiled testimony of Janet Sims set forth at **Exhibit B**, subject to the reservations set forth herein.

DATED July 7, 2023.

Respectfully submitted,

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**ATTORNEYS FOR APPLICANT
R040062, LP**

CERTIFICATE OF SERVICE

I hereby certify by my above signature that a true and correct copy of the foregoing **R040062, LP'S MOTION REGARDING PREFILED TESTIMONY** has been served upon all parties by forwarding said copy on July 7, 2023.

EXHIBIT A TO MOTION REGARDING PREFILED TESTIMONY

**SOAH DOCKET NO. 582-23-10368
TCEQ DOCKET NO. 2022-1731-MWD**

APPLICATION BY R040062, LP	§	BEFORE THE
FOR TPDES PERMIT NO.	§	STATE OFFICE OF
WQ0016008001	§	ADMINISTRATIVE HEARINGS
	§	

DIRECT TESTIMONY AND ATTACHMENTS

OF

DAVID TUCKFIELD, ESQ.

ON BEHALF OF

R040062, LP

JULY 7, 2023

APPLICANT'S EXHIBIT 01

**DIRECT TESTIMONY AND ATTACHMENTS OF DAVID TUCKFIELD, ESQ.
ON BEHALF OF R040062, LP**

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**DIRECT TESTIMONY OF DAVID TUCKFIELD, ESQ.
ON BEHALF OF AIRW 2017-7, LP**

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is David J. Tuckfield, and my business address (for mailing) is 12400 West Highway 71, Suite 350-150, Bee Cave, Texas 78738.

Q. WHAT SUBJECTS WERE YOU ASKED TO EVALUATE FOR THIS PROCEEDING?

A. I was asked to review and comment upon the issues of regionalization and need for the Indigo Water Resource Recovery Facility. For purposes of this testimony, I am going to refer to the property or the development that that will be served by the Draft Permit in this case as the “Indigo Development.”

II. QUALIFICATIONS

Q. DESCRIBE YOUR EDUCATIONAL BACKGROUND?

A. I earned a Bachelor of Arts degree in International Relations from Brigham Young University in 1985 (*cum laude*). I graduated from the J. Reuben Clark Law School (Brigham Young University), J.D. *magna cum laude*, 1989 (Order of the Coif; lead articles editor, Brigham Young University Law Review; Board of Editors, International and Comparative Law Annual).

Q. WHAT PROFESSIONAL LICENCES DO YOU HAVE?

A. I have been admitted to the following Bar Associations: District of Columbia, 1989; the State of Texas, 1996; Southern District of Texas, 2018; United States Supreme Court, 2016; The US Fifth Circuit Court of Appeals, 2021.

Q. IS APP EX. 2 A TRUE AND CORRECT COPY OF YOUR RESUME?

A. Yes.

1
2 **Q. IS THE INFORMATION IN YOUR RÉSUMÉ AT APP EX 2 AN ACCURATE**
3 **REFLECTION OF YOUR EDUCATION, PROFESSIONAL HISTORY, AND**
4 **QUALIFICATIONS?**

5 **A.** Yes.
6

7 **Q. CAN YOU DESCRIBE YOUR EXPERIENCE AS IT RELATES TO**
8 **REGIONALIZATION?**

9 **A.** My resume can be found at **APP. EX. 2.**
10

11 I am the Owner and sole shareholder of the Law Offices of David J. Tuckfield, PC. I am
12 also a Partner with the AL Law Group, PLLC. I have been an attorney practicing in
13 environmental law since 1989. I started my career at Vinson & Elkins, LLP in 1989 straight
14 out of law school. I began practicing in Washington DC but moved to Texas in 1992 and
15 have been practicing here ever since that time.
16

17 In 2000 I was made a partner at Vinson & Elkins. In 2006, I left Vinson and Elkins to start
18 my own law firm. In 2009 I joined the AL Law Group, PLLC to practice with other
19 attorneys that had left large firms. I am now a Partner at the AL Law Group, PLLC.
20

21 For the last 33 years, I have practiced in all areas of environmental law. I have represented
22 developers, municipalities, other governmental entities, and even protestants in
23 environmental permitting cases.
24

25 Over the last decade my practice has been primarily focused on wastewater issues and
26 wastewater permitting (through TCEQ). I have represented the City of Dripping Springs
27 since 2010 as special counsel for water and wastewater. In that capacity I have worked
28 with the City through a time of significant growth. I represent the City of Dripping Springs
29 in negotiating wastewater agreements with developers and municipal utility districts who
30 either seek to build their own plant or who seek to connect with the City's system. Over

1 the last thirteen years there have been many such agreements (and negotiations for such
2 agreements). The City of Dripping Springs is committed to Regionalization and my
3 negotiations always implicate regionalization issues. At some point in every negotiation
4 there is a question about when and how the City can be the regional provider, or when it
5 makes more sense to at least temporarily allow a wastewater plant for a particular
6 development.

7
8 I have also represented and continue to represent the City of Dripping Springs in its efforts
9 to obtain a TPDES permit for its South Regional Plant. When this case was referred to
10 SOAH for a contested case hearing, one of the issues referred (issue “J”) was “Whether the
11 Commission should deny or alter the terms and conditions of the draft permit based on
12 consideration of need under Texas Water Code (TWC) § 26.0282, and the general policy
13 to promote regional or area-wide systems under TWC § 26.081.”

14
15 I have represented other municipalities and governmental entities on water and wastewater
16 issues, including the City of Fairfield, the City of Clyde, the City of Bastrop, the City of
17 Killeen, and Bell County Water Control and Improvement District No. 1.

18
19 As shown on my resume, I have also represented developers in seeking wastewater permits.
20 Every permit submitted to TCEQ, of course, implicates regionalization.

21
22 In sum, I have spent 33 years practicing environmental law. For the last 13 years I have
23 been heavily involved with wastewater contract negotiations and permitting, which has
24 required me to understand and implement the State’s Regionalization Policy.

25
26 **Q. WHAT HAVE YOU REVIEWED TO PREPARE YOUR TESTIMONY AND**
27 **RENDER YOUR OPINIONS?**

28 **A.** I based my opinions on my knowledge and experience, including my 33 years of experience
29 working in environmental law, the last 13 of which have been substantially devoted to
30 obtaining wastewater permits from TCEQ and negotiating wastewater contracts on behalf

1 of Texas municipalities and developers. More specifically for this case, I have reviewed
2 the materials admitted as part of the administrative record in this case, including the
3 Application at **Tab D of the Administrative Record** and the Draft Permit at **Tab C of the**
4 **Administrative Record**, and the Executive Director's Response to Comments at **Tab A**
5 **of the Administrative Record**. I have also reviewed the TCEQ Commissioners'
6 Integrated Database and documents found therein for the following: AIRW 2017-7 Permit
7 No. WQ0015878001, Limmer Loop JV, LLC WQ0016260001, and New Horizons Utility
8 LLC WQ0016257001. I have also reviewed the documents referenced in my testimony,
9 the prefiled testimony of the witnesses presented by Jonah Water Special Utility District
10 ("Jonah"). I have also reviewed the administrative records and testimonies in other
11 contested cases that are referred to in my testimony that relate to the issue of
12 regionalization.

13 14 **III. SUBSTANTIVE ISSUES**

15 **Q. DESCRIBE YOUR UNDERSTANDING OF THE "STATE'S REGIONALIZATION**
16 **POLICY" AS IT MIGHT APPLY TO THIS CASE.**

17 **A.** Texas Water Code § 26.003 is the earliest expression of the State's Regionalization Policy
18 that would apply to this case. It, along with several other policy directives, was adopted in
19 1977 by the 65th Legislature. Section 26.003 provides as follows:

20
21 POLICY OF THIS SUBCHAPTER. It is the policy of this state and the
22 purpose of this subchapter to maintain the quality of water in the state
23 consistent with the public health and enjoyment, the propagation and
24 protection of terrestrial and aquatic life, and the operation of existing
25 industries, taking into consideration the economic development of the state;
26 to encourage and promote the development and use of regional and
27 areawide waste collection, treatment, and disposal systems to serve the
28 waste disposal needs of the citizens of the state; and to require the use of all
29 reasonable methods to implement this policy.

1 This language was largely repeated by rule at 30 Tex. Admin. Code (“TAC”) § 307.1. Section
2 26.003 is not exclusively a regionalization statute. There are numerous other policies expressed,
3 such as the policy to “maintain the quality of water in the state consistent with the public health
4 and enjoyment.”

5
6 In 1989, twelve years after the Legislature enacted Section 26.003, the 71st Legislature followed-
7 up enacting by Texas Water Code § 26.0282, which provides as follows:

8
9 “CONSIDERATION OF NEED AND REGIONAL TREATMENT
10 OPTIONS. In considering the issuance, amendment, or renewal of a permit
11 to discharge waste, the commission may deny or alter the terms and
12 conditions of the proposed permit, amendment, or renewal based on
13 consideration of need, including the expected volume and quality of the
14 influent and the availability of existing or proposed areawide or regional
15 waste collection, treatment, and disposal systems not designated as such by
16 commission order pursuant to provisions of this subchapter. This section is
17 expressly directed to the control and treatment of conventional pollutants
18 normally found in domestic wastewater.”

19
20 **Q. DOES TEXAS WATER CODE § 26.081 APPLY TO THIS CASE?**

21 **A.** No. Texas Water Code § 26.081 (also adopted in 1977 by the 65th Legislature) is part of
22 the State’s Regionalization Policy, but it does not apply to this case. Tex. Water Code §
23 26.081 authorized the Commission to designate area-wide waste collections systems. To
24 carry-out the provisions of Tex. Water Code §§ 26.003 and 26.081 the predecessor of the
25 TCEQ designated eight regional areas and entities in 30 TAC Chapter 351. Service in
26 those regional areas must be provided by the designated regional entity.

27
28 Texas Water Code § 26.081 does not apply in this case because the facility proposed to be
29 built in this case does not serve any regional area designated by the Commission in Chapter
30 351 and there is no regional provider designated for the area where the Indigo Development

1 is located. Jonah has not been designated a regional provider under 30 TAC Chapter 351.
2 I have confirmed this fact by reviewing the regional providers that have been identified in
3 30 TAC Chapter 351. “Absent a designated regional provider, the State’s regionalization
4 policy encourages, but does not compel, connection to a facility.”¹
5

6 **Q. IS REGIONALIZATION IMPORTANT?**

7 **A.** Yes. The Legislature has made it clear that regionalization should be encouraged and
8 promoted. Reasonable methods to implement this policy are required. There are good
9 reasons to encourage regionalization. Regionalization, however, should not be used as a
10 tool for a utility to hold developers or applicants hostage – requiring the developer or
11 applicant to connect at any cost, await the day when the utility actually has facilities as
12 opposed to mere aspirations, and be subjected to additional non-wastewater requirements.
13 In fact, the Commission recently adopted a Proposal for Decision (“PFD”) where the
14 Administrative Law Judge (“ALJ”) made clear that “. . .[t]he purpose of regionalization
15 review is to encourage Applicants to explore and give serious consideration to connection
16 to such utilities – not to provide neighboring utilities leverage and means to require such
17 connection.” *Crystal Clear Special Utility District and MCLB Land, LLC*, SOAH Docket
18 No. 582-20-4141; TCEQ Docket No.2020-0411-MWD, 2021 TX SOAH LEXIS 26, *49
19 (Tex. St. Off. of Admin. Hearings March 22, 2021) (**APP EX. 03**) (this case is hereinafter
20 referred to as “*Crystal Clear*”).
21

22 **Q. HAS THE TCEQ ADOPTED ANY RULES TO IMPLEMENT THE STATE’S**
23 **POLICY ON REGIONALIZATION?**

24 **A.** No.
25

¹ *Crystal Clear Special Utility District and MCLB Land, LLC*, SOAH Docket No. 582-20-4141; TCEQ Docket No.2020-0411-MWD, 2021 TX SOAH LEXIS 26, *68 (Tex. St. Off. of Admin. Hearings March 22, 2021) (Finding of Fact 48). *See also Id.* at *67 (Finding of Fact 41 noted that “[n]o regional provider has been designated for the area where the Subdivision is located); An *Order Granting The Application By DMS Real Tree, LLC For TPDES Permit No. WQ0015293001*; TCEQ DOCKET NO. 2015-1264-MWD; SOAH DOCKET NO. 582-16-1442, 2017 TX Commn on Env’tl Quality LEXIS 232, *16-17 (Conclusion of Law 7 stating that “[t]he City is not one of the listed authorized regional entities under 30 Texas Administrative Code Chapter 351.”).

1 **Q. HAS THE TCEQ ISSUED ANY GUIDANCE DOCUMENTS TO IMPLEMENT**
2 **THE STATE’S POLICY ON REGIONALIZATION?**

3 **A.** As a result of the *Crystal Clear* case I mentioned above (where the permit for a stand-alone
4 water resource recovery facility (“WRRF”) located in a city’s extraterritorial jurisdiction
5 (“ETJ”) was issued over the objection of the nearby city), Chairman Nierman tasked the
6 Executive Director’s staff to meet with him and develop new guidance on the State’s
7 regionalization and need policy. This resulted in TCEQ posting a page on its website
8 entitled “TCEQ Regionalization Policy for Wastewater Treatment” (hereafter referred to
9 as “TCEQ Regionalization Web Page”) (attached as **APP EX. 04**). TCEQ’s
10 Regionalization Web Page appeared online for the first time on July 30, 2021. It is
11 informative, but this is not a formal articulation of Commission policy set forth in
12 rulemaking, consistent with the Administrative Procedure Act affording notice and
13 opportunity for comment. That is, the web page is not a rule and not legally enforceable,
14 but it does show what the Executive Director looks at when considering the issues of
15 regionalization and need.

16
17 I will note that the application in this case was submitted in June 2021, prior to the
18 appearance of TCEQ’s Regionalization Web Page. *See Tab D of the Administrative*
19 **Record.**

20
21 **Q. WHERE SHOULD ONE LOOK TO DETERMINE HOW TCEQ INTERPRETS**
22 **AND APPLIES THE STATE’S POLICY ON REGIONALIZATION?**

23 **A.** TCEQ’s Regionalization Web Page is probably the best source. **APP EX. 04.** Also, in
24 addition to the *Crystal Clear* case I cited above, there have been other recent SOAH cases
25 involving regionalization. To fully understand how TCEQ implements the policy, it would
26 be important to look at recent PFDs and Commission-issued Orders that discuss
27 regionalization.

28
29 **Q. WHAT CAN BE GLEANED FROM RECENT PFDs AND COMMISSION-ISSUED**
30 **ORDERS?**

1 **A.** *Crystal Clear Special Utility District and MCLB Land, LLC*, SOAH Docket No. 582-20-
2 4141; TCEQ Docket No.2020-0411-MWD, 2021 TX SOAH LEXIS 26 (Tex. St. Off. of
3 Admin. Hearings March 22, 2021) (Hereafter *Crystal Clear*”) (**APP EX. 03**) is very
4 instructive. In that case, the following statements were made by the ALJ in his PFD
5 (which the Commission accepted):

6
7 “Section 26.0282 gives the TCEQ broad and permissive discretion in
8 implementing the State’s regionalization policy.”²

9
10 “The ALJ gives deference to the ED's interpretation that, with respect to
11 utilities within three miles of the proposed facility, the purpose of the
12 regionalization review is to encourage Applicants to explore and give
13 serious consideration to connection to such utilities--not to provide
14 neighboring utilities leverage and means to require such connection.”³

15
16 TCEQ “may exercise discretion to encourage and promote regionalization
17 based on the evidence presented on a case-by-case basis.”⁴

18
19 As a result of the *Crystal Clear* PFD, the Commission made the following
20 Conclusion of Law:

21
22 13. Texas Water Code § 26.0282 does not require the Commission to reach
23 specific conclusions before issuing a permit. Nor does it require the
24 Commission to deny a permit even if the Commission concludes that an
25 alternative system is available in the region. Instead, section 26.0282 gives
26 the Commission several options that it may exercise in a permit case to
27 encourage and promote regionalization based on the evidence presented

² *Crystal Clear*, 2021 TX SOAH LEXIS 26 at *47 (**APP EX. 03**).

³ *Id.* at *48-49 (**APP EX. 03**).

⁴ *Id.* at *50 (**APP EX. 03**).

1 concerning the need for the permit and other systems, existing and
2 proposed, in the geographical area.⁵
3

4 These statements provide guidance on how the State Regionalization Policy should be
5 applied.
6

7 **Q. HOW HAS TCEQ IMPLEMENTED THE STATE'S REGIONALIZATION**
8 **POLICY?**

9 **A.** It has taken two different and complementary approaches. First, as I mentioned, Chapter
10 351 of its rules designates specific regional areas and, in some cases, requires that any
11 applicant for a wastewater permit be in the name of the designated regional entity. This is
12 the only policy implemented by rule that could apply in a wastewater permitting case.
13 Because there is not a designated Regional provider for the area in which this Draft Permit
14 has been issued, these Chapter 351 requirements do not apply to this case.
15

16 The second approach I mentioned is the TCEQ's Regionalization Web Page. Again, while
17 it is entitled "policy," there is no indication that this Web Page has been formally adopted
18 TCEQ "policy," there has been no formal rulemaking nor formal adoption of the document
19 as a "policy." It is, however, the most recent and instructive material TCEQ has issued
20 with regard to any policy it might have regarding regionalization of wastewater permitting.
21 Regardless of its status, deference should be given to the ED's interpretation of TCEQ's
22 Regionalization Web Page and how TCEQ interprets the State's Regionalization Policy.⁶
23

24 The TCEQ's Regionalization Web Page points out that "TCEQ requires that an applicant
25 include justification of permit need in all wastewater permit applications for new facilities

⁵ *Crystal Clear*, 2021 TX SOAH LEXIS 26 at *72 (**APP EX. 03**) (Conclusion of Law 13). This statement was repeated in Conclusion of Law 17 in *Application by Regal, LLC for issuance of New TPDES Permit No. WQ0015817001*, SOAH Docket No. 582-21-0576; TCEQ Docket No. 2020-0973-MWD, 2021 TX SOAH LEXIS 154 (Tex. St. Off. of Admin. Hearings August 4, 2021).

⁶ *Crystal Clear*, 2021 TX SOAH LEXIS 26 at *48 (**APP EX. 03**) ("The ALJ gives deference to the ED's interpretation . . .").

1 and all applications to amend an existing permit.” **APP EX. 04.** It then cites Section 1.1
2 of the Domestic Technical Report for wastewater permit applications. The web page does
3 not say that the application form or its instructions constitute TCEQ “policy,” but because
4 the web page mentions the questions asked on the application (at Domestic Technical
5 Report 1.1), such questions are instructive. The primary question to be addressed is
6 whether “there are any domestic permitted wastewater treatment facilities or collection
7 systems located within a three-mile radius of the proposed Facility.” **APP EX. 04 (page**
8 **2).** If so, then the Applicant is to contact the “existing” facility and determine whether that
9 facility has the capacity or is willing to accept the wastewater from the proposed
10 development. **APP EX. 04 (page 3).** If the “existing” facility can and will accept the
11 additional wastewater for treatment, the applicant still need not connect to that facility if
12 an analysis of expenditures required to connect to the existing facility or collection system
13 versus the cost of constructing and operating the proposed new facility or expansion.

14
15 Deference should be given to the Executive Director in interpreting the response to these
16 questions.⁷

17
18 Other questions asked in the Domestic Technical Report 1.1 are: (1) “Is any portion of the
19 proposed service area located in an incorporated city?”; and (2) “Is any portion of the
20 proposed service area located inside another utility’s CCN area?”⁸ **Tab D of the**
21 **Administrative Record** (bates 046-047). In this case, both questions were appropriately
22 answered in the negative. *Id.* Any analysis regarding those two questions, therefore, is
23 irrelevant.

24
25 Taken together, the questions posited on the TCEQ Web Page and Domestic Technical
26 Report 1.1 demonstrates that TCEQ encourages and promotes regionalization by asking
27 certain questions seeking information about the location of the proposed facility and any

⁷ *Id.*

⁸ It is clear that the question is about a wastewater CCN, not a water CCN. The questions are aimed at determine whether there are regional wastewater facilities to which the development should connect, not regional water facilities.

1 facilities or systems to which connection would be reasonable. TCEQ seeks some
2 justification for why the Indigo Development doesn't connect to an existing facility or
3 system.
4

5 **Q. ARE THERE SPECIFIC REQUIREMENTS THAT APPLY TO ENSURE**
6 **COMPLIANCE WITH THE STATE'S REGIONALIZATION POLICY?**

7 **A.** No. In fact, unless the facility is an area designated by Chapter 351 as a regional area, the
8 policy by its very terms is permissive not mandatory (by using the term "may deny" instead
9 of "must deny" in the statutory language). As Judge Ross Henderson decided in his
10 proposal for decision in *Crystal Clear* "Section 26.0282 gives the TCEQ broad and
11 permissive discretion in implementing the State's regionalization policy."⁹ TCEQ's
12 Regionalization Web Page states that "[t]he presence of a wastewater treatment facility or
13 wastewater collection system within three miles of a proposed new wastewater treatment
14 facility or the expansion of an existing facility is not an automatic basis to deny an
15 application or to compel an applicant to connect to an existing facility." **APP EX. 04** (page
16 1) (emphasis in original).
17

18 **Q. WHEN SHOULD APPLICATIONS FOR DISCHARGES OF WASTEWATER BE**
19 **APPROVED ON THE BASIS OF REGIONALIZATION?**

20 **A.** According to TCEQ's Regionalization Web Page the proposed permit should be granted
21 in any one of the following four situations:
22

23 "[1)] There is no wastewater treatment facility or collection system within
24 three miles of the proposed facility.

25
26 [(2)] The applicant requested service from wastewater treatment facilities
27 within the 3 miles, and the request was denied.
28

⁹ *Crystal Clear*, 2021 TX SOAH LEXIS 26 at *47 (**APP EX. 03**).

1 [(3)] The applicant can successfully demonstrate that an exception to
2 regionalization should be granted based on costs, affordable rates, and/or
3 other relevant factors.

4
5 [(4)] The applicant has obtained a Certificate of Convenience and Necessity
6 (CCN) for the service area of the proposed new facility or the proposed
7 expansion of the existing facility.”

8
9 **APP EX. 04** (page 2). Throughout the remainder of my testimony, I shall refer to these
10 four situations as “Approval Basis 1, 2, 3, or 4.” Because “any” of the Approval Bases
11 justifies the granting of the Permit, just one of the Approval Bases must be satisfied for the
12 permit to issue.

13
14 **Q. DO ANY OF THESE APPROVAL BASES APPLY IN THIS CASE?**

15 **A.** Yes. Approval Bases 1, 2, and 3 all apply in this case and any one of them demonstrates
16 that the Draft Permit is consistent with the State’s Regionalization Policy. In this case,
17 Applicant satisfies not only one of the Approval Bases, but three (any one of which would
18 have been sufficient). Approval Basis 4, (that the applicant has obtained a CCN) does not
19 apply. Therefore, based on TCEQ’s Regionalization Web Page, there are three
20 independent grounds upon which the application should be granted.

21
22 **Q. BASED ON THE TCEQ WEB PAGE WHAT FACILTIES WARRANT ANY**
23 **ANALYSIS FOR PURPOSES OF EVALUATING REGIONALIZATION FOR THE**
24 **INDIGO WRRF?**

25 **A.** The City of Georgetown. Georgetown has a WRRF (called the “Dove Springs” facility)
26 within 3 miles of the Indigo WRRF. **Tab D of the Administrative Record** (bates 086).

27
28 **Q. BESIDES THE DOVE SPRINGS WRRF, ARE THERE ANY OTHER FACILITIES**
29 **THAT SHOULD BE ANALYZED BASED ON THE TCEQ WEB PAGE?**

1 A. No. The question to be addressed is whether there is a wastewater treatment facility or
2 collection system within three miles of the proposed facility. As can be seen in the
3 Administrative record, the only such facility that existed when the application was
4 submitted is the Dove Springs Facility. **Tab D of the Administrative Record** (bates 086).

5
6 **Q. HAVE YOU REVIEWED THE PREFILED TESTIMONY OF WILLIAM BROWN**
7 **IN THIS CASE (EX JWSUD-1)?**

8 A. Yes.

9
10 **Q. HAVE YOU REVIEWED THE PREFILED TESTIMONY OF MILES WHITNEY**
11 **IN THIS CASE (EX JWSUD-2)?**

12 A. Yes.

13
14 **Q. DO MESSERS. BROWN OR WHITNEY IDENTIFY FACILTIES OR ENTITIES**
15 **TO WHICH THE INDIGO DEVELOPMENT SHOULD CONNECT?**

16 A. Yes. Neither make mention of the only relevant facility (the Dove Springs facility), but
17 both Messrs. Brown and Whitney suggest (without identifying a specific facility) that
18 Applicant should connect to Jonah, and Mr. Whitney suggests that the following permits
19 are somehow relevant to a Regionalization inquiry: AIRW-2017-7 Permit No.
20 WQ0015878001, Limmer Loop JV, LLC Permit No. WQ0016260001, and New Horizons
21 Utility LLC Permit No. WQ0016257001.

22
23 **Q. HOW SHOULD THE QUESTION OF WHETHER THE INDIGO**
24 **DEVELOPMENT SHOULD CONNECT TO JONAH BE EVALUATED?**

25 A. The TCEQ Web Page is clear. The question is whether Jonah has a facility or a system
26 within 3 miles of the proposed facility. **APP EX. 04** (page 2). If it does, then Applicant
27 should have made an inquiry. **APP EX. 04** (page 2). There is no evidence that Jonah has
28 a facility or system within three miles of the proposed facility. Neither Messrs. Brown or
29 Whitney identifies a facility owned or operated by Jonah that that qualifies for further
30 inquiry or analysis. Absent such a facility, Approval Basis 1 dictates that “the proposed

1 permit should be granted” because “[t]here is no [Jonah] wastewater treatment facility or
2 collection system within three miles of the proposed facility.” **APP EX. 04** (page 2). With
3 respect to Jonah, therefore, Approval Basis 1 dictates that the draft permit be issued.
4

5 **Q. WITH RESPECT TO JONAH, IS ADDITIONAL ANALYSIS NEEDED?**

6 **A.** No. There is no Jonah wastewater treatment facility or collection system within three miles
7 of the proposed facility, so pursuant to Approval Basis 1 the analysis is complete.
8

9 **Q. HOW DOES APPLICANT SATISFY THE REGIONALIZATION INQUIRY WITH**
10 **REGARD TO AIRW-2017-7 Permit No. WQ0015878001?**

11 **A.** AIRW-2017-7 (Permit No. WQ0015878001) (hereafter “AIR-W”) is not an existing
12 facility. The TCEQ Web Page does not require an evaluation of permits, but an analysis
13 regarding a wastewater treatment facility or wastewater collection system that is
14 “presen[t].” **APP EX. 04** (page 1). Moreover, Approval Basis 1 doesn’t address the
15 existence of a permit, but requires the proposed permit be granted when “[t]here is no
16 wastewater treatment facility or collection system within three miles of the proposed
17 facility.” **APP EX. 04** (page 2). Throughout the document, TCEQ uses the term “existing
18 facility” **APP EX. 04** (pages 1, 2, and 3).¹⁰ It makes sense that for regionalization purposes
19 an applicant need only evaluate existing facilities rather than permits because just because
20 a permit exists doesn’t mean that a facility for that permit will ever be built. Moreover, if
21 an applicant has to revisit regionalization every time a permit is applied for or is issued,
22 the applicant would be constantly having to stop and reevaluate regionalization –

¹⁰ “The presence of a wastewater treatment facility or wastewater collection system within three miles of a proposed new wastewater treatment facility or the expansion of an existing facility is not an automatic basis to deny an application or to compel an applicant to connect to an existing facility.” **APP EX. 04** (page 1) (emphasis added). “The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.” **APP EX. 04** (page 2) (emphasis added). “[T]he agency supports new applicants and existing facilities productively working together” **APP EX. 04** (page 2) (emphasis added). “[L]ack of thorough communication with existing facilities within a three-mile radius.” **APP EX. 04** (page 2) (emphasis added). “If an existing facility does have the capacity to accept the proposed wastewater, submit an analysis of expenditures required to connect to the existing facility or collection system versus the cost of constructing and operating the proposed new facility or expansion.” **APP EX. 04** (page 3) (emphasis added). Provide copies of all correspondence with the owners and/or operators of any existing permitted domestic wastewater treatment facilities and collection systems within a three-mile radius of the proposed facility.” **APP EX. 04** (page 3) (emphasis added).

1 potentially causing the administrative process to grind to a halt in fast growing areas. The
2 TCEQ Web Page makes clear that the inquiry is regarding existing facilities and not
3 permits.
4

5 The AIR-W permit is not an existing facility. That permit was issued on November 28,
6 2022. **APP EX. 06.** Despite its issuance, the AIR-W facility has not yet been built. The
7 issuance of the permit has been appealed, and it is the subject of district court litigation
8 (Travis County District Court Docket No. D-1-GN-23-001004) (filed on February 21,
9 2023). I know these facts about the AIR-W permit because I testified as an expert witness
10 in that case so I have personal knowledge of the AIR-W permit, and I continue to follow
11 the progress of the AIR-W project.
12

13 As there is no existing AIR-W facility, Approval Basis 1 dictates that the Indigo permit be
14 granted because “[t]here is no [AIR-W] wastewater treatment facility or collection system
15 within three miles of the proposed facility.” **APP EX. 04** (page 2).
16

17 Even if only the existence of a permit (as opposed to a facility) is relevant (a contention
18 with which I could not more strongly disagree), at the time the Indigo WRRF application
19 was submitted (June 2021), the AIR-W Permit had not yet been issued (it was issued on
20 November 28, 2022). Therefore, when submitting the application, there would have been
21 no reason to evaluate the AIR-W permit. Approval Basis 1 once again dictates that that
22 the Indigo permit be granted because “[t]here is no [AIR-W] wastewater treatment facility
23 or collection system within three miles of the proposed facility.” **APP EX. 04** (page 2).
24

25 Therefore, with respect to the AIR-W permit, Approval Basis 1 dictates that this permit
26 should be issued under the State’s Regionalization Policy.
27

28 **Q. HOW DOES APLICANT SATISFY THE REGIONALIZATION INQUIRY WITH**
29 **REGARD TO LIMMER LOOP JV, LLC (PERMIT NO. WQ0016260001)?**
30

1 **A.** According to Mr. Whitney’s testimony, the Limmer Loop JV, LLC Permit (Permit No.
2 WQ0016260001) (hereafter “Limmer Loop”) is 3.37 miles away from the subject
3 application. **EX. JWSUD-2 at page 6.** Because it is more than 3 miles away, Limmer
4 Loop is irrelevant.

5
6 Approval Basis 1 dictates that “the proposed permit should be granted” because “[t]here is
7 no [Limmer Loop] wastewater treatment facility or collection system within three miles of
8 the proposed facility.” **APP EX. 04 (page 2).**

9
10 Moreover, there is no Limmer Loop permit. Although a draft permit has been issued, the
11 Notice of Application and Preliminary Decision was issued by TCEQ on May 5, 2023.
12 **APP EX. 07.** I reviewed the TCEQ Commissioner’s Integrated Database, there have been
13 more than 700 comments submitted and numerous hearing requests. Before the permit is
14 actually issued, it will likely be subjected to the contested case process at the State Office
15 of Administrative Hearings.

16
17 Even if only the existence of a permit application (as opposed to a facility) is relevant (a
18 contention with which I could not more strongly disagree), at the time the Indigo WRRF
19 application was submitted (June 2021), the Limmer Loop application had not yet been
20 submitted. TCEQ received the Limmer Loop application on November 29, 2022. **APP**
21 **EX. 07.** Therefore, when submitting the Indigo application, there would have been no
22 reason to evaluate the Limmer Loop application. Approval Basis 1 once again dictates that
23 that the Indigo permit be granted because “[t]here is no [Limmer Loop] wastewater
24 treatment facility or collection system within three miles of the proposed facility.” **APP**
25 **EX. 04 (page 2).**

26
27 Therefore, with respect to the Limmer Loop application, Approval Basis 1 dictates that this
28 permit should be issued under the State’s Regionalization Policy.

1 **Q. HOW DOES APPLICANT SATISFY THE REGIONALIZATION INQUIRY WITH**
2 **REGARD TO NEW HORIZONS UTILITY LLC (PERMIT NO. WQ0016257001)?**

3 **A.** The New Horizons Utility LLC (Permit No. WQ0016257001) (hereafter “New Horizons”)
4 is not an existing facility. More importantly, like Limmer Loop, a permit does not even
5 exist for the New Horizons facility.
6

7 A draft permit has not even been issued for the New Horizons facility. The Notice of
8 Receipt of Application and Intent to Obtain a Water Quality Permit was issued by TCEQ
9 on February 14, 2023. **APP EX. 08.** I reviewed the TCEQ Commissioner’s Integrated
10 Database and confirmed these facts. Before the permit is actually issued, a draft permit
11 must be issued, additional notice must be given, and there will be an opportunity for a
12 contested case hearing at the State Office of Administrative Hearings.
13

14 Even if only the existence of a permit application (as opposed to a facility) is relevant (a
15 contention with which I could not more strongly disagree), at the time the Indigo WRRF
16 application was submitted (June 2021), the New Horizons application had not yet been
17 submitted. TCEQ received the New Horizons application on November 22, 2022.
18 Therefore, when submitting the Indigo application, there would have been no reason to
19 evaluate the New Horizons application. Approval Basis 1 once again dictates that that the
20 Indigo permit be granted because “[t]here is no [New Horizons] wastewater treatment
21 facility or collection system within three miles of the proposed facility.” **APP EX. 04**
22 (page 2).
23

24 Therefore, with respect to the New Horizons application, Approval Basis 1 dictates that
25 this permit should be issued under the State’s Regionalization Policy.
26

27 **Q. HOW DOES APPLICANT SATISFY THE REGIONALIZATION INQUIRY WITH**
28 **REGARD TO GEORGETOWN’S DOVE SPRINGS PLANT.**

29 **A.** The Georgetown Dove Springs facility is an existing facility within three miles of the
30 proposed facility. Therefore, Approval Basis 1 does not apply.

1
2 The Applicant appropriately reported in its application that there was a City of Georgetown
3 facility within 3 miles of the proposed facility. **Tab D of the Administrative Record**
4 **(bates 047 and 086-087)**. Consistent with the TCEQ Web Page, Applicant inquired of
5 Georgetown whether it had the capacity and willingness to serve. **Tab D of the**
6 **Administrative Record (bates 088-099)**. Georgetown responded that it would provide
7 service for the proposed subdivision but the development must comply with various City
8 requirements. **Tab D of the Administrative Record (bates 087-089)**. An argument could
9 be made that because Georgetown conditioned service on additional non-wastewater
10 requirements, that it effectively “denied” service. Notwithstanding, because Approval
11 Basis 3 (which I will discuss shortly), has been satisfied, we need not analyze that
12 argument. Therefore, for purposes of streamlining this analysis, we can assume that
13 Approval Basis 2 does not apply.
14

15 Having made appropriate inquiry, the Applicant undertook a cost analysis to determine the
16 cost of connecting to the Dove Springs facility. This thorough cost analysis is in the record
17 at **Tab D of the Administrative Record (bates 100-102)**. According to the cost-analysis,
18 “it is clear that the cost of developing wastewater service in the immediate future is
19 substantially less if a new treatment plant is built at the site proposed in the permit
20 application as opposed to connecting to the City’s system.” **Tab D of the Administrative**
21 **Record (bates 102)**.
22

23 According to TCEQ’s Regionalization Web Page the proposed permit should be granted
24 pursuant to Approval Basis 3 if “[t]he applicant can successfully demonstrate that an
25 exception to regionalization should be granted based on costs, affordable rates, and/or other
26 relevant factors.” The applicant demonstrated through the cost analysis that “it will require
27 R040062, LP to spend greater than \$10 million and wait five years to obtain wastewater
28 services from the City.” **Tab D of the Administrative Record (bates 087 and 100-102)**.
29 Therefore, “the construction of an on-site treatment facility is an economically better
30 alternative for providing wastewater services to the proposed subdivision.” **Tab D of the**

1 **Administrative Record (bates 087 and 100-102).** There is no prefiled testimony that
2 disputes this analysis. In fact, there is no prefiled testimony in this case that suggests that
3 Applicant should connect to the Dove Springs Facility.
4

5 Tellingly, the City of Georgetown was a protestant in this case, but has withdrawn its
6 protest. If the Dove Springs facility were a viable alternative, it is unlikely that Georgetown
7 would have withdrawn from this proceeding.
8

9 Based on the undisputed financial analysis undertaken by the Applicant, the proposed
10 permit should be granted pursuant to Approval Basis 3 because “[t]he applicant [has]
11 successfully demonstrate[d] that an exception to regionalization should be granted based
12 on costs, affordable rates, and/or other relevant factors.”
13

14 **Q. MR. BROWN TESTIFIED ABOUT THE NUMBER OF CUSTOMERS AND**
15 **PEOPLE FOR WHICH IT PROVIDES SERVICE (SEE EXHIBIT JWSUD-1 at 4).**
16 **IS THAT RELEVANT FOR REGIONALIZATION?**

17 **A.** No.
18

19 Mr. Brown’s statement is misleading. I believe that all of those customers and people are
20 water customers. It is my understanding that Jonah does not have a single wastewater
21 customer. The regionalization inquiry deals with wastewater, not water.
22

23 The Proposal for Decision that was sent to TCEQ in the AIR-W case contained the
24 following proposed finding of fact:
25

26 53. Jonah is an established political subdivision that provides water service
27 to approximately 9,000 customers, and 30,000 people are in its
28 approximately 275-mile service area.
29

30 **APP EX. 06 at page 44.**

1 When considering the PFD and issuing the AIR-W permit, the Commissioners deleted this
2 finding of fact, saying: “The Commission determined to delete Finding[] of Fact #53 . . .
3 as unnecessary to the Commission’s regionalization policy consideration in this case.” It
4 is simply irrelevant to the question of wastewater regionalization that Jonah has water
5 customers.

6
7 **Q. WHAT IS A CCN?**

8 **A.** A Certificate of Convenience and Necessity (“CCN”) grants a CCN holder the exclusive
9 right to provide retail water and/or sewer utility service to an identified geographic area.
10 Chapter 13 of the Texas Water Code requires a CCN holder to provide continuous and
11 adequate service to the area within its CCN boundary. A CCN is exclusive and someone
12 other than the CCN holder cannot provide retail service inside the CCN area of another
13 without the CCN holder’s consent.

14
15 **Q. IS THE INDIGO DEVELOPMENT THAT IS THE SUBJECT OF THIS**
16 **PROCEEDING IN ANY JONAH CCN AREA?**

17 **A.** Yes, according to **Exhibit MW-1**, attached to the prefiled testimony of Miles Whitney, the
18 Indigo WRRF is located in Jonah’s water CCN. It is not located within any wastewater
19 CCN. **Tab D of the Administrative Record at 046-047.** I reviewed the Texas Public
20 Utility Commission CCN Viewer to confirm that the Indigo Development is not in any
21 wastewater CCN. It is not in any wastewater CCN and is not in any Jonah wastewater
22 CCN. Being in a water CCN but not a wastewater CCN is an important distinction. A
23 water CCN creates an exclusive service area for water, not for wastewater. For a utility to
24 be the exclusive provider for wastewater in an area, it must apply for and obtain a
25 wastewater CCN. Jonah has not done that for the area where the Indigo Development is
26 located. Whether a development is in a water CCN of a utility is irrelevant for wastewater
27 regionalization evaluation when that utility has no existing wastewater facilities or
28 wastewater systems. A water plant and water facilities cannot provide wastewater
29 treatment.

1 Interestingly, I researched the question of whether Jonah even has a sewer CCN. Although
2 Jonah technically had a sewer CCN (Number 21053), the Indigo WRRF was never in that
3 area. In addition, on November 22, 2022, the Texas Public Utilities Commission approved
4 an agreement whereby Jonah transferred all of its sewer customers and all of its certificated
5 area under that CCN number to the City of Hutto. **APP EX. 09.** Although Jonah had a
6 sewer CCN number, it divested itself of all its customers and service area.

7
8 **Q. MR. BROWN TESTIFIED THAT JONAH HAS AN INTEREST IN MAINTAINING**
9 **ITS CCN AREA. SEE EXHIBIT JWSUD-1 at 4). IS THAT RELEVANT FOR**
10 **REGIONALIZATION?**

11 **A.** Without any wastewater plant, wastewater facilities, or agreements to serve the specified
12 area, there is no wastewater significance that a development is within another utilities'
13 water CCN.

14
15 Jonah's witnesses provided no testimony that there was a Jonah facility or a Jonah system
16 within 3 miles of the Indigo WRRF.

17
18 In fact, The Proposal for Decision that was sent to TCEQ in the AIR-W case contained
19 the following proposed finding of fact:

20
21 54. Jonah is negotiating to provide wastewater to other nearby
22 developments and plans to expand its wastewater services within its
23 certificated water service area.

24
25 **APP EX. 06 at page 44 (emphasis added).**

26
27 When considering the PFD and issuing the AIR-W permit, the Commissioners deleted this
28 finding of fact, saying: "The Commission determined to delete Finding[] of Fact . . . #54
29 as unnecessary to the Commission's regionalization policy consideration in this case." It

1 is simply irrelevant to the question of wastewater regionalization that Jonah desires to
2 expand its wastewater services within its certificated water service area.

3
4 **Q. SHOULD APPLICANT HAVE SOUGHT JONAH'S CONSENT TO PROVIDE**
5 **WASTEWATER SERVICE IN JONAH'S WATER CCN SERVICE AREA?**

6 **A.** No. The TCEQ Web Page requires inquiries to be sent for facilities or systems within three
7 miles of the proposed facility. **APP EX. 04.** Jonah has not identified any such facility or
8 system.

9
10 **Q. DOES JONAH HAVE TO PROVIDED CONSENT FOR APPLICANT TO**
11 **PROVIDE WASTEWATER SERVICE IN JONAH'S WATER CCN SERVICE**
12 **AREA?**

13 **A.** No. There is no requirement that such consent is required. **APP EX. 04.** Nor would it
14 make any sense. If there is no facility, there can be no connection.

15
16 **Q. DOES IT MATTER THAT JONAH MIGHT AGREE TO CONSTRUCT,**
17 **OPERATE, AND MAINTAIN A WASTEWATER TREATMENT PLANT TO**
18 **SERVE THE APPLICANT?**

19 **A.** No. Regionalization questions address existing facilities and systems, not whether some
20 utility might enter into an agreement to build a facility. **APP EX. 04.**

21
22 **Q. DOES IT MATTER THAT THE PROPOSED FACILITY MIGHT BE IN JONAH**
23 **DISTRICT BOUNDARIES?**

24 **A.** No. The TCEQ Web Page makes no mention of any questions concerning the location of
25 a facility vis-à-vis a district boundary. **APP EX. 04.** Unlike a CCN, a district boundary
26 does not guaranty or require service. It is simply irrelevant. The question is whether there
27 is an existing facility or system within 3 miles of the proposed facility. **APP EX. 04.**

1 **Q. IS THE APPLICATION INSUFFICIENT BECAUSE JONAH AND THE**
2 **APPLICANT ENTERED INTO DISCUSSIONS REGARDING WASTEWATER**
3 **SERVICE, AND NO AGREEMENT WAS REACHED?**

4 **A.** No. The TCEQ Web Page makes no mention of any questions concerning whether there
5 had been attempts to negotiate an agreement with a local utility – much less when that that
6 utility does not have a facility or system within three miles of the proposed facility. **APP**
7 **EX. 04.**

8
9 **Q. DOES JONAH OWN OR OPERATE ANY WASTEWATER TREATMENT**
10 **PLANTS?**

11 **A.** I don't know of any wastewater treatment plants that are currently owned or operated by
12 Jonah. I did not see any reference to any wastewater treatment plants that are currently
13 owned or operated by Jonah in **Exhibit JWSUD-1 or JWSUD-2.**

14
15 Specifically, there is no evidence that Jonah has a wastewater treatment facility or
16 collection system within three miles of the proposed facility. In fact, the prefiled testimony
17 of Mr. William Brown only says that Jonah “desires to construct, operate, and maintain [a]
18 wastewater treatment” system. **EXHIBIT JWSUD-1 at 7:15.** A “desire” does not qualify
19 as a facility or system that should be analyzed under the Regionalization Policy. Currently,
20 although the Indigo WRRF is within Jonah's water CCN, it is outside Jonah's sewer CCN.
21 Therefore, there can be no argument that the permit should be denied based on any existing
22 Jonah facility or system.

23
24 **Q. HAS THE APPLICANT PROVIDED SUFFICIENT INFORMATION TO JUSTIFY**
25 **A NEED FOR THE INDIGO WRRF?**

26 **A.** Yes. Attachment J of the Application provides a justification for need. **Tab D of the**
27 **Administrative Record (bates 084).** Central Texas is a fast-growing area. *Id.* The
28 proposed subdivision is in Williamson County TX, outside the corporate limits of
29 Georgetown. The site currently does not have wastewater treatment service. *Id.* In
30 addition, the proposed subdivision is not in the area identified as the “future service area”

1 that was evaluated in the City's 2018 wastewater master plan. *Id.* The construction of
2 approximately 600 manufactured housing units will be completed within the next five
3 years. *Id.* The first phase of construction is for approximately 300 units to be completed
4 within two years after receipt of the requested permit for the proposed Indigo WRRF. *Id.*
5 These planned construction activities justify a need for the facility.
6

7 **Q. MR. TUCKFIELD, BASED ON YOUR EXPERIENCE, DO YOU HAVE ANY**
8 **OPINIONS REGARDING WHETHER THE APPLICATION SHOULD BE**
9 **GRANTED AND THE DRAFT PERMIT ISSUED?**

10 **A.** Based on my review of documents cited above, my experience working with both
11 developers and municipalities, my opinion is that the Draft Permit is consistent with the
12 State's Regionalization Policy and demonstrates need and it should be issued.
13

14 **IV. CONCLUSION**

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 **A.** Yes, but I reserve the right to amend my testimony if additional information becomes
18 available.

EXHIBIT B TO MOTION REGARDING PREFILED TESTIMONY

**SOAH DOCKET NO. 582-23-10368
TCEQ DOCKET NO. 2022-1731-MWD**

APPLICATION BY R040062, LP	§	BEFORE THE
FOR TPDES PERMIT NO.	§	STATE OFFICE OF
WQ0016008001	§	ADMINISTRATIVE HEARINGS
	§	

DIRECT TESTIMONY AND ATTACHMENTS

OF

JANET SIMS

ON BEHALF OF

R040062, LP

JULY 7, 2023

APPLICANT'S EXHIBIT 10

**DIRECT TESTIMONY AND ATTACHMENTS OF JANET SIMS
ON BEHALF OF R040062, LP**

ATTACHMENTS:

APP EX. 11..... Résumé of Janet Sims

1

DIRECT TESTIMONY OF JANET SIMS ON BEHALF OF AIRW 2017-7, LP

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Janet Sims, and my business address (for mailing) is 18217 Shoal Creek Blvd #203, Austin, TX 78757.

Q. IS APP EX. 11 A TRUE AND CORRECT COPY OF YOUR RESUME?

A. Yes.

Q. IS THE INFORMATION IN YOUR RÉSUMÉ AT APP EX 11 AN ACCURATE REFLECTION OF YOUR EDUCATION, PROFESSIONAL HISTORY, AND QUALIFICATIONS?

A. Yes.

Q. WHAT SUBJECTS WERE YOU ASKED TO EVALUATE FOR THIS PROCEEDING?

A. I was asked to review and comment upon the issue of water quality associated with this application and particularly the prefiled testimony presented by the protestants in this matter.

Q. WHAT PREFILED TESTIMONY DID YOU REVIEW IN THIS MATTER

A. I reviewed the prefiled testimony of William Brown and Miles Whitney.

Q. HAVE YOU FORMED AN OPINION RELATING TO THAT PREFILED TESTIMONY?

A. Yes. My opinion is that prefiled testimony puts forth no substantive evidence challenging the prima facie demonstration set forth in the administrative record as it relates to water quality and that the prefiled testimony did not otherwise provide any evidence in support

1 of an assertion that one or more provisions in the draft permit violate a specifically
2 applicable state or federal requirement as it relates to water quality.

3
4 **Q. ARE YOU PREPARED TO PROVIDE FURTHER TESTIMONY AS NECESSARY**
5 **IN THIS MATTER?**

6 **A.** Yes. If it is determined that the protestant has presented evidence that has rebutted the
7 applicant's prima facie case, I am prepared to provide further testimony on any such
8 evidence or otherwise in support of the Application as it relates to water quality.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A.** Yes, but I reserve the right to amend my testimony if additional information becomes
11 available.

Janet M. Sims

Janet.Sims@meadhunt.com • (512) 735-1001

Education

Bachelor of Science in Chemistry, The University of Texas of the Permian Basin, Odessa, Texas,
December 1980.

Professional Experience

Perkins Engineering Consultants, Inc., 2017 – present
A Mead & Hunt Company
Austin, Texas
Senior Project Manager

Perkins Engineering Consultants is a civil and environmental engineering consulting firm that specializes in water and wastewater utilities for municipalities as well as private land developers. Major responsibilities as a senior project manager are as follows:

- Prepare and assist with the processing of applications to renew, amend, or request new domestic Texas Pollutant Discharge Elimination System permits for minor and major treatment works.
- Prepare and assist with the processing of modifications to industrial pretreatment program for publicly owned treatment works to ensure compliance with federal regulations established in Title 40 Code of Federal Regulations Part 403.
- Develop technically based local limits to control industrial discharges from inhibiting biological treatment processes, causing treatment work discharges from exceeding water quality standards assigned to the receiving waters, and contaminate sludge/biosolids.
- Conduct water quality studies to establish site-specific water quality standards.

Alan Plummer Associates, Inc. 1995 - 2016
Austin, Texas 1992 - 1993
Senior Project Manager

Alan Plummer Associates is a civil and environmental engineering consulting firm that specializes in water and wastewater utilities for municipalities. Responsibilities as project manager were as follows:

- Prepared and assisted with the processing of applications to renew, amend, or request new domestic Texas Pollutant Discharge Elimination System permits for major publicly owned treatment works.
- Prepared and assisted with the processing of modifications to, and development of new industrial pretreatment programs for publicly owned treatment works to ensure compliance with federal regulations established in Title 40 Code of Federal Regulations Part 403.
- Conducted water quality studies to establish site-specific water quality standards.

City of Odessa, Environmental Control Laboratory 1984 – 1991
Odessa, Texas
Laboratory Technician/Supervisor

The City of Odessa, Environmental Control Laboratory provided analytical services for process control and compliance monitoring for two major wastewater treatment facilities and one water treatment facility. Responsibilities as laboratory technician/supervisor were to ensure analyses were conducted in accordance with EPA approved analytical methods, quality control measures for each analyses met data quality objectives prior to reporting, and results were reported accurately.

Publication Authored

There is a New Rule in Town – Let's Keep the Mercury from Rising, TexasWET Issue 5, 2017

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