

CLS - #47977

January 31, 2022

Toby Baker
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Petition for Rulemaking for Protection of Existing Pristine
Stream Segments

Dear Toby:

Please find enclosed the Petition for Rulemaking for Protection of Pristine Stream Segments from degradation caused by the discharge of treated domestic wastewater effluent. The petition is being submitted on behalf of Friends of Hondo Canyon dba as Pristine Streams Team (PST), Hill Country Alliance (HCA), Save Barton Creek Association (SBCA), Devils River Conservancy (DRC), and Texas Hill Country River Region (HCRR), three of which are 501(c)(3) charitable corporations and HCRR is a 501(c)(6) entity, all comprised of Texas citizens, riparian and other landowners, and supported by non-governmental organizations, and various individual Texans as evidenced by the signers of the enclosed document.

Petitioners propose adoption of a new “subchapter K – Protected Watersheds for Pristine Streams” (“Subchapter K”) for inclusion in Chapter 311 Watershed Protection of Title 30, Texas Administrative Code (“TAC”). The new rule prohibits TCEQ from permitting the discharge of treated domestic wastewater effluent into stream segments and their drainages that contain very low levels of Total Phosphorus, below common detectable limits, over the past ten years.

Petitioners appreciate the opportunities which have been afforded in the past several months to meet with TCEQ Water Quality Division Staff members on this matter.

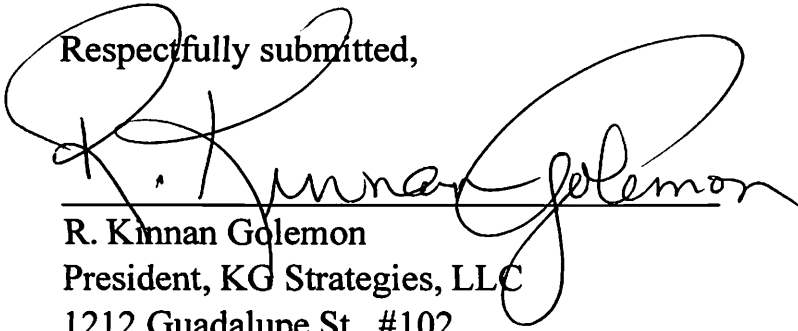
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EXECUTIVE OFFICE

We look forward to working with the Commissioners and your staff to put in place during 2022 a rule that really does conform with the “Taking Care of Texas” logo of TCEQ.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Kinnan Golemon". The signature is written in a cursive style with large, sweeping loops. A horizontal line is drawn across the signature, positioned just above the typed name below.

R. Kinnan Golemon
President, KG Strategies, LLC
1212 Guadalupe St., #102
Austin, TX 78701
512/633-9428

PETITIONERS' REPRESENTATIVE

PETITION FOR RULEMAKING	§	BEFORE THE TEXAS COMMISSION ON
	§	ENVIRONMENTAL QUALITY
BY FRIENDS OF HONDO CANYON	§	
dba PRISTINE STREAMS TEAM,	§	
HILL COUNTRY ALLIANCE,	§	
SAVE BARTON CREEK ASSOCIATION,	§	
DEVILS RIVER CONSERVANCY, TEXAS	§	
HILL COUNTRY RIVER REGION, et al.	§	
	§	
	§	
TO ADOPT NEW RULES FOR PROTECTED	§	
WATERSHEDS (“SUBCHAPTER K”)	§	
FOR PRISTINE STREAM SEGMENTS	§	
FROM DEGRADATION CAUSED BY	§	
TREATED DOMESTIC WASTEWATER	§	
EFFLUENT	§	

ORIGINAL PETITION FOR RULEMAKING

FRIENDS OF HONDO CANYON dba PRISTINE STREAMS TEAM (“PST”), Hill Country Alliance, Save Barton Creek Association, Devils River Conservancy, Texas Hill Country River Region, et al file this Original Petition for Rulemaking to the Texas Commission on Environmental Quality (“TCEQ”), requesting the Commission adopt a new rule establishing a new “Subchapter K – Protected Watersheds” (“Subchapter K”) to be included in Chapter 311 of the Texas Administrative Code (the “TAC”). The proposed Subchapter K is attached as Exhibit A. The objective of the new rules in Subchapter K is to prohibit the permitting of the discharge of treated domestic wastewater effluent to certain “stream segments” and their “drainages”, often referred to herein as “pristine streams”.

The pristine stream segments to be protected from discharge permits are those which have a demonstrated record in TCEQ data files of Total Phosphorus content below 0.06 mg/l (a common limit of detection) in 90% or more of the water quality samples collected over a ten (10) year period prior to January 1, 2022. A comprehensive list of these stream segments is set forth in Exhibit B. These stream segments deserve special protection because they naturally carry very low levels of phosphorus, below common detectable limits, and the addition of treated domestic wastewater effluent containing phosphorus in any amount or concentration will degrade the water quality. Petitioners respectfully request that the Commission consider this Petition and adopt the attached new rule. Pursuant to the provision of 30 Tex. Admin. Code (“TAC”) Section 20.15, PST respectfully shows the following:

I. THE PETITIONERS

FRIENDS OF HONDO CANYON dba PRISTINE STREAMS TEAM, HILL COUNTRY ALLIANCE (HCA), SAVE BARTON CREEK ASSOCIATION (SBCA), TEXAS HILL COUNTRY RIVER REGION (HCRR) and DEVILS RIVER CONSERVANCY (DRC) are 501(c)(3) charitable corporations comprised of Texas citizens, riparian and other landowners, and supported by non-governmental organizations and various individuals. They are joined by individual petitioners who care deeply and feel strongly about the remaining pristine streams in Texas.

The petitioners for many generations have observed that these pristine stream segments, where one can clearly see the stream bottom in standing and running water at depths of many feet, have been tourism magnets, sources of boundless recreational enjoyment and prominent engines for local, area and state economic prosperity. Characteristic of these streams is the extremely low level of Total Phosphorus that they carry. All treated domestic wastewater effluent contains Phosphorus. The discharge of such wastewater into these streams will degrade their water quality.

II. BRIEF EXPLANATION OF PROPOSED RULE

The objective of the new rules in Subchapter K is to protect “stream segments” and their “drainages” from degradation by prohibiting the discharge of treated domestic wastewater effluent. These stream segments have a demonstrated record of Total Phosphorous values of less than 0.06 mg/l (the common detectable limit) in 90% or more of the water quality samples collected over a ten (10) year period prior to January 1, 2022, based on data stored in TCEQ’s Surface Water Quality Monitoring database. The segments proposed to receive protection (often referred to herein as “pristine streams”) are the limited number of ultra-clear streams found in various parts of our State. Examples are segments of the Blanco River, Frio River, Devils River, Llano River and others. A comprehensive list of pristine stream segments meeting the Phosphorus criteria have been identified by PST and TCEQ staff and are presented in the attached Exhibit B. The proposed rule ensures that these pristine stream segments and their drainage areas will not be degraded by the discharge of treated domestic wastewater effluent.

III. TEXT OF PROPOSED RULE

Petitioners propose the adoption of a new rule to be located in a new Subchapter K of Chapter 311 Watershed Protection, Title 30 Texas Administrative Code. Petitioners propose the text of the new rule as is set forth in Exhibit A.

IV. AUTHORITY FOR THE NEW RULE

The new rule is proposed to be adopted pursuant to Section 26.011 of the Texas Water Code, which requires the Commission to administer the provisions of Chapter 26 Water Quality Control and to establish the level of quality to be maintained in, and to control the quality of, the water in this state as provided in Chapter 26. Waste discharges or impending waste discharges covered by the provisions of Chapter 26 are subject to reasonable rules adopted or issued by the Commission in the public interest.

V. INJURY OR INEQUITY RESULTING FROM FAILURE TO ADOPT PROPOSED RULE

The Real and Continual Threat of Adding Treated Domestic Wastewater Effluent to Our Pristine Streams. According to scientific literature, the addition of phosphorus-containing wastewater to streams with low phosphorus content will cause significant adverse consequences. In freshwater streams where the presence of phosphorus is undetectable, even a modest increase in phosphorus can set off a chain of undesirable biologic events, including accelerated plant growth, algae blooms, low dissolved oxygen, and the death of certain fish, invertebrates, and other aquatic animals. Low-flow pristine streams are particularly adversely affected. Treatment of domestic wastewater, even when the treatment is to the highest level of purification, cannot eliminate all phosphorus from being present in the effluent discharge. Consequently, the introduction of *any* treated domestic wastewater effluent into the low-phosphorus pristine streams listed on Exhibit B will unquestionably degrade these pristine streams, and can result in unsightly algae blooms and potential loss of aquatic life caused by the accompanying oxygen loss. Yet, some businesses, land developers and governmental entities continue to apply for treated domestic wastewater discharge permits affecting these pristine streams. TCEQ's current rules do not prohibit or discourage this, despite the problematic consequences; TCEQ's current rules instead invite this. The natural beauty of the areas where pristine streams are located make them attractive targets for development of new businesses and planned residential communities, which requires proper management of their treated domestic wastewater effluent. There is no reason to believe that efforts for such development in the pristine stream areas will abate, or that applications to discharge treated domestic wastewater effluent into pristine streams will cease unless the TCEQ takes action. As a result, the threat to pristine streams today is real and continual. The looming degradation of these pristine streams places downstream landowners and businesses at risk of adverse property and commercial impacts and diminished recreational uses of their "river front" properties.

The Reasons Why the TCEQ Should Amend its Rules to Protect Our Pristine Streams. Listed below are multiple reasons why the TCEQ should amend its rules to protect these precious pristine streams:

(i) **The Proposal is Consistent with TCEQ's Mission Statement.** TCEQ's Mission Statement is: "The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." The Proposal will protect a treasured natural resource of Texas that is at continual risk of degradation and potential elimination. Additionally, the communities in which the pristine streams are located depend on the continued pristine quality of their local streams for economic development. The measured Proposal, which balances the interests of all affected constituencies, will strengthen the economies of pristine stream communities, protect private property, promote Texas tourism, and allow for continued development in pristine stream areas in a sustainable and responsible way. By preventing the degradation of pristine streams caused by the introduction of treated domestic wastewater effluent, the Proposal plainly promotes clean water and the safe management of waste. The Proposal is fully consistent with TCEQ's Mission Statement.

(ii) **The Proposal Advances the Intent and Objectives of the TCEQ's Water Quality Monitoring Program.** Section 21.0135 of the Water Code provides: "The [TCEQ's water quality] monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities.... The data and reports shall also be used to provide sufficient information for the commission... to take appropriate action necessary to maintain and improve the quality of the state's water resources."

The Proposal advances the intent and objectives of these statutory provisions. The Proposal relies on historical TCEQ water quality monitoring data to "characterize water quality conditions," "support the permitting process," and "take appropriate action necessary to maintain and improve the quality of the state's water resources." The Proposal uses quality assured water samples from "stream segments" taken for approximately the last decade under the TCEQ's stream water quality monitoring program to determine which ones contain undetectable phosphorus. It is reasonable for the TCEQ to use its historical quality assured water sampling data to take appropriate action necessary to maintain and improve the quality of the state's water resources. Because existing TCEQ stream water sample data identifies the "stream segments" that have been shown to carry very low levels of phosphorus, and scientific literature tells us that adding more phosphorus to streams with very low and undetectable phosphorus causes degradation, the appropriate action of the TCEQ is to prohibit adding phosphorus to pristine streams and their drainages. That is exactly what the Proposal will do;

it prohibits the introduction of treated wastewater into no or low phosphorus pristine streams and their drainages because treated domestic wastewater effluent contains degrading phosphorus.

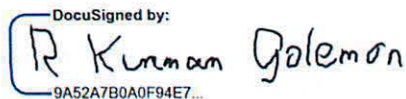
- (iii) The Proposal Will Substantially Cut TCEQ's Operating Costs by Eliminating Protracted Wastewater Discharge Permit Disputes Where Pristine Streams are Involved.** Based on TCEQ records, applications to discharge treated domestic wastewater effluent into beloved pristine streams are invariably protested. In the past, affected local landowners and businesses, as well as river and nature-lovers across the State, have routinely spent hundreds of thousands of dollars on fees for attorneys, water quality experts, and water quality reports to protest such applications. Their costs are matched or exceeded by the applicants. The TCEQ staff is forced to spend hundreds of hours to evaluate these applications and protests, not to mention incur thousands of dollars on necessary related water quality analyses, travel expense, convening and participating in local area public meetings, etc. It is estimated that a contested case costs the contestants and TCEQ at least \$500,000 each.

In the upper Nueces River Basin, where no wastewater discharge permits have yet to be issued by TCEQ, there have been three (3) contested treated domestic wastewater effluent discharge application cases recently. Two (2) of these were resolved months after filing but prior to the scheduling of a contested case hearing because the applicant, once informed of the risks to the affected stream segment, decided to pursue a non-discharge alternative. The RR417, LLC (Camp Ozark) application for discharge into Commissioners Creek, a tributary to the pristine upper Hondo Creek, on the other hand, was prosecuted up until the eve of a full-blown contested case hearing and still resulted in a zero-discharge permit. An application to discharge treated domestic wastewater effluent into a tributary to Barton Creek was contested for four (4) years before the developer recently decided to change their plans.

These treated domestic wastewater effluent applications are only a subset of all contested such wastewater discharge cases involving pristine streams. The filing of many more contested applications for treated domestic wastewater effluent discharge permits is assured unless TCEQ provides the clear and firm rule guidance proposed. The treated domestic wastewater effluent discharge permitting process should not occur in protracted and expensive judicial proceedings presided over by judges without wastewater expertise. The TCEQ process for approval of a wastewater management application should be a time- and cost-efficient regulatory process where the rules are easily understood, science-based, and protect Texas' natural resources in a manner that fairly and reasonably balances the interests of all affected constituencies. Implementing the Proposal will allow the TCEQ to deploy its limited resources on much more meritorious issues and will keep the treated domestic wastewater effluent permitting process where it properly belongs, at the TCEQ.

- (iv) **The Proposal is Consistent with TCEQ's Philosophy.** On its website, TCEQ states that it will "base decisions on the law, common sense, sound science, and fiscal responsibility." A decision to adopt the changes proposed is consistent with the statutory provisions related to the Texas Water Quality Monitoring Program. As previously discussed, the proposed changes are common sense ways to address all relevant interests related to the management of treated domestic wastewater effluent in pristine streams and their watersheds. These changes are grounded in sound science that correlates the addition of phosphorus to low phosphorus water with degradation. Adopting the changes is fiscally responsible and will eliminate the enormous costs currently associated with contested treated domestic wastewater effluent discharge cases involving pristine streams and their watersheds. Therefore, the changes are clearly in keeping with the TCEQ's philosophy.

Respectfully submitted,

DocuSigned by:

9A52A7B0A0F94E7...

Pristine Streams Team
By R. Kinnan Golemon
President, KG Strategies, LLC
1212 Guadalupe St., #102
Austin, Texas 78701
(512) 633-9428
State Bar of Texas Number 08108000

DocuSigned by:

2D8FF40851D3429...

Hill Country Alliance
Katherine Romans
1322 West Highway 290, Suite D
Dripping Springs, Texas 78620

DocuSigned by:

064BAAEC172846C...

Texas Hill Country River Region
Annabell McNew
21563 Hwy 127
Concan, Texas 78838

DocuSigned by:
Margo Denke Griffin
9F53DBD5F76C49D...

Friends of Hondo Canyon
Margo Denke Griffin
11035 FM 470
Tarpley, Texas 78883

DocuSigned by:
Brian Zabcik
AA6D639BE3B9434...

Save Barton Creek Association
Brian Zabcik
P.O. Box 5923
Austin, Texas 78763

DocuSigned by:
Julie Lewey
BB8F6EC95EF24AC...

Devils River Conservancy
Julie Lewey
201 W 5th St Suite 1300
Austin, Texas 7870

Individual Petitioners

DocuSigned by:
Ruth Bowman Russell
A3D37FC88A934FD...

Ruth Bowman Russell
615 Belknap Place
San Antonio, Texas 78212
Llano, Devils and Nueces Rivers

DocuSigned by:
Jeannie Dullnig
502EE490FA364CB...

Jeannie Dullnig
Mirasol Ranch
4 Dorchester
San Antonio, Texas 78209
Nueces River

DocuSigned by:
Marrs McLean Bowman
1880ED3D09DA4DC...

Marrs McLean Bowman
615 Belknap Place
San Antonio, Texas 78212
Llano and Nueces Rivers

DocuSigned by:
Ted Flato
3410034D9E72409...

Ted Flato
Kickapoo Ranch
210 Encino Avenue
San Antonio, Texas 78209
Nueces River

DocuSigned by:
Charles Granstaff
F1A2C8F34D014EF...

Charles Granstaff
5535 Fredericksburg Road, Suite 110
San Antonio, Texas 78229
San Saba River and Friends of the San Saba

DocuSigned by:
Gary Keller
6CEAB8CE08224F7...

Gary Wayne Keller
Browning Ranch
105 Riley Road
Austin, Texas 78746
Onion Creek

DocuSigned by:
Alice Ball Strunk
4488BF8196984C6...

Alice Ball Strunk
Hudspeth River Ranch
12459 Highway 163
Comstock, Texas 78837
Devils River

DocuSigned by:
Frank Zoch
18620A54C6E44A6...

Frank Zoch
Prade Ranch
115 W El Prado Drive
Olmos Park, Texas 78212
Frio River

DocuSigned by:
Roger W. Wallace
8AAA5284BCC44BD...

Roger W. Wallace
373 Truffle Road
Blanco, Texas 78606
Blanco River

DocuSigned by:
Ken Boester
3999E85CE375468

Ken Boester
11434 FM 2093
Fredericksburg, Texas 78624
Nueces River

DocuSigned by:
Reginald Stapper
45D32D43ADE04F4...

Reginald Stapper
550 Old Hwy 377
Junction, TX 76849
Nueces and Llano Rivers

DocuSigned by:
Ann K. Schneider
00958BD1180F47F...

Ann K. Schneider
Las Campanas Ranch
PO Box 238
Vanderpool, Texas 78885
Sabinal River

DocuSigned by:

John E. Newman, Jr.

D20CBB5028C4479...

John E. Newman, Jr.
203 Bushnell
San Antonio, Texas 78212
Sabinal River

DocuSigned by:

Scott J. Petty

A80B7FF446844E4

Scott J. Petty
1200 State Highway 173 N
Hondo, Texas 78861
Nueces River

DocuSigned by:

Paula Smith

843C823A87A94AE...

Paula Smith
Dobbs Run Ranch
3111 Windsor Road, Unit E.
Austin TX 78703
Nueces River

DocuSigned by:

Michelle Whitwell Pokorny

66333BF89BE348F

Michelle Whitwell Pokorny
Rio Lupe, LLC
701 N. Saint Marys St, #23
San Antonio, Texas 78205
Guadalupe River

DocuSigned by:

PHILIP W. LOCKE

CA9412A5263B460

Philip W. Locke
3619 Broadway St., Suite 1
San Antonio, Texas 78209-6509
210-862-6032
Frio River

DocuSigned by:

Travis Vandergriff

7E3A063C8F614C3...

Travis Vandergriff
Bullhead Creek Ranch
5730 Kenwood Ave
Dallas, Texas 75206
Nueces River

DocuSigned by:

Chris Hale

5F1464A41D7D44D...

Chris Hale
Norco Ranch
P.O. Box 5947
Austin, Texas 78469
Blanco River

DocuSigned by:

Paula Cox

091762AF85E6493...

Paula Cox
Cox Ranch
3501 Windsor Rd
Austin, Texas 78703
Frio River

DocuSigned by:

Martha Watts

D02618E0DB0F487...

Martha Watts
Eagle Nest Ranch
3841 Hackberry Road
Barksdale, Texas 78828
Nueces River

DocuSigned by:

Caroline Royall

24CC6C04C5F24C6...

Caroline Royall
2807 Deer Ledge St.
San Antonio, TX 78230
Sabinal River

DocuSigned by:
Thomas A. Harlan
6A362262DD7E4C7

Thomas A. Harlan
8800 Feather Hill Road
Austin, TX 78737
Sabinal River

DocuSigned by:
Arnold Bryce Miller
4238C77E457A460...

Arnold Bryce Miller
2708 Stratford Dr
Austin, Texas 78746
Colorado River

DocuSigned by:
Randy Nunns
DDTED0AD20BB4F1...

Randy Nunns
10108 Sunflower Lane
San Antonio, Texas 78213
Devils River

DocuSigned by:
Robert Hunt
D99E6C7DCE3D4AD...

Robert Wiley Hunt
16 Deerhurst
San Antonio, TX 78218
Guadalupe River

DocuSigned by:
W. E. Schultz
52C35D4051604E6...

W. E. Schultz
Cielo Vista Ranch
4403 Bayberry Row
San Antonio TX 78249
Frio River

DocuSigned by:

Jeff Braun

8D7C8CF08AEB4DB...

Jeff Braun
1935 Spanish Moss Drive
College Station, TX 77845
Sabinal River

DocuSigned by:

David N. Dornak

277128764DAD419...

David N. Dornak
100 Water Park Rd.
Wimberley, Texas 78676
Blanco River

DocuSigned by:

Harris Greenwood

557595C14B5E409...

Harris Greenwood
HH Ranch
4256 RR 1320
Stonewall, Texas 78671
Pedernales River

DocuSigned by:

David K. Langford

E0D1499D817D4FE...

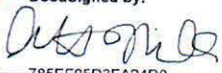
David K. Langford
The Laurels Ranch
107 Giles Ranch Road
Comfort, Texas 78013
Guadalupe River

DocuSigned by:



55E97388FBEB419...

Kathleen Drought Danysh
322 Arcadia Place
San Antonio, Texas 78209
Guadalupe River

DocuSigned by:

785EF05D3FA24D0...

Amy Hollman Miller
635 Hunters Grove Lane
Houston, TX 77024
Sabinal River

DocuSigned by:

23DD1BF88A064BD...

A. Ryland Howard
Head of the River Ranch
144 Park Hill Drive
San Antonio, Texas 78212
South Concho River

DocuSigned by:

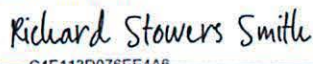
1BFBE8271E0447E...

Kathleen Lewis
OA Fisher Family Assn
P.O. Box 783
Utopia, Texas 78884
Sabinal River

DocuSigned by:

4715674D5F9B423...

Roger Gray
Sabinal Vista Ranch
P.O. Box 225
Vanderpool, Texas 78885
Sabinal River

DocuSigned by:

C4E413D076EE4A6...

Richard Stowers Smith
Stowers Ranch
625 Stowers Ranch Road
Hunt, Texas 78024
Guadalupe River

DocuSigned by:

Barbara Shelby Baetz

18DE1C71E91743F...

Barbara Shelby Baetz
1626 Milford
Houston, Texas 77006
Sabinal River

DocuSigned by:

Stuart Brown

42A2EC59157142C...

Stuart Brown
Brown Cibolo Creek Ranch
524 Upper Cibolo Creek Rd
Boerne, Texas 78006
Cibolo Creek

DocuSigned by:

Floyd McKinnerney

84625FCB9FDD46C...

Floyd McKinnerney
4R Ranch
9309 FY 462
Hondo, Texas 78861
Hondo Creek

DocuSigned by:

Rob Sandidge

63F5AD6742944A1...

Rob Sandidge
P.O. Box 50
Tarpley, Texas 78883
Hondo Creek

DocuSigned by:

Brian Weiner

C9442C1D2A36478...

Brian Weiner
Shadow Dance Ranch
8 Penny Lane
San Antonio, Texas 78209
Hondo Creek

DocuSigned by:

Jack Vexler

E256876C4D2D429

Jack Vexler
JBV Ranch
201 Charles Road
San Antonio, Texas 78209
Hondo Creek

DocuSigned by:

David Baker

026BD343C1334B5...

David Baker
Wimberley Valley Watershed Association
PO Box 2534
Wimberley, Texas 78676
Cypress Creek

DocuSigned by:

Jan Stockard Cato

DC2BB3F7261647E...

Jan Stockard Cato
Buck Hollow Ranch
15236 Heyne Ranch Road
Uvalde, Texas 78801
Frio River

DocuSigned by:

Joe Mims

8F2FE3F791C34A3...

Joe Mims
Harper Ranch
114 Legend Hollow
Boerne, Texas 78006
Sabinal River

DocuSigned by:

Betsy Urban

47DE5671F810415...

Betsy Urban
HFH Investments
P.O. Box 930
Buda, Texas 78610
Onion Creek

DocuSigned by:

Marla Maudlin

E034BE0BC3B64F2

Marla Maudlin
6 Maudlin Circle
Kemah, Texas 77565
Sabinal River

DocuSigned by:

Amy Pfluger

1C966B41642E411...

Amy Pfluger
700 Springs Ranch
P.O. Box 6719
San Antonio, TX 78209
Llano River

DocuSigned by:

Catherine Flato

E4D720542B72494...

Catherine C. Flato
Kickapoo Ranch
210 Encino Avenue
San Antonio, Texas 78209
Nueces River

DocuSigned by:

John W. Sone

E00F987F62594BC...

John W. Sone
Sone Ranch
604 W. Pecan Dr.
Johnson City, Texas 78636
Nueces River

DocuSigned by:

Hayden Blake Stanford

4777DD2056C1422...

Hayden Blake Stanford
CS Lazy C Ranch
177 Thompson Road
Utopia, Texas 78884
Sabinal River

DocuSigned by:
Reed Burns
85E6615D324645E...

Reed Burns
Charro Ranch
3716 Meredith St.
Austin, Texas 78703
Onion Creek

DocuSigned by:
Jeff Shaw
79E4EC5CA0A5438...

Jeff Shaw
100 Commons Road, Suite 715
Dripping Springs, Texas 78620
Onion Creek and Protect Our Water

DocuSigned by:
Bill Irwin Neiman
A3CC8583AD284A5...

Bill Irwin Neiman
4111 North US Highway 377
Junction, Texas 76849
Llano River and Llano River Watershed Alliance

DocuSigned by:
Monty Ramage
F74EDF7EBB1C4C6...

Monty Ramage
Camp Ben McCulloch
180 Misti Lane
Driftwood, Texas 78619
Onion Creek

EXHIBIT A

Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 311	WATERSHED PROTECTION
SUBCHAPTER K	PROTECTED WATERSHEDS

RULE 311.1 Definitions

The following words and terms, when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Classified segment" means any water body or a portion of a water body identified in Appendices A and C of 30 T.A.C. Section 307.10 as it existed on [January 1, 2023].

(2) "Drainage area" means every unclassified water body, if any, that drains to a stream segment to which this Subchapter applies.

(3) "Protected Watershed" means a stream segment and its drainage area.

(4) "Stream segment" means a stream, creek, or river, or a portion of a stream, creek, or river, that is a classified segment to which this Subchapter applies.

(5) "Unclassified water body" means a water body other than a classified segment.

RULE 311.2 Applicability

This Subchapter applies to:

(1) any stream segment, other than a stream segment that is located directly beneath a lake, pond or impounded reservoir, that on [January 1, 2023] has had:

(A) at least 10 water quality samples taken from the stream segment over the 10 calendar years preceding January 1, 2020; and

(B) according to data in the commission's Surface Water Quality Monitoring Information System, a total phosphorus level below .06 milligrams per liter in 90 percent or more of all water quality samples taken from the stream segment taken over the 10 calendar years preceding January 1, 2020; and

(2) the drainage area of any stream segment that meets the requirements of Subdivision (1).

A list of all stream segments found by the commission to satisfy the requirements of Subdivision (1) is set forth in Appendix A of this Rule.

EXHIBIT A

RULE 311.3 Prohibition on Direct Discharge; Exceptions

(a) After the effective date of this Rule the commission shall not issue a new permit authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed.

(b) This Rule does not affect the authority of the commission to issue:

- (1) an individual permit for a municipal separate storm sewer system; or
- (2) a general permit for stormwater and associated non-stormwater discharges.

(c) This Rule applies only to an application for a permit that is submitted to the commission on or after the effective date of this Rule. An application for a permit that was submitted to the commission before the effective date of this Rule is governed by the law and commission rules in effect at the time the application was filed.

(d) After the effective date of this Rule the commission may not grant:

(1) any amendment to a permit in effect before the effective date of this Rule authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed if such amendment would authorize any increase in the amount of direct discharge; or

(2) any amendment to an initial permit granted after the effective date of this rule pursuant to an application filed before the effective date of this Rule and authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed if such amendment would authorize any increase in the amount of direct discharge.

RULE 311.4 Required Use of Texas Land Application Permits, Chapter 210 Authorizations and Other Zero Discharge Alternatives

(a) In instances where a new permit authorizing the direct discharge from a domestic wastewater treatment facility of any waste, effluent, or pollutants into a protected watershed is prohibited by Rule 311.3, the only permit or authorization obtainable by an applicant from the commission authorizing the disposal of such waste, effluent or pollutants shall be a Texas Land Application Permit, one or more reuse authorizations under Chapter 210 of Title 30 of the Texas Administrative Code, and/or an alternative zero discharge method for wastewater disposal acceptable to the commission.

EXHIBIT B

0224	Red River Basin	North Fork Red River	89.7	miles
1250	Brazos River Basin	South Fork San Gabriel River	41.26	miles
1251	Brazos River Basin	North Fork San Gabriel River	41.77	miles
1415	Colorado River Basin	Llano River	241.94	miles
1424	Colorado River Basin	Middle Concho/South Concho River	77.76	miles
1427	Colorado River Basin	Onion Creek	78.65	miles
1430	Colorado River Basin	Barton Creek	39.50	miles
1809	Guadalupe River Basin	Lower Blanco River	13.35	miles
1813	Guadalupe River Basin	Upper Blanco River	75.97	miles
1815	Guadalupe River Basin	Cypress Creek	15.71	miles
1816	Guadalupe River Basin	Johnson Creek	24.76	miles
1817	Guadalupe River Basin	North Fork Guadalupe River	28.16	miles
1818	Guadalupe River Basin	South Fork Guadalupe River	28.13	miles
1905	San Antonio River Basin	Medina River above Medina Lake	33.84	miles
2111	Nueces River Basin	Upper Sabinal River	45.69	miles
2112	Nueces River Basin	Upper Nueces River	126.70	miles
2113	Nueces River Basin	Upper Frio River	47.22	miles
2114	Nueces River Basin	Hondo Creek	80.15	miles
2115	Nueces River Basin	Seco Creek	74.11	miles
2309	Rio Grande Basin	Devils River	73.66	miles
2310	Rio Grande Basin	Lower Pecos River	85.79	miles
2313	Rio Grande Basin	San Felipe Creek	9.20	miles
22 Segments			1373.02	miles