IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

AQUA TEXAS, INC.,	§	
	§	
Plaintiff	§	
	§	
v.	§	Civil Action No. 1:23-cv-01576-RP
	§	
HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT and BRUCE MOULTON, LINDA KAYE ROGERS, DAVID SMITH, CARLOS TORRES-VERDIN, and DOC JONES, each in their official capacities as DIRECTORS OF THE HAYES TRINITY GROUNDWATER CONSERVATION DISTRICT	§	
	§	
Defendants	§	

TESPA'S OPPOSED MOTION TO INTERVENE

Mark Twain famously observed, "whiskey is for drinking, water is for fighting."

And here we are, before this Court now sits a case that, if relief is granted as Plaintiff seeks, potentially will render meaningless the State of Texas' many decades of efforts including a state constitutional amendment to protect and manage finite water resources for the benefit of all in this State.

OVERVIEW

1. The Trinity Edwards Springs Protection Association, "TESPA," a group of citizens largely residing around Wimberley, Hays County, Texas, moves to intervene to protect their water resources, which are private property. Plaintiff opposes this motion, Defendants do not. TESPA members are aligned with Defendant Hays Trinity Groundwater Conservation District, the "District," in seeking to protect and manage groundwater. TESPA members are adverse to Aqua Texas, Inc., "ATI," whose requested relief would allow ATI to take TESPA members' water, which is a justiciable issue, but which is not a right held by the District. So, TESPA members

need to be a party to protect these privately held interests threatened by ATI, which is related to, but separate from the interests of the District in this case.

2. ATI violated the District's rules to protect groundwater in its jurisdiction, during a period of extreme drought conditions. ATI now seeks to have the Court render invalid the District's power to protect the groundwater for the benefit of all who depend on it.

3. To be very clear, some of ATI's arguments and requested relief potentially have state-wide consequences. If allowed to intervene, TESPA will not seek any damages for its members, only seek a declaratory judgment that the District remains empowered to protect the water resources it oversees, and to protect the water rights on which so many depend, especially during extreme droughts.

4. If ATI prevails in its requested relief to neuter groundwater protection laws and allow it unlimited pumping of groundwater, *i.e.* revert the common law "rule of capture," the readily foreseeable outcome is depletion of water upon which we depend for drinking, cooking, and cleaning, also wiping out water for wildlife, recreation, and businesses that depend on the groundwater flows to the creeks, streams, and rivers. To be very clear, ATI is arguing for a return to the common law rule of capture without saying the words "rule of capture" out loud. Indeed, ATI cites the very case, the 120-year-old-case, that adopted the common law rule of capture in Texas as applied to groundwater, while ignoring the key holding by the Supreme Court of Texas in *Edwards Aquifer v. Day*, 369 S.W.3d 814 (Tex. 2012) that groundwater districts have the authority to regulate groundwater production. (Dkt. 1, ATI's Original Complaint ¶ 45, citing, *Houston & T.C. Ry. Co. v. East*, 81 S.W. 279 (Tex. 1904)).

5. Both the District and TESPA oppose ATI's requested relief, but TESPA members – not the District – face the distinct personal harm for potential loss of water rights if ATI convinces the

Court to invalidate groundwater protection laws. So TESPA needs to be a party to protect its members' privately held interests, which are threatened by ATI.

6. TESPA filed an administrative complaint over ATI's violations with the PUC, which oversees ATI's operations as a for-profit utility seeking relief for its members that are Aqua's customers. ATI told the PUC that TESPA's complaints there overlap with issues in this case. ATI then argued that the PUC should abate TESPA's complaint in the PUC and instead require those issues to be litigated in this court. See, Exhibit 1. Thus, TESPA seeks to intervene and would adjudicate the issues in this forum *as ATI argued it should*. TESPA members impacted by ATI's requested relief must be afforded an opportunity to petition the government for redress of their grievances. ATI told TESPA members to come to this Court, we are here, and request to be heard.

SUMMARY OF ARGUMENT

7. Rule 24(a)(2) grants intervention of right to persons whose protected interests "may as a practical matter" be threatened in litigation, if existing parties "may" not protect them. Rule 24(b) allows permissive intervention at the Court's discretion, requiring only common questions of fact or law, respecting the possibility of undue delay or prejudice to original parties.

8. If ATI wipes out the regulatory framework that protects groundwater, the potential impact of its over-pumping poses the risk of, at a minimum, the loss of groundwater, which is private property under Texas law, and at worst outright failure of home water wells going dry, as well as Cypress Creek, which is an economic artery flowing through the Wimberley area which feeds economic activity in the area. The District may not adequately protect these private property interests, especially in light of ATI's demands for large damages and the District's limited funding.

FACTS

9. In deciding whether to grant intervention, the court takes movant's allegations as true. *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (internal citation omitted).

ATI expressly agreed on the need for the District to adopt and enforce rules to protect groundwater in the region surrounding Jacob's Well, here at issue.

10. Since time immemorial, Jacob's Well reliably has channeled groundwater to the surface, which then flows into Cypress Creek, which flows through Wimberley, and upon which local businesses are built. Jacob's Well creates a unique environment and destination recreational site, Jacob's Well Natural Area. The Creek likewise provides important and beautiful habitat. Both significantly contribute to the Hill Country economy.

11. In 2000, for the first time in recorded history, Jacob's Well Spring stopped flowing. Then in an ominous foreshadowing of over-pumping of the aquifer, it again stopped flowing in 2008, 2009, 2011, and 2013.

12. In 2018, the District convened a stakeholder group to protect Jacob's Well water flows. The stakeholder group met fifteen times. [1] Both TESPA and ATI representatives participated in this effort to formulate new protective rules, which led the District to develop the JWGMZ. Established under the Water Code, Chapter 36, to protect groundwater as mandated by the Constitution, the District operates in the same legal framework as other GCDs. (Dkt. 15, ¶ 5)

13. ATI agreed with all others to recommend: (1) establishing the JWGMZ; (2) Jacob's Well Spring flow be used as a trigger regarding when to curtail pumping; and (3) no new drilling permits be issued in the Middle Trinity aquifer - none for existing permittees, including ATI, to drill new

[1] The group included 8 landowners, business leaders, developers, 2 water utility executives, 6 community leaders, 4 government officials, 5 environmentalists, and 10 experts on key issues.

wells in that area. The District followed these recommendations to develop its rules for drought management.

14. Unanimously – including ATI and TESPA – the stakeholder group reached consensus on key matters. Their report to the public confirmed agreements "***that Jacob's Well and Cypress Creek flowing permanently is of central importance to all in Wimberley Valley and is a core ideal of this effort,"*** and that "[t]he economic health of the Wimberley Valley and our property values depend on clean, healthy water and aquifers. Sustainability of our water sources is essential and our goal is to protect the health of those systems."

15. ATI likewise joined in concluding: "despite existing drought management programs at the District and at the water suppliers, spring flow during drought months is not being protected sufficiently. Water usage goes up at precisely the worst possible time -- and the most critical time to protect spring flow. This data underscores the need to take new measures and make them count." ATI made no objection when the new rules came before the District's board for adoption.

Starting in 2022, ATI knowingly violated pumping limit rules that it agreed are needed, and committed "waste" (in the legal sense) millions of gallons of water.

16. Facing the historic drought beginning in 2022, Jacob's Well Spring ceased to flow for more than 230 days in 2022-23. Cypress Creek ran dry. The drought reached Stage 3 ("Critical"), then went to Stage 4 ("Emergency") levels, as aquifers were depleted. Following the rules developed with ATI's support, the District issued curtailments in the JWGMZ in February 2022, then district-wide in May 2022, with critical and emergency stages lasting into 2024. (Dkt. 15, ¶¶ 38-39)

17. ATI ignored the rules and its own reports confirmed over-pumping of its permit, *by over 160 million gallons in 2022-23, of which more than 100 million over-pumped gallons came from the JWGCZ.* (*Id.* ¶¶ 41-42) Also, according to its own reporting, ATI's water transmission pipes

at various times leaked 18.29% to 27.64% of the water carried, which constitutes "waste" of groundwater. (Dkt. 15, ¶ 50) *see,* TEX. WATER CODE § 36.001(8). As evidence of a contumacious mindset, others reported ATI's repeated discharge of sewage and partially treated wastewater into Cypress Creek. (*Id.* ¶¶ 51-57) On information and belief, ATI's release of raw sewage and also partially treated sewage into Cypress Creek triggered emergency response orders from TCEQ under the Clean Water Act

LEGAL FRAMEWORK APPLIED TO FACTS

The Texas Constitution and the Water Code, Chapter 36, empower the District to limit pumping to protect groundwater, especially during drought.

18. For more than a century, the "Conservation Amendment" to the Texas Constitution, art. 16, § 59, has mandated legislative action for groundwater protection, stating in part:

> "The conservation and development of all of the natural resources of this State ... are each and all hereby declared to be public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto."

19. To fulfill this mandate, the Legislature – supported by the Supreme Court – enacted Chapter 36 of the Water Code. Under Chapter 36, (*e.g.*, §§ 36.1071(a & f), 36.108, 36.113, 36.115 & 36.116(a)(2)(A)), the District – and other GCDs – require non-exempt users to obtain permits that limit pumping, including special rules during times of drought. "[O]ne purpose of groundwater regulation is to afford each owner of water in a common, subsurface reservoir a 'fair share,'" which establishes property rights, subject to regulation. *Edwards Aquifer v. Day*, 369 S.W.3d 814, 840 (Tex. 2012))("*Day*"); *accord, e.g., Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 145 (Tex. App.—San Antonio 2013, pet. denied)("*Bragg*").

20. Neither ATI nor anyone else within a GCD's jurisdiction has a right to pump unlimited amounts of water. *See e.g.,* TEX. WATER CODE § 36.002(b)(1)(ownership "does not entitle a landowner … to the right to capture a specific amount of groundwater below the surface" and §

36.002(d)(2) (ownership "does not … affect the ability of a district to regulate groundwater"); *see also, Day,* 369 S.W.3d at 820 & n.19 (proportionate reduction used for Edwards Aquifer).

21. ATI's Complaint, (Dkt. 1, ¶ 45) cites the rule of capture from *Houston & Texas Central Railway Co. v. East*, 98 Tex. 146, 81 S.W. 279 (1904) ("*East*"), but omits a critical subsequent development. After *East*, Texas citizens took action to pass a constitutional mandate for conservation. As explained in *Sipriano v. Great Spring Waters of America, Inc.*, 1 S.W.3d 75, 76-77 (Tex. 1999)

> After droughts in 1910 and 1917, the citizens of Texas voted in August 1917 to enact section 59 of article 16 of the Texas Constitution, which placed the *duty* to preserve Texas's natural resources on the State ….

See also *Day,* 369 S.W.3d at 831 & n. 96 ("groundwater "*must* be conserved under the Constitution")(Court's emphasis). Since then, the Supreme Court consistently has "recognized the Legislature's broad powers to regulate use, even within the common-law tort framework established by the rule of capture." *Sipriano,* 1 S.W.3d at 78; *see also Day,* 369 S.W.3d at 828 & n.70 (following *Sipriano*, "[t]he right to capture [is] not unfettered; it [allows] legislative regulation, which [the Supreme Court] expressly recognized and encouraged").

22. The Legislature repeatedly has exercised its "broad powers to regulate use of groundwater" using GCDs. *Sipriano,* 1 S.W.3d at 79 & nn. 34-35; *accord, e.g., Day,* 329 S.W.3d at 833-34. As "the state's preferred method of groundwater management," GCDs have "broad statutory authority …," *Day,* 329 S.W.3d at 834, and indeed "are the *only* method presently available" . *id., citing,* Chief Justice Hecht's concurrence in *Sipriano,* 1 S.W.3d at 81 (emphasis added.) This is still true.

23. GCDs "*must* … 'manage total groundwater production on a long-term basis to achieve an applicable desired future condition,' *considering estimates of groundwater availability*." *Day,* 329 S.W.3d at 835 (quoting the Water Code, emphasis added). GCD authority specifically includes

power to "'regulate … groundwater by … *setting production limits on wells …'*." *Id.* (quoting the Water Code, emphasis added). The Court recognizes GCDs are not required to "preserve historic or existing use before the effective date of [GCD] rules." *Id.* at 835-36.

24. The crushing and unrelenting demand for water brings with it the constitutional mandate for effective protection of water, even as the population has grown, and droughts persist. "In many areas of [Texas, groundwater] demand exceeds supply. Regulation is essential to its conservation and use." *Id*. at 840; *accord, e.g., Bragg,* 421 S.W.3d at 144-45.

ATI's extreme positions, if granted, pose grave threats to water security to TESPA members, and the public statewide.

25. The reason TESPA should be a party rather than merely submitting amicus briefs is the members TESPA represents face direct threats from some of the potential legal conclusions ATI requests of this Court, stated for example in the following paragraphs of ATI's complaint:

> 39. "Chapter 36 of the Texas Water Code does not authorize the Hays Trinity GCD to impose a moratorium on permitting new wells, nor does the District's enabling legislation."
>
> 42. "As a result of the [District's] unlawful permitting moratorium, the Defendants have arbitrarily refused to allow Aqua Texas the right to use and enjoy its vested ownership rights in groundwater, and with no reasonable justification…."
>
> 45. "Aqua Texas owns 18 acres of real property located in Hays County, Texas. Under Texas law, Aqua Texas owns the groundwater beneath the property and is entitled to drill for and produce the groundwater for beneficial use. An unbroken line of Texas cases extending back well over a century plainly and repeatedly state that a landowner owns the groundwater percolating beneath the surface. First announced by the Texas Supreme Court in *Houston & T.C. Ry. Co. v. East*, 81 S.W. 279 (Tex. 1904)...."
>
> 47. "These groundwater ownership rights are further confirmed by the District's governing statute — Chapter 36 of the Texas Water Code. Section 36.002 clearly sets out that a landowner "owns the groundwater below the surface of the landowner's land as real property."
>
> 48. "As a groundwater rights owner, Aqua Texas is entitled to produce the groundwater beneath its property, and any denial of such right amounts to confiscation. *Marrs v. R.R. Comm'n*, 177 S.W.2d 941 (Tex. 1944). Because groundwater is a landowner's property, any

order, regulation, or act that takes, damages, or destroys that property right without compensation is *prohibited* by the Fifth Amendment to the United States Constitution and by Section 17 of Article 1 of the Texas Constitution. *See Marrs*, 177 S.W.2d at 949."

49. "Aqua Texas has a vested right to ownership and use of the water beneath its property. It applied for permits to drill two wells from the 18-acre tract of land it purchased in furtherance of its conservation efforts. After Aqua Texas purchased the land, and then drilled test wells under the District's permitting process, the District prohibited Aqua from putting those new wells into production by instituting a permitting moratorium on new wells. The Defendants' moratorium on permitting new wells prevents Aqua Texas from using its private property for the intended purpose and, therefore, constitutes a taking of Aqua Texas's private property without compensation.

Responses to ATI's Dangerous Positions

26. ATI's reliance on ***East*** is a telling revelation of its unspoken goal – to have this Court invalidate decades of groundwater protection statutes and even a constitutional amendment and return areas under protection of GCD's to a pure rule of capture for groundwater. If TESPA is allowed to intervene, it will submit briefing to the Court demonstrating that through a series of actions, the Legislature and citizens have already put an end to the arguments advanced by ATI.

27. ATI seeks to direct attention away from the critical issue. No one disputes that ATI – and TESPA Members, and all landowners – have property rights to groundwater. The critical issue is whether ATI can disregard the District's lawful exercise of authority – which ATI previously agreed exists – to manage the resource to preserve rights for all groundwater owners. ATI is silent on this question of its requests on other's rights to groundwater.

28. Were the Court to so hold as ATI's demands, there is no limit to the number of new wells that can put straws into the aquifer, ever reducing the amount available for those with already existing wells on which they depend – in an area already experiencing severe demands on water availability. Then once more straws are into the pool of groundwater, ATI wants the Court to order there is no authority of the State to limit the amount of water a well owner can pump. With ATI's requested holdings, all water well owners could pump unlimited amounts of water but, as a

practical matter, that significantly benefits only commercial pumpers like ATI. Citizens in this area could lose the habitability of their homes and become unable to operate their businesses, in addition to devastating effects on the environment.

29. The critical fact ATI ignores is that water in this aquifer is not a stagnant, isolated pool that stops at fence lines like oil trapped in a shale formation. This aquifer is a highly dynamic underground flowing river. Were the Court to confer ATI's corporate wish list upon it, the unlimited water it will pump out into its leaky distribution system is water it is taking from others just as pumping from a river in one point is taking water that would otherwise flow downside for others to use. Just as the City of Austin does not have unlimited rights to drain the Colorado River, ATI does not have unlimited rights to drain the aquifers the State has empowered the District to protect.

30. If granted leave, TESPA will submit more thorough briefing on this, the core issue presented.

TESPA SEEKS DECLARATORY RELIEF ALIGNED WITH THE DISTRICT

31. TESPA seeks to intervene aligned with the District to defeat ATI's claims, and to support the District's counterclaims to compel ATI to follow established District rules. For this, TESPA seeks no relief broader than the District seeks. *See, Newby v. Enron Corp*., 443 F.3d 416, 422 (5th Cir. 2006)(intervention of right), *followed, U.S. ex rel Hernandez v. Team Fin., L.L.C.,* 80 F.4th 571, 576 (5th Cir. 2023) (permissive intervention).

32. Under the Water Code § 36.119(h) and common law, TESPA also would present a counterclaim to protect property rights of its affected members, to their "fair share" of groundwater, against over-pumping by ATI. As the Supreme Court has recognized (see, *e.g.*, *Friendswood, supra, Day, supra, Barshop, supra* & *Sipriano, supra*), Chapter 36, implementing

the Conservation Amendment, in important ways limits or overrules the rule of capture. *See also, e.g.,* TEX. WATER CODE § 36.002(c)(private right of action to sue party drilling without a permit or operating any well in violation of a GCD rule). As then-Justice, now Governor Abbott wrote in *Barshop,* 925 S.W.2d at 623, "the State has the responsibility under the Texas Constitution to preserve and conserve water resources for the benefit of all Texans."

33. TESPA requests the Court enjoin ATI from pumping other than in strict compliance with a District-issued permit including the permit limits and conditions to comply with the District's drought management plan. If the Court finds the District lacks authority to regulate any such well(s) to protect affected members, TESPA requests the Court enjoin ATI from pumping more water than needed for its own "reasonable use," as defined in *Sipriano*. 1 S.W.3d at 75 ("imposing liability on landowners who 'unreasonably' use groundwater to their neighbors' detriment"). *See also, e.g.,* TEX. CIV. PRAC. & REM. CODE § 5.001 (common law must be consistent with the Texas Constitution and statutes).

34. To whatever extent this claim exceeds relief sought by the District, TESPA has standing, because "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* 600 U.S. 181, 199 (2023), *accord, Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440. 447 (Tex. 1993). TESPA's affected members have standing to protect their property rights to a "fair share" of water (just as ATI itself claims), TESPA's mission clearly encompass rights it seeks to protect here, and no individuals are needed to present the defenses and seek the requested injunctive relief.

ARGUMENT

35. TESPA seeks to intervene of right and permissive intervention. FED. R. CIV. P. 24(a & b).

Timeliness

36. Timeliness is determined by consideration of the *Stallworth* factors. *Rotstain v. Mendez*, 986 F.3d 931, 937 (5th Cir. 2021), citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-66 (5th Cir. 1977); *Adam Joseph Res. v. CAN Metals Ltd.*, 919 F.3d 856, 865 (5th Cir. 2019).

> Factor 1. The length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene.
>
> Factor 2. The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case.
>
> Factor 3. The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied.
>
> Factor 4. The existence of unusual circumstances militating either for or against a determination that the application is timely.

Stallworth, 558 F.2d at 264-66. These factors "structure" the analysis, no one factor is necessarily dispositive. *Id.* at 264; *see also Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 279 (2022) ("[t]imeliness is to be determined from all the circumstances") (citation omitted); *John Doe No. 1 v. Glickman*, 256 F.3d 371, 375-76 (5th Cir. 2001)(not all factors must favor intervention, they set a "framework and 'not a formula'") (citations omitted). Here, all factors support TESPA.

37. Factor (1) supports TESPA, which seeks to intervene at the start of this case. After filing, the parties agreed to an extension for the District's answer deadline until April 30, 2024 (Dkt. 2), to attempt settlement (Dkt. 5, ¶ 1). During this time, which included mediation (Dkt. 6, ¶ 3), to seek to intervene would have been premature, and there might have been no need to intervene if

ATI settled. Thus, TESPA seeks to intervene promptly after it learned its interests exist, and promptly after it learned of ATI's arguments to abate TESPA's PUC case against ATI.

38. Factor (2) supports TESPA, because it focuses on prejudice that might arise "as a result of the would-be intervenor's failure to apply" when it should have known of its interest. *See also, e.g., Adam Joseph Res.,* 919 F.3d at 865 ("'prejudice must be measured by the delay in seeking intervention, not the inconvenience to the existing parties of allowing the intervenor to participate in the litigation'") (citation omitted). With this early motion, no such prejudice exists.

39. For factor (3), TESPA's "burden to show that its interests are not adequately protected is '*minimal*' and 'satisfied if the applicant shows that representation of his interest '*may* be' inadequate.'" *Rotstain,* 986 F.3d at 939, *following Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972) ("burden … minimal"). This supports intervention because TESPA interests and incentives differ significantly from the District. The District recognizes it "must balance" such interests of numerous persons. (Dkt. 15, ¶6), but TESPA's affected members personally lose critical property rights and face other personal and economic costs, which may largely destroy their businesses and habitability of their homes.

40. Considering factor (4), this case is unusual given its immense importance to, literally, the water of life. If ATI as a practical matter compels the District to back down, even in part, TESPA's affected members and many others, and fauna and flora reliant on groundwater from Jacob's Well and in Cypress Creek face significant threats.

Federal Rule 24(a)(2) provides for intervention of right.

41. TESPA seeks to intervene as of right under Rule 24(a)(2), which "'is to be liberally construed.'" *La Union,* 29 F.4th at 305 (citation omitted). TESPA must meet four requirements:

(1) the application for intervention must be timely (which it is, discussed above);

(2) the applicant must have an interest relating to the property or transaction which is the subject of the action;

(3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and]

(4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Id. (citations omitted). "Federal courts should allow intervention 'where no one would be hurt and the greater justice could be attained.'" *Id.* (citations omitted). This reflects "'our broad policy favoring intervention'" and "the intervenor's minimal burden.'" *Id.* (citation omitted).

42. TESPA's interest relating to the property or transaction that is the subject of the action "must be "a 'direct, substantial, legally protectable interest ….'" *La Union*, 29 F.4th at 305 (citations omitted). "Property interests are the quintessential rights Rule 24(a) protects …." *Id.* "[A] 'legally protectable interest' does not mean the interest must be 'legally *enforceable*': 'an interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim.'" *Id.* (citation omitted).

43. TESPA affected members have property rights to groundwater as discussed above, just like ATI. TESPA affected members also include persons with economic interests in businesses that depend on the outflow of Jacob's Well to create flows in Cypress Creek . *See, e.g., Sierra Club v. Glickman*, 82 F.3d 106, 109 (5th Cir. 1996) (*per curiam*) (non-profit intervenor asserted farmers' business interests in pumping from Edwards Aquifer); *Sierra Club v. Espy,* 18 F.3d 1202, 1207 (5th Cir. 1994) (non-profit intervenor asserted timber buyers' business interests). These include, for example, owners of the Wimberley Inn, the Lodge at Cypress Falls, Community Pizza, and Creekhaven Inn. Additional affected members include landowners along Cypress Creek, with "property rights" statutorily protected under Water Code § 11.142 and 30 T.A.C. 297.21. The

stakeholder group in which ATI participated – and in which ATI supported recommendations underlying the District's rules now at issue, premised the need for the JWGCZ and rules in part on economic effects of diminished flow at Jacob's Well Spring. Cases such as *Espy* and *Glickman*, confirm that non-profits like TESPA can assert these rights on behalf of their members.

44. Moreover, "environmental plaintiffs adequately allege injury in fact when they aver that they use [] affected areas and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 182 (2000)(citations omitted).

45. TESPA and two members also have protected interests due to their pending administrative action, *Complaint of [TESPA], Brent Pully, and Dean Eichelberger v. ATI Texas, Inc.*, PUC Docket 56481 (filed 4/9/24). Moving for dismissal (filed 5/13/24), ATI argues TESPA and its members "cannot use [the District's] threats against ATI as a basis for relief at the Commission, when those very threats by [the District] are presently being challenged in federal court," *i.e.*, here.

46. ATI asked the PUC to "abate [that proceeding] pending resolution of [this] federal court litigation" (filed 6/7/24). ATI reiterated to the PUC "that the very issues [TESPA and its members] bring before the PUC cannot be disentangled from the federal court suit," *i.e.*, this case. Thus, TESPA appears here as insisted by ATI.

47. Insofar as ATI seeks to use the results of this case in the PUC proceeding, in its most recent PUC filing (7/24/24) it erroneously asserts that Chapter 36 "flatly prohibits [the District] from denying [ATI] all access to its groundwater via a permit moratorium." Such a misconstruction of Chapter 36, which *would bar all GCDs from taking essential action during emergencies caused by drought* would eviscerate the regulatory structure. Manifestly, TESPA has direct interests to prevent a potentially catastrophic decision. The Fifth Circuit has recognized such practical effects

of *stare decisis* can constitute protected interests. *Atlantis Dev. Corp. v. U.S.*, 379 F.2d 818, 829 (5th Cir. 1976).

48. With respect to the "impairment requirement," TESPA "need only show that if [it] cannot intervene, there is a *possibility* that [its] interest could be impaired or impeded" by the disposition of the action. *La Union*, 29 F.4th at 307 (emphasis added, citation omitted). The focus is "practical" and "does not demand that [TESPA affected members] be bound by a possible future judgment." *Adam Joseph Res.*, 919 F.3d at 867 (citations omitted). As shown above, if ATI prevails, TESPA members face much more than a "possibility" that these interests "could be impaired or impeded."

49. In *La Union*, 209 F.4th at 307, the Fifth Circuit found the impairment requirement met because – if the trial court granted relief – committees seeking to intervene in an election matter would "have to expend resources," and rights previously granted to committee members of "could be taken away if the plaintiffs [there] prevail." This supports intervention for TESPA, which would need to expend more resources for environmental protection, and even more for its affected members, who would need to expend resources to cover their losses.

50. With respect to "inadequacy-of-representation," the "requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich*, 404 U.S. at 538 n.10. As discussed concerning timeliness, the District's litigation strategy "may be" inadequate to protect TESPA and its members, because of significant differences in interests and incentives.

51. The Fifth Circuit recognizes, in disputes over environmental rules, non-profits affectedby a regulation can meet the "minimal burden" to show members' interests "may" not be protected because of balancing, that is, "government must represent the broad public interest, not just the economic concerns of" any one side. *Espy*, 18 F.3d at 1208; *followed in, e.g. Glickman*,

82 F.3d at 381. Other courts agree. *E.g.*, *Kane County v. U.S.*, 928 F.3d 877, 894 (10th Cir. 2019) (pro-environment group sought maximum protection, whereas government had a broader range of interests, including competing policy, economic, political, legal, and environmental factors; also government must consider internal interests such as allocation of resources); *American Farm Bureau Federation v. E.P.A.*, 278 F.R.D. 98, 110-11 (M.D. Pa. 2011) (no adequate protection because EPA was subject to political pressures that might not align with intervenor interests, was required to represent broad and potentially conflicting interests and so might not adequately represent specific, parochial intervenor interests, might not resolve the action through litigation, but harm intervenor interests in settlement, and might not appeal an adverse decision).

Federal Rule 24(b)(1)(B) provides for permissive intervention.

52. Federal Rule 24(b)(1)(B) sets a low threshold for permissive intervention: "On timely motion, the court may permit anyone to intervene who: … (B) has a claim or defense that shares with the main action a common question of law or fact. …" With this met, permissive intervention is discretionary. *NOPSI v. United Gas Pipe Line Co.*, 732 F.2d 452, 470–71 (5th Cir. 1984); *Newby*, 443 F.3d at 424 (citation omitted). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3). [2] TESPA's motion is timely as discussed above, and TESPA has no objection to the current scheduling order. (Dkt. ¶ 18)

53. Courts have granted permissive intervention in similar cases. *E.g.*, *Georgia Aquarium v. Pritzker*, 309 F.R.D. 680, 691 (N.D. Ga. 2014) (Aquarium challenged agency denial of permit to

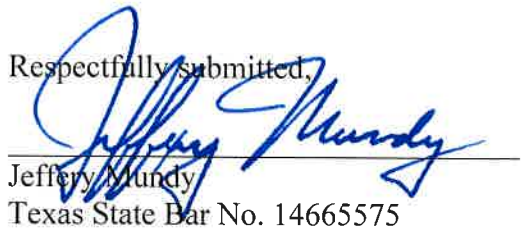
[2] Rule 24(b) "dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *Sec. & Exch. Comm'n v. U.S. Realty & Imp. Co.*, 310 U.S. 434, 459 (1940); *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975), *cert. denied*, 426 U.S. 925 (1976); *see also id.* ("intervenor-by-permission does not even have to be a person who would have been a proper party ...") (citations omitted).

import whales; environmental groups approved to intervene because they had submitted comments and had substantial programmatic, conservation, aesthetic, and economic interests to oppose the permit); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110-11 (9th Cir. 2002) (road advocates challenged agency rule requiring roadless areas; intervention was affirmed because, "though intervenors [did] not have a direct interest in the government rulemaking, they have asserted an interest in the use and enjoyment of roadless lands, and in the conservation of roadless lands, in the national forest lands subject to the Roadless Rule, and they assert 'defenses' of the government rulemaking that squarely respond to the challenges made by plaintiffs"), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011); *Wilderness Soc. v. Wisely*, 524 F.Supp.2d 1285, 1294 (D. Colo. 2007) (environmental groups challenged agency allowing oil/gas leases; permissive intervention allowed for private lessee because, "[r]egardless of how they may be conceived and described, [the lessee] possesses interests in leases …, and matters relating to the legality of the decision … resulted in the sale of those leases clearly share common questions of law and fact with the Plaintiffs' claims"). Here, TEPSA members rely on Jacob's Well Protected Water and JWGCZ groundwater, in which they possess significant economic and environmental interests; TESPA submitted comments supporting JWGCZ rules; and TESPA will squarely defend the District's decisions and present claims sharing common questions of law and fact with ATI's claims.

CONCLUSION

54. ATI's claims pose real and significant threats for TESPA's members. For their protection, and to protect the Chapter 36 framework, TESPA asks the Court to grant intervention under both Rules 24(a)(2) & (b)(1)(B).

Respectfully submitted,



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Certificate of Conference

I certify that, on July 31, 2024, I conferred with Ryan Greene, who represents Aqua Texas, Inc., who stated that ATI opposes TESPA's Opposed Motion to Intervene.

I further certify that, on July 29, 2024, I conferred with Deborah Trejo, who represents all Defendants in this action, who stated that Defendants do not oppose TESPA's Opposed Motion to Intervene.

Jeffery Mundy

Certificate of Service

I certify that on August 1, 2024, I served a copy of TESPA's Opposed Motion to Intervene by the Electronic Case Filing System to all counsel of record.

Jeffery Mundy

EXHIBIT 1

DOCKET NO. 56481

COMPLAINT OF TRINITY EDWARDS SPRINGS PROTECTION ASSOCIATION, BRENT PULLEY, AND DEAN EICHELBERGER AGAINST AQUA TEXAS, INC.	**§**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

AQUA TEXAS, INC.'S REPLY TO COMPLAINANTS' RESPONSE TO ORDER NO. 5

Aqua Texas, Inc. (Aqua) files this Reply to Complainants' Response to Order No. 5 (Complainants' Response) in the above captioned docket. This response is timely filed within five working days of receipt of the pleading to which the response is made.[1] Aqua shows as follows.

I. INTRODUCTION

Complainants introduce their Response to Order No. 5 by presenting a biased and one-sided account of the events that precipitated the federal court litigation between Aqua and the Hays Trinity Groundwater Conservation District (HTGCD or the District).[2] This introduction is ironic, as it plainly demonstrates that the very issues Complainants bring before the PUC cannot be disentangled from the federal court suit, despite Complainants' protestations to the contrary.

At its core, Aqua's federal case is about a biased regulator weaponizing its regulatory power against a party it has deemed undesirable. HTGCD blatantly discriminated against Aqua in violation of Aqua's property, due process, and equal protection rights. Aqua invested over $2 million in land and water rights to drill two new water supply wells. Under settled Texas law, groundwater is property that belongs to the landowner, and a groundwater district is strictly prohibited from denying a landowner the ability to use and enjoy its groundwater rights. After Aqua Texas notified the District of its intent to drill two new wells the District hurriedly adopted a rule to retroactively prevent Aqua from using them. This action unlawfully took Aqua's

[1] 16 TEX. ADMIN. CODE § 22.78
[2] Complainants' Response to Order No. 5 (July 19, 2024) (Complainants' Response).

groundwater rights without the payment of just compensation, in violation of both the U.S. and Texas Constitutions.

After depriving Aqua of its ability to develop a new source of supply for its customers, the District then fined Aqua almost a half million dollars for producing more groundwater than it was permitted to produce. The District thus simultaneously (1) prevented Aqua from obtaining new water supply and (2) fined the company for not having enough water supply. Underscoring the animus solely directed at Aqua, the District then forgave all fines for other water suppliers that "overproduced" their permits once they provided evidence of money spent toward water conservation, but the District refused to apply the same policy to Aqua.

Having prevented Aqua from developing its new supply wells, and then fining Aqua in a blatantly discriminatory manner, the District next threatened to not renew Aqua's permit if it did not pay the illegal fine of almost half a million dollars. Aqua responded by filing suit against the District and its Directors in their official capacity, seeking damages and injunctive relief for an unconstitutional taking of Aqua Texas's property, violations of equal protection and due process rights, and actions taken in excess of the District's statutory authority.

Importantly, the District has filed counterclaims against Aqua that invoke many of the same baseless allegations Complainants have made against Aqua here and which Aqua denies. But rather than waiting for the outcome of Aqua's federal court litigation with the District, Complainants filed this action with the PUC in a direct and transparent attempt to influence the outcome of Aqua's federal litigation. Complainants have consistently failed to present any claim distinct from those being litigated in the federal court suit, and their Response to Order No. 5 is no exception.

II. MOTION TO DISMISS

Complainants begin their Response to Order No. 5 by reiterating previously stated arguments advocating the dismissal of Aqua's Motion to Dismiss.[3] As Complainants present no new arguments beyond those previously asserted and given that Order No. 5 did not request additional briefing on Aqua's Motion to Dismiss, Aqua respectfully directs the ALJ to its prior filings in this Docket in support of its Motion to Dismiss.

III. ABATEMENT IS APPROPRIATE BECAUSE COMPLAINANTS DO NOT RAISE A SINGLE ISSUE NOT BEING ADDRESSED IN FEDERAL COURT

Complainants contend abatement is inappropriate because Complainants raise issues distinct from Aqua's federal lawsuit, but once again fail to cite a single issue in support of that proposition. Additionally, as Aqua describes below, Complainants most recent arguments are grounded in fundamental misunderstandings about Texas law concerning the authority of groundwater conservation districts to regulate groundwater production, ownership of groundwater, and certificate of convenience and necessity (CCN) regulation.

First, Complainants assert, "Aqua filed a lawsuit to substantially limit the District's authority to regulate groundwater."[4] Apart from being blatantly misleading, this statement is legally unsound. It is the Texas Legislature, not Aqua, that defines and limits the authority of groundwater conservation districts to regulate groundwater. HTGCD is a creature of statute limited to the powers expressly conferred by the legislature. The scope of any such district's power is measured by the terms of the statutes which authorize its creation, and it can "exercise no authority that has not been clearly granted by the legislature."[5] Aqua's lawsuit was not filed to

[3] Complainants' Response at 2.
[4] Complainants' Response at 7.
[5] *Tri-City Fresh Water Supply Dist. No. 2 of Harris Cnty. v. Mann*, 135 Tex. 280, 285, 142 S.W.2d 945, 948 (1940).

limit HTGCD's authority. Rather Aqua filed its lawsuit to ensure that HTGCD operates *within* its legislatively defined authority, an authority it has repeatedly and blatantly exceeded.

Further, nothing in Chapter 36 of the Water Code gives HTGCD authority to completely deny Aqua access to its groundwater. In fact, the legislature strictly forbade such actions in line with well-established Texas legal precedent.[6] Aqua *owns* the groundwater below its 18 acres of newly purchased land in Hays County as real property, and Aqua is legally entitled to drill for and produce it. While the Texas Water Code gives HTGCD measured authority to *limit* the amount of groundwater Aqua may produce, it flatly prohibits HTGCD from denying Aqua all access to its groundwater via a permit moratorium.[7] Thus, despite Complainants' repeated protestations, the *amount* of water Aqua was legally entitled to produce within the HTGCD's boundaries, is, and always has been, a primary issue being litigated in federal court.

Complainants reason that while Aqua's claims are related to "the volume of Aqua's water supply," the lawsuit will not address whether Aqua's water supply is sufficient to provide adequate and continuous service.[8] This circular reasoning lacks clarity and fails to explain how this Commission could determine Aqua's water supply was insufficient, without first establishing the amount of water Aqua is entitled to produce within the HTGCD. The fact remains that the two issues are plainly and inextricably tied together. There is no basis for determining that Aqua lacks sufficient water to provide continuous and adequate service without first determining whether it has an adequate *amount* of water to do so.

Then, in a disappointing and disingenuous attempt to influence this Commission with incomplete and misleading information, Complainants contend abatement is inappropriate because

[6] TEX. WATER CODE § 36.002(a)-(b); *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814, 831-832 (Tex. 2012).
[7] *See* TEX. WATER CODE § 36.002(c) ("Nothing in this code shall be construed as granting the authority to deprive or divest a landowner … of the groundwater ownership and rights described by this section.").
[8] Complainants' Response at 5.

Aqua *admits* it lacks a sufficient supply of water.[9] To support this contention, Complainants rely on a statement conveniently plucked from a broader communication which Complainants cite, but notably fail to include in their attached Exhibit 1. Specifically, Complainants refer to an email sent by Aqua President Craig Blanchette on January 26, 2024, where he states, "*Aqua pumped groundwater beyond permitted limits*," as evidence of Aqua's supposed admission.[10]

To address this unfounded claim, Aqua readily acknowledges that it produced more than its *permitted* amount of water during the period of drought curtailment. However, Aqua vehemently disputes that the amount of water permitted by HTGCD complies with Texas law, and this dispute is a central tenet of its federal court suit. Moreover, Aqua has always maintained ownership of and provided a sufficient supply of water to service its customers. Complainants have repeatedly failed to cite any instance of substantial service disruption, lack of pressure, or water shortages that would support the contention that Aqua lacks sufficient water to provide continuous and adequate service.

Furthermore, the email referenced by Complainants, in which they claim Aqua admits it lacks a sufficient water supply, actually states the opposite. When read in its entirety the email's intent is to reassure customers that Aqua possesses an adequate supply of water and that customers "can expect your water service to continue normally while Aqua Texas seeks a legal solution with the Hays Trinity Groundwater Conservation District." To provide the necessary context and fully address Complainants' assertion, Aqua has included the referenced email in its entirety.[11]

Complainants next contend that available records indicate Aqua is responsible for "egregious line losses" and "failed to promptly repair its infrastructure."[12] Aqua disputes this

[9] Complainants' Response at 4.
[10] *Id*.
[11] **Exhibit A**, Email from Aqua President Craig Blanchette to Customer (Jan. 26, 2024).
[12] Complainant's Response at 4.

contention on numerous grounds, but must once again reiterate, HTGCD's counterclaims in the federal court lawsuit *directly address* line loss and the maintenance of Aqua's infrastructure. HTGCD contends, via counterclaim in federal court, that Aqua has permitted "significant line losses," allegedly violating the District's rules against groundwater waste.[13] Thus, HTGCD has expressly made Aqua's line loss a central issue to be resolved in federal court, making abatement pending the resolution of these factual allegations both appropriate and prudent.

IV. THE PUC HAS AUTHORITY TO ABATE THIS PROCEEDING

Complainants erroneously rely on a strictly judicial doctrine concerning abatement to argue the PUC lacks authority to abate this proceeding.[14] Complainants state that the PUC regulates CCN holders, and Aqua does not contend otherwise as it relates to specific matters. However, the "primary jurisdiction doctrine" Complainants reference, poses no barrier to the PUC's authority to abate. The PUC routinely abates proceedings for a litany of reasons, including ongoing settlement discussions, resolution of litigation, and the completion of necessary regulatory or permitting processes.[15] Similarly, SOAH Administrative Law Judges (ALJ) have ordered stays of proceedings pending the outcome of interim order appeals to the full Commission.[16]

---

[13] Case No. 1:23-cv-01576; *Aqua Texas, Inc. v. Hays Trinity Groundwater Conservation District and Bruce Moulton, Linda Kaye Rogers, David Smith, Carlos Torres-Verdin, and Dock Jones, each in their official capacities as Directors of the Hays Trinity Groundwater Conservation District*; in the United States District Court, Western District of Texas, Counter-Plaintiff's Original Counterclaims (June 10, 2024) at ¶50-¶58.

[14] Complainants' Response at 6.

[15] *See* Appeal of M.E.N. Water Supply Corporation, Angus Water Supply Corporation, Chatfield Water Supply Corporation, Corbet Water Supply Corporation and the City of Kerens for Review of a Decision by the City of Corsicana to Set Wholesale Water Rates (Docket No. 43931) (Order No. 11 continuing abatement to allow the completion of appellate litigation in a related case); *See also* Petition of Sharyland Water Supply Corporation for Cease and Desist Order Against City of Edinburgh (Docket No. 44206- Commission Staff's Response to Order No. 2 and Support of Abatement);

[16] *Application of Undine Development, LLC for System Improvement Charges*, PUC Docket No. 53109, SOAH Docket No. 473-22-05848.WS, SOAH Order No. 15 Certifying Issues to the Public Utility Commission at 4 (Feb. 13, 2023) (certifying issues to the Commission and abating proceeding pending resolution of those certified issues).

In contrast, the "primary jurisdiction doctrine" is applied when a *court* seeks to determine whether an administrative agency has primary jurisdiction.[17] If the action is inherently judicial, the court retains jurisdiction to determine the controversy unless the legislature, by valid statute, has expressly granted exclusive jurisdiction to the administrative agency.[18] Here, no party to the federal court litigation requested the court abate the lawsuit to allow an agency to make any initial determinations. Thus, it is unclear how Complainants think a plainly judicial doctrine is applicable here.

In their final argument against abatement, Complainants attempt to convince the Commission to take immediate action because Aqua "plans to increase its customers in the CCN 13254 Service Area."[19] Apart from being entirely irrelevant as to whether Aqua is presently able to provide continuous and adequate service, this claim reflects a fundamental misunderstanding by Complainants of the relationship between a CCN holder like Aqua and the landowners and developers who choose to build homes or live within its boundaries.

To clarify, the "Offering Memorandum" cited by Complainants is in no way affiliated with Aqua, and Aqua has no plans to increase its customers in CCN 13254. As a CCN holder, Aqua has a state law duty to serve every customer within the boundaries of its CCN, and Aqua cannot deny, discontinue, reduce, or impair retail water or sewer service to customers who move within its boundaries.[20] Simply put, Aqua has no control over the number of customers it serves within its CCN, as state law explicitly mandates that Aqua must provide service to all eligible customers.

Moreover, the so-called "new" development referenced by Complainants as evidence of an insidious plan by Aqua to increase water consumption within CCN 13254 was platted and

[17] *See Amarillo Oil Co. v. Energy–Agri Prods., Inc.,* 794 S.W.2d 20, 26 (Tex.1990).
[18] *In re Cano Petroleum, Inc*., 277 S.W.3d 470, 473 (Tex. App. 2009).
[19] Complainants' Response at 7.
[20] TEX. WATER CODE § 13.250.

recorded in the Hays County records in 1972 and 1978.[21] In other words, the County approved the development of this subdivision *50 years ago*. This is not a new initiative but rather a recent effort by the landowner to attract a developer to complete a buildout that has been planned for more than half a century, long before the dispute between Aqua and the HTGCD existed.

Complainants' claims are solely grounded in issues currently being litigated in that federal court litigation, and entirely contingent on the hypothetical that Aqua will fail to prevail in its lawsuit against the District. Therefore, Aqua supports abatement of this matter pending resolution of the matters being litigated in federal court.

II. CONCLUSION

For the reasons set forth herein and in Aqua's prior briefing, Aqua respectfully requests the Commission grant Aqua's motion to dismiss the Complaint or, alternatively, Aqua's request for abatement of this matter pending resolution of the matters being litigated in federal court discussed herein.

[21] *See* **Exhibit B** - Woodcreek Plats for Section 8 (recorded Jul. 24, 1972) and Section 25 (recorded Feb. 27, 1978).

Respectfully submitted,

By: 

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Ryan D.V. Greene
State Bar No. 24012730
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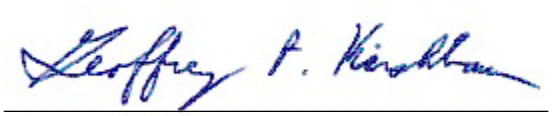
ATTORNEYS FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 24, 2024, in accordance with the Orders Suspending Rules issued in Project No. 50664.



Geoffrey P. Kirshbaum

EXHIBIT

A

From: Blanchette, Craig L
To: Garret Nick
Subject: RE: [EXTERNAL] Groundwater Laws
Date: Friday, January 26, 2024 2:33:10 PM

Good afternoon.

Thank you for your email and your concern regarding water service in Wimberley Valley. We share your desire for conservation and sustainable solutions for the region's water issues, and do not intend to jeopardize water availability for you. If you are a customer, you can expect your water service to continue normally while Aqua Texas seeks a legal solution with the Hays Trinity Groundwater Conservation District (HTGCD).

We believe you may have received inaccurate information regarding our service and the details of our lawsuit against the HTGCD.

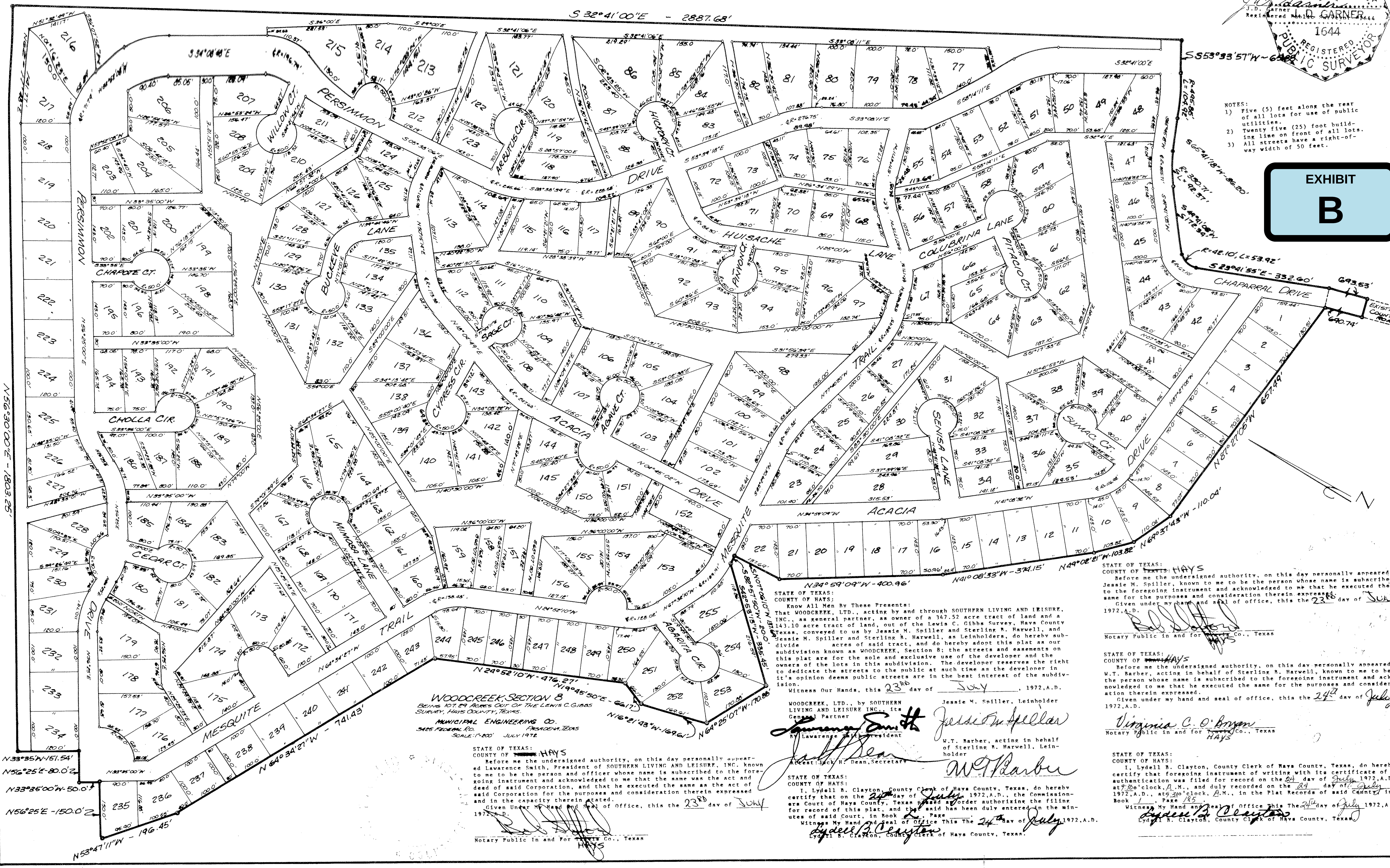
Simply put, Aqua pumped groundwater beyond permitted limits to meet water demand and was subsequently fined at levels that significantly exceed legal limits as set by the State of Texas. When Aqua contested these fines, as did other water utilities, Aqua's fines were not waived while other utilities' fines were waived. The reasons the HTGCD gave for fine forgiveness were demonstrated conservation efforts and infrastructure investments. Aqua demonstrated their long-standing commitment to conservation as well as millions of dollars of investment, exceeding all other utility investments combined. Yet, Aqua's fines were not waived under the same conditions.

Further, Aqua's attempts to seek groundwater sources outside of the Jacob's Well Groundwater Management Zone have been purposefully blocked by the HTGCD. They have withheld permits that would allow Aqua to pump and source water from newly drilled wells, alleviating impact on Jacob's Well. The HTGCD has not provided a sufficient answer as to why they would prevent Aqua from actively pursuing a solution to HTGCD's position that Aqua is negatively impacting Jacob's Well.

Aqua Texas had been in negotiations with the HTGCD for months to address the fine and water sourcing solutions. Rather than seeking compromise and solving the root concerns, the HTGCD has preferred to deploy a public relations campaign filled with misinformation to negatively impact Aqua's reputation and standing with the community. It would appear the HTGCD is more interested in funding the District through fines than seeking real water solutions for the residents of Wimberley Valley. These are the reasons why Aqua is fighting back.

For more information on this situation, please visit our website at www.aquawater.com/htgcd.php.

77730



EXHIBIT

B

WOODCREEK, SECTION 8

BEING 107.29 ACRES OUT OF THE LEWIS C. GIBBS SURVEY, HAYS COUNTY, TEXAS.

MUNICIPAL ENGINEERING CO.

3425 FEDERAL RD. PASADENA, TEXAS

SCALE: 1"=200' JULY 1972

I, J.D. Garner, a Registered Public Surveyor of the State of Texas, hereby certify that this plat represents WOODCREEK, Section 8 as staked on the ground.

J.D. Garner

J.D. Garner
Registered Public Surveyor #1644

STATE OF TEXAS
J.D. GARNER
1644
REGISTERED
PUBLIC SURVEYOR

NOTES:
1) Five (5) feet along the rear of all lots for use of public utilities.
2) Twenty five (25) foot building line on front of all lots.
3) All streets have a right-of-way width of 50 feet.

STATE OF TEXAS:
COUNTY OF HAYS:
Know All Men By These Presents:
That WOODCREEK, LTD., acting by and through SOUTHERN LIVING AND LEISURE, INC., as general partner, as owner of a 347.52 acre tract of land and a 143.10 acre tract of land, out of the Lewis C. Gibbs Survey, Hays County Texas, conveyed to us by Jessie M. Spiller and Sterling B. Harwell, and Jessie M. Spiller and Sterling B. Harwell, as Leinholders, do hereby subdivide acres of said tract, and do hereby adopt this plat as our subdivision known as WOODCREEK, Section 8; the streets and easements on this plat are for the sole and exclusive use of the developer and the owners of the lots in this subdivision. The developer reserves the right to dedicate the streets to the public at such time as the developer in it's opinion deems public streets are in the best interest of the subdivision.
Witness Our Hands, this 23RD day of JULY, 1972, A.D.

WOODCREEK, LTD., by SOUTHERN LIVING AND LEISURE INC., its General Partner

Lawarence Smith

By Lawarence Smith, President

Jack H. Dean

Attest: Jack H. Dean, Secretary

Jessie M. Spiller, Leinholder

Jessie M. Spiller

W.T. Barber, acting in behalf of Sterling B. Harwell, Leinholder

W.T. Barber

STATE OF TEXAS:
COUNTY OF HAYS
Before me the undersigned authority, on this day personally appeared Lawarence Smith, President of SOUTHERN LIVING AND LEISURE, INC. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act and deed of said Corporation, and that he executed the same as the act of said Corporation for the purposes and consideration therein expressed and in the capacity therein stated.
Given Under My Hand and Seal of Office, this the 23RD day of JULY 1972, A.D.

Notary Public In and For ~~Travis~~ HAYS Co., Texas

STATE OF TEXAS:
COUNTY OF HAYS:
I, Lydell B. Clayton, County Clerk of Hays County, Texas, do hereby certify that on the 24th day of July, 1972, A.D., the Commissioners Court of Hays County, Texas passed an order authorizing the filing for record of this plat, and that said has been duly entered in the minutes of said Court, in Book 2, Page ____.
Witness My Hand and Seal of Office This The 24th day of July 1972, A.D.

Lydell B. Clayton

Lydell B. Clayton, County Clerk of Hays County, Texas.

STATE OF TEXAS:
COUNTY OF ~~TRAVIS~~: HAYS
Before me the undersigned authority, on this day personally appeared Jessie M. Spiller, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.
Given under my hand and seal of office, this the 23RD day of JULY 1972, A.D.

Notary Public in and for ~~Travis~~ HAYS Co., Texas

STATE OF TEXAS:
COUNTY OF ~~TRAVIS~~ HAYS
Before me the undersigned authority, on this day personally appeared W.T. Barber, acting in behalf of Sterling B. Harwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.
Given under my hand and seal of office, this the 24th day of July 1972, A.D.

Virginia C. O'Bryan

Notary Public in and for ~~Travis~~ HAYS Co., Texas

STATE OF TEXAS:
COUNTY OF HAYS:
I, Lydell B. Clayton, County Clerk of Hays County, Texas, do hereby certify that foregoing instrument of writing with its certificate of authentication was filed for record on the 24 day of July 1972, A.D. at 9:30 o'clock, A.M., and duly recorded on the 24 day of July 1972, A.D., at 9:30 o'clock, A.M., in the Plat Records of said County, in Book 1, Page 185.
Witness My Hand and Seal of Office This The 24th day of July 1972, A.D.

Lydell B. Clayton

Lydell B. Clayton, County Clerk of Hays County, Texas.

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Vol. 2 pg12

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:

That we, Lawrence C. Smith and H.A. Sansom, President and Secretary, respectively of WOODCREEK RESORT, INC., a corporation of the State of Texas, owner of the property subdivided in the above and foregoing map of WOODCREEK, SECTION 25, do hereby make subdivision of said property for und on behalf of Woodcreek Resort, Inc. according to the lines, streets, lots, alleys, parks, building lines, and easements hereon shown and designate said subdivision as WOODCREEK, SECTION 25, located in the George Overland Survey, No. 67 and the Louis Gibbs Survey, No. 62, Hays County, Texas.

WOODCREEK RESORT, INC.

Lawrence C. Smith — Lawrence C. Smith, President
H.A. Sansom — H.A. Sansom, Secretary

Before me, the undersigned authority, on this day personally appeared Lawrence C. Smith, President and H.A. Sansom, Secretary, known to me to be the person whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein and herein set out, as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20th day of FeB 1978

Carolyn J. Sopanske
Notary Public in and for Hays County, Texas
My commission expires on Mar 31, 1979

I, J.D. Garner, a Registered Public Surveyor of the State of Texas, do hereby certify that this plat correctly represents a plat of Woodcreek Section 25.

STATE OF TEXAS — J. D. GARNER — 1644 — REGISTERED PUBLIC SURVEYOR

J.D. Garner
J.D. Garner, Registered Public Surveyor #1644

STATE OF TEXAS
COUNTY OF HAYS

I, Lydell B. Clayton, County Clerk of Hays County, Texas, certify that on the 27 day of February 1978 the Commissioners Court of Hays County, Texas, passed an order authorizing the filing for record of this plat and the said order has been duly entered in the minutes of said court in Book 2, Page ____.

Witness my hand and seal of office this the 20 day of March, 1978.

Lydell B. Clayton
Lydell B. Clayton
County Clerk, Hays County, Texas

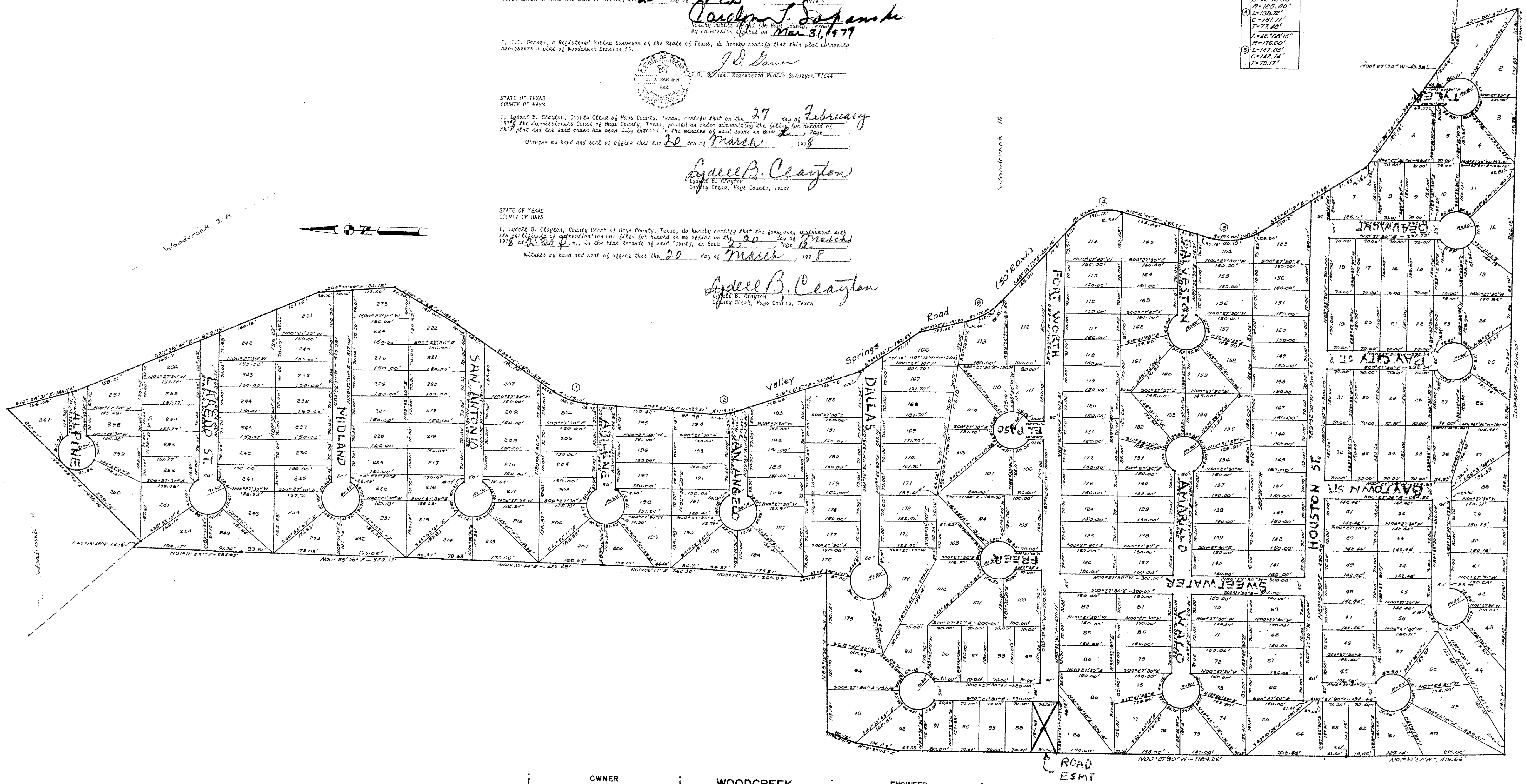
STATE OF TEXAS
COUNTY OF HAYS

I, Lydell B. Clayton, County Clerk of Hays County, Texas, do hereby certify that the foregoing instrument with its certificate of authentication was filed for record in my office on the 20 day of March 1978 at 2:30 P.m., in the Plat Records of said County, in Book 2, Page 12.

Witness my hand and seal of office this the 20 day of March, 1978.

Lydell B. Clayton
Lydell B. Clayton
County Clerk, Hays County, Texas

CURVE NO.	CURVE DATA
1	Δ=30°21'07" R=175.00' L=92.71' C=91.62' T=47.47'
2	Δ=23°16'03" R=175.00' L=71.07' C=70.58' T=36.03'
3	Δ=33°40'30" R=175.00' L=102.86' C=101.38' T=52.96'
4	Δ=63°35'06" R=125.00' L=138.72' C=131.71' T=77.48'
5	Δ=48°08'13" R=175.00' L=147.03' C=142.74' T=78.17'



OWNER
WOODCREEK RESORT, INC.
LAWRENCE C. SMITH PRESIDENT
H. A. SANSOM SECRETARY

WOODCREEK SECTION 25

A 83.828 ACRE TRACT OUT OF THE GEORGE OVERLAND SURVEY A-67 AND THE LOUIS GIBBS SURVEY A-62 HAYS COUNTY, TEXAS.

150 100 75 50 25 0 50 100 150
SCALE: 1"=100'   FEBRUARY 1978

ENGINEER
MUNICIPAL ENGINEERING CO.
3425 FEDERAL ROAD
PASADENA, TEXAS 77504
PHONE 941-8988

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AQUA TEXAS, INC.,	§	
	§	
Plaintiff	§	
	§	
v.	§	Civil Action No. 1:23-cv-01576-RP
	§	
HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT and BRUCE MOULTON, LINDA KAYE ROGERS, DAVID SMITH, CARLOS TORRES-VERDIN, and DOC JONES, each in their official capacities as DIRECTORS OF THE HAYES TRINITY GROUNDWATER CONSERVATION DISTRICT	§	
	§	
Defendants	§	

O R D E R

It is hereby Ordered that TESPA's Motion to Intervene is GRANTED pursuant to Federal Rules of Civil Procedure 24(a)(2) and 24(b)(1)(B).

Date: _____, 2024

_____
Hon. Robert L. Pitman