SOAH DOCKET NO. 957-18-4985

APPLICATION OF ELECTRO PURIFICATION, LLC, FOR WELL MODIFICATION AUTHORIZATION AND PRODUCTION PERMIT	**§ § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROTESTANTS' MOTION FOR SUMMARY DISPOSITION

Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website.

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE ("ALJ"):

Come now, the Trinity Edwards Springs Protection Association ("TESPA"), Hays County, Donald F. Wood and pro se landowners (collectively, "Protestants"), and file this Motion for Summary Disposition pursuant to 1 TAC § 155.505 and respectfully ask the ALJ to remand Electro Purification LLC's ("EP") application and draft permit to the Barton Springs Edwards Aquifer Conservation District (the "District" or "BSEACD") with the recommendation to deny the application because the ALJ finds that approval of the application would:

(1) circumvent the Protestants' express right to participate in the administrative process for permit amendments in violation of the District's own rules and the Protestants' constitutional right to due process; and

(2) violate the District's regulatory requirement that the applicant demonstrate non-speculative demand with actual plans and intent to use the water within the near term.

There is no genuine issue as to any material fact based on the uncontroverted evidence in the record.[1] TESPA and the pro se landowners are entitled to a decision in their favor as a matter of law because the draft permit, if approved, would be invalid and illegal.

[1] *Texas Alcoholic Beverage Comm'n, Petitioner v. Joe Angel Gomez d/b/a Game on Sports Bar and Grill, Respondent*, 2017 WL 1425654, at *3 (noting the standard for summary disposition).

I.
INTRODUCTION

TESPA is a Texas non-profit corporation that was created to: (1) protect the Trinity and Edwards aquifers from over-pumping; (2) protect cherished springs like Jacob's Well that are interconnected with the aquifers; and (3) protect property rights of landowners who depend on and desire to ensure availability of this critical natural resource. TESPA's membership is comprised of hundreds of residents and property owners throughout Central Texas.[2] More than 100 TESPA members own water wells within two miles of the proposed EP well field and many more within five miles.[3] Modeling demonstrates that this area will experience a significant drop in water levels due to the vast pumping contemplated by the draft permit.[4] Don Wood is less than a quarter-mile from the proposed well-field and the District projects the water level in his well to drop nearly five-hundred feet—far below the current depth of his pump—within the first year of pumping the full permitted volume.[5] The Protestants are being forced to defend their property rights and their livelihoods. Hays County is being forced to fight to protect its water supplies for future residential and commercial growth which is being severely threatened by this single permit application.[6]

On July 13, 2017, EP applied for a Production Permit from the District to pump an unprecedented 912,500,000 gallons of groundwater per year, or 2.5 million gallons per day ("MGD"), out of the Middle Trinity Aquifer from wells located on the Odell and Bridges properties—a volume in excess of **3x** the largest existing permit issued by the District in the Trinity Aquifer.[7]

---

[2] Affidavit of Vanessa Puig-Williams, ¶3, attached as Exhibit A.
[3] *Id.* at ¶4.
[4] TESPA Prefiled Testimony James Beach Ex. 810.
[5] GM Prefiled Testimony Brian Smith Ex. 9 at p. 4, Table 4.
[6] Hays County Prefiled Testimony Commissioner Lon Shell at p. 3:3-9 (all citations to testimony will be in the format "p. [page]:[line number]").
[7] Spreadsheet of production permits with volumes, attached as Exhibit B; *See also* Exhibit A, Affidavit of Vanessa Puig-Williams, ¶5.

On May 21, 2018, the General Manager (the "GM") issued her Statement of Position regarding EP's application and recommended the District issue a permit on the following predetermined graduated production schedule:

- Phase I 500,000 gallons per day (0.5 MGD) = 182,500,000 gallons per year
- Phase II 1,000,000 gallons per day (1.0 MGD) = 365,000,000 gallons per year
- Phase III 1,500,000 gallons per day (1.5 MGD) = 547,500,000 gallons per year
- Phase IV 2,000,000 gallons per day (2.0 MGD) = 730,000,000 gallons per year[8]
- Phase V 2,500,000 gallons per day (2.5 MGD) = 912,500,000 gallons per year

The District has never previously considered a phased volume Production Permit.[9] The draft permit authorizes EP to produce 0.5 MGD until subsequent production phases are approved. The GM would unilaterally consider authorization of additional phases and decide whether EP can increase its groundwater production to the much larger volume of water at each subsequent phase.[10] In its current form, the draft permit violates the District's own rules which expressly afford affected persons the right to participate in the administrative process for groundwater applicants seeking to substantially increase production volumes[11] and the Protestants' due process rights under the federal and Texas Constitutions.

The applicant must also show that the requested pumpage volume demonstrates "reasonable non-speculative demand" with actual plans and intent to use the water within the near term.[12] The totality of EP's evidence affirmatively shows, however, that EP does not have actual plans or an intent to use the water within the near term. Such a demonstration is expressly required

[8] The original draft permit only had four phases: .5 MGD; 1.0 MGD; 1.5 MGD; and 2.5 MGD. On May 30, 2019, however, the GM revised the draft permit to add the additional phase of 2,000,000 gallons per day. The revised draft permit was submitted into the record as GM Prefiled Testimony Ex. Escobar 4, attached as Exhibit C.
[9] GM Vanessa Escobar Prefiled Testimony at p. 43:23-44:1.
[10] Exhibit C, GM Prefiled Testimony Ex. Escobar 4, Revised Special Conditions, pp. 3 and 12.
[11] *See* District Rules 3-1.6(C) and 3-1.9(A), attached as Exhibit D.
[12] Exhibit D, District Rules 3-1.6(A)(2) and 3-1.4(A)(8)(c); "Barton Springs / Edwards Aquifer Conservation District Management Plan" (adopted Sept. 28, 2017), p. 20-21. https://bseacd.org/uploads/MGMTPLAN.TWDBApproved112117_reduced.pdf (the "District Management Plan"), excerpt attached as Exhibit E.

by the District's rules.[13] EP's sole evidence of use for this unprecedented volume of water is a single contract for sale of water to Goforth Special Utility District ("Goforth"), an entity whose current contracted supplies—not including water under the contested permit—will last through **at least the next 30 years** based on its own projected demand.[14]

No genuine issue of material fact exists as to whether the draft permit if issued violates TESPA's right to due process or whether the proposed production is dedicated to a reasonable non-speculative demand. TESPA is entitled to a decision as a matter of law as to these fatal defects in the draft permit.[15]

II.
THE DRAFT PERMIT IS INVALID AS A MATTER OF LAW

A. The phased structure of the permit violates the District's own rules related to Major Amendments and due process.

After reviewing the aquifer test data and modeling, the GM determined that the proposed pumping of 2.5 MGD of groundwater results in "substantial drawdown in the Cow Creek [formation] and possibly inducing drawdown in the overlying Lower Glen Rose [formation]."[16] Recognizing the anticipated substantial drawdown, the GM concluded that EP's proposed production of 2.5 MGD "has the potential to cause unreasonable impacts to existing wells,"[17] including the hundreds of wells within the modeled impact zone that depend on the Cow Creek and Lower Glen Rose. Rather than recommending denial of the permit or approval of a reduced production volume that the best available science demonstrates avoids anticipated unreasonable

[13] *See* Exhibit D, District Rules 3-1.6(A)(2) and 3-1.4(A)(8)(c); Exhibit E, District Management Plan at 21; Hays County Stefan Schuster Prefiled Testimony 7:8-23.
[14] Hays County Stefan Schuster Prefiled Testimony Ex. 2D, Letter from Goforth engineer Neal R. Goedrich to Jaime Burke, June 22, 2017 (the "June 22nd Letter"), attached as Exhibit F; Hays County Stefan Schuster Prefiled Testimony Ex. 2H, District Table of "Goforth Water Supplies/Demand", attached as Exhibit G.
[15] 1 TEX. ADMIN. CODE § 155.505(a).
[16] GM Prefiled Testimony Escobar Ex. 3, GM Statement of Position at p. 3 (GM-000060), attached as Exhibit H.
[17] *Id*. at 6 (GM-000063).

impacts,[18] the GM proposed an unvalidated phased approach. The proposed phases ramp up **100%** of the initial 0.5 MGD each year from 0.5 MGD (182,000,000 gallons per year) to the full requested production of 2.5 MGD (912,500,000 gallons per year) over the course of 5 years.[19] Approval of each phase is subject to the **GM's sole discretion**.[20]

The large increase in pumpage makes each request to increase production under a subsequent phase a major amendment to the permit pursuant to District Rule 3-1.9(A) ("Major Amendment"), the approval of which requires full public notice and participation like a new Production Permit application under District Rules 3-1.9(B)[21] and 3-1.6(C), thereby affording affected landowners the right to participate in the administrative process.[22] District Rule 3-1.9(A)(5) defines minor amendments to include "[i]ncreases in use of 10% or less of permitted pumpage." "All other amendments… that increase the permitted volume such that it is no longer a minor amendment… are major amendments."[23] The initial phase of the draft permit is 182,500,000 gallons per year and each phase contemplates an increase in production from the previous phase by an additional 182,500,000 gallons per year—far more than the minor amendment limit of 10%—making phases 2, 3, 4, and 5 Major Amendments that each require a hearing. By improperly surrendering evaluation of each Major Amendment to the discretion of the

[18] As required under TEX. WATER CODE § 36.0015 and District Rule 3-1.4(G)(1). *See* Exhibit D.
[19] EP Prefiled Testimony Ex. 23 at p. 3 (EP-01408), attached as Exhibit I.
[20] Exhibit C, GM Prefiled Testimony Escobar Ex. 4, Revised Special Conditions at p. 12, 13 (GM-0000126) ("The GM may grant authorization and approval for the Permittee to advance to the next phase of production, **without public notice and hearing**.) (Emphasis added); (GM-0000127) ("The General Manager will issue an approval letter and revised permit stating that the Permittee is authorized to produce the next Phase volume once the **GM has determined** that all monitoring, avoidance or mitigation measures have been completed by the Permittee to the satisfaction of the GM.") (Emphasis added).
[21] "Major amendments shall be subject to all the requirements and procedures applicable to issuance of a Production Permit for a new well or, if applicable, a Transport Permit."
[22] "The General Manager shall schedule a public hearing for all major amendment applications, for all Transport Permit applications, for all new Production Permit applications with proposed groundwater production applications with proposed groundwater production of more than 2,000,000 gallons annually, and for applications to convert Temporary Permits into Regular Production Permits pursuant to Rule 3-1.55, and refer the applications to the Board for action."
[23] Exhibit D, District Rule 3-1.9(A)(5).

GM, the draft permit violates due process under the federal and Texas Constitutions, Administrative Procedure Act, Texas Water Code, and the District Rules.

Procedural due process under the Texas Constitution,[24] like the federal Constitution,[25] is determined under a two-part test that considers whether the petitioner: "(1) has a liberty or property interest that is entitled to procedural due process protection; and (2) if so, we must determine what process is due."[26] The Texas Supreme Court has conclusively decided that "landowners do have a constitutionally compensable interest in groundwater."[27]

What process is due is measured by a "flexible standard that depends on the practical requirements of the circumstances."[28] Constitutional due process requires "notice and an opportunity to be heard at a meaningful time and in a meaningful manner."[29] In administrative proceedings, the Texas Supreme Court has determined this entails "a full and fair hearing on disputed fact issues. This requirement includes the right to cross-examine adverse witnesses and to present and rebut evidence."[30] Such process must be afforded before the protected interest is affected except in emergency situations.[31] The Texas Legislature and the District ensure that parties affected by groundwater production applications are afforded proper due process under Chapter 36 of the Texas Water Code and the District Rules by requiring the opportunity for a

[24] TEX. CONST. art. I, § 19 ("No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.").
[25] U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law").
[26] *Univ. of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 929 (Tex. 1995).
[27] *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 838 (Tex. 2012).
[28] *Than*, 901 S.W.2d at 930 (*citing Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).
[29] *Than*, 901 S.W.2d at 930 (*citing Mathews*, 424 U.S. at 333); *see also Mosley v. Texas Health & Human Servs. Comm'n*, No. 17-0345, 2019 WL 1977062, at *10 (Tex. 2019) ("The ultimate test of due process of law ... is the presence or absence of rudiments of fair play long known to our law."); *Texas Comm'n on Envtl. Quality v. Denbury Onshore, LLC*, No. 03-11-00891-CV, 2014 WL 3055912, at *8 (Tex.App.—Austin 2014); *Wimberley Springs Partners, Ltd. v. Wimberley Valley Watershed Ass'n*, No. 03-13-00467-CV, 2017 WL 2229876, at *6 (Tex.App.—Austin 2017).
[30] *City of Corpus Christi v. Pub. Util. Comm'n of Texas*, 51 S.W.3d 231, 262 (Tex. 2001) (Emphasis added).
[31] *Cleveland Bd. Of Educ. v. Loudermill*, 470 US 532, 542, n.7 (1984).

contested case hearing on new Production Permits and Major Amendments.[32]

Under TEX. WATER CODE §36.114(a), the "[D]istrict by rule shall determine each activity regulated by the district for which a permit or permit amendment is required." Under TEX. WATER CODE §36.114(b), once a groundwater district determines that a permit or permit amendment is required for an activity, it must then determine by rule whether such an application requires a hearing. The District exercised its authority by adopting Rule 3-1.3 which requires a permit prior to drilling, pumping or operating a well designated for municipal use. The District Rules also provide that the GM must schedule[33] and **"the District shall conduct a public hearing for major amendment applications"**[34] which **"shall be subject to all the requirements and procedures applicable to issuance for a production permit of a new well."**[35]

Public participation at a hearing for a new permit enables affected persons, like the Protestants, to protect their property rights by identifying deficiencies in the pending application. The Protestants' ability to protect their interest in groundwater from a **future** Major Amendment hinges on their receipt of notice and an opportunity to be heard at the time EP requests a Major Amendment and at a hearing where they may offer evidence.

The GM's recommendation to issue the draft permit is based only on the District's evaluation of the permit's first phase of 0.5 MGD per year. The GM Statement of Position acknowledged that "the District is unable to evaluate the long-term, regional components of the unreasonable impact definition for the final phases of the permit at this time."[36] Importantly, the District's engineer Brian Smith testified that based on the information that is available from the

[32] Whether an adjudicative proceeding is required under the APA prior to the determination of rights depends on the agency's enabling act and agency rules may decide whether those proceedings include a contested case hearing, specifically. *Texas Comm'n on Envtl. Quality v. City of Waco*, 413 S.W.3d 409, 423 (Tex. 2013).
[33] Exhibit D, District Rule 3-1.6(C).
[34] *Id*. at District Rule 3-1.4(C)(2). (Emphasis added).
[35] *Id*. at District Rule 3-1.9(B). (Emphasis added).
[36] Exhibit H, GM Prefiled Testimony Escobar Ex. 3, GM Statement of Position, p.5 (GM-000062).

aquifer test and resulting parameters, "the aquifer would be incapable of actually producing the 2.5 MGD without causing dewatering of the entire Cow Creek and inducing significant drawdown from the overlying Lower Glen Rose."[37]

The limited scope of review necessitates those potentially impacted be provided the opportunity to participate when EP seeks to amend the permit to significantly increase production. A hearing held now under current circumstances cannot cure the future harm of deprivation of participation—at which time the District will evaluate new information for the first time. The District clearly anticipated this potential procedural defect and safeguarded against it by mandating hearings on all Major Amendments. The current framework of the draft permit, however, circumvents this protective measure.

When an agency's "final order denies parties due process of law, *see Lewis v. Metropolitan Sav. & Loan Ass'n*, 550 S.W.2d 11, 16 (Tex.1977), or when it fails to follow the clear, unambiguous language of its own regulations," such is arbitrary[38] and thus invalid.[39] For example, in *Bexar County Sheriff's Civil Service Commission v. Davis*, the petitioners "were entitled under the Manual to have a hearing on their grievances, and since they were denied such a hearing, they were denied procedural due process."[40] The agency must, at the very least, follow its own rules and procedures.

The draft permit's failure to provide the requisite public participation for Major Amendments violates the District's Rules and the Protestants' right to due process as a matter of law. The draft permit should be remanded to the District recommending that the permit be denied.

---

[37] *See* GM Ex. No. 5, Brian Smith Prefiled Testimony, at p.18:20 – 19:2 (GM-000177).
[38] *Reliant Energy, Inc. v. Pub. Util. Comm'n of Texas*, 153 S.W.3d 174, 199 (Tex.App.—Austin 2004) (*citing Pub. Util. Comm'n of Texas v. Gulf States Utilities Co.*, 809 S.W.2d 201, 207 (Tex. 1991); *Power Res. Group, Inc. v. Public Util. Comm'n*, 73 S.W.3d 354, 358 (Tex.App.—Austin 2002, pet. denied)).
[39] TEX. GOV'T CODE § 2001.174(2)(F); *Pub. Util. Comm'n of Texas v. Gulf States Utilities Co.*, 809 S.W.2d at 207.
[40] *Bexar Cty. Sheriff's Civil Serv. Comm'n v. Davis*, 802 S.W.2d 659, 662 (Tex. 1990).

B. The draft permit is not supported by "reasonable assurances of definite, non-speculative use."

Before approving or denying an application for a Production Permit, "the District shall consider whether there are reasonable assurances of definite, non-speculative plans and intent to use the water for specific beneficial uses during the Production Permit term."[41] Approval requires the District to "affirm that [the requested volume and use are] for beneficial use and for an annual volume that is non-speculative and commensurate with reasonable demand to avoid over-permitting and discourage waste."[42] To accomplish the District's stated policy of avoiding over-permitting and discourage waste the District requires "assurances that there are actual plans and intent to use the water for beneficial purposes within the **near term**."[43] All information submitted to the District in support of the draft permit conclusively proves the contrary.

During the administrative review of EP's application, the District informed EP by letter that EP's application was deficient because—despite submitting its contract with Goforth—EP had not provided "any information relating to the reasonable and non-speculative demonstration for [its] demand."[44] The District specifically requested "additional details and data demonstrating the projected demands of contracted individual customers."[45] Types of requested information included Goforth's available water supplies, projected demands, population projections, and growth and demand projections reflected in the Texas Water Development Board Regional Water ("TWDB") Plan.[46] In response, EP contacted Goforth and requested additional information to support its application.[47] Goforth subsequently sent the District a letter on behalf of EP (the "January 4th

[41] Exhibit D, District Rule 3-1.6(A)(2).
[42] Exhibit E, District Management Plan at 21; *See also* Exhibit D, District Rule 3-1.4(A)(8)(c) ("…The requested pumpage volume should demonstrate reasonable non-speculative demand.").
[43] Exhibit E, District Management Plan at 21. (Emphasis added).
[44] Letter from BSEACD to EP consultant Kaveh Khorzad, October 11, 2017 at p. 2-3 (Goforth 000758-000759), attached as Exhibit J.
[45] *Id*.
[46] *Id*.
[47] Letter from EP Attorney to Goforth Attorney, November 10, 2017 (Goforth 000755-60), attached as Exhibit K.

Letter").[48] The information provided in that letter, however, demonstrates that Goforth does not need EP's water and fails to establish that EP's dedicated use for the 912,500,000 gallons per year is non-speculative.

Goforth's January 4th Letter describes its already available firm water supply as: 2,758 acre-feet per year ("AFY") from the Guadalupe Blanco River Authority ("GBRA"), 140 AFY from County Line Special Utility District, and 754 AFY from BSEACD. This adds up to a firm yield of 3,652 AFY or 3.26 MGD. Goforth continued to explore alternative sources of water even after submitting these numbers to the District. As of December 19, 2017, Goforth's Board of Directors was considering purchasing up to 5,000 additional AFY from GBRA.[49] On February 21, 2018—approximately six weeks later, and two weeks after Goforth's January 4th Letter to the District—Goforth opted to purchase 4,000 AFY from the GBRA.[50] Goforth informed the District that this water would be online starting in the year 2023.[51] This purchase more than **doubled** Goforth's future supplies—without any water under the contested permit—to 7,652 AFY or 6.83 MGD.

On behalf of EP, Goforth's retained engineer, Neal Goedrich, submitted projections of Goforth's future water needs starting in 2017 through 2027 to the District on March 10, 2017 (the "March 10th Letter")[52]—before Goforth executed the contract with GBRA for an additional 4,000 AFY. In the March 10th Letter, Goedrich projected Goforth's future water needs based on total meters to be 7,493 for 2017, which equates to 754,844,820 gallons. In 2018, Goedrich projected

[48] Letter from Neal R. Goedrich to Kendall Bell-Enders, January 4, 2018 (the "January 4th Letter"), attached as Exhibit L.
[49] E-mail from Mario Tobias to Debbie Sandoval, et al., RE: Water Rate Study / GBRA Contract, attached as Exhibit M.
[50] Excerpt of February 21, 2018 Water Supply Agreement between GBRA and Goforth for 4,000 AFY, attached as Exhibit N.
[51] Hays County Prefiled Testimony Stefan Schuster Exhibit 2G, Email from Neal Goedrich to Kendall Bell-Enders, January 10, 2018 (the "January 10th Email"), attached as Exhibit O.
[52] EP Prefiled Exhibit 23, Attachment A, Letter from Neal R. Goedrich to Mario Tobias, March 10, 2017 (the "March 10th Letter"), attached as Exhibit P.

8,108 total meters, which equates to 816,799,920 gallons for 2018.[53] The Texas Water Development Board Use Survey for 2017 showed Goforth's aggregate actual use from all sources was 693,789,000 gallons (2,129 AFY) or 61,055,820 gallons (187 AFY) less than Goforth's projected demand.[54] The TWDB Use Survey for 2018 showed Goforth's aggregate actual use from all sources was 760,788,000 gallons (2,335 AFY) or 56,011,920 gallons (172 AFY) less than projected demand.[55]

Even when using conclusively disproven, inflated demand projections from Goforth's March 10th numbers,[56] Goforth's current supplies under contract—excluding those under the contested permit—will create a significant surplus of **3,000,000 gallons per day** through at least 2027.[57] The District tabulated the information submitted in support of EP's application to better display Goforth's future water needs:[58]

Future Water Needs

	Population	Meters	GPCD	Demand (gallons)	Demand (MGD)	Supply (MGD)	Diff
2017	22479	7493	92	754,844,820	2.068	3.26	1.19
2018	24324	8,108	92	816,799,920	2.238	3.26	1.02
2019	26316	8,772	92	883,691,280	2.421	3.26	0.84
2020	28476	9,492	92	956,224,080	2.620	3.26	0.64
2021	30612	10,204	92	1,027,950,960	2.816	3.26	0.44
2022	32220	10,740	92	1,081,947,600	2.964	3.26	0.30
4,000 acre/ft of GBRA water available in 2023							-
2023	33912	11,304	92	1,138,764,960	3.120	6.83	3.71
2024	35697	11,899	92	1,198,705,260	3.284	6.83	3.55
2025	37572	12,524	92	1,261,667,760	3.457	6.83	3.37
2026	39546	13,182	92	1,327,954,680	3.638	6.83	3.19
2027	41622	13,874	92	1,397,666,760	3.829	6.83	3.00

Goforth submitted its future water needs to the TWDB on June 22, 2017 as part of the state-wide water planning process.[59] According to Goforth's own projected population and water

[53] Exhibit P, the March 10th Letter; Exhibit L, the January 4th Letter; Exhibit G, District Table of "Goforth Water Supplies/Demand."
[54] TWDB 2017 Use Survey, attached as Exhibit Q.
[55] TWDB 2018 Use Survey, attached as Exhibit R.
[56] Exhibit P, the March 10th Letter; Exhibit L, the January 4th Letter; Exhibit G, District Table of "Goforth Water Supplies/Demand."
[57] *Id.*
[58] *Id.*
[59] Exhibit F, the June 22nd Letter.

demand submitted to the TWDB, Goforth projects a water demand of 7,625 AFY in the year 2050.[60] Without any additional water from EP, Goforth has already secured guaranteed supplies of 7,652 AFY, creating a surplus beyond thirty years lasting through 2050.[61]

The President of the Goforth Board of Directors and Goforth's corporate representative, Ronald Bell, confirmed in his deposition that Goforth does not know whether it needs any water from EP. Mr. Bell was designated by Goforth as the representative with knowledge of, among other topics, "Goforth's sources of water, including all current water supply contracts for each source of water supply to Goforth" and "Goforth's consideration, review, or investigation of its future water demands."[62] Yet, Mr. Bell testified on behalf of Goforth that:[63]

Q (BY MR. FRIEDMAN) Do you know, as we sit here today, the amount of water Goforth has available to provide its customers with for the year of -- calendar year of 2019?
A No, I don't.
Q Do you know the amount of water that Goforth has available to it to serve its customers in the calendar year of 2020?
A You'd have to talk to my engineer.
Q Do you know the amount of water available to Goforth to serve its customers from any year after 2020?
A The same answer.
Q No?
A No.
Q Do you know how much water Goforth needs to serve its customers in 2020?
A No.
Q Do you know what volume of water Goforth needs to serve its customers beyond 2020?
A No.

[60] *Id*.
[61] Firm yield from the January 10th email (7,652 AFY) exceeds Projected Water Demand for year 2050 (7,625 AFY) from the June 22nd Letter.
[62] *See* Hays County's Subpoena of Goforth, attached as Exhibit S.
[63] Deposition of Ronald Bell, President of Goforth (April 4, 2019), Tr. 89:6-25, excerpt attached as Exhibit T. (Emphasis added).

Mr. Bell's testimony reflects tremendous uncertainty about whether Goforth will use EP's water and exposes EP's lack of definite, non-speculative plans and intent to use the water in the near term.

Just two months after Mr. Bell's deposition testimony, EP openly acknowledged that Goforth may no longer need EP's water. On July 31, 2019, EP wrote to Goforth:

> [W]e understand that Goforth has been able to secure interim sources of water, which long-term may change your plans and needs for some of the later stages of groundwater development planned for the EP Hays County groundwater project. **Because Goforth may decide that it no longer desires the full amount of groundwater available from EP prospectively**, EP is reaching out to other water purveyors in Hays County so that EP can fulfill its mission, to provide Hays County groundwater to as many residents of Hays County as possible.[64]

Simultaneously, EP disseminated 21 letters in July 2019 soliciting new buyers for the water requested under this permit.[65] These letters—nearly two years after submitting its application that EP alleged was dedicated to a non-speculative use at that time—exposes the extremely speculative nature of the draft permit and the entire project.

The complete absence of need for the water demonstrated by Goforth's own water projections combined with the President of Goforth's affirmative statements of uncertainty surrounding its demand and EP's frantic letter campaign for new buyers leaves no genuine issue of any material fact that the EP's application fails to satisfy District Rules 3-1.6(A)(2) and 3-1.4(A)(8)(c) which require a demonstration of reasonable non-speculative demand at any point during the foreseeable life of the permit[66] or within the near term. Issuing the draft permit in its current form would be contrary to the District's express policy to "avoid over-permitting and

[64] Letter from EP to Mario Tobias, "Re: Electro Purification LLC and Goforth's Ongoing Groundwater Project" (July 31, 2019) (Emphasis added), attached as Exhibit U.
[65] *See* EP Solicitation Letters, attached as Exhibit V.
[66] All permits are effective for one fiscal year, unless otherwise stated on the permit. Exhibit D, District Rule 3-1.7(A). The GM without hearing shall renew a permit for wells under circumstances described in District Rule 3-1.8.

discourage waste."[67] The draft permit should be remanded to the District recommending that the permit be denied.

III.
PRAYER

For the foregoing reasons, TESPA and the pro se landowners respectfully request the Administrative Law Judge:

(1) Grant this Motion for Summary Disposition;

(2) Find, as a matter of law, that:

   a. The draft permit violates the District's rules and the Protestants' right to due process,

   b. The proposed production under the draft permit does not satisfy District rules requiring that production be dedicated for a reasonable non-speculative demand, and

   c. The draft permit is invalid;

(3) Prepare a proposal for decision that remands the draft permit to the District with the recommendation that the District deny the draft permit accordingly; and

(4) Issue an order dismissing this proceeding from SOAH's Docket.

[67] Exhibit E, District Management Plan at 21.

Respectfully submitted,

By: *_/s/ Adam M. Friedman_____*

Adam M. Friedman
Texas Bar No. 24059783
MCELROY, SULLIVAN, MILLER & WEBER, L.L.P.
1201 Spyglass, Suite 200
Austin, Texas 78746
afriedman@msmtx.com
Tel: (512) 327-8111

Vanessa Puig-Williams
Texas Bar No. 24056167
PUIG-WILLIAMS LAW
vanessa@puigwilliamslaw.com
Tel: (512) 826-1026

Jeff Mundy
Texas Bar No. 14665575
MUNDY LAW FIRM
jeff@jmundy.com
Tel: (512) 334-4300
ATTORNEYS FOR TESPA

Eric Allmon
FREDERICK PERALES ALLMON & ROCKWELL, PC
1206 San Antonio Street
Austin, TX 78701
eallmon@lf-lawfirm.com
Tel: (512) 469-6000
ATTORNEY FOR HAYS COUNTY

J.D. Head
Texas Bar No. 9322400
FRITZ, BYRNE, HEAD, & GILSTRAP, PLLC
221 W. 6th Street, Suite 960
Austin, Texas 78701
jhead@fbhg.law
Tel: (512) 476-2020
ATTORNEY FOR DONALD F. WOOD

CERTIFICATE OF SERVICE TO ALL PARTIES

I hereby certify that on the 26th day of September, 2019, a true and correct copy of the foregoing document was served on the individuals listed below by email.

Edmond R. McCarthy, Jr.
McCarthy & McCarthy, LLP
1122 Colorado, Suite 2399
Austin, TX 78701
Tel: (512) 904-2313
Fax: (512) 692-2826

Representing Electro Purification, LLC
ed@ermlawfirm.com
and Via First Class Mail

Bill D. Dugat, III
Bickerstaff Heath Delgado Acosta, LLP
3711 S. Mopac Expressway
Building One, Suite 300
Austin, TX 78746
Tel: (512) 472-8021
Fax: (512) 320-5638

Representing Barton Springs Edwards Aquifer Conservation District
bdugat@bickerstaff.com
and Via First Class Mail

Patrick Cox, Ph.D.
St. Stephens Episcopal Church
6000 FM 3237
Wimberley, TX 78676
Tel: (512) 217-2279

Pro se on behalf of St. Stephen's Episcopal School and Church
patrickcox7@gmail.com

Judi Baskin
400 Limestone Lane
Driftwood, TX 78619
Tel: (650) 208-9245

Pro Se Party
Sissi@VintageOaksFarm.com

Chris Elliott
300 Buckskin Pass
Driftwood, TX 78619
Tel: (805) 801-9003

Pro Se Party
chris@myhks.com

Dennis D. Pape
6790 FM 3237
Driftwood, TX 78619
Tel: (512) 847-1314

Pro Se Party
danapsalas@gmail.com

Dana Pape-Salas
1216 Mathias Street
Cedar Park, TX 78613
Tel: (512) 940-0429

Pro Se Party
danapsalas@gmail.com

Dalton and Peggy Pape (Life Estate)
6790 FM 3237
Driftwood, TX 78619

Pro Se Party
danapsalas@gmail.com

Tom and Irene Biggins
601 Buckskin Pass
Driftwood, TX 78619

Pro Se Party
tb78619@gmail.com

Mary Louise Bond
1200 Todo Lane
Driftwood, TX 78619

Pro Se Party
secretwaterwarriorsociety@gmail.com

Jim Chisholm
P.O. Box 2281
Wimberley, TX 78676

Pro Se Party
jimchis51@gmail.com

/s/ Adam M. Friedman
Adam M. Friedman