

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

AQUA TEXAS, INC.,	§	NO. 1:23-CV-1576-DAE
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
HAYS TRINITY GROUNDWATER	§	
CONSERVATION DISTRICT	§	
	§	
Defendant,	§	
	§	
_____	§	

ORDER GRANTING IN PART AND DENYING IN PART
THE PARTIES' MOTIONS FOR SUMMARY JUDGMENT

Before the Court are Plaintiff Aqua Texas, Inc.'s ("Aqua Texas") Partial Motion for Summary Judgment (Dkt. # 114) and Defendants Hays Trinity Groundwater Conservation District's ("Hays Trinity") Motion for Summary Judgment. (Dkt. # 120.) The Court finds a hearing on these Motions is not necessary. After careful consideration of the filings, the Court, for the reasons that follow, **GRANTS IN PART** and **DENIES IN PART** Aqua Texas's Motion for Summary Judgment, and **GRANTS IN PART** and **DENIES IN PART** Hays Trinity's Motion for Summary Judgment.

FACTUAL BACKGROUND

Aqua Texas is a Texas retail public utility regulated by the Texas Public Utilities Commission (“PUC”) under Certificates of Convenience and Necessity (“CCN”) No. 13254 for water and No. 21116 for wastewater. (Dkt. # 1 at 5.) Under Texas law, CCNs “give holders the exclusive right to provide water or sewer service within particular service areas.” Green Valley Special Util. Dist. v. City of Cibolo, 866 F.3d 339, 340 (5th Cir. 2017) (citing Tex. Water Code § 13.242(a)). Aqua Texas was created by the Texas Legislature in 2001 with a mission to conserve, recharge, and prevent waste of groundwater within western Hays County, Texas. See Tex. Spec. Dist. Loc. Laws Code § 8843.001 et seq. It provides water and wastewater service to almost four hundred systems throughout Texas. (Dkt. # 1 at 5.) Specifically, Aqua Texas services retail customers in three relevant systems within the jurisdictional boundaries of Hays Trinity: (1) Woodcreek Phase I, (2) Woodcreek Phase II; and (3) Mountain Crest. (Id.) Aqua Texas alleges that its customers in these areas are mostly homes in residential subdivisions with ordinary water usage of Texas homeowners. (Id.)

Additionally, Aqua Texas contends that it owns and operates groundwater wells for the relevant utility systems in this case within the jurisdictional boundaries of Hays Trinity. (Dkt. # 1 at 5.) Aqua Texas alleges that its wells were drilled, completed, and operational prior to the Texas Legislature’s

creation of Hays Trinity in 2001. (Id.) Following the creation of Hays Trinity, operating permits were issued to Aqua Texas, authorizing production of water from its wells. (Id. at 6.)

Aqua Texas contends that it invested over \$ 2 million in land and groundwater rights to develop two new public supply wells to fulfil service obligations and enhance flow at Jacob’s Well. (Dkt. # 61 at 2.) Aqua Texas alleges that it submitted well construction notices to Hays Trinity in July of 2022 and lawfully drilled and tested those two wells. (Id.) Aqua Texas alleges that it then filed initial applications for the two new wells on August 24, 2022. (Id. at 6.) Hays Trinity adopted a permitting moratorium that went into effect in October of 2022 that was allegedly retroactively applied to purportedly block Aqua Texas from obtaining operating permits. (Id. at 7.) Aqua Texas also alleges that, during this same time, Hays Trinity “grandfathered” in other entities that had initiated well development projects prior to the moratorium but that it refused to do so for Aqua Texas. (Id. at 2, 7.)

Aqua Texas alleges that on April 13, 2023, Hays Trinity sent Aqua Texas a Notice of Alleged Violation (“NOAV”) for exceeding its operating permit production limit for the 2022 year. (Dkt. # 1 at 6.) According to Aqua Texas, the NOAV alleged that three operating wells were in violation of exceeding the annual drought-adjusted permitted amounts. (Id.) Based on the violation, Hays Trinity

assessed \$448,710 in penalties against Aqua Texas, ordering payment by May 8, 2023, or just over three weeks after the NOAV was sent. (Id.)

Aqua Texas further alleges that twenty other NOAVs were also issued to other water providers in response to over-pumping during drought curtailment. (Dkt. # 1 at 6.) Thereafter, according to Aqua Texas, Hays Trinity considered four settlements from the other water providers to whom the NOAVs were also sent, resulting in penalty payments being forgiven in exchange for the water providers spending money on conservation efforts. (Id.) Aqua Texas contends that it requested the same penalty forgiveness that other water providers had received in light of its own dedication to conservation and replacement of aging infrastructure. (Id.) Aqua Texas asserts that it has spent millions of dollars to reduce water loss and proactively address conservation and line leakage during the drought curtailment period. (Id. at 7–8.) According to Aqua Texas, the amount it has spent on conservation efforts far exceeds the \$448,710 penalty that Hays Trinity assessed against it, citing examples of such efforts. (Id. at 8–10.)

Aqua Texas also contends that it provided receipts and documentation of its extensive conservation efforts to Hays Trinity, but that Hays Trinity failed to follow its own precedent and denied Aqua Texas's request for penalty forgiveness without any explanation. (Dkt. # 1 at 10–11.) According to Aqua Texas, the parties were engaged in settlement discussions when Hays Trinity provided the

media with information concerning their settlement negotiations, violating the Rules of Evidence. (Id. at 11.) Aqua Texas alleges that Hays Trinity provided a one-sided story to the media which disparaged Aqua Texas in the process. (Id.) Aqua Texas also maintains that Hays Trinity “has repeatedly shown animosity and bias against Aqua Texas by penalizing not only Aqua Texas, but its customers too.” (Id.) Aqua Texas alleges Hays Trinity has threatened that it will not renew Aqua Texas’s permits if it does not timely pay the penalty charge, resulting in danger to Aqua Texas’s customers being deprived of water service. (Id.) Aqua Texas asserts that, “[w]ithout this Court’s intervention, if [Hays Trinity] is allowed to continue its unequal treatment and unlawful bias against Aqua Texas, the residents who are served by Aqua Texas will be left without water and no viable substitute for water service.” (Id.)

PROCEDURAL BACKGROUND

Aqua Texas filed suit against Defendants on December 29, 2023. (Dkt. # 1.) Aqua Texas filed its First Amended Complaint on May 21, 2025, alleging Hays Trinity violated its Fourteenth Amendment right to equal protection in violation of 42 U.S.C. § 1983 by unequally applying its penalty forgiveness policy, unequally applying its permit moratorium, and by unequally applying penalties for “waste” under Rule 9.1. (Dkt. # 61 at 14–16.) Aqua Texas also claims Hays Trinity violated its due process rights; however, the Court dismissed

that claim in granting Hays Trinity's prior Motion to Dismiss. (Dkts. ## 61 at 16; 125; 31.) Aqua Texas also claims that Hays Trinity's permitting moratorium deprives it of its vested statutory rights under Chapter 245 and seeks declaratory relief recognizing its rights under Chapter 245. (Dkt. # 61 at 18–19.) Aqua Texas also makes takings claims alleging that Hays Trinity's refusal to allow it to produce and use its groundwater and refusal to allow it to complete its Chapter 245 project are takings. (Id. at 19–24.) Aqua Texas also claims Hays Trinity violated the Texas Water Code ("TWC") and the Texas Open Meetings Act ("TOMA") by adopting unnoticed rules without public comment or deliberation. (Id. at 28–29.)

Hays Trinity filed its Counterclaims on June 10, 2024. (Dkt. # 16.) Hays Trinity brings counterclaims against Aqua Texas for over pumping from 2021 through present, continued pumping without a permit, wasting ground water, late filing of monthly and quarterly pumping reports, and failure to cap or plug abandoned or deteriorated wells or failure to notify Hays Trinity of doing so. (Dkt. # 110 at 19–34.)

On November 6, 2025, Aqua Texas filed its Motion for Partial Summary Judgment as to all of Hays Trinity's counterclaims and two of Aqua Texas's claims. (Dkt. # 114.) On December 15, 2025, Hays Trinity filed its Partial Motion for Summary Judgment as to all of Aqua Texas's claims. (Dkt. # 120.)

LEGAL STANDARD

I. Summary Judgment

“Summary judgment is appropriate only if ‘there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” Vann v. City of Southaven, 884 F.3d 307, 309 (5th Cir. 2018) (citations omitted); see also Fed. R. Civ. P. 56(a). “A genuine dispute of material fact exists when the ‘evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” Bennett v. Hartford Ins. Co. of Midwest, 890 F.3d 597, 604 (5th Cir. 2018) (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986)). “The moving party ‘bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.’” Nola Spice Designs, LLC v. Haydel Enter., Inc., 783 F.3d 527, 536 (5th Cir. 2015) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

“Where the non-movant bears the burden of proof at trial, ‘the movant may merely point to the absence of evidence and thereby shift to the non-movant the burden of demonstrating . . . that there is an issue of material fact warranting trial.’” Kim v. Hospira, Inc., 709 F. App’x 287, 288 (5th Cir. 2018) (quoting Nola Spice Designs, 783 F.3d at 536). While the movant must demonstrate the absence of a genuine issue of material fact, it does not need to negate the elements of the

nonmovant's case. Austin v. Kroger Tex., L.P., 864 F.3d 326, 335 (5th Cir. 2017) (quoting Little v. Liquid Air Corp., 37 F.3d 1069, 1076 n.16 (5th Cir. 1994)).

A fact is material if it "might affect the outcome of the suit." Thomas v. Tregre, 913 F.3d 458, 462 (5th Cir. 2019) (citing Anderson, 477 U.S. at 248).

"When the moving party has met its Rule 56(c) burden, the nonmoving party cannot survive a summary judgment motion by resting on the mere allegations of its pleadings." Jones v. Anderson, 721 F. App'x 333, 335 (5th Cir. 2018) (quoting Duffie v. United States, 600 F.3d 362, 371 (5th Cir. 2010)). The nonmovant must identify specific evidence in the record and articulate how that evidence supports that party's claim. Infante v. Law Office of Joseph Onwuteaka, P.C., 735 F. App'x 839, 843 (5th Cir. 2018) (quoting Willis v. Cleco Corp., 749 F.3d 314, 317 (5th Cir. 2014)). "This burden will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.'" McCarty v. Hillstone Rest. Grp., Inc., 864 F.3d 354, 357 (5th Cir. 2017) (quoting Boudreaux v. Swift Transp. Co., 402 F.3d 536, 540 (5th Cir. 2005)). In deciding a summary judgment motion, the court draws all reasonable inferences in the light most favorable to the nonmoving party. Wease v. Ocwen Loan Servicing, LLC, 915 F.3d 987, 992 (5th Cir. 2019).

On cross-motions for summary judgment, the court examines each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party. White Buffalo Ventures, LLC v. Univ. of Tex. at Austin, 420 F.3d 366, 370 (5th Cir. 2005). "Cross-motions for summary judgment will not, in and of themselves, warrant the granting of summary judgment unless one of the parties is entitled to judgment as a matter of law" Joplin v. Bias, 631 F.2d 1235, 1237 (5th Cir. 1980). Each party may move for summary judgment using different legal theories that rely on different sets of material facts. Bricklayers, Masons & Plasterers Int'l Union of Am. v. Stuart Plastering Co., 512 F.2d 1017, 1023 (5th Cir. 1975). Nonetheless, cross-motions for summary judgment may be probative of the absence of a factual dispute when they reveal a basic agreement concerning what legal theories and material facts are dispositive. See id.

Additionally, at the summary judgment stage, evidence need not be authenticated or otherwise presented in an admissible form. See Fed. R. Civ. P. 56(c); Lee v. Offshore Logistical & Transp., LLC, 859 F.3d 353, 355 (5th Cir. 2017). However, "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)).

II. Statutory Interpretation

When interpreting a statute, a Court should begin by giving its words their ordinary, plain meaning. United States v. Moore, 71 F.4th 392, 395 (5th Cir. 2023). Plain language must be enforced unless it is ambiguous. Id. However, a statute’s “[t]ext should never be divorced from context.” United States v. Koutsostamatis, 956 F.3d 301, 306 (5th Cir. 2020). Context includes the immediate clause and “the broader context of the statute as a whole.” Moore, 71 F.4th at 395 (quoting Asadi v. G.E. Energy (USA), L.L.C., 720 F.3d 620, 622 (5th Cir. 2013) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997))).

Further, canons of construction can be used to resolve remaining ambiguity, if applicable. See generally Yates v. United States, 574 U.S. 528, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015). One principle of statutory interpretation which serves as a means of giving full effect to legislative intent is the doctrine of *in pari materia*. State v. Wiseman, 269 S.W.3d 769, 774 (Tex. App.—Austin 2008, no pet.) (citing Mills v. State, 722 S.W.2d 411, 413 (Tex. Crim. App. 1986)). Statutes that are *in pari materia* are construed together as parts of the same law and, where possible, conflicts between the statutes are harmonized. In the Estate of Forister, 421 S.W.3d 175, 180 (Tex. App.—San Antonio 2013, pet. denied) (citing In re J.M.R., 149 S.W.3d 289, 292 (Tex. App.—Austin 2004, no pet.)). “Similarity of

purpose or object is the most important factor in determining whether two statutes are *in pari materia*, i.e., whether they are closely enough related to justify interpreting them as if they were parts of the same law.” Texas Ass’n of Acupuncture & Oriental Med. v. Texas Bd. of Chiropractic Exam’rs, 524 S.W.3d 734, 744 (Tex. App. 2017) (citing Texas State Bd. of Chiropractic Exam’rs v. Abbott, 391 S.W.3d 343, 348 (Tex. App.—Austin 2013, no pet.)). If two statutes were clearly written to achieve the same objective, they share a common purpose. Texas Ass’n of Acupuncture & Oriental Med., 524 S.W.3d at 744 (citing *id.* at 348–49).

DISCUSSION

Aqua Texas moves for summary judgment as to all of Hays Trinity’s counterclaims and Aqua Texas’s claims that Hays Trinity does not have authority to impose a moratorium on new wells and that it violated public notice requirements for rule amendments. (Dkt. # 114.) Hays Trinity moves for summary judgment as to Aqua Texas’s claims. (Dkt. # 120.) The Court addresses all of the parties’ arguments in turn and begins by analyzing Aqua Texas’s claims that Hays Trinity acted ultra vires.

I. Hays Trinity’s Statutory Authority

Hays Trinity moves for summary judgment on all of Aqua Texas’s claims that Hays Trinity exceeded its statutory authority, including that it assessed

penalties in excess of a statutory cap, enacted a permitting moratorium, and enforced waste rules. (Dkt. # 120 at 22.) Aqua Texas moves for summary judgment on its claims that Hays Trinity does not have authority to impose a permitting moratorium and enforce waste rules. (Dkt. # 114 at 5, 13.) Hays Trinity argues that, as a governmental entity, it enjoys sovereign immunity and, in the alternative, if it were not immune, its implicated actions were within its statutory authority. (Dkt. # 120 at 22–25.) The Court’s analysis begins with Hays Trinity’s invocation of sovereign immunity.

A. Sovereign Immunity

Hays Trinity contends it is entitled to sovereign immunity, which would bar Aqua Texas’s claims that it exceeded its statutory authority by assessing penalties in excess of a statutory cap, enacting a permitting moratorium, and enforcing waste rules. (Dkt. # 120 at 22–23.) Aqua Texas notes this Court previously denied Hays Trinity’s claim of sovereign immunity in ruling on its’ Motion to Dismiss. (Dkt. # 128 at 22; see Dkt. # 125 at 8–9.) While this Court declined to dismiss Aqua Texas’s claims against Hays Trinity on the basis of sovereign immunity at the pleadings stage, Hays Trinity is not barred from asserting sovereign immunity at the summary judgment stage. (Dkt. # 125 at 8–9.) However, the Court’s analysis of sovereign immunity has not changed. (Id.)

Section 36.251(a) of the Water Code entitles any person, who is “affected by and dissatisfied with” any *rule or order* made by a district, to file suit against the district or its directors to challenge the validity of the law, rule, or order. See Tex. Water Code Ann. § 36.251(a) (emphasis added). Thus, the Texas legislature has provided a limited waiver of immunity for judicial review of a district’s rules or orders.

Aqua Texas’s claims that Hays Trinity acted outside of its authority by imposing fines in excess of the statutory cap, instituting a permitting moratorium, and enforcing waste rules. (Dkt. # 61 at 24–28.) As to the claim that Hays Trinity imposed fines in excess of the statutory cap, Aqua Texas’s claim is based on Hays Trinity’s penalty fee schedule, which Hays Trinity established by rule in Hays Trinity’s District Rules at Section 10.1.3(E). (Dkt. # 120-1 at 151.) As to the claim that there is no authority to impose a permitting moratorium, Aqua Texas’s claim is based on Hays Trinity’s drought management rules, which effectuate a moratorium in Hays Trinity’s District Rules at Rule 13.3.3(B)-(C). (Dkt. # 114-1 at 13.) As to the enforcement of waste rules, Aqua Texas’s claim is based on Hays Trinity’s rules categorizing waste found in Hays Trinity’s District Rules at Rule 2. (Dkt. # 114-1 at 9.)

Because the Texas legislature has provided a limited waiver of immunity for judicial review of a district’s rules or orders and Aqua Texas has put

forth the specific Hays Trinity District Rules on which it bases its statutory authority claims, there is no issue of material fact as to whether Hays Trinity is entitled to sovereign immunity. See Tex. Water Code Ann. § 36.251(a). Hays Trinity is not entitled to sovereign immunity as to Aqua Texas’s claims that Hays Trinity exceeded its statutory authority because these claims fall within the waiver of immunity provided by TWC § 36.251(a). Id. Thus, Hays Trinity’s Motion for Summary Judgment invoking sovereign immunity to bar Aqua Texas’s claims that Hays Trinity exceeded its statutory authority is **DENIED**.

B. Authority to Institute a Moratorium on New Wells

Aqua Texas moves for summary judgment on its claim that Hays Trinity does not have statutory authority to impose a permitting moratorium on new wells. (Dkt. # 114 at 14–16.) Hays Trinity also moves for summary judgment on this claim. (DKt. # 120 at 24.)

The moratorium at issue arises from District Rule 13.3 and is triggered when certain drought stages arise. (Dkt. # 120-1 at 172–173.) In Stage 3 and Stage 4 drought conditions, “the District will not accept any application for a new operating permit or any amendment to increase production under an existing operating permit.” (Id.) Further, in those same drought conditions, “no new well may be constructed other than wells drilled to replace existing permitted wells *or wells for exempt uses*” and “[t]he Board *may grant a variance to this rule for new*

wells used to alleviate conditions threatening the health, safety, or welfare of the public.” (*Id.* (emphasis added).)

Aqua Texas argues that Texas jurisprudence prohibits a GCD from instituting a permitting moratorium, urging the applicability of Coyote Lake Ranch and Edwards Aquifer Authority. Coyote Lake Ranch, LLC v. City of Lubbock, 498 S.W.3d 53, 65 (Tex. 2016); Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 843 (Tex. 2012). (Dkt. # 114 at 15.) The Court finds neither case persuasive here.

Coyote Lake Ranch is too distinct to be apropos here because it dealt with whether the accommodation doctrine extended to groundwater in the context of a deed to water rights between a ranch and a city. 498 S.W.3d at 55–65. In Edwards Aquifer Authority, the Supreme Court of Texas considered whether the Authority’s permit denial could manifest a taking and found that it may, reversing summary judgment on the plaintiffs’ takings claim. 369 S.W.3d at 843. The Supreme Court of Texas stated that “a landowner cannot be deprived of *all beneficial use* of the groundwater below his property merely because [...] supply is limited.” *Id.* (emphasis added). However, Edwards Aquifer Authority is also distinct from the moratorium before this Court because the Authority was not a GCD created under TWC § 36 and it has not been shown that the moratorium at issue would deprive “all beneficial use of groundwater” because there are exemptions and variances available. *Id.* (Dkt. # 120-1 at 172–173.) Under the

moratorium, it appears that Aqua Texas could drill an exempt well or qualify for a variance, allowing it to engage in beneficial use of its groundwater underlying the property implicated in this case. (Id.) The proposition that an inability to pump enough groundwater to further expand its operations as a retail public utility equates to being deprived of “all beneficial use of groundwater” is not convincing to this Court. The Court’s analysis will instead center on whether Hays Trinity’s enabling law, based on its language, empowers it to institute the permitting moratorium created by District Rule 13.3. S. Plains Lamesa R.R., Ltd. v. High Plains Underground Water Conservation Dist. No. 1, 52 S.W.3d 770, 776 (Tex. App. 2001).

Hays Trinity contends that the permitting moratorium falls within its authority to make rules limiting groundwater production in order to conserve, preserve, and protect the groundwater in its boundaries, pursuant to TWC § 36.101(a). (Dkt. # 120 at 24.) Aqua Texas argues that Hays Trinity is not expressly granted authority to impose a permitting moratorium by the TWC § 36 and claims that the TWC enables Hays Trinity to regulate groundwater production but prevents it from prohibiting production unless it is due to tract size or well spacing. (Dkt. # 114 at 14–15.)

The power of a groundwater conservation district (“GCD”) is limited by the terms of the statutes creating it and a district has no authority beyond what

the legislature clearly granted it. S. Plains Lamesa R.R., Ltd., 52 S.W.3d 770, 776 (citing Tri–City Fresh Water Supply Dist. No. 2 v. Mann, 135 Tex. 280, 142 S.W.2d 945, 948 (1940)). This requires close examination of the relevant statutes to determine what authority a district is granted. Id. Thus, the Court begins by analyzing the relevant provisions of the TWC.

Generally, Hays Trinity is subject to § 36 of the TWC which authorizes it to, among other things, develop a comprehensive management plan for aquifers within its jurisdiction and to adopt and enforce its rules. Tex. Water Code §§ 36.101, 36.102, 36.1071. Under the authority granted in § 36 of the TWC, groundwater conservation districts have broad authority to fulfill their purposes through rulemaking. Guitar Holding Co. v. Hudspeth Cnty. Underground Water Conservation Dist. No. 1, 263 S.W.3d 910, 912 (Tex. 2008); Tex. Water Code Ann. § 36.0015 (groundwater conservation districts’ rules are “the state’s preferred method of groundwater management”).

The TWC makes clear that groundwater ownership rights recognized in § 36.002(b) are “*subject to* Subsection (d)[.]” Tex. Water Code Ann. § 36.002 (emphasis added). TWC § 36.002(d) specifically states that it is not intended to affect a district’s ability to regulate groundwater production under other sections. TWC § 36.116(a)(2) authorizes districts to regulate the production of groundwater by setting production limits on wells, limiting production based on geographic size,

limiting production, limiting production from a defined number of acres assigned to a well site, limiting the maximum amount of production on the basis of acre-feet per acre or gallons per minute per well site per acre, by “managed depletion,” or any combination of the above. This is very broad considering that the TWC does not define “managed depletion.” TWC § 36.101 empowers districts to make and enforce rules, “including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter.” Even broader, TWC § 36.1071(f) requires a district to “adopt rules necessary to implement [its] management plan.”

However, “[a] common mistake regarding GCDs is to assume that Water Code chapter 36 encompasses all the details as to the powers, duties, funding, administration, and authority of each specific district. In fact, one must also have a full understanding of the district’s groundwater management plan, the district’s rules, and the special laws or TCEQ orders creating the district to make this determination.” State Bar of Texas, Essentials of Texas Water Resources § 16.2 (2016). Therefore, the Court will proceed to consider Hays Trinity’s creating legislation, special laws, and its groundwater conservation management plan. See

Tri-City Fresh Water Supply Dist. No. 2 of Harris Cnty. v. Mann, 135 Tex. 280, 285, 142 S.W.2d 945, 948 (1940). Because the various statutes and laws creating Hays Trinity all serve the same objective — creating and defining the powers granted to Hays Trinity, all enabling law will be read *in pari materia*. Texas Ass’n of Acupuncture & Oriental Med., 524 S.W.3d 734, 744 (Tex. App. 2017).

The legislation creating Hays Trinity does not expressly grant additional general powers beyond what is included in TWC § 36 and the laws of the state. See Act of May 27, 2001, 77th Leg., R.S., ch. 374, § 3.0304, 2001 Tex. Gen. Laws 662. Likewise, the Special District Local Laws Code does not expressly grant additional general powers beyond what is included in TWC § 36 and the laws of the state. See Tex. Spec. Dist. Local Laws Code § 8843.101–.106 (Title 6, Subtitle H). However, Hays Trinity’s 2021 Management Plan, states that it may develop rules, policies, and activities to: “[e]ncourage conservation practices and efficient water use[; g]uide the development of drought contingency and management plans[; ... and p]rovide for the District’s management and regulation of identified critical groundwater depletion areas within the District ...” (Dkt. # 120-1 at 10.) The Management Plan specifically states that, in order to protect hydrostatic pressure in the Jacobs Well springshed, Hays Trinity created the Jacobs Well Groundwater Management Zone (“JWGMZ”), and instituted District Rule 15, which sets out the “cutback triggers” that effectuate the

permitting moratorium implicated by Aqua Texas. (*Id.* at 32.) The Management Plan also states that Hays Trinity may establish these critical groundwater depletion areas or “management zones,” that it may develop a [desired future condition] specific to that area to address that depletion issue, and it may “[d]etermine and implement the proportional reduction of groundwater use for all classes of groundwater use that are established by the District.” (*Id.*) (emphasis added). This Management Plan was approved by the Texas Water Development Board (“TWDB”) in February of 2021. (*Id.* at 2.) Thus, reading the enabling law, applicable Management Plan, and TWC § 36.1071(f) *in pari materia* provides some clarity on the scope of Hays Trinity’s authority. Texas Ass’n of Acupuncture & Oriental Med., 524 S.W.3d at 744 (statutes written to achieve the same objective are construed together). TWC § 36.1071(f) expressly requires Hays Trinity to “adopt rules necessary to” carry out its Management Plan, which indicates that Hays Trinity does have the authority to stop new permitting under triggering drought conditions set forth in District Rule 13 to effectuate its Management Plan. See S. Plains Lamesa R.R., Ltd., 52 S.W.3d at 781 (TWC § 36.101 gives a GCD the discretion to promulgate rules). Therefore, Hays Trinity’s Motion for Summary Judgment as to Aqua Texas’s claim that the permitting moratorium exceeds its authority is **GRANTED**. Therefore, Aqua Texas’s claim that the permitting moratorium exceeded Hays Trinity’s statutory authority is **DENIED**.

C. Penalties Exceeding a Statutory Cap

Hays Trinity moves for summary judgment on Aqua Texas’s claim that Hays Trinity exceeded its statutory authority by enacting fines exceeding the statutory cap. (Dkts. ## 120 at 23–24.) Aqua Texas contends that Hays Trinity’s enabling statutes do not empower Hays Trinity to impose fees for over-pumping and that TWC § 36 only empowers Hays Trinity to set civil penalties which it must rely on the courts to enforce. (Dkt. # 61 at 24–26.) Further, Aqua Texas argues that TWC § 36.205(c)(2) caps fees based on ground water production to \$10 per acre-foot payable annually, which would be \$0.03 per thousand gallons. (Id.)

Conservation districts have the authority to “set reasonable *civil penalties* against any person *for breach of any rule of the district* not to exceed \$10,000 per day per violation, and each day of a continuing violation constitutes a separate violation. Tex. Water Code. Ann. § 36.102(b) (emphasis added).¹ The TWC also empowers GCDs to set fees for administrative acts, set and collect fees for services it provides outside of its boundaries, and to “assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn.” Id. at § 36.205(a)–(c). Production fees are capped at “\$10 per acre-foot payable annually for water used for any other [purpose other than agriculture.]” Id. at (c)(1)–(2). Hays Trinity’s enabling special

¹ This amount was increased to \$25,000 per day in September of 2025.

laws allow it to charge fees for well construction and service connection, and expressly states that it may not impose taxes or assess fees beyond fees for well construction and service connection. Tex. Spec. Dist. Local Laws Code § 8843.151–153. However, this special law proceeds to grant Hays Trinity the authority to collect fees for permit renewal applications. Id. at 8843.1515. Nothing about the special local law outlining Hays Trinity’s authority functions to curtail its power under TWC § 36.102(b) to set civil penalties for violating district rules. See Tex. Spec. Dist. Local Laws Code § 8843.001–1515.

Hays Trinity sent a NOAV to Aqua Texas on April 13, 2023. (Dkt. # 120-1 at 352–353.) The NOAV states that Aqua Texas was “in violation of exceeding the annual drought-adjusted permitted amounts.” (Id.) The NOAV specifically cites District Rule Penalty Schedule 10.1.3(H) citing “[f]ailure to comply with the terms and conditions of the User Drought Contingency Plan, the Water Conservation Plan, or the Drought Production Cutback Chart[.]” (Id.) Of note, the NOAV did not cite violations for exceeding production limits of an operating permit (District Rule 10.1.3(E)) and instead cites Aqua Texas for failing to comply with drought measures and the Water Conservation Plan, which are district rules. (Id.; Dkt. # 120-1 at 171–173.) District Rule 13.2.2 requires permit holders to reduce groundwater production based on their individual Drought Production Cutback Chart. (Dkt. # 120-1 at 171–172.) District Rule 13.4 requires

permit holders to submit and abide by a User Drought Contingency Plan and a Water Conservation Plan and states that non-compliance may subject the permit holder to penalties. (Id. at 173.)

Attempts to categorize Hays Trinity's penalty fees as "fees" implicated by TWC § 36.205 or Tex. Spec. Dist. Local Laws Code § 8843.151–153 are semantics unpersuasive to this Court. Hays Trinity's penalty fees stemming from District Rule 10 are unambiguously punitive financial obligations imposed for violating District Rules, placing them squarely within the purview of the civil penalties provision of TWC § 36.102(b). Thus, the NOAV in question was issued within the authority granted to Hays Trinity under TWC § 36.102(b) to impose civil penalties for violations of its District Rules.

Aqua Texas also contends the amount of the penalty exceeds the statutory cap on fees under TWC § 36.205(c). (Dkt. # 128 at 22.) However, this Court finds that the NOAV imposed civil penalties under TWC § 36.102(b), which would cap penalty fees at \$10,000 per day per violation. The NOAV calculated the penalty at \$500 plus \$5 per 1,000 gallons of overage per the penalties in effect under the District Rules at the time the NOAV was sent. (Dkt. # 120-1 at 352–353.) The violations stemming from Woodcreek Phase 1 in 2022 totaled \$188,690, which would be less than \$10,000 per day. (Id.) The NOAV states that the violations stemming from Woodcreek Phase II and Mountain Crest were calculated

based on data from March 1 through December of 2022, which would be a period of 305 days. (*Id.*) With Woodcreek Phase II penalties totaling \$238,815 and Mountain Crest totaling \$ 21,205, neither penalty would exceed \$10,000 per day. (*Id.*) Therefore, the Court finds that the civil penalties imposed in the NOAV did not exceed the applicable statutory cap.

Because the penalties imposed by the NOAV were within Hays Trinity's statutory authority and the amount of the penalties did not exceed that applicable statutory cap, Hays Trinity's Motion for Summary Judgment as to Aqua Texas's claims that it exceeded its statutory authority in imposing fines in excess of the cap is **GRANTED**.

D. Hays Trinity's Rules Enforcement

Aqua Texas moves for summary judgment on Hays Trinity's counterclaim to enforce its waste and line loss rules. (Dkt. # 114 at 5–8.) Hays Trinity Moves for summary judgment on Aqua Texas's claims that its enforcement of waste rules exceeded Hays Trinity's statutory authority. (Dkt. # 120 at 25.)

Aqua Texas argues that Hays Trinity does not have statutory authority over water line loss or wastewater spills. (Dkt. # 114 at 5.) Hays Trinity counters that the TWC authorizes it to do the very same. (Dkt. # 120 at 25.) The Court will begin by evaluating Hays Trinity's authority to regulate line loss, then evaluate the same as to wastewater spills.

As to line loss, Aqua Texas contends that, although GCDs can regulate production to prevent waste, TWC § 36’s definition of “waste” does not encompass water line loss. (Dkt. # 114 at 5–6.) Aqua Texas also argues that line loss is not waste because line loss is an unavoidable reality experienced by all utilities in delivery of water to their customers. (*Id.*) Aqua Texas asserts that Hays Trinity’s broader definition of “waste” in its District Rules must be stricken because it is more burdensome than the relevant statutory provisions of the TWC. (*Id.* at 6.) Hays Trinity counters that the language in its District Rule defining “waste” tracks the language of TWC §36.001.8(B) and that Aqua Texas’s alleged waste from line loss meets two definitions of “waste” in its District Rules other than the implicated definition. (Dkt. # 120 at 25.)

Aqua Texas asserts that if it can show Hays Trinity’s Rule 9.1 “(1) contravenes specific statutory language; (2) runs counter to the general objectives of the statute; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions[,]” it is unlawful, urging the applicability of Texas State Bd. of Examiners of Marriage & Fam. Therapists v. Texas Med. Ass’n, 511 S.W.3d 28, 33 (Tex. 2017) (collecting cases regarding rule making by state agencies). However, Hays Trinity is not a state agency—it is a regional political subdivision. S. Plains Lamesa R.R., Ltd., 52

S.W.3d at 777. Therefore, the Court looks to the powers conferred to GCDs to determine whether Hays Trinity has the authority to regulate line loss. Id. at 776.

Briefly restated, a GCD only has the powers conferred upon it by its enabling laws and statutes. Id. TWC § 36.101(a) allows a district to make and enforce district rules to achieve various purposes, including to “prevent [the] waste of groundwater” and “to provide for conserving [groundwater.]” The TWC defines “waste” as meaning any of the following:

- (A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
- (B) the flowing or producing of wells from a groundwater reservoir *if the water produced is not used for a beneficial purpose*;
- (C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
- (D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;
- (F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
- (G) for water produced from an artesian well, “waste” also has the meaning assigned by Section 11.205.

(9) “*Use for a beneficial purpose*” means use for:

- (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- (B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- (C) any other purpose that is useful and beneficial to the user.

Tex. Water Code Ann. § 36.001 (emphasis added). While TWC § 36.001(G)(9) provides a list of what uses constitute a “beneficial purpose,” the TWC also defines “beneficial use.” TWC § 11.002(4). It is important to consider the definition of beneficial use in determining the scope of the definition of waste because the two concepts inherently dovetail. Viewing the TWC more fully, rather than piecemeal, the TWC defines beneficial use as the “use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.” Tex. Water Code Ann. § 11.002(4).

The implicated subpart to Hays Trinity’s District Rule defining “waste” is subpart H, which includes as waste: “[u]tilizing groundwater for a beneficial use in an amount that exceeds the amount reasonably needed for that purpose.” (Dkt. # 120-1 at 116.) Thus, the definition of “waste” under Hays Trinity’s District Rules is neither broader nor more burdensome than the definition of “waste” in the TWC because District Rule 2.1(H) merely incorporates the language from the TWC defining “beneficial use” into the

TWC’s definition of “waste.” Viewing the TWC’s definition of waste in light of the TWC’s definition of beneficial use places line loss clearly within the scope of “waste” that TWC § 36.101(a) empowers GCDs to regulate via rule making.

Further, the TWC empowers GCDs to make and enforce rules to provide for conserving groundwater. Id. The TWC defines conservation as including “practices, techniques, and technologies that will reduce the consumption of water, *reduce the loss or waste of water*, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.” Tex. Water Code Ann. § 11.002(8)(B) (emphasis added). This definition of conservation, which includes *reducing loss* or waste, also places line loss within the regulatory powers of GCDs via district rule making under TWC § 36.101(a).

Next, the Court considers Aqua Texas’s claim that Hays Trinity lacks authority to regulate wastewater spills because it is a GCD. (Dkt. # 114 at 5–8.) Aside from line loss, Hays Trinity brings a counterclaim against Aqua Texas to enforce waste rule violations based on various incidents of spills of sewage and wastewater. (Dkt. # 110 at 27–29.) Hays Trinity maintains that these instances of sewage and wastewater spills

violated District Rule § 9.1 by “producing water not used for a beneficial purpose” and “allowing groundwater to escape onto adjacent properties and into natural water courses.” (Id.)

Aqua Texas argues that Hays Trinity does not have authority to regulate wastewater system because that authority lies with the PUC and that wastewater and sewage are groundwater that has already been used for a beneficial purpose. (Dkts. ## 114 at 7–8; 119 at 4.) Hays Trinity counters that TWC § 36 empowers it to regulate waste associated with the production, handling, or management of groundwater so long as the waste falls within the definition of waste in the TWC and involves groundwater within its district. (Dkts. ## 118 at 14–16; 120 at 25.)

Again, to determine if Hays Trinity exceeded its statutory authority, the Court seeks to determine what powers Hays Trinity’s enabling laws and statutes clearly conferred upon it. S. Plains Lamesa R.R., Ltd., 52 S.W.3d at 776–7.) As already outlined above, TWC § 36.101(a) empowers GCDs to enact district rules to conserve, preserve, and protect groundwater in order to serve multiple enumerated purposes, including to prevent the waste *of groundwater*.

The TWC § 36.001(5) defines groundwater as “water percolating below the surface of the earth.” Further, the TWC’s definition of “waste” in § 36.001(8)(A–G) is specific to waste *of groundwater*. While TWC § 36 does not

define sewage, § 26 does define sewage for the purposes of that Chapter, which this Court finds informative here. The TWC defines sewage as “waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation. Tex. Water Code Ann. § 26.001(7). The basis for the argument that groundwater already used by customers, which Hays Trinity’s own pleadings identify as being “wastewater” and “sewage,” would fit within the definition of waste under TWC § 36.001(8)(A–G) simply because it “escaped onto adjacent properties and into natural water courses” is entirely unclear to this Court. (Dkt. # 110 at ¶ 60, 63–67.) The spills of sewage and wastewater cited by Hays Trinity in their counterclaim for waste rules violations do not fit within the definition of “waste” under TWC § 36.001(8)(A–G) because groundwater and sewage are separate and distinct substances under the TWC. Once the groundwater is used and changes in character to the point that it meets the definition of sewage, it is no longer groundwater. Edwards Aquifer Authority, 369 S.W.3d at 822 (“the character of water as groundwater or state water can change.”). Thus, Hays Trinity does not have authority to regulate spillage of wastewater and sewage as being the waste of groundwater under TWC § 36.101(a) and § 36.001(8)(A–G). This Court does not suggest that Hays Trinity lacks all authority to regulate sewage or wastewater spills under other powers or duties potentially imbued to it by its

enabling law.² This Court concludes only that Hays Trinity does not have such powers under TWC § 36.101(a) and § 36.001(8)(A–G) in the context it sought to enforce its District Rules here by treating sewage as groundwater.

Based on the analyses above, Hays Trinity’s Motion for Summary Judgment as to Aqua Texas’s claim that it exceeded its statutory authority in enforcing its waste rules is **GRANTED IN PART AND DENIED IN PART**. Further, Aqua Texas’s Motion for Summary Judgment as to those same claims is also **GRANTED IN PART AND DENIED IN PART**. Hays Trinity is entitled to summary judgment on Aqua Texas’s ultra vires claim as to the enforcement of waste rules to Aqua Texas’s line loss. Aqua Texas is entitled to summary judgment on its ultra vires claims as to Hays Trinity’s waste rules enforcement in application to their sewage and wastewater spills.

II. Fourteenth Amendment Violations

Hays Trinity moves for summary judgment on all of Aqua Texas’s claims alleging Fourteenth Amendment violations, including claims based on Hays Trinity’s rules enforcement, the permitting moratorium, and Hays Trinity’s counterclaims to enforce waste rules. (Dkt. # 120 at 7.)

² Whether Hays Trinity has the authority to issue fines for district rules violations for the spillage of sewage and wastewater under TWC § 36.101(a)’s duty to preserve and protect the recharging of groundwater or a groundwater reservoir to prevent the degradation of water quality is not at bar in this case as Hays Trinity’s counterclaim is based on its waste rules.

In order to state a claim under § 1983, a plaintiff is required to “allege a violation of a right secured by the Constitution or laws of the United States.” Moore v. Willis Indep. Sch. Dist., 233 F.3d 871, 874 (5th Cir. 2000)). “The Equal Protection Clause protects individuals from governmental action that works to treat similarly situated individuals differently.” John Corp. v. City of Hous., 214 F.3d 573, 577 (5th Cir. 2000). Aqua Texas has alleged class-of-one equal protection claims because it does not allege it is part of a suspect classification and instead asserts unique treatment. (Dkt. # 61 at 14–16); Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam).

A class of one equal protection claims requires that Aqua Texas prove (i) it was intentionally treated differently from other similarly situated utilities and that (ii) there was no rational basis for the differential treatment. Id. Rational basis review seeks to determine whether the differential treatment rationally relates to the actor’s articulated interests. St. Joseph Abbey v. Castille, 712 F.3d 215, 223 (5th Cir. 2013).

A. Hays Trinity’s Rules Enforcement Settlements

Aqua Texas alleges that Hays Trinity had a practice of forgiving rule violation penalties based on funds spent on conservation efforts, which Hays Trinity never extended to it, violating its Fourteenth Amendment rights. (Dkt. # 61 at 14–16.) Aqua Texas contends the differential treatment it received from Hays

Trinity lacks a rational basis and is based on the Director's personal animus towards it. (Id.)

In moving for summary judgment, Hays Trinity asserts that its decision to extend penalty forgiveness to Aqua Texas was an exercise of its discretion based on its district rules. (Dkt. # 120 at 9.) Thus, the discretionary nature of the decision precludes Aqua Texas's equal protection claim. (Id.) Aqua Texas counters that the NOAV at issue was for over pumping in 2022, and that the district rule in effect then did not implicate discretion in forgiving penalties. (Dkt. # 128 at 7–8.)

Application of a class of one equal protection claims requires a “clear standard” by which the equal protection claim can be evaluated. Engquist v. Oregon Dep't of Agric., 553 U.S. 591, 603, 128 S.Ct. 2146 (2008). Discretionary decisions based on numerous subjective, individualized assessments do not provide the type of “clear standard” required for a court to evaluate a class of one equal protection claim. Id. Thus, the Court will begin by evaluating whether Hays Trinity District Rule 10 is discretionary in nature based on the Rule's language.

The NOAV at issue in this case was for exceeding drought-adjusted permitted amounts in 2022 at 2022 penalty rates but was issued to Aqua Texas in April of 2023. (Dkt. # 120-1 at 352–353.) Thus, any negotiations to receive penalty forgiveness for money spent on conservation measures would have

occurred when January 2023 or subsequent District Rules were in effect. (Id.) As the NOAV itself states, “[i]f repairs or improvements to your water system were made in 2022 or other conservation measures were made [...] and you can provide copies of paid invoices as evidence, HTGCD *may consider* deducting reasonable costs from the NOAV amount.” (Id.)

The January 2023 District Rule 10–10.1.6 had been in effect since January of 2018 and contains some discretionary language. (Dkt. # 120-1 at 151–152.) District Rule 10.1.2 states Hays Trinity shall send an NOAV, the NOAV shall include certain specified information, and that the NOAV “*may* require remedial action and *may* include a payment amount required to settle the violation.” (Id.) In statutory construction, “[t]he word ‘may’ customarily connotes discretion.” Palomino v. Fed. Bureau of Prisons, 408 F. Supp. 2d 282, 290 (S.D. Tex. 2005) (quoting Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 125 S.Ct. 694, 703, 160 L.Ed.2d 708 (2005)). The fact that Rule 10.1.2 states that Hays Trinity *may* include a payment amount required to settle the violation, versus using the word *shall*, indicates that Hays Trinity’s rules provided for the exercise of discretion in imposing and settling financial penalties for district rule violations. Id. Therefore, the discretionary nature of the District Rule at issue precludes Aqua Texas’s class of one equal protection claim for enforcement of the

NOAV at issue and refusal to offer or accept conservation improvements as credits to settle it.

B. Moratorium on New Wells

Aqua Texas alleges that Hays Trinity’s refusal to permit its new wells, via the permitting moratorium, violates its Fourteenth Amendment rights because other utilities were permitted after the moratorium. (Dkt. # 61 at 15.) Aqua Texas maintains there is no rational basis for the differential treatment. (Id.)

Hays Trinity moves for summary judgment on this claim arguing ripeness. (Dkt. # 120 at 12–13.) Hays Trinity maintains that, while Aqua Texas submitted notices for constructing its two new wells in the JWGMZ, it never actually submitted operating permit applications nor sought a variance to convert its test wells into operational wells. (Id.) Aqua Texas counters that its claim is not based on the refusal to permit their two new wells but on the refusal by Hays Trinity to “*grandfather* Aqua’s permitting process.” (Dkt. # 128 at 9–11.) Aqua claims it is entitled to being grandfathered in because their permitting process began with their well construction notifications, which were submitted two months prior to the permitting moratorium taking effect. (Id.)

Evaluating ripeness ensures that federal courts do not decide “premature or speculative” disputes. Shields v. Norton, 289 F.3d 832, 835 (5th Cir. 2002) (citing United Transp. Union v. Foster, 205 F.3d 851, 857 (5th Cir.

2000)). A case ripens when it “would not benefit from any further factual development and when the court would be in no better position to adjudicate the issues in the future than it is now.” Pearson v. Holder, 624 F.3d 682, 684 (5th Cir. 2010) (cleaned up). For an equal protection claim premised upon permitting, that claim would not be ripe until the regulator has made a “final, definitive position” about the permit. DM Arbor Ct., Ltd. v. City of Houston, 988 F.3d 215, 218–19 (5th Cir. 2021) (district court was correct in finding that plaintiff’s permit-based claims were not ripe when the city council had not taken a final, definitive position about the permits).

Aqua Texas submitted two “new well construction notification applications” in 2022. (Dkt. # 120-1 at 288–293.) Hays Trinity sent well construction notification confirmations for both of these notification applications to Aqua Texas on August 31, 2022. (Dkt. # 120–1 at 286–287.) Both confirmations referred to the applications as being an “Application of Intent to Drill or Alter a Well.” (Id.) Scot Foltz (“Foltz”), Aqua Texas’s Environmental Compliance Manager, testified that his duties include submitting permitting applications to GCDs. (Dkt. # 120-1 at 305, 312.) Foltz specifically testified that Aqua Texas had not submitted any applications for operating permits for their two test wells at issue, citing the permitting moratorium as preventing Aqua Texas from “moving forward on that.” (Dkt. # 120-1 at 312.) Foltz was specifically asked why Aqua

Texas did not submit operating permits for the two test wells, and he testified that Aqua Texas did not apply because the two wells would not have been eligible for the health and safety exemption to the permitting moratorium. (Id. at 313.) Hays Trinity’s General Manager, Laura Thomas’s (“Thomas”) Declaration also states that Aqua Texas never submitted operating permit applications on the two wells in question. (DKt. # 120-1 at 349.)

Aqua Texas counters that its claim is not based on the refusal to permit their two new wells but on the refusal by Hays Trinity to “grandfather Aqua’s permitting process.” (Dkt. # 128 at 9–11.) Aqua emailed Hays Trinity’s General Manager, Charlie Flatten (“Flatten”), on November 2, 2022, stating that the permitting moratorium “cannot be applied retroactively to Aqua’s wells to be completed pursuant to the enclosed Well Construction Notifications.” (Dkt. # 128-3 at 1–2.) The communication went on to state that “the District must process this second in a series of applications pursuant to the District Rules that were in effect at the time the process was initiated by authorizing well construction and timely issuing the operating permits.” (Id.) The communication closes with Aqua Texas stating that it “looks forward to receipt of the district’s authorization to proceed with the completion of the wells.” (Id.) Flatten responded the next day by email stating that the new wells would require a new permit and that Hays Trinity would not be accepting non-exempt new permit applications until drought conditions

improved. (Dkt. # 128-4.) Flatten testified in his deposition that he “believed that the District would not accept an application because of the moratorium.” (Dkt. # 128-20 at 15.)

Hays Trinity’s District Rule in effect prior to November 2, 2023, define an operating permit as being the “authorization issued by the District under which an owner or operator of property within the District may construct, drill, or modify a well in compliance with approved District and State of Texas standard any may withdraw a specific amount of groundwater for a non-exempt use for a designated period of time.” (Dkt. # 120-1 at 113.) A test well is defined as a well “drilled to evaluate groundwater quality or quantity.” (Id. at 115.) A well construction notification is defined as a notice “provided to the District on a District Form of intent to construct a new well.” (Id. at 116.) Although, District Rule 11.1.4 states that all permit applications need to submit a well construction notification, nothing in District Rule 11 or 3 states that the operating permit process begins with the well construction notification process. (Id. at 118–124, 153–154.) However, in an email from Flatten to a Mr. Shindler, Flatten states that “[b]ecause your well construction notification process started prior to the start of the moratorium, Fitzhugh Park will be considered grandfathered for production permit application purposes and no Variance will be required.” (Dkt. # 128-10 at 1.) Of note, even though Fitzhugh Park was being “grandfathered” it would still

require submission of additional information and Flatten made no representations that the operating permit application would be approved or not.

While Aqua Texas contends that their Fourteenth Amendment claim arising from the permitting moratorium is ripe because Hays Trinity would not grandfather it under the pre-moratorium permitting process, this is illusory, because the dispute is still speculative. Shields v. Norton, 289 F.3d at 835. Aqua Texas expressed its position by demanding to be grandfathered (Dkt. # 128-3 at 1–2) and Hays Trinity expressed its position that a new permit would be required and would not be accepted due to the moratorium. (Dkt. # 128-4.) However, neither acted on their respective positions by submitting or refusing an application. (Dkt. # 120-1 at 305, 312–313, 349.) Because Aqua Texas never applied for operating permits, the Court would be left to speculate what Hays Trinity would have done, such as refuse to accept the permit application due to the moratorium, accept submission but deny the permit under new rules, apply the pre-moratorium rules, deny the permit under the moratorium, etc. Hays Trinity cannot act on an application that was never submitted; thus, Aqua Texas’s Fourteenth Amendment claim based on the permitting moratorium is not ripe. Id. Therefore, Hays Trinity is entitled to summary judgment on Aqua Texas Fourteenth Amendment claim based on the permitting moratorium and that claim is hereby dismissed.

C. Hays Trinity’s Counterclaims to Enforce Waste Rules

Hays Trinity moves for summary judgment on Aqua Texas's Fourteenth Amendment claim based on Hays Trinity's counterclaim to enforce its waste rules to line losses as well as to wastewater and sewage spills. (Dkt. # 120 at 15–16.) Aqua Texas alleges that Hays Trinity's counterclaims to enforce waste rules against it for their line losses and waste spills manifests differential treatment because Hays Trinity had never enforced those rules against other utilities in the district. (Dkts. ## 61 at 16; 128 at 5.) Aqua Texas contends that there is no rational basis for this differential treatment and that the actions were based on the Director's personal animus towards Aqua Texas. (*Id.*) Hays Trinity argues that Aqua Texas fails to identify any other utility that is similarly situated and maintains that the rational basis for its counterclaim is the excessiveness of Aqua Texas's waste. (Dkt. # 120 at 15–16.) The Court will begin by considering whether Aqua Texas was treated differently than a similarly situated comparator.

For its class of one equal protection claim, Aqua Texas must identify “similarly situated” comparators and must provide specific facts to support the conclusion of similarity. Fazzino v. Roe, No. 6:18-CV-00114-JCM, 2021 WL 8202798, at *2 (W.D. Tex. Aug. 23, 2021) (citing Rountree v. Dyson, 892 F.3d 681, 685 (5th Cir. 2018)). There is no precise formula used to determine whether a plaintiff is similarly situated to a comparator. *Id.* (citing Lindquist v. City of Pasadena, 669 F.3d 225, 234 (5th Cir. 2012)). A full spectrum of factors must be

considered, including the plaintiff's and comparators' relationship with the ordinance at issue. Id.

Aqua Texas maintains its similarly situated comparators for line loss and water spillage waste enforcement are Wimberley Water Supply ("WWSC") and Dripping Springs Water Supply Company ("DSWSC"). (Dkt. # 128 at 5–7, 11–12.) Hays Trinity alleges Aqua Texas's line losses are as follows:

a. In 2020, Aqua Texas reported the following line losses:

Permit Nos.	Waste
No. 188, Mountain Crest	9.58% line loss reported
No. 189, Cardinal Valley	17.69% line loss reported
No. 198, Woodcreek I, Well #12	28.49% line loss reported
No. 199, Woodcreek II	26.48% line loss reported

b. In 2021, Aqua Texas reported the following line losses:

Permit Nos.	Waste
No. 188, Mountain Crest	3.92% line loss reported
No. 189, Cardinal Valley	30.18% line loss reported
No. 198, Woodcreek I, Well #12	22.05% line loss reported
No. 199, Woodcreek II	29.13% line loss reported

c. In 2022, Aqua Texas reported the following line losses:

Permit Nos.	Waste
No. 188, Mountain Crest	11.08% line loss reported

No. 189, Cardinal Valley	20.01% line loss reported
No. 198, Woodcreek I, Well #12	23.35% line loss reported
No. 199, Woodcreek II	30.69% line loss reported
No. 210, Woodcreek I, Well #11	21.67% line loss reported

d. In 2023, Aqua Texas reported the following line losses:

Permit Nos.	Waste
No. 188, Mountain Crest	19.06% line loss reported
No. 189, Cardinal Valley	20.93% line loss reported
No. 198, Woodcreek I, Well #12	17.37% line loss reported
No. 199, Woodcreek II	33.38% line loss reported
No. 210, Woodcreek I, Well #11	21.67% line loss reported

e. In 2024, Aqua Texas reported the following line losses:

f. Permit Nos.	Waste
No. 188, Mountain Crest	8.95% line loss reported
No. 189, Cardinal Valley	39.97% line loss reported
No. 198, Woodcreek I, Well #12	24.68% line loss reported
No. 199, Woodcreek II	34.28% line loss reported
No. 210, Woodcreek I, Well #11	22.58% line loss reported

(Dkt. # 110 at 26–27.) Flatten testified in his deposition that he was not aware of Hays Trinity enforcing waste rules for line loss against any user other than Aqua Texas. (Dkt. # 120-1 at 402.) Flatten’s testimony went on to acknowledge the line losses of other utilities such as DSWSC and WWSC. (*Id.* at 402–404.) Based on the Declaration of Thomas, who succeeded Flatten as the General Manager of Hays Trinity, Aqua Texas owns five of twelve wells located within the JWGMZ. (Dkt. # 120-1 at 348–349.) DSWSC does not own any wells within the JWGMZ and WWSC owns one well within the zone. (*Id.*) The wells Aqua Texas owns within JWGMZ are Woodcreek North, Golf Course, Woodcreek Phase I, Woodcreek Phase II, and Mountain Crest. (Dkt. # 120-1 at 425.) Hays

Trinity’s geotechnician, Keaton Hoelscher (“Hoelscher”), created charts demonstrating line loss percentages by permittee within Hays Trinity from 2020 through 2024, although this was not attached as an exhibit with his Declaration. (Dkt. # 120-1 at 425–426.) Hoelscher cites that Aqua Texas’s five wells in the JWGMZ pumped a total of 157,285,800 gallons of water from within the zone in 2022, while WWSC’s single well in the zone pumped 40,970,000 gallons that same year. (Id.) Hoelscher also cited that from 2022 to 2024, Aqua Texas “consistently had the highest percentages of line loss, often by significant margins[.]” (Id.)

Thomas’s Declaration states that Aqua Texas is one of the largest water users, by volume, within Hays Trinity and that the only utilities that pump similar volumes to Aqua Texas are WWSC and DSWSC. (Id. at 348–349.) Foltz’s own Declaration acknowledges that Aqua Texas’s three systems within Hays Trinity had lines losses of 17 gallons per connection per day (“GCD”), 20 GCD, and 68 GCD in 2024. (Dkt. # 114-1 at 5.)

Considering all of this evidence, it is not disputed that Aqua Texas’s closest comparators in size are WWSC and DSWSC and that all utilities have line losses and may experience spills. However, no other utilities similar to Aqua Texas in size own nearly as many wells within JWGMZ as Aqua Texas nor pump as much within the zone as Aqua Texas. (Dkt. # 120-1 at 249–349, 425–426.)

Aqua Texas's incomparable presence in the frail JWGMZ renders it dissimilar to WWSC and DSWSC; therefore, the WWSC and DSWSC are not similarly situated comparators. Fazzino v. Roe, 2021 WL 8202798, at *2–3. Because Aqua Texas fails to create a genuine issue of material fact as to different treatment of a similarly situated comparator, Hays Trinity is entitled to summary judgment on Aqua Texas's equal protection claims on enforcement of waste rules for its line losses and waste spills. Therefore, these claims are dismissed.

III. Taking Claims

Aqua Texas alleges that Hays Trinity's permitting moratorium manifests a taking because it deprives Aqua Texas of the ability to produce and use its groundwater. (Dkt. # 61 at 19–22.) Aqua Texas also alleges that its two test wells are Chapter 245 projects, thus refusal to grandfather them under pre-moratorium rules also manifests a taking. (Id. at 23–24.) Hays Trinity moves for summary judgment on Aqua Texas's taking claims arguing ripeness and lack of evidence. (Dkt. # 120 at 16.) The Court has found that Aqua Texas's equal protection claim premised on permitting is not ripe because it is not disputed that Aqua Texas never submitted applications for operating permits. Thus, Aqua Texas's taking claim premised on permitting is also unripe under the same reasoning. The Court will therefore only evaluate Aqua Texas's claim that its test

wells are a Chapter 245 project and thus Aqua has vested property interests in its permits because they filed notifications of well construction.

Aqua Texas asserts that its well construction notifications were essentially initial permits in a series of permits for its wells project and thus, under Local Government Code Chapter 245, it can only be subject to the rules in effect at the time of the well construction notifications and that it has vested property rights in those permits. (Dkt. # 61 at 23.) Aqua maintains that refusal to apply the district rules in effect at the time of well construction notifications equates to a taking of its vested property rights in its wells project. (Id.) Hays Trinity counters that Chapter 245 is inapplicable because well construction notifications do not equate to permits and therefore would not give rise to any vested property rights in a project. (Dkt. # 120 at 21–22.) Hays Trinity maintains that the well construction notifications are merely optional, preliminary steps in developing a water supply well. (Id.)

Local Government Code “Chapter 245 of the Texas Local Government Code creates a system by which property developers can rely on a municipality’s land use regulations in effect at the time the original application for a permit is filed.” Vill. of Tiki Island v. Premier Tierra Holdings, Inc., 464 S.W.3d 435, 439 (Tex. App. 2015). Chapter 245 provides that a permit under that provision is a “license, certificate, approval, registration, consent, permit, or other

form of authorization required by law, rule, regulation, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.” Tex. Loc. Gov’t Code Ann. § 245.001(1). Chapter 245 defines a project as “an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.” Id. at § 245.001(3).

Hays Trinity’s District Rules in effect prior to November 2 of 2023, define an operating permit as being the “authorization issued by the District under which an owner or operator of property within the District may construct, drill, or modify a well in compliance with approved District and State of Texas standard any may withdraw a specific amount of groundwater for a non-exempt use for a designated period of time.” (Dkt. # 120-1 at 113.) Based on this definition, the operating permit itself is a permit under Chapter 245 because it is a permit and is a form of authorization required by rule. Tex. Loc. Gov’t Code Ann. § 245.001(1).

A test well is defined as a well “drilled to evaluate groundwater quality or quantity.” (Id. at 115.) Again, nothing in District Rule 3 or 11 states that the operating permit process begins with the well construction notification process. (Id. at 118–124, 153–155.) While not every test well becomes an operating well because test outcomes may not always be desirable, Rule 11.1.4 does require a well construction notification be submitted for any well sought to be

permitted. (Id. at 154, 286.) A well construction notification is defined as a notice “provided to the District on a District Form of intent to construct a new well.” (Id. at 116.) The definition of a well construction notification does not fit within the definition of a permit under Chapter 245 because nothing in the District Rules’ definition indicates that a well construction notification requires any “license, certificate, approval, registration, consent, permit, or other form of authorization” from Hays Trinity—it is simply a person or entity telling Hays Trinity that it is drilling a test well or intending to drill a test well. (Id. at 116.) Tex. Loc. Gov’t Code Ann. § 245.001(1). This is further supported by how Hays Trinity responds to someone submitting a well construction notification: it merely confirms receipt of the notification. (Dkt. # 120-1 at 286287.) Because the well construction notification is not a permit under Chapter 245, the well construction notification does not serve as a permit in a series of permits. Tex. Loc. Gov’t Code Ann. § 245.001(1); § 245.001(3). Therefore, Chapter 245 is not applicable to Aqua Texas’s takings claim premised on permitting and it does not function to ripen Aqua Texas’s takings claim. Thus, Hays Trinity is entitled to summary judgment on Aqua Texas’s takings claim premised on the permitting moratorium and the application of Chapter 245.

IV. Counterclaims on Permit Invalidity

Hays Trinity brought counterclaims for unauthorized pumping due to expired permits, both for injunctive relief and civil penalties. (Dkt. # 110 at 25–26.) Aqua Texas moves for summary judgment on Hays Trinity’s counterclaims for injunctive relief and penalties based on the expiration of Aqua Texas’s operating permits claiming their permits are not expired under the TWC. (Dkt. # 114 at 3.)

Hays Trinity alleges that Aqua Texas has six operating permits that expired on December 31, 2023, because Aqua Texas had pending enforcement actions it did not settle and it did not renew those permits. (Dkt. # 110 at 25–26.) Hays Trinity argues the same regarding a seventh permit that expired on December 31, 2024, for the same alleged reasons. (*Id.*) Hays Trinity maintains that because these seven permits expired, all subsequent pumping from these wells is unlawful because it is unpermitted pumping. (*Id.*) Aqua Texas counters that under TWC § 36.1145(b)(2) and (c), its permits remain in effect because it is subject to impending enforcement action that has not been settled or finally adjudicated.

TWC § 36.1145(b) provides that a GCD is not required to renew a permit if the applicant is (i) delinquent in paying a fee required by the GCD; (ii) “subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a

final adjudication; or” (iii) has not paid a civil penalty or has otherwise not complied with an order from a final adjudication for violation of a permit, order, or rule. Tex. Water Code Ann. § 36.1145(b)(1–3). § 36.1145(c) states that if a GCD is not required to renew a permit under (b)(2), that “permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.” Id. at (c). The parties do not dispute that (c) applies to Aqua Texas.

However, Hays Trinity counters that the seven permits expired because Aqua Texas did not timely submit renewal applications and fees as required under TWC § 36.1145(a). (Dkt. # 118 at 13–14.) However, nothing in § 36.1145 requires a permit holder subject to § 36.1145(c) to submit renewal applications and fees. Subsection (a) cited by Hays Trinity has plain and clear language that it applies to permit renewals that a GCD *has to renew*. Specifically, subsection (a) states that “[e]xcept as provided by Subsection (b), a district *shall* without a hearing renew or approve an application to renew an operating permit” provided that the permit holder timely submits and application and fees. Tex. Water Code Ann. § 36.1145(a) (emphasis added). Further, subsection (c)’s language is clear that it applies to permits a GCD *does not have to renew*, stating “[i]f a district is not required to renew a permit under Subsection (b)(2), *the permit remains in effect[.]*” Id. at (c) (emphasis added). Subsection (c) does not include language requiring permit renewal or payment of fees. (Id.) Because TWC §

36.1145's plain language does not place any renewal requirement on Aqua Texas, it is entitled to summary judgment on these counterclaims and Hays Trinity's counterclaims for injunctive relief and civil penalties of unpermitted pumping fail as a matter of law and are thus dismissed. Tex. Food Indus. Ass'n v. U.S. Dep't of Agric., 81 F.3d 578, 582 (5th Cir. 1996) (absent ambiguity, a statute's words must be given their plain meaning); Contender Farms, LLP v. U.S. Dep't of Agric., 779 F.3d 258, 269 (5th Cir. 2015) (to determine a statute's ordinary meaning its language is considered, words are given their ordinary, common meaning, words are read in proper context and considered based on the statute as a whole, and terms are also considered in light of the statute's purpose).

V. Counterclaims for Fines from Rules Enforcement

Aqua Texas moves for summary judgment on Hays Trinity's counterclaims to enforce their late reporting rules and rules regarding the handling of abandoned or deteriorated wells. (Dkt. # 114 at 8–12.) The Court will first analyze the late reporting claims, then analyze the capping and plugging rules claims.

A. Late Reporting

Hays Trinity alleges that Aqua Texas consistently violated its District Rules by failing to timely file quarterly reports for all of its operating permits and monthly reports for its operating permits within the JWGMZ. (Dkt. # 110 at 29–

33.) For these violations of its District Rules, Hays Trinity seeks civil penalties and injunctive relief. (Id.) Aqua Texas contends that Hays Trinity cannot seek judicial relief for its late reporting because Hays Trinity never issued NOAVs for those rule violations, as required by its own Rule 1.5.3. (Dkts. ## 114 at 8–10; 119 at 5–6.) Hays Trinity counters that its District Rules do not require an NOAV as a condition precedent to an enforcement action and that the TWC does not require NOAVs prior to bringing enforcement actions. (Dkt. # 118 at 16–17.)

The parties do not dispute that Hays Trinity did not issue an NOAV to Aqua Texas for late reporting nor that the reporting rules were applicable to Aqua Texas. (Dkts. ## 114; 118; 119.) Under the District Rules in effect prior to October of 2023, an enforcement action is defined as “action taken by the District to enforce District Rules, orders, permits, or any other law within its enforcement authority.” (Dkt. # 120 at 111.) This definition is broad and would include both sending a NOAV and filing suit. Rule 5.7 is titled “Hearings on Enforcement Actions.” (Dkt. # 120-1 at 144.) Rule 5.7.1 states that an NOAV shall go before the Board of Directors, as a “contested case hearing” item, *if* a timely contestation letter is received from someone who received an NOAV. (Id.) Rule 5.7.5 states that “[f]ollowing the contested case hearing concerning the NOAV,” the Board decides on the proper resolution of the matter, with enumerates outcomes including

assessing a penalty, making an offer of compromise and settlement, or filing suit to seek injunctive relief and or civil penalties. (*Id.* at 145.)

Rather than interpreting Rule 5.7.5 in a vacuum and instead viewing it in light of the title and substance of the entirety of Rule 5.7 and its subparts, it becomes clear that the plain meaning of Rule 5.7 outlines a sequential process for *hearings on* enforcement actions. (*Id.* at 144–145.) Rule 5.7 is silent as to any sequential process for enforcement actions themselves and only speaks to the hearing process if a hearing is triggered by a letter contesting an NOAV. (*Id.*) Rule 5.7 requires that if a hearing occurs on an enforcement action, Hays Trinity shall make a decision on proper resolution of the enforcement matter; however, it does not speak to whether an enforcement action requires issuance of an NOAV or a hearing on an NOAV. (*Id.*) Rule 5.7.5 cannot be interpreted to require an NOAV prior to bringing an enforcement action without willfully ignoring the context of Rule 5.7 and how it functions as a whole, which would not be proper. Contender Farms, LLP v. U.S. Dep’t of Agric., 779 F.3d at 269. Thus, Aqua Texas is not entitled to summary judgment on Hays Trinity’s counterclaims to enforce its late reporting rules.

B. Addressing Abandoned or Deteriorated Wells

Hays Trinity alleges that Aqua Texas violated state law and its District Rules by failing to cap or plug abandoned and deteriorated wells. (Dkt. #

110 at 33–35.) Aqua Texas moves for summary judgment on Hays Trinity’s counterclaim to enforce capping and plugging rules, claiming those rules have not been triggered. (Dkt. # 114 at 11–12.) The Court will begin by analyzing Aqua Texas’s capping and plugging allegations, and then it will proceed to surveying the confluence of the relevant state laws and District Rules on capping and plugging wells.

Hays Trinity alleges that from 2022 to present, Aqua Texas never requested a permit to cap any of its abandoned or deteriorated wells and never notified Hays Trinity of any capping or plugging activities those wells. (Dkt. # 110 at 33–34.) Hays Trinity’s counterclaim implicates Maintenance Well 1, Section 25 Well, Bullfrog Well, and Park Well. (Id.) Also, Hays Trinity contends that its counterclaim on capping and plugging was notice of such conditions and that was first filed on June 10, 2024. (Dkts. ## 118 at 17–18; 15.)

Texas law defines an abandoned well as a well that is not in use. Tex. Occ. Code Ann. § 1901.255(a)(1). As part of that definition, a well is considered in use if it is not deteriorated and has been capped. Id. A deteriorated well is a well that will cause or is likely to cause pollution of any water in the state due to its condition. Id. at (a)(2). Under the Texas Occupations Code (“TOC”), a landowner or well owner has 180 days from learning of conditions making their well abandoned or deteriorated *to cap or plug the well*. Id. at (c) (emphasis added).

Once plugged, the TOC requires a plugging report be submitted to the Board of the relevant GCD within 30 days of plugging but does not require a report for capping. Id. at (d). The Texas Administrative Code (“TAC”) requires that a deteriorated well be plugged and requires that an abandoned well be capped or plugged and also includes the same 180-day triggering language. 16 Tex. Admin. Code § 76.72(e).

The TAC sets out the standards for capping and plugging wells and also requires that wells be capped or plugged in compliance with GCD’s district rules. Id. at 76.104. A non-deteriorated well—one which has a casing in good condition and is beneficial to its owner—may be capped with a covering that is not easily removable by hand, prevents surface pollutants from entering the well, and that can sustain a weight of at least 400 pounds. Id. at (d).

Next, the Court reviews Hays Trinity’s District Rules in effect through October of 2023. The District Rule has a broader definition of a deteriorated well, tracking the TOC’s definition but adding “or is allowing or likely to allow escape of fresh groundwater into any other geologic strata or to the surface of the earth.” (Dkt. # 120-1 at 110.) The Rules define an open or uncovered well as being an artificial penetration “at least 10 feet deep that is dug or drilled for the purpose of producing groundwater [...] and is not capped or equipped with an annular seal.” (Id. at 113.) The annular seal is the grout that

seals the space between the casing and the borehole wall. (Id. at 109.) The Rules require that an open or uncovered well be capped and the Rules do not define capping. (Id. at 146.) The Rules proceed to require that capping “shall provide a sanitary seal to prevent the introduction of potential contaminants and shall be capable of sustaining a weight of at least four hundred pounds.” (Id.) Rule 6 requires that within 180 days of learning of an abandoned or deteriorated well, the owner shall plug that well. (Id. at 147.) The District Rules after November of 2023 require an open or uncovered well be capped but additionally require a drilling permit prior to capping a well. (Id. at 237.) The revised District Rules also require a drilling permit to plug a well. (Id. at 238.)

For salience, the interplay between the above regulations and rules are briefly outlined here. Under the TOC, an abandoned or deteriorated well must be either capped or plugged. Tex. Occ. Code Ann. § 1901.255(c). Under the TAC, a deteriorated well must be plugged and an abandoned well must be capped or plugged. 16 Tex. Admin. Code § 76.72(e). Under District Rules, an open or uncovered well must be capped and an abandoned or deteriorated well must be plugged. (Dkt. # 120-1 at 146–147, 237–238.) All of the above trigger action by Aqua Texas within 180 days of becoming aware of conditions that would make the implicated wells either deteriorated or abandoned. Tex. Occ. Code Ann. § 1901.255(c); 16 Tex. Admin. Code § 76.72(e). ((Dkt. # 120-1 at 146–47, 237–38.)

Because the above do not conflict and Aqua Texas is subject to Hays Trinity's District Rules, Aqua Texas would be in violation if it failed to plug the implicated wells and they are in fact deteriorated or abandoned and it was aware of the conditions making them so.

Aqua Texas maintains that all four wells implicated by Hays Trinity's counterclaims have been capped since at least 2022, when Aqua Texas purchased the respective pieces of land. (Dkt. # 114 at 11–12.) Aqua also contends that it was never aware of any conditions that would render these wells deteriorated or abandoned even after Hays Trinity filed its relevant counterclaim due to vagueness of the pleadings. (Id.)

Hays Trinity's first pleading of its capping and plugging counterclaim filed on June 10, 2024, identified Wells No. 21 and at least one well on the property associated with Mountain Crest as being abandoned or deteriorated, without citing any conditions. (Dkt. # 15 at 20.) The first amendment to this counterclaim, filed on May 13, 2025, more specifically identified the allegedly violative wells, including more wells and a map, but again does not cite any conditions making those wells abandoned or deteriorated. (Dkt. # 56 at 23–24.) The second amendment to this counterclaim, filed on May 21, 2025, adds more specifically identified wells but again fails to allege any conditions rendering these wells deteriorated or abandoned. (Dkt. # 62 at 23–24.) The live pleading of this

counterclaim, filed on October 3, 2025, also identifies no specific conditions of the now only four implicated wells. (Dkt. # 110 at 33–34.) However, it is not disputed that Aqua Texas and Hays Trinity were both present on October 22, 2025, when Aqua Texas had six wells inspected by Texan Water. (Dkts. ## 114-1 at 230–231; 118-1 at 98–114.) This inspection would be sufficient for Aqua Texas to have learned of any conditions requiring capping or plugging as of October 22, 2025. Thus, the Court turns to whether any of those wells are actually abandoned or deteriorated as of that date.

Aqua Texas has produced the well inspection report from Texan Water’s inspection on October 22, 2025. (Dkt. # 114-1 at 230–231.) That report speaks to the Section 25 Well, Bullfrog Well, Park Well, Maintenance Well 1, and also included Maintenance Well 2 and “Aqua #23 Well.” (Id.) The only actionable findings noted in Texan Water’s report were that the Section 25 Well needed a vent or plug to the open port on the well seal and that Aqua # 23 Well should have a cap on the wire port of the well seal and a plug on the open airline piping on the well seal. (Id.) Aqua Texas has submitted two photographs showing those recommended interventions being implemented. (Id. at 232–233.)

Hays Trinity contends that, based on inspection and photographs from October of 2025, several of Aqua Texas’s wells exhibit conditions meeting the definitions of abandonment and deterioration. (Dkt. # 118 at 18–19.) Hays Trinity

maintains that the Section 25 Well has an uncovered opening at the top of the well head and that it might have an obstructed downhole from a suspected casing collapse. (Id.) Hays Trinity also asserts that the Bullfrog Well and Park Well have pads that are not intact or that are in advanced disrepair and that they have steel sleeves that appear too short to prevent surface runoff from entering. (Id.) Not included in its counterclaim, but included in its Response, Hays Trinity alleges Well No. 1509 was unsecured or loosely capped with a lightweight cap. (Id.) As evidence of the above, Hays Trinity produced a Declaration from Thomas, attesting to the foundation of attached inspection photographs with notes from October 22, 2025, which are from Hays Trinity's records. (Dkt. # 118-1 at 98–114.) These include inspection photographs from Maintenance Well 1, the Section 25 Well, Bullfrog Well, Park Well, and Well No. 1509. (Id.)

The above variances in the findings from the parties inspecting the same wells on the same day create a genuine issue of material fact as to whether any of these six wells meet the definitions of abandoned or deteriorated wells. Thus, Aqua Texas is not entitled to summary judgment on Hays Trinity's capping and plugging counterclaims.

VI. Notice of Rule Amendment Claims

Aqua Texas moves for summary judgment on its claims that Hays Trinity failed to give public notice of its February 6, 2025, rule amendments, in

violation of the TWC and the Texas Open Meetings Act (“TOMA”). (Dkt. # 114 at 16–19.) Hays Trinity also moves for summary judgment on this claim. (Dkt. # 120 at 25–27.) Aqua Texas does not deny that Hays Trinity publicly gave notice of some rule changes but asserts that the amendments adopted differed substantively from the changes noticed. (Dkt. # 114 at 16–19.) Aqua Texas seeks to enjoin Hays Trinity Hays Trinity’s enforcement of these rule changes and to also enjoin it from deliberating during executive session.

The TWC requires a GCD to provide public notice of a rule making hearing at least twenty days prior to the meeting. Tex. Water Code Ann. § 36.101(d). It also requires the GCD to make a copy of all proposed rules available to the public at least twenty days before a rule making hearing. *Id.* at (d)(5). TWC § 36.101(e) requires that the notice of the rule making hearing include “a brief explanation of the subject of the rulemaking hearing; and [] a location or internet site at which a copy of the proposed rules may be reviewed or copied.” *Id.* at (e).

GCD’s are also subject to TOMA, which requires governmental bodies to deliberate openly in public. Tex. Gov’t Code Ann. § 551.001–002. TOMA’s notice requirement requires that an applicable body’s notice shall include the “subject of each meeting held by the governmental body.” *Id.* at § 551.041. A notice is not required to “state all of the consequences which may flow from consideration of the topic,” the notice must still “alert the general public to the

topic under consideration.” Mares v. Texas Webb Cnty., No. 5:18-CV-121, 2020 WL 619902, at *4 (S.D. Tex. Feb. 10, 2020) (citing City of Rio Grande City v. BFI Waste Serv. of Tex., LP, No. 04-15-00729-CV, 2016 WL 5112224, at *11 (Tex. App.—San Antonio 2016) (citations omitted)). Where the content of a notice is not disputed, the adequacy of the notice is a question of law. Id. (citing Palacios v. City of Crystal City, Tex., No. DR-12-CV-040-AM-CW, 2014 WL 11320459, at *5 (W.D. Tex. Sept. 30, 2014)).

Aqua Texas Argues that Hays Trinity violated TWC’s notice requirement by not noticing all implicated rules amended and for noticing amendments different from those actually adopted. (Dkt. # 114 at 16–19.) Aqua Texas also contends that Hays Trinity deliberated on the rule amendments during executive session, violating TOMA. (Id.) Hays Trinity counters that it was compliant because the TWC and TOMA do not prohibit a GCD from modifying proposed changes after public comments and deliberations, which would not require further notice. (Dkts. ## 120 at 26–27; 118 at 10–13.)

The notice for the February 6, 2025, hearing identified the following as hearing item number one:

[p]roposed amendments to District Rules: The proposed rules revise the District’s existing rules 1 (Introduction), 2 (Definitions), 3 (Well Construction, Operating Permits, and Water Utility Connections), 4 (Well Construction, Reports, and Spacing), 5 (Hearings), 10 (Enforcement), 11 (Aquifer Test/Well Performance Test and Report), 12 (Reporting), 13 (Drought Management), 14 (Variances), and 15

(Management Zone). Proposed rules are available on the District Website and at the District office.

(Dkt. # 120-1 at 621.) The notice was posted on Hays Trinity's website and at its office on January 17, 2025. (Id.) The notice stated that written public comment could be submitted to Hays Trinity via email or mail. (Id.) Aqua Texas alleges Rules 3.7, 10.1.2, and 15.2.1 were amended in ways not covered by the notice and that Rule 13.2 was amended without proposed changes being noticed because there were proposed changes circulated for Rule 13 but not specifically for Rule 13.2.

(Dkt. # 114 at ¶ 18.)

The proposed amendment language is shown below in red followed by the amendment ultimately adopted in purple. The proposed amendments did not include any changes to Rule 13.2 but Rule 13 was covered in the posted notice.

(Dkt. # 114-1 at 92, 621.)

Section 3.7 Renewal of an Operating Permit

Clarification of timing and terms of permit renewals and applicability of automatic renewal under Chapter 36, consistent with Section 3.8.

(3.7.1) Permits will be renewed for the same annual production amount, ownership, term, place of use, purpose of use, points of withdrawal, and rate of withdrawal, and-and term if an application to renew and the required permit renewal fee is received within 4 months of permit expiration and not later than~~by~~ October 1st of the year the permit expires. A permit amendment application in

~~accordance with Section 3.8 along with the renewal fee~~ is required if requesting an amendment change to the permit. ~~Renewal fees shall coincide with requested amended production amount and or permit term.~~

(3.7.2) The District may charge and collect a permit renewal application fee not to exceed \$400 in accordance with Section 8843.1515.

(3.7.3) Renewal applications complying with the requirements of this section shall be ~~automatically~~-approved except when the applicant: (a) is delinquent in paying a fee required by the ~~D~~district; (b) is subject to a pending enforcement action for a substantive violation of a ~~D~~district permit, order, or rule that has not been settled by agreement with the ~~D~~district or a final adjudication; or (c) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a ~~D~~district permit, order, or rule.

If the permit amendment process results in the denial of an amendment, the permit as it existed shall be renewed, unless Subsection (a), (b) or (c) of this section applies to the applicant.

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is subject to a pending enforcement action for a substantive violation of a District permit, order, or rule that has not been settled by agreement with the District or a final adjudication, but the applicant has submitted a renewal application complying with the requirements of this section, the permit shall remain in effect until the final settlement or adjudication on the matter of the substantive violation, at which time the renewal application shall be considered and approved if the application complies with the requirements of this section at that time. Renewal applications shall be denied by the District if an applicant is delinquent in paying a fee required by the District or has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a District permit, order, or rule.

(3.7.4) If the permit amendment process results in the denial of an amendment, the permit as it existed shall be renewed, unless Subsection (a), (b) or (c) of this section applies to the applicant.

~~(3.7.4) Neither the permit holder nor the public may request a contested case hearing concerning an operating permit renewal. An amendment application may be completed in accordance with Rule 5.5.~~

RULE 10. ENFORCEMENT

Section 10.1 Enforcement

This additional language better reflects the District's discretion in settling its claims for civil penalties in court and further defines its practices with respect to achieving settlements of its claims based on actual permanent reductions in groundwater use.

(10.1.2.1) At the District's discretion, sSettlement of an NOAV for violating the withdrawal limitations in a permit may include, but is not limited to:

- a. payment of the settlement amount;
- b. negotiation of a settlement amount based on evidence of receipts proving repairs to a water system negatively impacted by a "force majeure"; and
- c. negotiation of a settlement amount based on evidence receipts proving of installation of improved water conservation or management systems that result in a permanent reduction of groundwater withdrawals.

RULE 10. ENFORCEMENT

Section 10.1 Enforcement

(10.1.2.1) At the District's discretion, sSettlement of an NOAV for violating the withdrawal limitations in a permit may include, but is not limited to:

- a. payment of the settlement amount;
- b. negotiation of a settlement amount based on evidence of receipts proving repairs to a water system negatively impacted by a "force majeure"; and
- c. negotiation of a settlement amount based on evidence receipts proving of installation of improved water conservation or management systems that result in a permanent reduction from a permittee's historic groundwater withdrawal amounts.

(15.2.1) Drought curtailments are mandatory for non-exempt use wells within the JWGMZ. The District will post the ~~then-current~~ drought curtailment percentage applicable to that month on the first business day of each month that a drought curtailment applies on the District's website. The amount of groundwater authorized to be withdrawn during that month may not exceed the baseline amount as adjusted by the applicable drought curtailment amount. Monthly Baseline Production Amounts may be averaged only during contiguous months of a specific drought stage.

(15.2.1) Drought curtailments are mandatory for non-exempt use wells within the JWGMZ, which must comply with any applicable drought curtailments required under Rule 13 and with drought curtailments required under this rule. If a drought has been declared for the JWGMZ in accordance with the requirements of Rule 13 and this rule, ~~T~~ the District will post the ~~then-current~~ drought curtailment percentage applicable ~~for~~ that month on the ~~first business day of each month that a drought curtailment applies~~ District's website. The amount of groundwater authorized to be withdrawn during that month may not exceed the baseline permitted groundwater withdrawal amount as adjusted by the applicable drought curtailment amount based on the number of days during the month that any drought stage is in effect. Monthly Baseline Production Amounts may be averaged only during contiguous months of a specific drought stage.

(Dkt. #114-1 at 68–69, 120–121, 77, 129, 93–94, 146.) Below are the changes made to Rule 13.2 shown in purple.

Section 13.2 Drought Triggers

(13.2.1) The District's drought triggers are based upon the discharge flow rates provided by the USGS for the Pedernales River at Johnson City (USGS 08153500) and Blanco River at Wimberley (USGS 08171000). The District also references the Palmer Drought Severity Index as a possible drought trigger, in accordance with Subsection 13.32.12 (C). ~~To see the latest drought trigger indicators, District Drought Stage Chart, or Drought Stage History, visit the District's website.~~

(13.2.3) The General Manager ~~shall~~ may declare a drought and any drought stage level changes at the time that the criteria for the drought or drought stage level change when they occurs. The declaration shall provide the date that the drought stage commences or ends. Tand provide a written Order for the Board ~~may also declare a drought or any drought stage level change at a~~ to approve and sign at the next available Board meeting following the time that the criteria for the drought or drought stage level change occurs. Once a drought or drought stage level change has occurred been initiated, all permit holders shall be notified of the current drought status and its effective date.

(13.2.4) Except as otherwise provided for pPermit holders within the Jacob's Well Groundwater Management Zone, permit holders are required to reduce groundwater production from the permitted groundwater withdrawal amount as indicated on their individual Drought Production Cutback Chart in accordance with the applicable percent of curtailment for the month.

(Id. at 144.)

The transcription of the February 6, 2025, public hearing indicates that some public comment was received by Hays Trinity prior to the meeting, which was incorporated to the proposed changes, and those incorporations were provided to attendees in a packet at the meeting. (Dkt. # 114-1 at 97, lines 5–10.) An attorney, Mr. McCarthy, was present at the meeting and gave public comment regarding Rules 5 and 11. (Id. at 98–99.) Mr. McCarthy also noted that he submitted comments the day prior but stated he believed he saw them reflected in the previously referenced packet. (Id.) No other public comment was offered during the meeting. (Id. at 95–112.) At 5:59, the Board went into executive session and returned to meeting in the open at 6:58. (Id. at 109, 152.) Mr.

Moulton stated on the record that no formal actions were taken by the Board while the meeting was closed. (Id.) A Board member moved to adopt the rule amendments and amendments to the proposed rules, which was seconded and not opposed. (Id. at 110.)

Given that Hays Trinity published its proposed rule changes and broadly noticed rule amendments to Rules 3, 10, 13, and 15, Hays Trinity’s notice sufficiently alerted “the general public to the topic under consideration [,]” meeting the notice requirement of TOMA. Mares, 2020 WL 619902, at *4. Based on the above evidence regarding the public meeting on the rule changes, there is a genuine issue of material fact as to whether Hays Trinity met the requirements of TWC § 36.101(d)(5) by making a copy of all proposed rules available to the public. The summary judgment evidence does not sufficiently account for the source of the rule changes ultimately adopted—they do not establish whether Hays Trinity failed to disclose its proposed changes or that the additional changes arose from pre-submitted public comments. The transcript appears to indicate that the differences between the proposed changes and the adopted changes stemmed from public comments submitted prior to the meeting. (Dkt. # 114-1 at 97, lines 5–10.) However, that is an assumption this Court is unwilling to make without evidence establishing the source of the later developed changes. Thus, neither party is entitled to summary judgment on the claim that Hays Trinity violated TWC §

36.101(d)(5). Further, Aqua Texas is not entitled to summary judgment on its claims for injunctive relief regarding the amended rules because there is a genuine issue of material fact as to whether Hays Trinity's Board deliberated while it was in executive session, in violation of TOMA. (Dkt. # 114-1 at 109–110, 152.)

VII. Attorneys' Fees and Costs

Hays Trinity moves for summary judgment on Aqua Texas's claim for attorneys' fees and costs arguing that failure of the § 1988 equal protection claims and TOMA claims precludes recovery of attorneys' fees and costs. (Dkt. # 120 at 27–28.) Because Aqua Texas's equal protection claims did not survive summary judgment, Hays Trinity is entitled to summary judgment on the preclusion of Aqua Texas's attorneys' fees and costs as to those claims. Hays Trinity is not entitled to summary judgment on Aqua Texas's TOMA claims, as the open meeting requirements claim remains unresolved.

VIII. Objections

Aqua Texas filed Objections to Hays Trinity's Summary Judgment Evidence on January 12, 2026. (Dkt. # 127.) Aqua Texas objected to consideration of the paragraph eight of Laura Thomas's Declaration and the Declaration of Lon Shell. As the Court relied on neither in ruling on the instant Motions, Aqua Texas's Objections are **MOOT**.

Aqua Texas also filed Objections to Summary Judgment Evidence on January 27, 2026, opposing exhibits attached to Hays Trinity's Reply (Dkt. # 133). (Dkt. # 137.) The Court did not consider or rely on the Declaration of Robert Brian Robinson nor the Revised Spreadsheet on Late Reporting in ruling on the instant Motions. Therefore, Aqua Texas's Objections are **MOOT**.

CONCLUSION

Based on the foregoing, the Court will **GRANT IN PART** and **DENY IN PART** the parties' respective Motions for Summary Judgment (Dkts. ## 114, 120).

Hays Trinity's Motion for Summary Judgement is **GRANTED** as to Aqua Texas's claims that: Hays Trinity acted ultra vires by instituting a permitting moratorium; Hays Trinity acted ultra vires by enacting and imposing over pumping fines in excess of a statutory cap, Hays Trinity acted ultra vires in enforcing its District Rules on waste to line losses; Hays Trinity violated the Equal Protection Clause by not engaging in settlement efforts for its rules enforcement; Hays Trinity violated the Equal Protection Clause by denying operating permits under the permitting moratorium; Hays Trinity violated the Equal Protection Clause by enforcing its waste rules; Hays Trinity engaged in a taking by enforcing its permitting moratorium Hays Trinity engaged in a taking by not grandfathering their wells under Chapter 245; and Hays Trinity violated TOMA's notice

requirements. (Dkt. # 120.) To the extent the above claims request injunctive relief, the Court **DEFERS** ruling on such relief until a later time. Hays Trinity's Motion for Summary Judgment is further **GRANTED** as to precluding Aqua Texas' attorneys' cost and fees stemming from Aqua Texas's Equal Protection claims. (Id.) Therefore, the aforementioned claims are **DISMISSED WITH PREJUDICE**.

Hays Trinity's Motion for Summary Judgment is **DENIED** as to: Aqua Texas's claims that it acted ultra vires in enforcing waste rules to waste water and sewage spills and that it violated TOMA's open meeting requirements. (Id.) Hays Trinity's Motion for Summary Judgment is further **DENIED** as to precluding Aqua Texas from recovering attorneys' fees and costs stemming from its TOMA claims. (Id.)

Aqua Texas's Motion for Summary Judgment is **GRANTED** as to its claim that Hays Trinity acted ultra vires in enforcing waste rules to waste water and sewage spills and Hays Trinity's counterclaims based on permit invalidity. (Dkt. # 114.) To the extent the above claims request injunctive relief, the Court **DEFERS** ruling on such relief until a later time. Therefore, Hays Trinity's counterclaim on permit invalidity is **DISMISSED WITH PREJUDICE**.

Aqua Texas's Motion for Summary Judgment is **DENIED** as to: its claim that Hays Trinity acted ultra vires by instituting a permitting moratorium; its claim that Hays Trinity acted ultra vires in enforcing waste rules to line losses; Hays Trinity's counterclaims for enforcement of late reporting; Hays Trinity's counterclaim for enforcing capping and plugging rules; its claims that Hays Trinity violated TOMA's notice and open meetings requirements. (Dkt. # 114.)

Aqua Texas's Objections to Summary Judgment Evidence are hereby **MOOTED**. (Dkts. ## 127, 137.)

Trial will be set by separate Order.

IT IS SO ORDERED.

DATED: Austin, Texas, August 24, 2026.



David Alan Ezra
Senior United States District Judge