

BRANSCOMB LAW

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June 23, 2022

Edwards Aquifer Authority
Attn: Permits / Omar Garcia and Tamauj Thomas
900 E. Quincy
San Antonio, Texas 78215

Via Email: ogarcia@edwardsaquifer.org
tthomas@edwardsaquifer.org

RE: Application to Convert Base Irrigation Groundwater to Unrestricted Irrigation Groundwater

Dear Mr. Garcia and Mr. Thomas:

We are in receipt of your email dated April 18, 2022, requesting additional information on the Application to Convert Base Irrigation Groundwater to Unrestricted Irrigation Groundwater (the "Application"). As you are aware, the Application seeks to convert 87.00 acre-feet of Base Irrigation Groundwater to Unrestricted Groundwater due to the development of the 92.51 Historically Irrigated Acres ("HIA").

Per your request, enclosed with this letter is an invoice showing that Second Nature Compost purchased 22.5 tons of sodium bentonite to properly line the HIA.

You also requested we provide a more in-depth narrative explaining the necessity of mixing bentonite clay with the soil to develop the HIA. The Texas Commission on Environmental Quality (the "TCEQ") regulates the composting industry. A composting facility must be constructed and operated in a manner that protects groundwater. Tex. Admin. Code § 332.45. An operator of a composting facility must submit a site development plan to TCEQ showing "that the facility is designed so as not to contaminate groundwater and so as to protect the existing groundwater quality from degradation." Tex. Admin. Code § 332.47(6)(C). Any material used for manufacturing compost must be located "on a surface that is adequately lined to control seepage." Tex. Admin. Code § 332.47(6)(C)(i). The lined surface must be durable enough to withstand the traffic necessary to operate the composting facility. Tex. Admin. Code § 332.47(6)(C)(i).

As you can see from the previously provided map, all areas of the HIA without existing structures or ponds is used for the manufacturing of compost. The Processing Area, Tipping Area, Post-Processing Area, and Finished Material Stockpile Area are all necessary for the different stages of the composting process. In order to be in compliance with TCEQ's requirements for composting facilities, the HIA had to be properly lined to prevent seepage into the Edwards Aquifer. The mixture of bentonite clay with the soil on the HIA was the most

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effective and cost-efficient way to line the surface of the HIA to prevent seepage and to withstand the continuous use of heavy machinery (including dump trucks, water dollies, and windrow turners) on the HIA.

As mentioned in my previous letter, dated March 28, 2022, EAA Rule § 711.342(a)(1) provides a nonexclusive list of physical alterations that can transform historically irrigated land into developed land, including “athletic fields or by similar improvements.” The HIA subject to the Application has been developed and has undergone substantial physical alterations to make the HIA suitable for a composting facility in accordance with TCEQ requirements. While the HIA’s improvements are not specifically listed in EAA Rule § 711.342(a)(1), the HIA has been physically altered to the point to where it falls under the “or similar improvements” category.

If you wish to discuss this further, contact me at 210-598-5409 or email me at madair@branscomblaw.com.

Very Truly,



Mary Adair

MEA:dlp

cc: Scott Verstuyft
Sherry Knox
Judy Foster