

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between BP 1766 San Antonio, Ltd. ("BP") and its' successor's and assigns and the Edwards Aquifer Authority ("Authority"). BP and the Authority are collectively referred to as the "Parties."

I. RECITALS

WHEREAS, the Authority is a political subdivision of the State of Texas, created by the Texas Legislature pursuant to Article XVI, § 59 of the Texas Constitution, and under Section 1.08(a) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended) charged with, among other things, the management, conservation, preservation, and protection of the Edwards Aquifer ("Aquifer"), and with increasing the recharge of, and the prevention of waste or pollution of water in, the Aquifer;

WHEREAS, BP is a domestic limited partnership organized under the laws of the State of Texas with its principal office in Dallas, Texas;

WHEREAS, BP has filed an application with the Texas Commission on Environmental Quality ("TCEQ") for TPDES Permit No. WQ0014713001 ("Permit") on May 5, 2006, which is currently pending as TCEQ Docket No. 2008-0699-MWD ("Application"). The Application seeks a wastewater discharge permit for the Hills of Castle Rock development, a residential subdivision proposed for the northeast corner of Medina County on the Contributing Zone of the Aquifer. The proposed subdivision would be served by a wastewater treatment facility that would discharge into the San

Geronimo Creek basin. Numerous persons have filed with the TCEQ requests for a contested case hearing on the Application;

WHEREAS, the Parties, acting for the purposes of compromising and settling all claims between them related to the Application, and in order to avoid the costs and burdens of further participation in or litigation by the Authority relating to the Application, including participation in a contested case hearing before the State Office of Administrative Hearings ("SOAH"), desire to settle, as described more fully herein below, all issues and claims between the Parties relating to the Application. Accordingly, this Agreement is intended to fully and finally compromise and settle any and all issues and claims between the Parties arising from or relating to the Application; and

WHEREAS, this Settlement Agreement may not be construed to evidence the Authority's approval or support of: (1) the Application or the Hills of Castle Rock development; (2) the development of land on or proximate to the Recharge Zone of the Aquifer; or (3) the discharge of wastewater into a watercourse on or proximately upgradient of the Recharge Zone that contributes recharge to the Aquifer.

II. CONSIDERATION

For and in consideration of the foregoing recitals which are made a part of this Agreement for all purposes, and the agreements, covenants, and promises between the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the undersigned agree as follows:

1. The Authority agrees not to seek "party" status at a contested case hearing before SOAH on the Application or to take an active role in the protest of any other party or interested group or individual in such a hearing.

2. **BP agrees to undertake all its best efforts, including requesting in writing and taking all other appropriate steps as may be appropriate, for the TCEQ to include in the Permit, if issued, the following conditions:**

(A) a requirement that BP perform downstream sampling for Dissolved Oxygen and Total Phosphorus every three months for the first three years of the Permit at the following two locations:

- 1. San Geronimo Creek at the Park Road 37 bridge immediately west of State Highway 16; and**
- 2. San Geronimo Creek at the Gallagher Ranch entrance immediately west of State Highway 16;**

(B) if monitoring data required by Subsection (A) indicate no impact to water quality in San Geronimo Creek from the wastewater discharge, based on a comparison of samples collected during the first three years of the Permit term to the water quality baseline data established by the Authority for the sampling locations, compared to the quality of the effluent discharged pursuant to Permit #14713-001, monitoring may be reduced to once every six months for the downstream locations listed in Subsection (A) for the life of the initial Permit; and

(C) BP will submit to the Authority and the TCEQ all analytical data and chain-of-custody documentation within 30 days of the sample date.

3. **The Authority may also take any reasonable steps necessary in its judgment to ensure that the TCEQ include in the Permit the conditions in Section II.2 above. The Authority will notify BP of any contact that it makes with TCEQ on these matters. The Authority will also cooperate with the BP as may be necessary and**

appropriate to assist BP in its efforts to have the conditions in Section II.2 above included in the Permit.

4. In the event that the TCEQ does not include in the Permit the conditions in Section II.2 above, BP agrees to request a modification or amendment of the Permit, in accordance with TCEQ rules, within 30 days of the Permit issuance, requesting that the conditions be added to the Permit.

5. In the event that the TCEQ does not include in the Permit the conditions listed in Section II.2 above, even after BP has requested a modification or amendment of the Permit in accordance with Section II.4 above, BP agrees nonetheless to comply with the conditions pursuant to this Agreement.

6. BP agrees, within 120 days of issuance of the Permit, to apply to the TCEQ for authorization under Chapter 210 of 30 Texas Administrative Code to beneficially reuse treated effluent from the Hills of Castle Rock development on site with the purpose and intent of minimizing discharges further downstream from the downgradient most property line of the Hills of Castle Rock project site.

7. The Authority hereby recognizes that the testing of creek flows downstream of the effluent release point will allow for other environmental factors to contribute to creek water quality degradation between the location of release and the location of testing and that this factor must be considered when analyzing creek flow testing data.

8. It is understood that this Agreement is a compromise of the relevant issues and claims, including but not limited to those remaining in the Application, that the undertaking of the obligations set out in this Agreement is intended to avoid further

dispute and litigation and buy peace.

III. REPRESENTATIONS AND WARRANTIES

The Parties expressly warrant that they: (1) have read and understand the effect of this Agreement as a compromise and settlement and that it is contractual; (2) have executed it voluntarily of their own free will upon their own best judgment and advice of attorneys of their choosing, for the purposes and considerations set forth herein; (3) own all of the claims that they have asserted or could have asserted in connection with the Application, and that they have not in any way transferred to a third-party any claim which they have, or may have had in the past; and (4) have the legal authority to enter into and execute this Agreement

IV. ORAL REPRESENTATIONS

It is further understood and agreed that this Agreement contains the entire agreement between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the Parties, and that there are no oral understandings, representations, statements, promises or inducements not set forth in this Agreement. This Agreement cannot be changed or terminated orally. No warranties, representations, covenants, amendments, understandings or agreements not expressly set out in this Agreement shall be binding upon the Parties or form the basis of liability for any of the Parties unless subsequently executed in writing by the Parties. The terms of this Agreement are contractual.

V. MISCELLANEOUS

This Agreement shall be governed by, construed and enforced in accordance with, and subject to the laws of the State of Texas.

It is agreed that if any portion of this Agreement is determined to be contrary to the laws of the State of Texas, or otherwise declared unenforceable, it is the Parties' intent that the remaining portions of the Agreement be given full force and effect.

In the event that BP is found to have breached any provisions of this Agreement, BP agrees to pay the Authority's costs for performing the sampling required under this Agreement, and its attorney's fees and costs incurred in order to enforce this Agreement.

In the event that the Authority is found to have breached any provisions of this Agreement, the Authority agrees to pay BP's attorney's fees and costs incurred in order to enforce this Agreement.

The Parties consent to the execution of duplicate originals of this Agreement.

ACCEPTED, APPROVED AND ENTERED into on the dates shown below.

BP 1766 SAN ANTONIO, LTD.

By: *Shaul Baruch*
Shaul Baruch, Manager,
BP 1766 San Antonio GP, LLC,
General Partner of BP 1766 San
Antonio, Ltd.

STATE OF TEXAS

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COUNTY OF TEXAS

This instrument was acknowledged before me on this the 29 day of May, 2008, by Shaul Baruch, who is known to me personally or provided legally sufficient proof of identity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29 day of May, 2008.

Lynn Mary Juarez
Notary Public In And For The State Of Texas



My Commission Expires: 01-29-2012

EDWARDS AQUIFER AUTHORITY

By: Velma R. Danielson
Velma R. Danielson
General Manager

STATE OF TEXAS

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COUNTY OF BEXAR

This instrument was acknowledged before me on this the 10th day of JUNE, 2008, by Velma R. Danielson, who is known to me personally or provided legally sufficient proof of identity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of June, 2008.

Sandy Haglund
Notary Public In And For The State Of Texas



My Commission Expires:
2-28-2012

APPROVED AS TO FORM

Darcy Ann Brownfeller
Darcy Ann Brownfeller
General Counsel
Edwards Aquifer Authority