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Working Together to Protect the Ogeechee, Canoochee and Coastal Rivers

August 20, 2024

Via E-Mail

Environmental Protection Division
Watershed Protection Branch
Suite 1470A East Tower
2 Martin Luther King, Jr. Dr., Atlanta, GA 30334
EPDComments@dnr.ga.gov

Re: Draft Groundwater Withdrawal Permits for Bryan County Mega-Site in Bryan and Bulloch Counties - Permit Nos. 016-0013 and 016-0014

Georgia Environmental Protection Division staff,

Ogeechee Riverkeeper (ORK), a 501(c)(3) organization, works to protect, preserve, and improve the water quality of the Ogeechee River basin, which includes the Canoochee River, tributary streams, and all of the streams flowing out to Ossabaw Sound and St. Catherine's Sound. The Ogeechee River system drains more than 5,500 square miles across 21 counties in Georgia. ORK works with local communities to retain the ecological and cultural integrity of rivers, streams, wetlands, and related habitats throughout the Basin. Protecting the Floridan Aquifer, and the humans, fish and wildlife, and water resources that rely on it, is central to ORK's mission.

ORK submits these comments on the draft groundwater withdrawal permits issued by the Georgia Environmental Protection Division (EPD) for Bryan and Bulloch Counties to supply the Hyundai Mega-site, among other users. ORK is concerned about EPD's inadequate level of review in considering these permits. Specifically, EPD failed to sufficiently consider (1) the impact of the withdrawals on the Floridan Aquifer and its role in the human and natural environment and (2) how to protect the Floridan Aquifer through alternate water sources and conservation measures. Additionally, ORK is concerned about (3) the ability of the counties to administer and effectively disburse relief through the Well Mitigation Fund as well as EPD's ability to effectively enforce the conditions related to the Well Mitigation Fund and whether the fund's establishment sufficiently meets regulatory review and consideration requirements. As currently presented, EPD did not consider all relevant information on the impacts of the permits, as required, and therefore cannot issue the permits. Likewise, the existing enforcement mechanisms cannot effectively ensure all of the terms and conditions will be properly executed in retroactively remedying unreasonable adverse impacts to residents and the agricultural community. Until all required information is considered and enforcement mechanisms are reinforced, ORK calls on EPD to either pause its permitting decision or to deny the permit application due to the unreasonable adverse impact that is expected to result from these withdrawals.

1. Failure to consider the best available information and impacts to other water bodies, endangered species, and other water users

EPD must pause its current permitting process, utilize the best available information, and consider the far-reaching environmental impacts that these groundwater withdrawals will have on other water bodies and the humans, fish, and wildlife that rely on them. EPD's failure to take a hard look at these mandatory review criteria threatens to strain the area's water resources, harm endangered species, negatively impact potential future water users, and invalidate the proposed permits. ORK asks that EPD undertake these required reviews and analyses and reconsider the terms, conditions, and ultimate permitting decision before making its final decision.

EPD must use the best available information when considering groundwater withdrawal applications in order to inform reasoned permitting decisions. State law requires that EPD "shall consider . . . any other relevant factors, such as, but not limited to, the best geologic and hydrologic information available on the aquifer or groundwater system of the area" when reviewing a permit application.¹ Likewise, EPD is required to consider "diversion from or reductions in flows in other water courses."²

EPD does not appear to be using the best available information in this permitting decision. Specifically, EPD's conclusions and explanations of the withdrawals' impact on the Ogeechee and Savannah rivers, their tributaries, and two endangered species of fish are lacking and overlook available information. First, EPD's statement that the Floridan Aquifer "does not have a hydraulic connection with the Savannah [or] the Ogeechee River" is not explained using any scientific justification.³ Magnolia Springs State Park in Jenkins County is home to Floridan Aquifer-fed springs which feeds Buckhead Creek, an Ogeechee River tributary. This clear example of hydraulic connection with the Ogeechee River also suggests that other Floridan Aquifer-fed springs exist in the Ogeechee and Savannah river basins, playing important water quality and quantity roles in crucial aquatic habitats. Past aquifer overuse could have contributed to the loss of other springs throughout the Ogeechee and Savannah river basins, with future overuse further contributing to further impacts. It also suggests that overuse of the Floridan Aquifer could be negatively impacting other aquifers that lay above it. The loss of the clean, cold spring water likely impacts the water quality, aquatic habitat, and fish and wildlife in these rivers and their tributaries.

Based on EPD's assumption and unsupported statement that no hydraulic connection exists, it is likely that it did not consider or assess how much water would be diverted from the Ogeechee and Savannah Rivers and their tributaries or how those diversions would reduce flows from springs feeding those water bodies as well as cause a diminishment of downstream water quality. Without these analyses and considerations, EPD failed to meet its regulatory review requirements. EPD should provide the geologic, hydrologic, and scientific information to justify its conclusion. Until that time, ORK urges EPD to pause the permitting process to ensure no impacts to other water bodies will result from these withdrawals.

¹ Ga. Comp. R. & Regs. 391-3-2-.05(1)(i).

² Ga. Comp. R. & Regs. 391-3-2-.05(1)(h).

³ Georgia Environmental Protection Division. "Response to Comments on the Draft Special Conditions. At pages 6, 11, and 15.

Second, the conclusions around impacts to two endangered species are fatally limited in scope and fail to consider water quality impacts potentially resulting from the proposed withdrawals. The two species at issue are the Atlantic sturgeon⁴ and the shortnose sturgeon,⁵ both listed as ‘endangered’ by the National Marine Fisheries Service. In its response to comments, EPD states that “[s]pecies that use those surface water bodies as their habitat are not affected by water use from the Floridan Aquifer.” Specifically, “those surface water bodies” refer to the Ogeechee River, Savannah River, and Okefenokee National Wildlife Refuge. As noted above, however, this appears to be based on the assumption that the Floridan Aquifer does not hydrologically influence either of these rivers to any degree. It is feasible that the Ogeechee and Savannah Rivers have aquifer-fed cool water seeps that create cold water refugia in the segments of these rivers, which provide crucial respites for these sturgeon species to escape harmfully high water temperatures during critical life cycle stages.⁶ Reducing aquifer levels and pressure to any degree prevents these springs from recovering, reduces or removes the cold water refugia from aquifer-fed seeps, continues the trend of overutilization, and harms the recovery efforts of these two endangered species. For these reasons, and the reasons noted above, ORK urges EPD to pause its permitting decision, confirm that the proposed water withdrawals will not harm the Atlantic and shortnose sturgeon or their recovery efforts, and publicly provide scientific justification for its conclusions.

Georgia law makes clear that groundwater use should be “subject to reasonable regulation in order to conserve [water] resources and to provide and maintain conditions which are conducive to the development and use of water resources.”⁷ Accordingly, “[a]ny person applying for a permit . . . shall also submit with such application a water conservation plan approved by the director and based on guidelines issued by the director,”⁸ and Georgia regulations require EPD to consider “documentation of effective water conservation” when reviewing permits for groundwater withdrawal.⁹ Here, neither Bryan nor Bulloch County submitted a water conservation plan as plainly required under the law. Such water conservation is critical to ensure the long-term viability of the state’s water resources. With the existing strain on the Floridan Aquifer, applications for groundwater withdrawal permits must contain clear plans for water conservation, and effective water conservation strategies should be central to EPD’s review and permitting decision.

Unfortunately, concrete and actionable conservation measures do not appear to be in place for either county and, therefore, could not have been considered by EPD in these permit application reviews. In the documents provided to ORK through an open records request,¹⁰ Bulloch and Bryan Counties’ applications rely on future plans to develop water conservation plans and do not provide any documentation of effective water conservation measures. Bulloch County’s application states that “a draft Water Conservation Plan will be submitted to EPD with water conservation

⁴ NOAA Fisheries. Atlantic Sturgeon information page. Available at: <https://www.fisheries.noaa.gov/species/atlantic-sturgeon>.

⁵ NOAA Fisheries. Shortnose Sturgeon information page. Available at: <https://www.fisheries.noaa.gov/species/shortnose-sturgeon>.

⁶ NOAA Fisheries raise these same issues in its comments. EPD’s responses do not adequately address these concerns, relying only on the unproven and unexplained statement that the Floridan Aquifer “does not have a hydraulic connection with the Savannah [or] the Ogeechee River.”

See NOAA Fisheries. “Ref: Groundwater Applications for Bryan County Mega-Site.” Submitted March 8, 2024. At page 3.

⁷ O.C.G.A. § 12-5-91.

⁸ O.C.G.A. § 12-5-96.

⁹ Ga. Comp. R. & Regs. 391-3-2-.05(1)(j).

¹⁰ Ogeechee Riverkeeper. “Georgia Open Record Act Request for Information related to Bryan and Bulloch County Groundwater Supply Wells for the Hyundai Mega-Site. Submitted October 19, 2023.

measures to be implemented” at some future date.¹¹ Bulloch County states that after a “service delivery agreement is finalized” it “will seek a modification of [the permit].” This is an unacceptable inversion of the permitting process. A promise to take future, undefined actions should not be the basis of granting a permit. Furthermore, Bulloch County states that “Bryan County’s [application] will include detailed information concerning the conservation measures that will be employed to conserve water in North Bryan County and at the Hyundai mega-site.”

Bryan County makes similarly insufficient statements of promised future actions to implement water conservation measures. Despite Bulloch County’s reliance on Bryan County’s “detailed information concerning water conservation measures,” Bryan County does not provide any acceptable level of detail for EPD to meaningfully review and consider.¹² Bryan County’s application states that it “will develop conservation and reuse policies to help reduce impact to groundwater resources.” While suggesting those policies would include efforts to facilitate reuse water usage, those policies did not exist in any of the documents available to EPD and, therefore, could not have been reviewed and considered. As such, EPD should pause its permitting decision until both Bulloch and Bryan counties show concrete water conservation plans based on enacted, promulgated, or legally enforceable measures. Until that point, EPD’s review is incomplete and the permit is not based on an exhaustive review.

In addition, it should also be noted that the efficacy of utilizing the North Bryan Water Reclamation Facility’s reuse water is unproven. Our understanding is that reuse water will not be used in Hyundai’s manufacturing process. The only water that might be reused at the Hyundai Mega-site is for landscaping. There is no assurance that any of this reuse water will be used in any industrial processes. If utilization of reuse water is the only conservation measure being pursued, that will not be enough to meaningfully conserve the water that will be withdrawn under these permits. ORK urges EPD to require true conservation measures to be put in place to protect the Floridan Aquifer and all who rely on it.

EPD also failed to specifically consider the proposed withdrawals’ impacts on potential water users and how it manages the “cone of depression” underlying Savannah. Georgia state law makes clear that groundwater withdrawal permits may be granted only if “there are not unreasonable adverse effects on other water uses, including public and farm use, and *including potential as well as present use*” (emphasis added).¹³ With both residential and industrial growth expected for the region, potential future water use is expected to grow in both Bryan and Bulloch Counties. Likewise, any new or expansion of a current agricultural operation would further increase water usage. The areas immediately around the proposed wells have potential and foreseeable water users that could see unreasonable adverse impacts resulting from the proposed withdrawals.

EPD does not seem to have considered potential uses. In its response to comments, EPD states that “[p]lanning of future water needs is part of the regional water planning process.”¹⁴ In response to a comment raising concerns about future withdrawal permitting decisions and the future availability and fitness of the aquifer, EPD said that its review process “involves whether the amount of withdrawal requested is reasonable, whether the source have the capacity to provide the requested amount, whether there are impacts to the resource and other users, and what mitigation

¹¹ Hofstadter & Associates. Inc. “Preliminary Engineering Report for Groundwater Withdrawal Permits for Bulloch County. August 2023. At page 9.

¹² Bryan County Engineering Department. “Bryan County Hyundai Mega-Site Green Zone Groundwater Allocation Permit Request Conditions.” Dated September 1, 2022. At page 3.

¹³ Ga. Comp. R. & Regs. 391-3-2-.06(2).

¹⁴ Georgia Environmental Protection Division. “Response to Comments on the Draft Special Conditions. At page 12.

measures can be put in place to mitigate such impacts.”¹⁵ While attention has been paid to “existing Floridan Aquifer wells,”¹⁶ EPD must also specifically consider and conclude that potential water users will not see unreasonably adverse effects as a result of these proposed withdrawals.

In summary, EPD should not issue these permits until it fully considers, confirms, and documents that there will not be any unreasonable adverse impacts to the environment that could result from the proposed groundwater withdrawals. Specific confirmation should be provided for potential surface water connections, connection to other aquifers, impacts to aquifer-fed springs, the resulting impacts to flows and water quality in the Ogeechee and Savannah River basins, and the potential impact on the survival and recovery of the endangered Atlantic and shortnose sturgeon. EPD should also require clear documentation of existing and presently applicable water conservation measures prior to approving these permits. Finally, EPD must explicitly consider these withdrawals’ impact on potential water use in the growing region. Until these shortcomings are resolved, ORK calls on EPD to delay its permitting decisions or to deny the permits as currently proposed.

2. A Faster switch to Alternative Sources must be prioritized

The Environmental Protection Division should more urgently prioritize development of and transition to alternative sources in order to meet the region’s growing water supply demand. The already-strained Floridan Aquifer cannot be sustainably used to provide all of the incoming industrial growth while simultaneously meeting domestic and agricultural demands. While the proposed special conditions are a positive step in the direction of transition and sustainable water supply, the needed urgency is severely lacking. Likewise, the enforcement mechanisms to ensure this expeditious transition plan should be strengthened. ORK urges EPD to prioritize a faster transition that is clearly enforceable.

The 25-year transition timeframe proposed in these permits’ special conditions is unacceptably long. To put this into perspective, the Coastal Georgia Water & Wastewater Permitting Plan for Managing Salt Water Intrusion is only 18 years old. While it has been useful in preventing new overuse in critical locations, it has not incentivized the needed transition to alternate sources of supply, even with the guidance of the Coastal Georgia Regional Water Planning Council. When considering the preceding efforts to address known Floridan Aquifer overuse, the additional 25 years this permit essentially grants would result in over a half-century of insufficiently urgent action to reduce strain on this crucial aquifer and develop and use alternative, sustainable sources. In light of the exponential population and industrial growth experienced since the 2006 Plan and the anticipated acceleration of that growth in the coming years and decades, the lack of urgency cannot be continued.

EPD must effectively and expeditiously work towards its public trust goal of ensuring protection of the inter-state water resources. As the last quarter-century of insufficient action highlights, a light-handed approach will not achieve these goals. The simplest way to speed up the transition is to shorten the time the applicants are allowed to withdraw water from these wells. 25 years is a long and seemingly arbitrary period. EPD does not provide a specific justification for how it decided on a 25-year timeline, only stating that it will “take adequate time to secure that

¹⁵ *Id.* at page 8.

¹⁶ *Id.* at page 2.

cooperation and to plan, design, construct and implement operations...” and that “securing funding for the infrastructure development also needs time.” Nowhere is the selection of a 25-year timeline explained. Such an important transition should be prioritized.

A recently completed and operational 10 MGD surface water treatment plant in Pearland, TX provides an example of a prioritized and efficient timeline for design and construction.¹⁷ From initial inclusion in the City’s Capital Investment Plant to its design, bidding, construction, and operational opening, the project took just over 8 years.¹⁸ Even with the pandemic-related supply chain issues and weather-related limitations, 8 years is a more realistic timeline, even if an additional year were included for conversations, research, and preparation to get to the initial request for a new water treatment plant. Other projects have similar timelines, a 3-year construction timeline in Oak Ridge, TN¹⁹ and an 11-year timeline in surface water-limited Tahoe, CA.²⁰ Based on these examples, a generous but efficient timeline would be 10 years. If EPD has the authority to set a 25-year timeline, a shorter, evidence-based timeline of 10 years should also be within their authority to establish and enforce.

Beyond a simple shortening of the allowed transition time period, EPD should reduce the amount of groundwater permitted to be withdrawn over time to incentivize local entities to make the necessary efforts to actualize the transition to alternative water supply sources. This could take a number of forms. One way could be to write in specific reductions at specific time periods. For example, at the permit’s 5th year, permitted withdrawal will be reduced by 150,000 gpd at each well and will continue to be reduced each year after. A second approach would be an increasingly sharp reduction at milestone years. For example, withdrawals will be reduced by 50,000 gpd at Year 5, an additional reduction of 250,000 gpd in Year 10, 500,000 gpd further in Year 15, and an additional 1.5 MGD in Year 20. A third option is to shorten the permit length to 5 years, in order to allow EPD to reassess the withdrawals on a more frequent basis and have a more direct hand in ensuring an expeditious transition. For example, the City of Pembroke’s Bulloch County well operations are only granted this 5-year permit term. These mechanisms would clearly message to the applicants that these wells are a temporary resource that are being allowed as a bridge to a more sustainable source.

Finally, EPD must also be prepared to enforce the terms of this permit when alternative supply becomes available. These permits state that when an alternative supply is available, there must be a corresponding reduction in groundwater withdrawals.²¹ ORK agrees that this is the most logical approach to meeting water supply needs, and supports these terms. However, the Intergovernmental Agreement signed between Bryan and Bulloch Counties

¹⁷ City of Pearland, TX. “Surface Water Treatment Plant.” *Available at:* <https://www.pearlandtx.gov/departments/engineering-and-capital-projects/projects-division/project-updates/surface-water-treatment-plant> (last visited August 19, 2024).

¹⁸ Houston Chronicle. “Pearland to open new \$175 million water treatment plant that will reduce reliance on Houston.” March 14, 2024. *Available at:* <https://www.houstonchronicle.com/neighborhood/pearland/article/pearland-water-treatment-plant-18703010.php> (last visited August 19, 2024).

Article shows first city Task Order dated June 2016 and reports opening expected for May 2024.

¹⁹ Oakridger. “Official break ground on new \$78.3M water plant for the city.” October 20, 2022. *Available at:* <https://www.oakridger.com/story/news/2022/10/21/officials-break-ground-on-new-78-3m-water-plant-for-city/69573126007/> (last visited August 19, 2024).

²⁰ City of Tahoe Public Utility District. “West Lake Tahoe Regional Water Treatment Plant“ *Available at:* <https://www.tcpud.org/watertreatmentplant> (last visited August 19, 2024).

²¹ See Bryan County Permit No 016-0013 at § 6(g) and Bulloch County Permit No. 016-0014 at § 6(f).

contains a term that explicitly conflicts with these permits' special conditions. Specifically, it states that Bryan County will never use less than 3.5 MGD from the wells.²² If sufficient water supply is available, these permits require withdrawal reduction below 3.5 MGD. ORK is concerned that the counties will attempt to enforce the terms of their agreement despite these EPD permits. As such, ORK urges careful attention to available alternative water supply, reductions in the permitted wells, and strict compliance with the EPD permits.

3. Concerns and Issues with the Well Mitigation Fund

The Well Mitigation Fund required in the permit's special conditions should be refined in order to ensure that its critical function can be executed, achieved, and enforced. First, the specific details of the plan should be in place before the permit is approved, not just before withdrawals can begin. This should include clear details of the mechanisms, decision rubrics, timelines for disbursement, as well as temporary measures to meet urgent needs and other needed measures. Second, EPD should provide clear expectations of what those mechanisms and terms must achieve and empower itself to deny a proposed mitigation fund that will not sufficiently address the potential unreasonable adverse impacts. Third, EPD should clarify the expectations of the list of licensed professionals allowed to investigate adverse impacts. Fourth, EPD should include clear and express ramifications of noncompliance with permit terms. Fifth, a clear definition of "unreasonable adverse impact" and an explanation of how the definition was applied to the 5-mile radius should be provided. Sixth and finally, EPD must explain how it meets regulatory requirements in its permitting decision if unreasonable adverse impacts could result from the proposed withdrawals. Until these concerns are addressed, ORK asks EPD to either pause its permitting decision or to deny the permit applications altogether.

First, EPD should not issue this permit without fully reviewing and approving the Well Mitigation Fund. This fund is crucial in reducing short-term harm of potential unreasonable adverse impacts from the wells. It does not make sense, common or regulatory, to allow these wells to be approved and drilled before a fund with an efficient and solid reimbursement mechanism exists. Even if the withdrawals are delayed until EPD receives a plan, this still puts the cart before the horse. Without knowing the specifics of the plan, EPD cannot have met its regulatory duty in considering and concluding whether unreasonable adverse impacts will result from the wells.²³ As is evident from the inclusion of the special conditions addressing short term impacts, EPD appears to have concluded that adverse impacts are going to result from the proposed withdrawals. Its solution is to remedy and compensate impacted well owners through the Well Mitigation Fund. However, without having seen the specifics of the Well Mitigation Fund, EPD has no way of knowing whether a mitigation fund will actually achieve that goal. Without this information, EPD cannot have met its regulatory duty to sufficiently consider and determine whether granting these permits will have an unreasonable adverse impact on other water users. It should be noted that, while a Memorandum of Understanding²⁴ exists between

²² While the Agreement qualifies this limitation, it is only related to "any regulations, terms, and/or conditions that may be associated with any of the funding sources utilized to construct the entire water system as defined in Section 1 of this Agreement." That is, not in relation to the terms and conditions related to this permit.

"Bryan-Bulloch County Water and Sewer Service Agreement." See

<https://bullochga.igms.com/Citizens/FileOpen.aspx?Type=1&ID=1760&Inline=True> at Packet Page 20, § 3.1.e.

²³ GAC 391-3-2-.06(2). EPD should issue permits only "when there are not unreasonable adverse effects on other water uses." *Id.*

²⁴ "Memorandum of Understanding Establishing a Well Mitigation Program for Specified Areas within Bryan County and Bulloch County." See: <https://bullochga.igms.com/Citizens/FileOpen.aspx?Type=1&ID=1760&Inline=True> at Pack Pages 3-7.

the two counties, promising to create the mitigation fund, no precise details exist. As such, ORK calls on EPD to require the applicants to create and submit the Well Mitigation Fund before issuing the permits.

Second, clearer requirements for the specific terms of the Well Mitigation Fund are needed to ensure the protection of water users adversely impacted by the proposed withdrawals. As currently presented, the minimum explanations needed for the Well Mitigation Funds to be approved are “mitigation fund mechanisms with defined forms, mitigation practices, processes and protocols prior to withdrawals from the permitted groundwater wells.”²⁵ As long as a proposed mitigation plan includes these items, it will be approved by EPD. Concerningly, these forms, practices, processes, and protocols do not have to meet any standards - they simply have to exist. This could easily lead to a non-functioning mitigation fund that might never disburse any money. For an extreme example, say the Well Mitigation Fund includes a mechanism or process that states “after 6 months of a domestic well not functioning, a landowner may begin the application process.” While this would meet the permits’ minimum requirement of developing the Well Mitigation Fund with clear procedures, this is a plainly unacceptable outcome. Residents and farmers cannot realistically be expected to wait that long. However, as currently written, the counties could develop this mechanism and, because it meets the terms of the permits, EPD would have to approve the fund and allow withdrawals to begin. While this extreme a mechanism is not likely to be proposed, the issues that the proposed permit conditions’ language present are clear - without more precise expectations, the Well Mitigation Program may not efficiently remedy unreasonable adverse impact. Short of clear expectation, the impacted community is vulnerable to unacceptable outcomes resulting from these withdrawals’ foreseeable and potential unreasonable adverse impacts.

Third, some added clarity in defining the licensed professional allowed to investigate impacts. Water well drillers and pump installers licensed in the State of Georgia are those “licensed professionals” that may conduct the investigations. Currently, the permits state that “[a] list of those licensed professionals must be published on the permittee’s website.”²⁶ ORK requests that this sentence be revised to state “A list of **all** those licensed professionals...” in order to ensure that the impacted community is fully informed of all of the potential investigators available to them.

Fourth, the permits should include clear and strong ramifications for noncompliance with the mitigation fund. These ramifications should include immediate suspension and potential revocation upon confirmation of a valid complaint. The importance of this mitigation fund cannot be understated. Potential impacts to residential drinking water strikes at one of the most basic necessities of life. Likewise, the loss of access to agricultural wells could doom whole crops and herds of livestock, devastating operations. These are issues that cannot be taken lightly. Failure by the applicants to efficiently address potential issues could have the most extreme impacts on life, property, and the community’s way of life. As such, the consequences for not meeting expectations should be equally extreme. ORK suggests adding a fourth subsection in the mitigation fund special condition²⁷ that states, “applicant’s noncompliance with the terms of the mitigation fund will result in the immediate suspension of this permit and potential revocation of the permit.”

Fifth, ORK requests EPD clarification on how it defines “unreasonable adverse impact.” In the Response to Comments on the Draft Special Conditions, EPD states that it “does not anticipate unreasonable adverse impacts on

²⁵ Bryan Permit § 6.c and Bulloch Permit § 6.b.

²⁶ Bryan Permit § 6.d and Bulloch Permit § 6.c.

²⁷ Which would be Bryan Permit § 6.c.4 and Bulloch Permit § 6.b.4.

existing wells,” and justifies its special condition requiring a mitigation fund as a “conservation measure.”²⁸ The Ga. Comp. R & Regs. 391-3-2 does not include the term “conservation measure” and mainly references conservation in relation to a water conservation plan. Likewise, the special conditions related to addressing short term impacts, including the mitigation fund, do not address water conservation. Instead, it is designed to respond to, remedy, and address “significant impacts” to wells in the area. Despite this suggested terminology of “conservation measure,” the mitigation fund is not meant for conservation, but rather for impacts. And it certainly appears that “significant impacts” and “unreasonable adverse impacts” occupy very similar meanings. Without a clear definition of “unreasonable adverse impact” that is substantially different from a “significant impact,” these appear to be interchangeable terms.

Further, a definition of “unreasonable adverse impact” would be helpful in clarifying how EPD selected its 5-mile radius for eligibility for relief from well impacts. EPD refers to regional water planning contexts and drawdown interferences, but does not provide any citation and reference for these numbers. It further states that the 10-foot drawdown is conservatively chosen to assess impact, again without explanation.²⁹ EPD must have some clearer concept of what an “unreasonable adverse impact” is when making its conservative assessments of impacts. Clear communication on this issue could also justify and confirm that the 5-mile radius is sufficiently protective of all those that could be either unreasonably adversely impacted or significantly impacted. ORK asks for EPD clarification on this definitional question and how the Department applied this definition to the current 5-mile area of impact.

Sixth and finally, EPD must explain how it has met its regulatory requirements in determining no unreasonable adverse impacts will result from these permitted withdrawals. As has been discussed above, the inclusion of the Well Mitigation Fund special condition and the description of potential “significant impacts” resulting from the proposed withdrawals certainly appears to meet the threshold of an “unreasonable adverse impact.” Clear definitions for “unreasonable adverse impact” and “significant impact” would help EPD clarify its conclusions.

Likewise, if an “unreasonable adverse impact” results, the Well Mitigation Fund is not sufficient to ensure these permits will satisfy all of the considerations required by state regulations. As noted above, EPD must determine that there will not be any unreasonable adverse impacts that would result from a proposed withdrawal in making its permitting decision. Even assuming a sufficient mitigation plan is in place and would efficiently address resulting impacts, EPD is not empowered to grant a permit that it determines would have an unreasonable adverse impact. Here, there will be adverse impacts that will have significant negative effects on well owners. EPD would have to overlook these specifically identified considerations³⁰ in making its permitting decision, ignoring its regulatory requirements and invalidating its permitting decision. Without an expanded explanation of what an “unreasonable adverse impact” is, how it differs from a “significant impact,” and how these proposed withdrawals fit into those definitions, granting these permits appears to ignore regulatory requirements. ORK asks EPD for clarification on this crucial regulatory question.

²⁸ Georgia Environmental Protection Division. “Response to Comments on the Draft Special Conditions. At page 10.

²⁹ *Id.* At pages 1-2.

³⁰ See Ga. Comp. R. & Regs. 391-3-2-.05(1)(c)-(e).

Thank you in advance for your time and consideration on these important, impactful, and long-lasting decisions. Please let me know if you have any questions or need clarification on our comments before making your final permitting decision: ben@ogeecheeriverkeeper.org.

Sincerely,

Ben Kirsch, Legal Director
Ogeechee Riverkeeper