

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW Plaintiffs Randolph Paul Oakes; Brenda Sue Oakes; Gary Lorenz Oakes; Dana Karen Wagenfehr; Fred Wagenfehr; James Whitley Gloor; Wendy Gloor; Kristin C. Gilland; Candace L. Lochridge; Elizabeth Rabon; Kurt Reedy; Rebecca Taylor; Paul Randall Hill; Charles H. McAlister; Angie McAlister; Thomas Davidson; Cheryl Davidson; Chimney Valley Lookout, LLC, Leonard Clear Creek Ranch, LLC; Christine Huguelet; Manie Rose Mann; William Fojtasek; Dianne Fojtasek; Board House Creek, LLC; CJ Bitter, Individually and as Trustee of the Patricia Ann McClure Bitter Trust; Howard Heiligmann, Individually and as Trustee of the Charles H. Heiligmann Revocable Living Trust; Elizabeth Heiligmann; HB Legacy Partners, LLC; Michael C. Ashley; Donna Ashley; Douglass D. Hearne, Jr.; Christopher B. Hearne; Mary Ellen Umstattd; Kathleen A. Wight; Bartow Stonebridge, LLC; ; Pierrepont M. Bartow; Roberta B. Matthews; EDJ Properties, LLC; Duke Ranch, LLC; Jose M. Sandoval; Edna Y. Sandoval; Todd Rogers; Erin Rogers; Bennett Schotz; and Jane Schotz (hereinafter collectively referred to as the “Plaintiffs”) in the above-entitled and numbered cause and file this Original Petition and Application for Declaratory Relief and Mandatory Injunction against Defendant Permian Highway Pipeline, LLC (“PHP”) and Defendant Kinder Morgan Texas Pipeline, LLC (“Kinder Morgan”), and in support thereof, respectfully show the Court as follows:

I. Nature of Claims

1. Kinder Morgan and its subsidiary Permian Highway Pipeline LLC is constructing a 425-mile long, forty-two inch diameter gas utility pipeline (“the Pipeline”) across Texas, running directly through Blanco County. The stated purpose of the Pipeline is to carry high-pressure natural gas. In Blanco County, where Plaintiffs’ property is located, the Pipeline was initially planned to cross the Blanco River in two separate locations in close proximity, in a primarily

residential area. Despite public opposition to the Pipeline based in large part on the potential impacts of building such a pipeline through an environmentally-sensitive area—which included, among other features, known geological karst formations with the potential to act as a direct conduit to groundwater—as well as ongoing concerns regarding the safety of the Pipeline, Defendants PHP and Kinder Morgan started construction in Blanco County and proceeded hastily with little to no public input or dialogue.

2. On March 28, 2020, the concerns related to the construction of the Pipeline were substantiated when Defendants spilled a reported 36,000 gallons of pipeline drilling fluid (“the spill”) which immediately and directly impacted the properties and groundwater of those in the vicinity of the spill, including Plaintiffs. Distressingly, despite the magnitude of the spill, both PHP and Kinder Morgan failed to immediately notify residents of the spill, and violated state law by failing to immediately notify the Railroad Commission of Texas (“RRC”) of the event. On April 9, 2020, the Railroad Commission of Texas issued a Notice of Violation to Kinder Morgan based on its violation of Statewide Rule 8(b) regarding pollution to surface or subsurface water and Statewide Rule 20(a) regarding Kinder Morgan’s failure to provide the RRC notice of the spill until three days after it occurred.

3. Due to the karst geological features in the area of the spill, the reported 36,000 gallons of drilling fluid spilled by Defendants likely migrated through the borehole and along intersections with karst fractures, recharge features and other formation openings. It is likely that some of the contaminants remain in the fractures, while some of the contaminants remain distributed within the groundwater and aquifer system. These contaminants likely will persist as a chronic source of chemical-laden sediment and turbidity, with continued impacts to the groundwater and drinking water, potentially for years. To date, Defendants have not fully

disclosed the complete composition by volume of the constituents in drilling fluids released into the aquifer despite requests to do so. Kinder Morgan has admitted that the drilling fluid contains AMC Gel, a product that includes constituents that can be harmful to human health. A complete disclosure of the makeup of the drilling fluids, including specific amounts of each constituent, are necessary to determine the specific current and future impacts from the spill. Moreover, despite the RRC's Notice of Violation dated April 9, 2020, Kinder Morgan has not put forth a plan to address the contaminants that remain in the karst fractures and the contaminated sediment that remains in the aquifer. Plaintiffs specifically requested a remediation plan with a comprehensive groundwater monitoring plan, but to date, Kinder Morgan has failed to respond or meaningfully engage Plaintiffs.

4. To add insult to injury, in an apparent acknowledgment that the original pipeline route where the spill occurred was inappropriate from the start due to the environmentally sensitive karst features, Kinder Morgan has recently taken swift steps to re-route the pipeline around much of the impacted neighborhood. However, their decision to move the Pipeline from the site of the spill is too little too late for the residents whose lives and properties have been uprooted by Kinder Morgan's ill-conceived actions.

5. Well water is the only source of water for Plaintiffs, as is the case for most residents in the vicinity of the spill. Prior to the spill, the quality of the water as described by several Plaintiffs—many of whom have owned property in Blanco County for decades—was pristine. As a result of the spill and out of concern for the safety of the water supply, Plaintiffs largely rely on bottled water for cooking or drinking. They are concerned about using the water for other household uses, such as washing clothes and dishes, but currently have no other source of water for these daily needs.

6. Plaintiffs bring their Original Petition against both PHP and Kinder Morgan for the impact that the spill has had on their properties. They seek a declaratory judgment regarding liability for the contamination, monetary damages, and all other relief to which they are entitled under the law, including site investigation costs and attorneys' fees.

7. The Plaintiffs also seek a mandatory injunction requiring cleanup of the contamination and restoration of the properties that results, at a minimum, in the complete removal of contaminants released, no impact to surface or groundwater, and the land returned to conditions before installation spill.

II. Discovery Control Plan

8. Plaintiffs intend to conduct discovery under Level 3 of TEX. R. CIV. P. 190.3 and affirmatively plead that this suit is not governed by the expedited-actions process in TEX. R. CIV. P. 169 because Plaintiffs seek monetary relief in excess of \$100,000.

III. Relief Sought

9. The extent of the damage to Plaintiffs' properties has not been fully characterized as of the date of the filing of the petition. Plaintiffs seek non-monetary relief and monetary relief over \$1,000,000. TEX. R. CIV. P. 47(c)(5). The damages sought herein are within the jurisdictional limits of this Court.

IV. Parties

10. Plaintiff Randolph Paul Oakes is an individual residing at 2728 Diamond Trail, New Braunfels, Texas 78132. He has an interest in approximately 280.6 acres of property at 218 The Oakes Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Oakes driver's license number are 542. The last three digits of his Social Security number are 273.

11. Plaintiff Brenda Sue Oakes is an individual residing at 2728 Diamond Trail, New Braunfels, Texas 78132. She has an interest in approximately 280.6 acres of property at 218 The Oakes Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Oakes driver's license number are 939. The last three digits of her Social Security number are 912.

12. Plaintiff Gary Lorenz Oakes is an individual residing at 218 The Oaks Lane in Blanco, Texas 78606. He has an interest in approximately 280.6 acres of property at 218 The Oakes Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Oakes driver's license number are 843. The last three digits of his Social Security number are 272.

13. Plaintiff Dana Karen Wagenfehr is an individual residing at 455 Buckner Lane, Blanco, Texas, 78606. She has an interest in approximately 111.63 acres of property at 155, 413, 422 and 455 Buckner Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Wagenfehr's driver's license number are 867. The last three digits of her Social Security number are 054.

14. Plaintiff Fred Wagenfehr is an individual residing at 455 Buckner Lane, Blanco, Texas, 78606. He has an interest in approximately 111.63 acres of property at 155, 413, 422 and 455 Buckner Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Wagenfehr's driver's license number are 843. The last three digits of his Social Security number are 807.

15. Plaintiff James Whitley Gloor is an individual residing at 155 Buckner Lane, Blanco, Texas, 78606. He has an interest in approximately 111.63 acres of property at 155, 413, 422 and 455 Buckner Lane in Blanco, Texas which has been impacted by Defendants' spill of

drilling fluid. The last three digits of Mr. Gloor's driver's license number are 221. The last three digits of his Social Security number are 858.

16. Plaintiff Wendy Gloor is an individual residing at 155 Buckner Lane, Blanco, Texas, 78606. She has an interest in approximately 111.63 acres of property at 155, 413, 422 and 455 Buckner Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Gloor's driver's license number are 996. The last three digits of her Social Security number are 436.

17. Plaintiff Kristin C. Gilland is an individual residing at 116 Parkhill Drive, Bastrop, Texas 78602. She has an interest in approximately 111.63 acres of property at 155, 413, 422 and 455 Buckner Lane in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Gilland's driver's license number are 835. The last three digits of her Social Security number are 351.

18. Plaintiff Candace L. Lochridge is an individual residing at 2943 Westlake Cove, Austin, Texas 78746. She owns approximately 142.26 acres of property at 7117 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Lochridge's driver's license number are 942. The last three digits of her Social Security number are 200.

19. Plaintiff Elizabeth Rabon is an individual residing at 185 Chimney Valley Road in Blanco, Texas 78606. She owns approximately 29.65 acres of property at 185 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Rabon's driver's license number are 852. The last three digits of her Social Security number are 150.

20. Plaintiff Kurt Reedy is an individual residing at 1404 Norwalk Lane #101, Austin, Texas 78703. He owns approximately 14.29 acres of property at River Ridge Ranch, Lot 15 in Blanco, Texas, which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Reedy's driver's license number are 324. The last three digits of his Social Security number are 024.

21. Plaintiff Rebecca S. Taylor is an individual residing at 5999 Ranch Road 165, Blanco, Texas 78606. She has an interest in approximately 44.21 acres of property at 5999 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Taylor's driver's license number are 050. The last three digits of her Social Security number are 061.

22. Plaintiff Paul Randall Hill is an individual residing at 5999 Ranch Road 165, Blanco, Texas 78606. He has an interest in approximately 44.21 acres of property at 5999 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Hill's driver's license number are 586. The last three digits of his Social Security number are 854.

23. Plaintiff Charles H. McAlister is an individual residing at 1894 Chimney Valley Road, Blanco, Texas 78606. He owns approximately 1.0 acres of property at 1894 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. McAlister's driver's license number are 231. The last three digits of his Social Security number are 201.

24. Plaintiff Angie McAlister is an individual residing at 1894 Chimney Valley Road, Blanco, Texas 78606. She owns approximately 1.0 acres of property at 1894 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last

three digits of Ms. McAlister's driver's license number are 687. The last three digits of her Social Security number are 177.

25. Plaintiff Thomas Davidson is an individual residing at 111 Ross' Ridge, Canyon Lake, Texas 78133. He owns approximately 20.04 acres of property at 2649 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Davidson's driver's license number are 403. The last three digits of his Social Security number are 826.

26. Plaintiff Cheryl Davidson is an individual residing at 111 Ross' Ridge, Canyon Lake, Texas 78133. She owns approximately 20.04 acres of property at 2649 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Davidson's driver's license number are 405. The last three digits of her Social Security number are 350.

27. Plaintiff Chimney Valley Lookout LLC is a Texas Limited Liability Company doing business at 3126 Edgewater Drive, Austin, Texas 78733. The company owns approximately 9.9 acres of property at 647 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

28. Plaintiff Leonard Clear Creek Ranch LLC is a Texas Limited Liability Company doing business at 18 Lakeside Park, Dallas, Texas 75225. The company owns approximately 215 acres of property at 4648 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

29. Plaintiff Christine Huguelet is an individual residing at 1786 Chimney Valley Road, Blanco Texas 78606. She owns approximately 19.02 acres of property at 1786 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last

three digits of Ms. Huguelet's driver's license number are 532. The last three digits of her Social Security number are 788.

30. Plaintiff Manie Rose Mann is an individual residing at 744 Spanish Moss Drive, Spring Branch, Texas 78070. She owns approximately 19.02 acres of property at 1786 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Mann's driver's license number are 524. The last three digits of her Social Security number are 472.

31. Plaintiff William Fojtasek is an individual residing at 122 Wilcox Road, Blanco, Texas 78606. He owns approximately 14.5 acres of property at 122 Wilcox Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Fojtasek's driver's license number are 875. The last three digits of his Social Security number are 625.

32. Plaintiff Dianne Fojtasek is an individual residing at 122 Wilcox Road, Blanco, Texas 78606. She owns approximately 14.5 acres of property at 122 Wilcox Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Fojtasek's driver's license number are 695. The last three digits of her Social Security number are 870.

33. Plaintiff Board House Creek, LLC is a Texas Limited Liability Company doing business at 302 Cloverleaf Avenue, San Antonio, Texas 78209. The company owns approximately 448.2 acres of property situated in the JL McCrocklin League Survey No. 15, Abstract No. 2 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

34. Plaintiff C.J. Bitter is an individual residing at 129 Deer Draw, Georgetown, Texas 78628. He has an interest in approximately 174.9 acres of property at 6592 Ranch Road 165 in

Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. Mr. Bitter brings this suit individually, and as Trustee of the Patricia Ann McClure Bitter Trust. The last three digits of Mr. Bitter's driver's license number are 864. The last three digits of his Social Security number are 645.

35. Plaintiff Howard C. Heiligmann is an individual residing at 129 Deer Draw, Georgetown, Texas 78628. He has an interest in approximately 22.43 acres of property at 7345 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. Mr. Heiligmann brings this suit individually and as Trustee of the Charles H. Heiligmann Revocable Living Trust. The last three digits of Mr. Heiligmann's driver's license number are 205. The last three digits of his Social Security number are 785.

36. Plaintiff Elizabeth Heiligmann is an individual residing at 129 Deer Draw, Georgetown, Texas 78628. She has an interest in approximately 22.43 acres of property at 7345 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Heiligmann's driver's license number are 290. The last three digits of her Social Security number are 496.

37. Plaintiff HB Legacy Partners, LLC is a Texas Limited Liability Company doing business at 129 Deer Draw, Georgetown, Texas 78628. The company owns approximately 139.8 acres of property at 6683 Ranch Road 165 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

38. Plaintiff Mike Ashley is an individual residing at 739 Chimney Valley Road, Blanco, Texas 78606. He owns approximately 6.81 acres of property at 739 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three

digits of Mr. Ashley's driver's license number are 921. The last three digits of his Social Security number are 361.

39. Plaintiff Donna Ashley is an individual residing at 739 Chimney Valley Road, Blanco, Texas 78606. She owns approximately 6.81 acres of property at 739 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Ashley's driver's license number are 997. The last three digits of her Social Security number are 013.

40. Plaintiff Douglas D. Hearne, Jr. is an individual residing at 2315 Bridle Path, Austin, Texas 78703. He has an interest in over 400 acres of property situated in the JL McCrocklin Survey No. 15, Abstract No. 2 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Hearne's driver's license number are 556. The last three digits of his Social Security number are 026.

41. Plaintiff Christopher B. Hearne is an individual residing at 404 Skyline Road, Georgetown, Texas 78628. He has an interest in over 400 acres of property situated in the JL McCrocklin Survey No. 15, Abstract No. 2 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Hearne's driver's license number are 128. The last three digits of his Social Security number are 225.

42. Plaintiff Mary Ellen Umstatted is an individual residing at 1507 Wild Cat Hollow, Austin, Texas 78746. She has an interest in over 400 acres of property situated in the JL McCrocklin Survey No. 15, Abstract No. 2 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Umstatted's driver's license number are 063. The last three digits of her Social Security number are 700.

43. Plaintiff Kathleen H. Wight is an individual residing at 6202 Shadow Mountain Cove, Austin, Texas 78731. She has an interest in over 400 acres of property situated in the JL McCrocklin Survey No. 15, Abstract No. 2 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Wight's driver's license number are 204. The last three digits of her Social Security number are 795.

44. Plaintiff Bartow Stonebridge, LLC is a Texas Limited Liability Company doing business at 10810 Katy Freeway, Suite 110, Houston, Texas 77043. The company has an interest in approximately 314.0 acres of property situated in the Henry Manton Survey No. 17, Abstract No. 387 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

45. Plaintiff Pierrepont M. Bartow is an individual residing at 8815 Ben Kerns Road, Klamath Falls, OR 97601. He has an interest in approximately 314.0 acres of property situated in the Henry Manton Survey No. 17, Abstract No. 387 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Bartow's driver's license number are 117. The last three digits of his Social Security number are 316.

46. Plaintiff Roberta B. Matthews is an individual residing at 587 Lexington Club Court, Apt. 403, Memphis, Tennessee 38117. She has an interest in approximately 314.0 acres of property situated in the Henry Manton Survey No. 17, Abstract No. 387 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Matthew's driver's license number are 724. The last three digits of her Social Security number are 317.

47. Plaintiff EDJ Properties, LLC is a Texas Limited Liability Company doing business at 129 Deer Draw, Georgetown, Texas 78628. The company has an interest in approximately 314.0 acres of property situated in the Henry Manton Survey No. 17, Abstract No. 387 in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid.

48. Plaintiff Duke Ranch, LLC is a Texas Limited Liability Company doing business at 1004 Rocky Canyon Road, Arlington, Texas 76012. The company owns over 344 acres of property situated in the JL McCrocklin League Survey No. 15, Abstract No. 2 in Blanco, Texas, including property at 2185 Chimney Valley Road, which has been impacted by Defendants' spill of drilling fluid.

49. Plaintiff Jose M. Sandoval is an individual residing at 7993 Middle Creek Road, Blanco, Texas 78606. He owns approximately 15.0 acres of property at 7993 Middle Creek Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Sandoval's driver's license number are 003. The last three digits of his Social Security number are 466.

50. Plaintiff Edna Y. Sandoval is an individual residing at 7993 Middle Creek Road, Blanco, Texas 78606. She owns approximately 15.0 acres of property at 7993 Middle Creek Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Sandoval's driver's license number are 235. The last three digits of her Social Security number are 332.

51. Plaintiff Todd Rogers is an individual residing at 1108 Chimney Valley Road, Blanco, Texas 78606. He owns approximately 233.0 acres of property at 1108 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Rogers' driver's license number are 775. The last three digits of his Social Security number are 121.

52. Plaintiff Erin Rogers is an individual residing at 1108 Chimney Valley Road, Blanco, Texas 78606. She owns approximately 233.0 acres of property at 1108 Chimney Valley Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last

three digits of Ms. Rogers' driver's license number are 249. The last three digits of her Social Security number are 264.

53. Plaintiff Bennett Schotz is an individual residing at 1711 San Gabriel, Austin, Texas 78701. He owns approximately 8.13 acres of property at 417 River Bend Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Mr. Schotz's driver's license number are 806. The last three digits of his Social Security number are 564.

54. Plaintiff Jane Schotz is an individual residing at 1711 San Gabriel, Austin, Texas 78701. She owns approximately 8.13 acres of property at 417 River Bend Road in Blanco, Texas which has been impacted by Defendants' spill of drilling fluid. The last three digits of Ms. Schotz's driver's license number are 114. The last three digits of her Social Security number are 914.

55. Defendant Permian Highway Pipeline LLC is a Delaware limited liability company authorized to do business in Texas, with a principal office located at 1001 Louisiana Street, Suite 1000, Houston, Texas 77002. It may be served with process by serving its Registered Agent, Capitol Corporate Services, Inc. at 206 E. 9th Street, Suite 1300, Austin, Texas 78701.

56. Defendant Kinder Morgan Texas Pipeline, LLC is a Delaware limited liability company authorized to do business in Texas, with a principal office located at 1001 Louisiana Street, Suite 1000, Houston, Texas 77002. It may be served with process by serving its Registered Agent, Capitol Corporate Services, Inc. at 206 E. 9th Street, Suite 1300, Austin, Texas 78701.

V. Jurisdiction and Venue

57. The Court has subject matter jurisdiction over the lawsuit because the controversy exceeds this Court's minimum jurisdictional requirements.

58. Venue is mandatory in Blanco County under TEX. CIV. PRAC. & REM. CODE §15.011 because this suit is, in part, for damages to real property, and Blanco County is where the properties at issue are located.

VI. Background Facts

59. Plaintiffs are owners of properties collectively in excess of 2,400 acres in Blanco County, Texas. The properties include homesites and working ranches. Well water has been the exclusive source of water for consumption and household uses.

60. On March 28, 2020, Defendants spilled a reported 36,000 gallons of drilling fluid during construction of the Pipeline in close proximity to the Plaintiffs' properties, damaging Plaintiffs' land and groundwater. As noted above, Defendants failed to notify any residents of the spill at the time it occurred, and violated state law by failing to notify the RRC. It is likely that contaminants remain in the karst fractures and the contaminated sediment that remains in the aquifer, which will continue to impact to the groundwater and drinking water—and Plaintiffs' use and enjoyment of their properties—potentially for years. Defendants have taken no action to remediate the spill.

61. Sampling on wells on various Plaintiffs' properties have shown increased turbidity, including turbidities exceeding 12 Nephelometric Turbidity Units (NTU), with variable or increasing turbidities during purging. The heterogeneous distribution of bentonite in the macroporous karst aquifer is the likely source of this turbidity and the variability of the measurements. Notably, if these were public wells the State of Texas would require that the turbidity never exceed 1 NTU.¹ Plaintiffs have also seen staining on plumbing, which was not

¹ See <https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/290f.pdf>.

present prior to the spill and can be consistent with a potential ongoing impact to the microbial makeup of the groundwater as a result of the spill.

62. As set forth below, Plaintiffs have been severely damaged by the spill caused by Defendants.

VII. Causes of Action

63. The preceding paragraphs are incorporated herein by reference as if fully set forth below.

A. Count 1: Trespass to Real Property

64. Defendants PHP and Kinder Morgan entered and/or continue to enter properties owned by the Plaintiffs without authorization by releasing contaminants to groundwater and soil as a result of the drilling fluid spill that occurred on or about March 28, 2020.

65. Defendants PHP and Kinder Morgan entry was physical, intentional, and voluntary, and caused injury to Plaintiffs' right of possession.

66. Defendants PHP and Kinder Morgan took no action and has taken no action to ensure that the contaminants would not migrate or continue to migrate, unauthorized, onto Plaintiffs' properties. Defendants' failure to take action to prevent the contaminants from migrating or continuing to migrate on to Plaintiffs' properties was and is grossly negligent or done with malice and deliberate and willful and caused Plaintiffs' injuries.

67. Defendants' trespass is continuing because contaminants continue to migrate through Plaintiffs' properties.

68. Defendants' trespass is temporary because it can be repaired, fixed, or restored, and any anticipated recurrence would be only occasional, irregular, intermittent, and not reasonably predictable, such that future injury could not be estimated with reasonable certainty.

69. In the alternative, Defendants' trespass is permanent because either (a) the damage is not capable of being repaired, fixed, or restored, or (b) even if capable of repair, there is substantial certainty the injury will repeatedly, continually, and regularly recur, such that future injury can be reasonably evaluated.

70. Defendants' unauthorized entry onto Plaintiffs' properties resulted in the following damages:

- a. Loss of market value;
- b. Cost of repairs;
- c. Loss of use and enjoyment of the property;
- d. Diminution in market value damages after repair;
- e. Mental anguish for intentional conduct;
- f. Expenses;
- g. Exemplary damages; and
- h. Court costs.

71. In addition, to remedy Defendants' continuing unauthorized entry to Plaintiffs' properties, Plaintiffs request a mandatory injunction requiring cleanup of the site, as described below.

B. Count 2 – Private Nuisance

72. Defendants substantially interfered with, and continue to substantially interfere with, Plaintiffs' interests in the use and enjoyment of their respective properties by:

- a. allowing the release of contamination onto Plaintiffs' properties and through the soil, surface water, and groundwater; and

- b. taking no action to ensure that the contaminants would not migrate or continue to migrate, unauthorized, onto Plaintiffs' properties.

73. Defendants substantial interference with Plaintiffs' interests in the use and enjoyment of their properties has caused Plaintiffs' unreasonable discomfort, annoyance, and inconvenience.

74. Defendants have caused physical damage to Plaintiffs' respective properties, economic harm to the properties' market values, and psychological harm to Plaintiffs' "peace of mind" in the use and enjoyment of their properties.

75. Defendants negligently interfered with Plaintiffs' interests. Defendants owed a legal duty to Plaintiffs to exercise reasonable care to prevent injury to Plaintiffs and their properties. Defendants were aware, or should have been aware of their release of 36,000 gallons of drilling fluid into Plaintiffs' groundwater supply. Defendants created a dangerous condition by failing to exercise reasonable care in installing the Pipeline, and this condition resulted in the contamination of Plaintiffs' properties. Further, once aware that the spill had occurred, Defendants failed to take affirmative action to control or avoid increasing the danger to Plaintiffs.

76. Defendants intentionally and unreasonably interfered with Plaintiffs' interests by failing to take action once Defendants became aware of the 36,000 gallon drilling fluid spill. Defendants' deliberate inaction allowed the contamination to migrate from the location of the drilling fluid spill to adjacent properties, including Plaintiffs' properties in one continuous insult. To date, Defendants have intentionally failed to take any action to contain or ameliorate the contamination in order to prevent continued contamination to Plaintiffs' properties. Defendants continue to maintain the conditions wherein contaminants are migrating onto Plaintiffs' properties.

77. Defendants' interference with Plaintiffs' interests is temporary because it can be repaired, fixed, or restored and any anticipated recurrence would be only occasional, irregular, intermittent, and not reasonably predictable, such that future injury could not be estimated with reasonable certainty.

78. In the alternative, Defendants' interference with Plaintiffs' interests is permanent because either (a) the damage is not capable of being repaired, fixed, or restored, or (b) even if capable of repair, there is substantial certainty the injury will repeatedly, continually, and regularly recur, such that future injury can be reasonably evaluated.

79. Defendants' interference with Plaintiffs' interests caused injury to Plaintiffs, which resulted in the following damages:

- a. Loss of market value;
- b. Cost of repairs;
- c. Loss of use and enjoyment of the property;
- d. Diminution in market value damages after repair;
- e. Personal discomfort, annoyance, frustration, and inconvenience;
- f. Mental anguish for intentional conduct;
- g. Expenses;
- h. Exemplary damages; and
- i. Court costs.

80. In addition, to remedy Defendants' continuing unauthorized entry to Plaintiffs' properties, Plaintiffs request a mandatory injunction requiring cleanup of the site, as described below.

C. Count 3 – Negligence

81. Defendants owed a legal duty to Plaintiffs to exercise reasonable care to prevent injury to Plaintiffs and their properties.

82. Defendants were aware, or should have been aware, of their release of 36,000 gallons of drilling fluid during construction of the Pipeline.

83. Defendants created a dangerous condition by failing to exercise reasonable care in their installation of the Pipeline in an area with known karst geological features, resulting in the contamination of Plaintiffs' properties. Further, once aware that the spill had occurred, Defendants, failed to take reasonable affirmative action to control or avoid increasing the danger to Plaintiffs. In particular, Defendants' deliberate inaction allowed the contamination to migrate from the location of the drilling fluid spill to adjacent properties, including Plaintiffs' properties in one continuous insult. To date, Defendants have intentionally failed to take any action to contain or ameliorate the contamination in order to prevent continued contamination to Plaintiffs' properties.

84. Defendants' negligence proximately caused injury to Plaintiffs, which resulted in the following damages:

- a. Loss of market value;
- b. Cost of repairs;
- c. Loss of use and enjoyment of the property;
- d. Diminution in market value damages after repair;
- e. Mental anguish for intentional conduct;
- f. Expenses;
- g. Exemplary damages; and

h. Court costs.

D. Count 4 – Negligence Per Se

85. Defendants' actions violate RRC Statewide Rule 8, which provides that, "No person conducting activities subject to regulation by the [RRC] may cause or allow pollution of surface or subsurface water in the state," 16 TEX. ADMIN. CODE § 3.8(b). It also provides that,

No person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or any other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.

16 TEX. ADMIN. CODE § 3.8(d).

86. Plaintiffs are included in the class of persons that RRC Statewide Rule 8 is designed to protect, and the injury to Plaintiffs is of the type the statute was designed to prevent.

87. Defendants' violation of Statewide Rule 8 is without legal excuse.

88. Defendants' violation of Statewide Rule 8 and negligence per se proximately caused injury to Plaintiffs, which resulted in the following damages:

- a. Loss of market value;
- b. Cost of repairs;
- c. Loss of use and enjoyment of the property;
- d. Diminution in market value damages after repair;
- e. Mental anguish for intentional conduct;
- f. Expenses;
- g. Exemplary damages; and
- h. Court costs.

E. Count 5 – Texas Natural Resource Code Section 85.321

89. A landowner harmed by a violation of Chapter 85 of the Texas Natural Resources Code or “another law of this state prohibiting waste or a valid rule or order of the [RRC] may sue for and recover damages and have any other relief to which he may be entitled at law or equity.” TEX. NAT. RES. CODE § 85.321.

90. Plaintiffs’ properties were damaged by Defendants’ violations of provisions of RRC Statewide Rule 8, which provides that, “No person conducting activities subject to regulation by the [RRC] may cause or allow pollution of surface or subsurface water in the state,” 16 TEX. ADMIN. CODE § 3.8(b). It also provides that,

No person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or any other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.

16 TEX. ADMIN. CODE § 3.8(d).

91. Further, Plaintiffs’ were damaged by Defendants’ violations of a RRC Statewide Rule 20(a).

92. Defendants’ violations of RRC Statewide Rules 8 and 20(a) caused injury to Plaintiffs, which resulted in the following damages:

- a. Loss of market value;
- b. Cost of repairs;
- c. Loss of use and enjoyment of the property;
- d. Diminution in market value damages after repair;
- e. Mental anguish for intentional conduct;

- f. Expenses;
- g. Exemplary damages;
- h. Attorneys' fees; and
- i. Court costs.

93. In addition, to remedy Defendants' continuing unauthorized entry to Plaintiffs' properties, Plaintiffs request a mandatory injunction requiring cleanup of the site, as described below.

VIII. Application for Mandatory Injunctive Relief

94. Plaintiffs seek a mandatory injunction requiring cleanup of their properties that results, at a minimum, in the groundwater, surface water and land use returned to pre-spill conditions.

IX. Application for Declaratory Relief

95. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.003, Plaintiffs seek a finding and determination that Defendants, and not Plaintiffs, are liable for all response costs or damages resulting from Defendants' spill of 36,000 gallons of drilling fluid.

96. An owner of contaminated property may be a potentially responsible party for response costs or damages under certain authorities. The Texas Commission for Environmental Quality, however, "may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site owned or operated by the person" if the contaminants that are the subject of the investigation "appear to originate from an up-gradient, offsite source that is not owned or operated by the person," reflecting an intention by the state to protect innocent landowners from liability for contamination. TEX. HEALTH & SAFETY CODE § 361.1875.

97. Plaintiffs also seek costs and reasonable and necessary attorney's fees, as are equitable and just, pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009.

X. Jury Demand

98. Plaintiffs demand a jury trial and herewith tender the appropriate fee.

XI. Conditions Precedent

99. All conditions precedent have been performed or have occurred.

XII. Request for Disclosure

100. Under TEXAS RULE OF CIVIL PROCEDURE 194, Plaintiffs request that Defendants disclose, within 30 days of the service of this request, the information or material described in Rule 194.2, and supplement any responses as required by the rules.

XIII. Prayer

For these reasons, Plaintiffs ask that the Court issue citation for Defendants to appear and answer, and that Plaintiffs be awarded a judgment against Defendants for the following:

- a. Actual damages;
- b. Mandatory injunction requiring cleanup of Plaintiffs' properties that results, at a minimum, in the groundwater, surface water and land use returned to pre-spill conditions;
- c. Declaratory judgment in favor of the Plaintiffs pursuant to TEX. CIV. PRAC. & REM. CODE § 37.003, finding and determining that Defendants are liable for all response costs or damages resulting from the contamination;
- d. Mental anguish damages;
- e. Exemplary damages;
- f. Prejudgment and postjudgment interest;

- g. Court costs;
- h. Attorneys' fees; and
- i. All other relief to which Plaintiffs are entitled.

DATE: December 23, 2020

Respectfully Submitted,

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