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**SOAH DOCKET NO. 473-23-23623
PUC DOCKET NO. 54843**

PETITION OF AVALON POINT WATER SYSTEM, LLC FOR A CEASE- AND-DESIST ORDER AGAINST TX SPUR, LLC	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**TX SPUR, LLC’S OBJECTIONS TO THE DIRECT TESTIMONY AND EXHIBITS OF
AVALON POINT WATER SYSTEM, LLC**

TO THE HONORABLE JUDGE FARHADI:

COMES NOW, TX Spur, LLC (TX Spur), and files these Objections to the Direct Testimony and Exhibits of Avalon Point Water System, LLC (Avalon) (hereinafter, Objections) and would respectfully show the following:

I. GENERAL OBJECTION

Avalon prefiled the direct testimony (PFT) and exhibits of John Moore on May 2, 2025. State Office of Administrative Hearings (SOAH) Order No. 9 (Scheduling Order), issued on March 24, 2025, establishes a deadline of June 6, 2025 for filing objections to and motions to strike all parties’ PFT.¹ This filing asserts timely Objections to Avalon’s PFT and exhibits.

As set out more fully below, Avalon’s witness John Moore pontificates on multiple legal and regulatory issues throughout his PFT for which he is not qualified to address. Mr. Moore is a fact witness who lacks the requisite training, knowledge and education to provide the reliable opinion testimony of an expert to help the trier of fact, here the Administrative Law Judge (ALJ), in accordance with the Texas Rules of Evidence. Rather, his purported legal conclusions range from opining on the construction of Commission rules, the Texas Water Code and rules of a

¹ SOAH Order No. 9, Adopting Agreed Procedural Schedule, Setting Hearing on the Merits and Setting Procedural Requirements (Mar. 24, 2025).

groundwater conservation district to answering all of the legal questions (requiring construction of Commission rules and statutes) posed by the Commission’s Preliminary Order’s Issues to be Addressed. Ultimately Mr. Moore’s PFT is non-credible and self-serving since Avalon stands to financially benefit from the answer to the ultimate question of whether TX Spur is a “retail public utility.”

II. SPECIFIC OBJECTIONS TO JOHN MOORE’S DIRECT TESTIMONY

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
1	Page 4 Line 10-11	Q: PLEASE IDENTIFY EXHIBIT JM-4. A: <u>Exhibit JM-4</u> is a site plat from the Bandera County Deed records for the TX Spur property as originally platted.	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion about the regulation of subdivisions and property development through platting. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine a fact in issue. As such, statements about the platted status of TX Spur’s property are conjecture and speculative which is not helpful to determine a fact in issue. Nor has Mr. Moore demonstrated that his opinion on the platted status of TX Spur’s property is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact pursuant to Tex. R. Evid. 701. Additionally, TX Spur objects that the referenced testimony is irrelevant under Tex. R. Evid. 401 and 402. Reference to the platted status of TX Spur’s property is irrelevant to the pending petition and is not germane to any of the Issues to be Addressed in the Preliminary Order issued by the Commission. Even if the 5.025-acre property was platted and subdivided, which it is not, the presence of platted

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
			lots does not constitute illegal retail water utility service.
2	Page 4 Lines 14-15	. . . Tx Spur is providing retail water service to the occupants of its RV park. . . Tx Spur is illegally providing retail water service. . .	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion about the applicability of Commission rules to TX Spur and whether its provision of water to its tenants constitutes retail water utility service. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of law. As such, statements about whether TX Spur is providing retail water service and whether such service is “illegal” are inflammatory conjecture and speculative which is not helpful to determine a fact in issue. Nor has Mr. Moore demonstrated that his opinion on whether TX Spur’s service to its tenants constitutes retail water utility service is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact pursuant to Tex. R. Evid. 701.
3	Page 4 Lines 22-23	. . .Tx Spur is illegally encroaching on Avalon’s CCN area.	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion about the legality of TX Spur’s provision of water to its tenants and so-called and undefined “encroachment.” Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of law. Nor has Mr. Moore demonstrated that his opinion on whether TX Spur’s service to its tenants constitutes illegal

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
			<p>encroachment is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact pursuant to Tex. R. Evid. 701. Additionally, TX Spur objects that the referenced testimony is irrelevant under Tex. R. Evid. 401 and 402. Reference to illegal “encroachment” is irrelevant to the pending petition, is not referenced in Commission rules and is not germane to any of the Issues to be Addressed in the Preliminary Order issued by the Commission.</p>
4	Page 6 Lines 3-11	<p>Q: CAN YOU TELL FROM <u>EXHIBIT JM-6</u> WHAT AQUIFER AND FORMATION THE TX SPUR WELL IS DRAWING WATER FROM?</p> <p>A: Yes. TX Spur’s well is constructed into the same aquifer and formation as Medina Highland’s water well. The specific aquifer zone that TX Spur is drawing from is slightly lower. . .TX Spur is taking water away from Medina Highlands. . .</p>	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not a geologist, hydrogeologist or water well driller qualified to render an opinion about the geological characteristics of either sites, their wells or potential drawdown. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on whether TX Spur’s groundwater well and its potential hydrogeologic effect on Avalon’s well is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701. Additionally, TX Spur objects that the referenced testimony is irrelevant under Tex. R. Evid. 401 and 402. Into what formation the TX Spur well is completed and whether that effects drawdown on Avalon’s well is irrelevant to the pending petition, is not referenced in Commission rules and is not germane to any of the Issues to be Addressed in the Preliminary Order issued by the Commission.</p>

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
5	Page 6 Lines 17-21	<p>Q: EVEN IF THE WELL IS NOT CONSIDERED A PUBLIC WATER SUPPLY WELL, DOES ANY AGENCY REQUIRE THAT THE WELL BE PERMITTED OR REGISTERED?</p> <p>A. Yes. The Bandera county River Authority and Groundwater District requires all wells to be permitted or registered, even if they are only for domestic use. TX Spur's well is not permitted or registered with the Bandera River and Groundwater District as required.</p>	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion about TX Spur's well compliance with groundwater conservation district (GCD) rules. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of law. Nor has Mr. Moore demonstrated that his opinion on the applicability of GCD rules or TX Spur's compliance with such rules is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact pursuant to Tex. R. Evid. 701. Additionally, TX Spur objects that the referenced testimony is irrelevant under Tex. R. Evid. 401 and 402. TX Spur's compliance with Bandera County River Authority GCD for its exempt well is irrelevant to the pending petition, is not referenced in Commission rules and is not germane to any of the Issues to be Addressed in the Preliminary Order issued by the Commission.</p>
6	Page 6 Lines 22-25	<p>Q: IS TX SPUR A RETAIL PUBLIC UTILITY?</p> <p>A. Yes, because under the PUC rule definition of "retail public utility" at 16 Tex. Admin. Code § 24.3(31), TX Spur operates and maintains facilities for providing potable water service for compensation to the RV park residents.</p>	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion about the ultimate legal question in this docket, about whether TX Spur is a retail public utility. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of law. Nor has Mr. Moore demonstrated that his opinion on the construction of Commission rules is rationally based on personal knowledge which is helpful to the ALJ on an issue</p>

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
			of fact (i.e., compensation) pursuant to Tex. R. Evid. 701.
7	Page 7 Lines 1-26	<p>Q: IS THE TX SPUR WATER WELL AND WATER DISTRIBUTION SYSTEM PROVIDING WATER SERVICE TO THE RV PARK RESIDENTS A “PUBLIC WATER SYSTEM”?</p> <p>A. Yes. . .</p> <p>Avalon has provided all the information required under PUC Rule § 24.255 as shown by the fact that the PUC declared Avalon’s petition administratively complete on May 10, 2023 (see PUC Interchange Item No. 6 in this docket).</p>	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly about what constitutes a public water system under the Commission rules, an improper “encroachment” under the Texas Water Code § 13.252 or whether Avalon’s petition meets all Commission requirements. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine these issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of applicable rules and statutes is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701.
8	Page 8 Lines 16-31	<p>Q: 2 DOES TX SPUR OPERATE, MAINTAIN, OR CONTROL FACILITIES FOR PROVIDING POTABLE WATER SERVICE FOR COMPENSATION?</p> <p>A. Yes. As described above. . .</p>	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly the Preliminary Order’s Issues to be Addressed that rely on the construction of Commission rules such as references in questions in Lines 23 and 26. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine these issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of applicable rules and statutes is rationally based on personal

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			knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701.
9	Page 10 Line 26	<p>Q. IF TX SPUR IS A RETAIL PUBLIC UTILITY, IS IT PROVIDING, FURNISHING, MAKING AVAILABLE, RENDERING, OR EXTENDING RETAIL WATER UTILITY SERVICE TO AVALON POINT'S CERTIFICATED SERVICE AREA WITHOUT HAVING OBTAINED A CCN THAT INCLUDES THE MEDINA HIGHLANDS MOBILE HOME PARK, AS PROHIBITED BY TWC § 13.242(a) OR 16 TAC § 24.225(a)?</p> <p>A. Yes. . . TX Spur is providing retail water utility service. . .</p>	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly the ultimate question of whether TX Spur is a retail public utility. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of law. Nor has Mr. Moore demonstrated that his opinion on the construction of applicable rules and statutes resulting in an ultimate finding on “retail water utility service” is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701.</p>
10	Page 10 Line 29 through Page 11 Line 1	<p>Q. IF TX SPUR IS NOT A RETAIL PUBLIC UTILITY, IS IT RENDERING. . .</p> <p>A. . . it is rendering retail water utility service to the public. . .</p>	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly the ultimate question of whether TX Spur is a retail public utility rendering retail water utility service to the public. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of</p>

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			applicable rules and statutes resulting in an ultimate finding on “retail water utility service” is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701.
11	Page 11 Line 13	A. . . .TX Spur is providing retail water utility service. . .	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly the ultimate question of whether TX Spur is a retail public utility rendering retail water utility service to the public. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of applicable rules and statutes resulting in an ultimate finding on “retail water utility service” is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701.
12	Page 11 Lines 19-20	A. . . .requiring TX Spur to cease & desist providing retail water service to the RV park and requiring the RV park residents to apply for water service from Avalon.	TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because, as with much of his prior testimony, Mr. Moore is not qualified to render a legal opinion on <i>any</i> issue in this docket, but particularly the ultimate question of whether TX Spur is a retail public utility rendering retail water utility service to the public. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of

Obj.	Testimony	Specific Passage	Objections and Basis to Strike
			<p>applicable rules and statutes resulting in an ultimate finding on “retail water utility service” is rationally based on personal knowledge which is helpful to the ALJ on an issue of fact or law pursuant to Tex. R. Evid. 701. Mr. Moore’s non-credible opinion testimony also assumes facts not in evidence – that Tx Spur is providing retail water utility service and that the RV park residents are within the jurisdiction of the Commission in this docket, when they are not. Nothing in this Cease & Desist case and rules applicable thereto would require the individual RV residents to apply to Avalon for service.</p>
13	Page 12 Line 18	A. Avalon has met all PUC rule requirements.	<p>TX Spur objects to the referenced testimony pursuant to Tex. R. Evid. 702, because Mr. Moore is not qualified to render a legal opinion on the construction of any Commission rules nor Avalon’s compliance with such rules. Mr. Moore lacks the requisite knowledge, skill, experience, training, or education such that his opinion will help the trier of fact to determine this issue as a matter of fact or law. Nor has Mr. Moore demonstrated that his opinion on the construction of applicable is helpful to the ALJ pursuant to Tex. R. Evid. 701, rather his opinion is blatantly self-serving.</p>

III. SPECIFIC OBJECTIONS TO EXHIBITS

Obj.	Exhibit No. and Document Title	Objections and Basis to Strike
14	JM-2: Detailed Map	Applicant objects to JM-2 under Tex. R. Evid. 801 because the detailed map is hearsay. Based on the footer, the map appears to have been created over two years ago by an individual, Nick Coxwell, who is not testifying in this proceeding nor sponsoring the map. The document is an out of court statement intended to prove the truth of the matter asserted that the area noted is an “encroachment” on Avalon’s CCN area. 12043.
15	JM-3: General Location Map	Applicant objects to JM-3 under Tex. R. Evid. 801 because the general location map is hearsay. Based on the footer, the map appears to have been created over two years by an individual, Nick Coxwell, who is not testifying in this proceeding nor sponsoring the map. The document is an out of court statement intended to prove the truth of the matter asserted that the area noted is an “encroachment” on Avalon’s CCN area. 12043.
16	JM-6: State Water Well Report	Applicant objects to JM-6 under Tex. R. Evid. 801 because the water well report is hearsay. The document is an out of court statement intended to prove the truth of the matter asserted that TX Spur and Avalon water comes from the same geologic formation, that there is drawdown, etc. Mr. Moore is not an expert who can rely on hearsay, nor has the proper predicate been offered or other argument made that the record is self-authenticating.
17	JM-7: 5 Photographs labeled as Attachment 1-3 and attached to the “Verified Complaint” ²	Applicant objects to JM-7 under Tex. R. Evid. 801 because the five photographs included in JM-7 are hearsay. The photographs within Mr. Moore’s complaint are out of court statements intended to prove the truth of the matter asserted (by Avalon) that TX Spur has more connections than previously asserted. Mr. Moore is not an expert who can rely on hearsay, nor does

² Neither the photographs nor other exhibits attached to the PFT have chronological page numbering, exhibit labeling or batc-stamping.

		he have any personal knowledge of the photographs because they were not taken by Mr. Moore.
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IV. CONCLUSION

For the reasons set out above, TX Spur requests that the above-noted objections to the portions of the prefiled testimony and exhibits JM-2, 3, 6 and 7 of John Moore be sustained and that testimony and exhibits stricken in their entirety. Should the ALJ admit any of the specified testimony or exhibits subject to these Objections, TX Spur requests that the ALJ accord such testimony and exhibits the appropriate weight.

Respectfully submitted,

Helen S. Gilbert

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that, unless otherwise ordered by the presiding officer, I provided notice of the filing of this document to all parties via electronic mail on the 6th of June 2025 in accordance with PUC Order Suspending Rules issued in Project No. 50664.

Helen S. Gilbert

By: _____

