



GateHouse Water LLC v. Lost Pines Groundwater Conservation District et al

2022 | Cited 0 times | W.D. Texas | August 15, 2022

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION GATEHOUSE WATER LLC, Plaintiff v. LOST PINES GROUNDWATER CONSERVATION DISTRICT, MICHAEL TALBOT, SHERIL SMITH, MICHAEL SIMMANG, DAVID FLEMING, HERBERT COOK, LARRY SCHATTE, KAY ROGERS, PHIL COOK, BILLY SHERRILL, CARL STEINBACH, MELISSA COLE, THOMAS ARSUFFI, ELVIS HERNANDEZ, Defendants

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No. A-22-CV-00132-LY

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE TO:
THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE

Before the Court is ; and all related briefing. After reviewing these filings and the relevant case law, the undersigned issues the following report and recommendation.

I. BACKGROUND Plaintiff Gatehouse Water, LLC Defendants Lost Pines Groundwater Conservation District (the Michael

Talbot, Billy Sherrill, Carl Steinbach, Michael Simmang, Sheril Smith, David

Fleming, Herbert Cook, Larry Schatte, Kay Rogers, Phil Cook, Melissa Cole, 1

Thomas Arsuffi, and Elvis Hernandez 2

Gatehouse is a Texas limited liability company that acquired certain municipal wells, groundwater leases, and permits from its predecessor-in- alleges granted it a constitutionally protected interest in the groundwater. Dkt. 29,

at 17-18, 27.



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The operating permits Gatehouse acquired from Forestar included a special or contracts to provide at least 12,000 acre- anniversary date of the issuance of the permit. Dkts. 29-9 at 16; 30-1, at 18.

Gatehouse acknowledges that the five-year anniversary of the permits was January 21, 2021, for certain of the permits, and January 26, 2021, for others. Dkts. 29, at 27; 29-9; see also Dkt. 30-1. After Gatehouse sought to renew the permits in November without any amendment to the terms and conditions District renewed the permits but indicated that permits remained subject to the

deadline contained in Special Condition 8 which Gatehouse understood to mean the . Dkts. 29, at 27-27; 29-13; 29-14. Gatehouse then

1 Gatehouse brings claims against Defendants Michael Talbot, Billy Sherrill, Carl Steinbach, Michael Simmang, Sheril Smith, David Fleming, Herbert Cook, Larry Schatte, Kay Rogers, Phil Cook, and Melissa Cole in their official and individual capacities as directors of the Lost Pines Groundwater Conservation District. Dkt. 29, at 1-2. 2 Gatehouse brings claims against Thomas Arsuffi and Elvis Hernandez in their official capacities as directors of the Lost Pines Groundwater Conservation District. Dkt. 29, at 2.

sought to modify Special Condition 8, which the District with its own Rules. Dkts. 29, at 28-33; 29-10; 29-20.

In the absence of a modification to Special Condition 8, Gatehouse presented a contract with Central Texas Water Supply Corporation - year deadline that provided for the sale of all its permitted production for 2021. Dkt. 29, at 29-30. The District then suspended Special Condition 8 to evaluate the validity of the contract with CTWSC, and ultimately found that the contract did not comply with Special Condition 8 transport groundwater under its permits. Dkts. 29, at 30-33, 38-39; 29-1; 29-2; 29-3;

29-20; 29-22. Gatehouse alleges that its permits are the only operating permits ever issued by the District that imposed an obligation such as that found in Special Condition 8. Dkt. 29, at 37.

Gatehouse brings eight causes of action based on what it considers to be the ultra vires actions regarding its permits, which Gatehouse alleges violated its state and federal rights. Dkt. 29, at 43-94. Defendants moved to dismiss 3 to state a claim. Dkt. 30.

Gatehouse filed a response, 4

Dkt. 38, and Defendants filed

3 Defendants filed their 60-page motion to dismiss without requesting leave from the Court to exceed the page limits imposed by the local rules. W. D. Tex. Loc. R. CV- are leave to exceed the page



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limits, the undersigned cautions Defendants against submitting

such voluminous filings without first seeking leave from the Court. 4 Gatehouse likewise failed to request leave to exceed the page limits imposed on their response by the local rules. W. D. Tex. Loc. R. CV-7(D)(3). The undersigned uses his discretion to grant Gatehouse leave to exceed the page limits, and similarly cautions Gatehouse against failing to seek leave from the Court in the future.

a reply. Dkt. 42. The undersigned will address the arguments presented in the

II. LEGAL STANDARDS A. 12(b)(1) 5 Federal Rule of Civil Procedure 12(b)(1) allows a party to assert lack of subject-matter jurisdiction as a defense to suit. Fed. R. Civ. P. 12(b)(1). Federal district courts are courts of limited jurisdiction and may only exercise such jurisdiction as is expressly conferred by the Constitution and federal statutes. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court properly dismisses a case for lack of subject-matter jurisdiction when it lacks the statutory or constitutional power to adjudicate the case. *Madison*

12(b)(1) motion to dismiss is *o Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001), cert. denied, 536 U.S. 960 (2002). *Id.* In ruling on a Rule 12(b)(1) motion, the court may consider any one

of the following: (1) the complaint alone; (2) the complaint plus undisputed facts

5 Defendants offer no substantive argument under Rule 12(b)(1), instead repeatedly stating [move to dismiss] 58. determine on what basis Defendants believe subject matter is lacking here. *City of Sachse*,

Tex. v. Kansas City S., 564 F. Supp. 2d 649, 653 (E.D. Tex. 2008) the court has an affirmative duty to raise the issues regarding subject matter jurisdiction, sua sponte, whenever a problem with subject matter jurisdiction is perceived

resolution of disputed facts. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008).

B. 12(b)(6) If well-pleaded facts as true, viewing them in the

In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2006) including factual allegations that when

Cuvillier v. Taylor, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 570, 577 (2007)).

Iqbal, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).



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allows the court to draw the reasonable inference that the defendant is liable for the Id allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, Id. A court ruling on a 12(b)(6) motion may rely on the complaint, its

Dorsey v. Portfolio Equities, Inc.,

540 F.3d 333, 338 (5th Cir. 2008) (citations and internal quotation marks omitted). A court may also consider documents that a defendant attaches to a motion to dismiss Causey v. Sewell Cadillac-Chevrolet, Inc., 394 F.3d 285, 288 (5th Cir. 2004). But

because the court reviews only the well-pleaded facts in the complaint, it may not consider new factual allegations made outside the complaint. Dorsey, 540 F.3d at 338. Turner v. Pleasant, 663 F.3d 770, 775 (5th Cir. 2011) (quoting Harrington v. State

Farm Fire & Cas. Co., 563 F.3d 141, 147 (5th Cir. 2009)).

III. DISCUSSION A. Immunities against the Individual- Capacity Defendants 6

as barred by either absolute legislative immunity, quasi- judicial immunity, or qualified immunity. Dkt. 30, at 48-57. Gatehouse responds that none of the categories of immunity propounded by Defendants are applicable here. Dkt. 38, at 19-25. The undersigned will assess each of the individual immunities proposed by Defendants below.

6 For the purposes of this section, the undersigned will refer to the Individual Defendants who face claims in their individual capacities, Michael Talbot, Billy Sherrill, Carl Steinbach, Michael Simmang, Sheril Smith, David Fleming, Herbert Cook, Larry Schatte, Kay Rogers, Phil Cook and Melissa Cole, as the Individual-Capacity Defendants.

Legislative Immunity First, Defendants argue that the Individual-Capacity Defendants are immune from suit under the doctrine of absolute legislative immunity because their permits as part of a governmental body. Dkt. 30, at 50. Gatehouse responds that the

Individual-Capacity Defendants are not entitled to legislative immunity because 5, at 19. The undersigned agrees.

While legislative immunity protects not only legislators, but also officials courts have made a distinction between establishing a policy, act, or law and enforcing or administering it when determining whether legislative immunity applies. Hughes v. Tarrant Cnty., Tex., 948 F.2d 918, 920 (5th Cir. 1991) (finding that legislative immunity did not apply because actions by county officials were not based on general facts regarding any policy, but instead, [were] based on specific facts of an



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individual situation related to the district court clerk The Fifth Circuit

absolute legislative immunity. Id.

The first test focuses on the nature of the underlying facts used to reach the challenged action or decision. See id. If the underlying facts on which the decision is , Case 1:22-cv-00132-LY Document 50 Filed 08/15/22 Page 7 of 25 Id. (citation omitted). If the underlying facts are more specific and relate to a particular individual or situation, the action is not legislative. Id. challenged action or decision. tablishment of a general policy,

Id. (citation omitted). If the challenged action or decision singles out

Id. (citation omitted).

Here, Gatehouse challenges the Individual-Capacity Defendants decisions , which were rendered based on facts specific . See Dkts. 29; 38, at 19-20; Hughes, 948 F.2d at 920 If the facts used in the decision-making are more specific, such as those that relate to particular individuals or situations, then the decision is administrative. Indeed, Defendants even admit in their reply the more specifically focused an action is, the more likely it is administrative (not legislative) in nature. The undersigned thus finds that the Individual-Capacity Defendants are not entitled to legislative immunity under either test propounded by the Fifth Circuit given that their decisions Hughes, 948 F.2d at 920 (internal citation removed).

Quasi-Judicial Immunity Defendants next argue that the Individual-Capacity Defendants are shielded individual capacity claims against them under the doctrine of

quasi-judicial immunity because they permittee can pump groundwater. Dkt. 30, at 51-53. Gatehouse responds that the

factors federal courts use to determine whether officials are entitled to quasi-judicial immunity do not weigh in favor of the Individual-Capacity Defendants being protected from suit by such a doctrine. Dkt. 35, at 21-24. In their reply, Defendants broadly assert that quasi- available to public officers in Texas who are engaged in discretionary acts. Gleason v. Beesinger, 708 F. Supp. 157, 159 (S.D. Tex. 1989)). Although it is unclear whether Defendants believe the Individual-Capacity Defendants are entitled to quasi-judicial immunity under state or federal law, 7

the undersigned will address both forms of immunity out of an abundance of caution.

Under Texas law, quasi- law immunity afforded to public officers and employees for tortious acts 8

done within the course and scope of their duties, while performing discretionary functions, and



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acting in good faith. *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994). The burden is on the one asserting the to plead and prove all elements. *Perry v. Texas A & I Univ.*, 737 S.W.2d 106, 110 (Tex. App. 1987 Corpus Christi, writ ref d n.r.e).

7 - judicial immunity, that their motion to dismiss focuses almost entirely on quasi-judicial immunity under state law, with the exception of a passing citation to one federal case which is addressed later in this section. Dkts. 30, at 51-53; 42, at 11. 8 The undersigned finds it curious that Defendants limit their citations regarding quasi- judicial immunity to those involving the state law version of quasi-judicial immunity given that Gatehouse does not appear to bring any state law tort claims against the Individual- Capacity Defendants. See Dkts. 29, at 43-82; 30, at 51-53; 42, at 10-11.

Here, Defendants have failed to meet their burden of demonstrating that the Individual-Capacity Defendants are entitled to quasi-judicial immunity under Texas law. See *id.*; *Chambers*, 883 S.W.2d at 653. Gatehouse specifically pleaded that the Individual-Capacity Defendants acted in bad faith in applying Special Condition 8 to their permits, declining to modify the permits, and finding that its contract with CTWSC did not fulfill the condition. See, e.g., Dkt. 29 at 17 (calling Individual see *id.* at 61 (alleging that Defendants acted

knowingly, and with the clear and unapologetic intent to prevent GateHouse from producing its privately owned groundwater Moreover, Defendants did not attach any evidence to their motion rebutting the allegation that the Individual-Capacity Defendants did not act in good faith when they groundwater rights. See Dkt. 30. Resolving all factual disputes in favor of Gatehouse,

as the Court must at the motion to dismiss phase, the undersigned finds that Defendants have not demonstrated that the Individual-Capacity Defendants are entitled to quasi-judicial immunity under state law because they failed to establish the elements of official immunity as a matter of law.

Under federal law, -judicial immunity protects officials that *Da Vinci Inv., Ltd. P ship v. Parker h* Cir. 2015). While it is unclear whether Defendants even intended to raise the issue of federal quasi-judicial immunity under

federal law, 9

out of an abundance of caution the undersigned finds that the Individual-Capacity Defendants have not demonstrated their entitlement to such a defense at this time. Courts evaluate six factors 10

to determine whether a defendant is immune from suit based on the doctrine of quasi-judicial immunity, which the undersigned notes Defendants did not identify or address in their briefing. See Dkts. 30; 38. Applying the quasi-judicial immunity factors, as well as existing precedent, to the current case, the undersigned finds that the Individual-Capacity Defendants are not entitled to quasi-judicial immunity under federal law. *Beck*, 204 F.3d at 634.



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As Gatehouse notes in its response, Defendants did not offer any argument related to the factors federal courts use to assess the applicability of quasi-judicial immunity. See Dkts. 30; 38, at 22. In their reply, Defendants insist that because the permits, they are entitled to quasi-judicial immunity. Dkt. 42, at 11. Yet the

discretionary authority afforded to the District and its officials is only one of six factors the undersigned must assess in determining whether quasi-judicial immunity

9 Indeed, Defendants cite one case where a court addressed quasi-judicial immunity under federal law, yet misstate the findings of that court by stating in a parenthetical that it extend[ed] quasi-judicial immunity to officials who perform functions similar to those of judges in similar settings affording absolute immunity is not appropriate at this stage of the litigation *G & H Dev., LLC v. Penwell*, 9 F. Supp. 3d 658, 668 (W.D. La. 2014). 10 Courts evaluate a non-exhaustive list of factors to determine whether non-judicial actors - to assure that the individual can perform his functions without harassment or intimidation; (2) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (3) insulation from political influence; (4) the importance of precedent; (5) the adversary nature of the process; and (6) the correctability of error on appeal. *Beck v. Tex. State Bd. of Dental Exa rs*, 204 F.3d 629, 634 (5th Cir. 2000) (citing *Butz v. Economou*, 438 U.S. 478, 512 (1978)).

applies to the Individual-Capacity Defendants. See *Beck*, 204 F.3d at 634. Indeed, in the one case Defendants cite in their motion to dismiss addressing quasi-judicial immunity under federal law, the court found that zoning board officials were not entitled to quasi-judicial immunity at the motion to dismiss phase where plaintiff alleged that t may not

have been insulated from political influence *G & H Dev.*, 9 F. Supp. 3d at 668.

Here, similarly, Gatehouse alleges that the Individual Defendants decisions regarding their permits were politically motivated and that the hearings regarding their permits were public hearings that were not quasi-judicial in nature. See Dkt. 29, at 27-43 At the time the Board members were making decisions about whether the GateHouse Contract satisfied Special Condition No. 8, some of those members . Moreover, as Gatehouse points out, the Texas Water Code explicitly allows lawsuits and recognizes that immunity for

at 23; Tex. Water Code §§ 36.251(a), 36.066(a). The undersigned thus finds that at

this time the Individual-Capacity -judicial

visit the issue of immunity,

whether it be absolute or qualified, in the form of a Rule 56 motion for summary *G & H Dev.*, 9 F.



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Supp. 3d at 668.

Qualified Immunity Defendants finally argue that the Individual-Capacity entitled to immediate dismissal in their individual capacities with prejudice under

3-57. Gatehouse responds that the Individual- Capacity Defendants are not protected under qualified immunity because the Fifth Circuit has previously held that groundwater conservation district directors are not than other similarly situated persons when [a] district denied his application for a

groundwater production permit, as is alleged here. Dkts. 29, at 78-79; 35, at 24 (citing *Stratta v. Roe*, 961 F.3d 340, 358-61 (5th Cir. 2020)). Defendants respond that the court in *Stratta* did not assess whether the groundwater conservation district there was operating in its commercial or sovereign role, and as such is not applicable here yet fails to cite any authority standing for the proposition that such a distinction is relevant to the qualified immunity inquiry. Dkt. 42, at 11-12.

The defense of qualified immunity shields government officials performing not violate clearly established statutory or constitutional rights of which a reasonable

Kinney v. Weaver, 367 F.3d 337, 349 (5th Cir. 2004) (internal citation omitted). When considering a qualified immunity defense raised in the context of a motion to dismiss, the Court must determine whether Case 1:22-cv-00132-LY Document 50 Filed 08/15/22 Page 13 of 25 pleadings assert facts which, if true, would overcome the defense of qualified *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012) (internal citation removed specific facts that both allow the court to draw the reasonable inference that the

defendant is liable for the harm he has alleged and that defeat a qualified immunity Id.

Here, Gatehouse has pleaded sufficient facts that, when taken as true, suggest that the Individual-Capacity Defendants are liable for the alleged harm, and are not entitled to the defense of qualified immunity. See Dkt. 29. As explained below, Gatehouse sufficiently pleaded in its amended complaint that the Individual- Capacity ifth and Fourteenth Amendment rights by wrongfully taking Gateh their groundwater without adequate compensation and violated protection rights by treating it differently than other permit holders. Dkt. 29, at 69-

81.

B. Takings Claims Defendants move to dismiss fourth and seventh causes of action, which allege its contract with CTWSC, or modify Special Condition 8 in its permits constitutes a taking interest in its groundwater in violation of its Fifth Amendment and state law rights. 11

Dkts.



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11 consider[s] the federal and state takings claims together, as the analysis for both is complementary. *Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 477 (Tex. 2012).

29, at 69-77; 30, at 17-19. Specifically, Defendants argue that imposition of Special Condition 8 in the operating permits is in fact

a contract claim because the District was acting in its commercial, rather than sovereign, capacity when it imposed such a condition on the permits. Dkt. 30, at 17- 19. Gatehouse responds that it has properly stated a takings claim under federal and state law because it alleged that: (1) it has a constitutionally protected interest in the its groundwater leases. Dkt. 38, at 17-19. The undersigned agrees.

from the application of a negotiated contract term in -in-interest. Dkts. 30, at

32; 30- s regarding , not be challenged through a federal constitutional claim. Dkt. 30, at 33 (citing *Preston Hollow Capital, L.L.C. v. Cottonwood Dev. Corp.*, 23 F.4th 550, 553 (5th Cir. 2022)). Yet as Gatehouse points out, its claimed groundwater rights do not arise from the settlement agreement compliance

enforce Special Condition 8 in such a way as to deprive Gatehouse of the constitutionally protected property rights as secured through the groundwater leases. See Dkts. 29; 35, at 6-14.

The capacity when it made decisions regarding Gate . Defendants rely

heavily on *Preston Hollow Capital, L.L.C. v. Cottonwood Dev. Corp.*, 23 F.4th 550, 553 (5th Cir. 2022), to support their argument that Gatehouse may not state any takings claims against them because they acted in their commercial capacity pursuant to a contract between the parties. Dkt. 30, at 31-34. Yet in *Preston Hollow*, plaintiff finance company brought breach of a loan agreement between the parties. *Preston Hollow*, 23 F.4th at 553.

Here, in contrast, Gatehouse does not allege that Defendants breached the settlement agreement, but rather that Defendants compliance with Special Condition 8, and not to modify the condition or allow

Gatehouse to comply with it through its contract with CTWSC, effectuated a taking -existing groundwater rights. Dkt. 29, at 17, 31, 69-77.

rights arise from their statutory duties under the Texas Water Code and were not

e in the manner [of] *City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 516 (Tex. App. 2014); *Preston Hollow* such as contract termination or detention of property under the contract that would



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constitute a simple breach of contract when a non-governmental entity is involved do not become a constitutional violation simply because the contracting party is a

). The District Court should deny

C. Equal Protection Claim Defendants also move to dismiss claim, though the winding nature of their argument makes it unclear on what basis Defendants believe the claim to be deficient. Dkt. 30, at 34-38. At one point, by its takings claims, yet Gatehouse cites a case address Dkt. 30, at 37 (citing *R Bend Estates II, LLC v. St. John the Baptist Par.*, No. CV 15-

4951, 2016 WL 4087490, at *3 (E.D. La. Aug. 2, 2016)). The undersigned is perplexed takings claim is not ripe. See Dkt. 30. Moreover, Gatehouse clearly alleges rights

that it was treated differently than all other permit recipients in the district through the imposition of Special Condition 8. Dkt. 29, at 79-80.

state a claim for relief that is what it believes

to be deficient about To state a was that there was no in its treatment. *Stratta*, 961 F.3d at 360. Here, Gatehouse alleges that it was treated differently from other entities that have filed

permit applications with the District, and that such differential treatment lacked -80 (alleging that the District treated it differently by not imposing Special Condition 8 on any others seeking permits and denying its permit applications when th As such, the undersigned finds that Gatehouse has sufficiently stated a claim for violation of its equal protection rights against the District and the Individual Defendants in their individual capacities.

However, the undersigned agrees with Defendants that Gatehouse may not maintain its equal protection claim against the Individual Defendants in their official capacities. *U.S. ex rel. Bias v. Tangipahoa Par. Sch. Bd.*, 816 F.3d 315, 322 (5th Cir. 2016) (affirming dismissal of official-capacity claims because the official-capacity of claim against entity itself). As such, the undersigned will against the Individual Defendants to the extent such claims are brought against them

in their official capacities.

D. Procedural Due Process Claim Gatehouse admits in its complaint that it was provided with actual notice of and an

decisions about the operating permits. Dkt. 30, at 36-37. To state a claim for violation of procedural due process rights, a plaintiff must plead that she has a liberty or



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property interest which has been interfered with by the State, and that the procedures attendant upon that deprivation were constitutionally insufficient. *Richardson v. Tex. Sec y of State*, 978 F.3d 220, 229 (5th Cir. 2020).

While Gatehouse has certainly alleged that it has a property interest in groundwater through its leases, which Defendants interfered with by denying its permit renewal, it has failed to adequately plead that the procedures Defendants utilized to reach such a result were constitutionally deficient. Dkt. 29, at 78. Gatehouse alleges the Defendants violated its procedural due process rights because they ignored them throughout their conduct of the proceedings and their decision- making in the uncontested matters related to the GateHouse Permits that have been brought before them. In its response, Gatehouse purports to point to two paragraphs of its amended complaint to demonstrate that Defendants did not allow Gatehouse to s it cites from its amended complaint

without reference to any factual allegations. Dkts. 29, at 68; 78; 30, at 16.

Moreover, as Defendants point out, Gatehouse fails to allege how the procedures Defendants utilized were constitutionally deficient given that Gatehouse does not allege that it lacked notice or an opportunity to be heard at the meetings where Defendants took actions that allegedly deprived Gatehouse of its property interests. Dkt. 29, at 29-33, 37-39. While Gatehouse claims that Defendants failed to follow their own rules, this does not necessarily render their procedure

constitutionally flawed given that Gatehouse acknowledges it had notice and an opportunity to be heard at the District meetings regarding its permits. *Id.* at 32 (admitting that during July 27, 2021, meeting, where District determined that public comment, and comment from GateHouse representatives *Reynolds v. City of Com., Tex.*, No. 3:19-CV-01577-E, 2020 WL 1915713, at *4 (N.D. Tex. Apr. 17, 2020) (dismissing allege any facts to show he was not provided the required notice of or an opportunity to be heard procedural due process claim should be dismissed.

E. Substantive Due Process Claim arguing that

of substantive due process, process claim is subsumed by its Fifth Amendment takings claim. Dkt. 30, at 35-36. Gatehouse responds that it has sufficiently pleaded its due process claim against interfered with its constitutionally protected property interest in groun -17. In its complaint,

groundwater when it determined,

Gatehouse had not complied with Special Condition 8. Dkt. 29, at 78-79.

subsumed by its Fifth Amendment takings claim, the undersigned finds that Gatehouse has not stated a claim for relief for violation of its substantive due process rights. Defendants argue that or . *Id.* at 36. A substantive due



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process claim requires a plaintiff to show that the challenged government action is arbitrary, unreasonable, or has no relationship to a legitimate government interest. See *Simi Inv. Co. v. Harris Cnty., Tex.*, 236 F.3d 240, 249 (5th Cir. 2000) (stating

While Gatehouse certainly alleges that Defendants actions were arbitrary in nature, its amended complaint falls short of alleging facts that the allow Gatehouse to comply with the condition, and determination that Gatehouse did not comply with the condition through its CTWSC to th in regulating the production of

groundwater through the permitting process. Dkt. 29, at 79; *Md. Manor Assocs. v. City of Houston*, 816 F. Supp. 2d 394, 407 (S.D. Tex. 2011); *Simi*, 236 F.3d at 251 a conceivable legitimate objective. If the question is at least debatable, there is no

In its response, Gatehouse points to certain paragraphs in its amended complaint that it insists would s are to portions of its complaint

contention that the District process rights , or follow its own

rules when making decisions regarding Gat . Dkt. 38, at 17; see, e.g., Dkt. 29, at 85. Yet as Defendants point out, the conduct alleged is not so outrageous, that it may fairly be said to shock the contemporary conscience, and

necessarily violate due process. See Dkts. 29; 42, at 9; *Reyes v. N. Texas Tollway Auth.*,

861 F.3d 558, 562 (5th Cir. 2017) (noting that when assessing substantive due process ; see also *Md. Manor*, 816 F.

Supp. 2d at 408 The City does not violate due process merely because it acts in a manner not authorized by an ordinance. The District Court should dismiss

F. Ultra Vires Claims at

the Directors acted beyond their lawful authority or failed to perform a purely

claims against Defendants based on their imposition of Special Condition 8 on Gatehouse, determination that Gat with Special Condition 8, finding. Dkt. 29, at 43- regarding its ultra vires claims against the Individual Defendants, which the

undersigned finds curious given that Gatehouse filed a response to the motion to dismiss that exceeded the page limits imposed by the local rules. See Dkt. 38.



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vires claims, the undersigned will recommend that the District Court grant

Defendants. Kellam v. Servs., No. 12-352, 2013 WL 12093753, at *3 (N.D. Tex. May

31, 2013), aff'd sub nom. Kellam v. Metrocare Servs., 560 F. App'x 360 (5th Cir. 2014) Mayo v. Halliburton Co., No. 10-1951, 2010 WL

4366908, at *5 (S.D. Tex. Oct. 26, 2010) (granting motion to dismiss breach of contract and thus waived the argument).

against the Individual Defendants, should be dismissed.

IV. RECOMMENDATION In accordance with the foregoing discussion, the undersigned RECOMMENDS that the District Court GRANT IN PART and DENY IN PART Specifically, the District Court should

GRANT to dismiss equal protection claims against the Individual Defendants in their official capacities, ultra vires claims against the Individual Defendants, procedural due process against Defendants, and substantive due process against Defendants. The undersigned equal protection claim against the Individual Defendants in their official capacities, procedural due process, and substantive due process claims be DISMISSED WITH PREJUDICE, while its ultra vires claims against the Individual Defendants should be DISMISSED WITHOUT PREJUDICE. DENIED in all other respects.

The referral of this case to the Magistrate Court should now be canceled.

V. WARNINGS The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The district court need not consider frivolous, conclusive, or general objections. , 834 F.2d findings and recommendations contained in this Report within fourteen days after

the party is served with a copy of the Report shall bar that party from de novo review by the district court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the district

court. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985); , 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED August 15, 2022.



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DUSTIN M. HOWELL UNITED STATES MAGISTRATGE JUDGE

