MEMORANDUM

To: Liz Fancher, Hearings Officer – T3-2022-16220

Date: *5/19/2025*

From: Lauren Courter, Ian Courter, Cottrell CPO and Pleasant Home Community Association

RE: Rebuttal to S.29, "Response to Testimony Related to Stormwater and Groundwater"

SUMMARY

Exhibit S.29 addresses comments related to stormwater and groundwater concerns submitted before or during the April 16, 2025, Multnomah County remand hearing. PWB consultant experts, Delve Underground and GSI Water Solutions, emphasize PWB's commitment to protecting groundwater and highlights its longstanding groundwater protection efforts.

PWB's experts highlight that groundwater quality was assessed to identify any pesticide contaminants from construction dewatering and future building underdrains. A water sample collected on April 24, 2025, was tested for several pesticide compounds. None were detected above the laboratory's reporting limit, indicating no contamination at the time of sampling.

Finally, PWB experts address a total of thirteen raised issues across several testimonies. Eleven of those thirteen expert comments designate these concerns of natural resource impacts as those primarily related to construction activity and therefore conclude "…, and as such is outside the scope of this proceeding and irrelevant to compliance with MCC 39.7515(B)."

General rebuttal to responses to testimony provided in S.29.

Despite the significant impacts of construction activities on natural resources, such as extensive excavation, groundwater seepage, and stormwater discharge into Johnson Creek at rates far greater than what PWB's engineer's anticipated, PWB's experts repeatedly claim that these impacts are outside the scope of this proceeding. They argue that these impacts are irrelevant to compliance with the requirement in MCC 39.7515(B) that there are no adverse effects to natural resources. This dismissal of construction-related harm that are permanent, especially to water resources, reveals a clear contradiction between PWB's stated commitment to environmental protection, particularly water resources, and its actual practices during construction. It also disregards the purpose and intent of MCC 39.7515(B), which is to ensure that development unrelated to the rural and agricultural community has no adverse impacts on natural resources. Furthermore, in multiple instances PWB affirms that measures to manage stormwater and groundwater discharge meets state (DEQ) standards. However, PWB dismisses the more stringent standard the county requires beyond state guidelines.

Permanent effects are unaddressed testimony in S.29.

Not only does PWB dismiss any significance of natural resource effects during construction, through their use of the phrase "…, and as such is outside the scope of this proceeding and irrelevant to compliance with MCC 39.7515(B)", but they also ignore the potential permanent effects of discharged stormwater and groundwater during construction and after project completion as noted in Exhibit N.43. Such permanent effects include changes to overland flow, natural drainage patterns, and groundwater infiltration due to significant and permanent

alterations in the site's topography, including the western and eastern portions of the property. Assuming that the flows from pumping groundwater are temporary, PWB offered no response to opponents' expert evaluation that the excess water could have long-term adverse effects on amphibian breeding, nesting, and rearing downhill of the flow spreader.

SPECIFIC REBUTTALS TO TESTIMONY RESPONSES

Points Made in Comments 1, 3, 6, 9, and 13.

Improper Flow Spreader Design

The flow spreader was not properly designed to achieve its intended function of evenly distributing groundwater and stormwater, as documented in N.43 and N.14. Due to the high flow volume and natural topography of the southwestern corner water converged in one area rather than dispersing as designed. This caused subsequent erosion and altered natural flow patterns which will have permanent impacts. This condition directly conflicts with the County's requirement under MCC 39.7515(B), which mandates that there be no adverse effects to natural resources.

Additionally, the original engineering plans by Stantec, referenced in Exhibit I.100 (point #22), clearly stated that discharge from dewatering groundwater in excavations is required to match predevelopment stormwater flow rates. This would be accomplished presumably by storing water and metering discharge. As evidenced by the video footage at Exhibit N.14, that requirement was not fulfilled. The amount of groundwater seepage during excavation was significantly underestimated, leading to excessive discharge volumes. Reports and video documentation in the public record (e.g. N.43 and N.14) describe discharge reaching up to one million gallons per day being released into Johnson Creek. This volume far exceeded pre-development stormwater conditions and what was anticipated. As a result, it directly contributed to sediment transport and negative impacts on the stream ecosystem with permanent effects. The burden of designing a stormwater system that maintains pre-development flow rates and protexts water quality rests with the applicant and not upon opponents as suggested by PWBs experts in the first bullet listed on page 2 of S.29.

The failure to accurately quantify groundwater volumes, and the impact from those volumes in the initial planning stages raises serious doubts about the reliability of the engineering that assumes post-construction discharge assumptions, all completed by Stantec. If previous estimates were inaccurate and the original design criteria were not met, there is no solid basis for trusting that the current models and water management measures will be effective with the newly designed flow spreader. The poorly designed flow spreader and flawed assumptions reinforce this concern and undercut PWB's assurances of no adverse effect.

PWB's Improper Reliance on DEQ Compliance as the Standard

While PWB emphasizes compliance with the Oregon DEQ standards, satisfying these standards does not serve as a surrogate for compliance with 39.7515(B) which is far more strict.

For example, DEQ allows a cumulative 10% increase in downstream turbidity, but even this amount can result in ecological impacts. In sensitive ecosystems like Johnson Creek, increases in

turbidity can reduce light penetration, disrupt fish behavior and habitat quality, and contribute to long-term sediment accumulation. Any measurable impact of this kind would constitute an adverse effect under the County's policy and therefore violate the conditions for approval.

PWB also downplays its impact by stating that the Filtration Facility site represents only a small fraction of the Johnson Creek watershed—11% during construction and just 3.5% post-construction. However, the overall scale of the watershed as a whole has nothing to do with the impact to pre-existing natural resources. This is a red herring. It is included to diminish the significance of the impact which detracts from the main issue. The significance or the size of the impact is not part of the threshold. In hydrologically sensitive areas, even small discharge areas can cause disproportionate harm if flows are concentrated, not properly dispersed, or introduced into vulnerable locations. This is especially true when flow spreaders are improperly designed, as has been documented in this case. The reality is that concentrated discharges—no matter how small in relative area—alters stream flow patterns, destabilize banks, and damage habitat over time.

Therefore, both the reliance on DEQ standards and the argument about limited site size fail to establish that there will be no adverse effect. The documented sediment transport, poorly dispersed runoff, and potential long-term erosion all indicate adverse effects that violate the standard of no harm to natural resources. These impacts cannot be justified by regulatory compliance alone or minimized by statistical comparisons.

Impact to Spring May Not Be Temporary or Insignificant

While PWB characterizes the referenced spring as "daylighting stormwater" flowing along surface topography near Point of Discharge #3, this interpretation fails to account for significant site-specific hydrogeologic context and observed impacts. First, the characterization of these flows as merely surface runoff ignores the fact that pre-construction conditions supported persistent seasonal spring activity. PWB minimizes historically observed spring discharges, which suggest a more complex interaction between subsurface flow pathways and geologic variability. These are conditions potentially disrupted by excavation, compaction, and altered site grading. Given these potential effects, the burden of proof lies with PWB to demonstrate that the project will not disrupt existing subsurface hydrology or permanently alter natural spring flow patterns. Without clear evidence, assumptions about the source and behavior of these waters are insufficient to rule out long-term environmental impacts.

Furthermore, Exhibit N.58 does not adequately evaluate the hydrologic function of this spring, nor do they assess how construction grading and flow spreading may have altered the recharge area and subsurface flow connectivity. Simply stating that drainage will be "restored" does not address the fact that the natural recharge patterns were likely changed permanently, reducing infiltration capacity and potentially cutting off or rerouting the spring's recharge source.

The assertion that these impacts are "limited to the construction time period" is unsupported and misleading. The permanent grading changes, combined with dewatering during excavation, suggest a lasting alteration of the hydrologic regime feeding this spring. Under MCC 39.7515(B), even temporary impacts to natural resources like springs are relevant if they

contribute to long-term degradation, particularly where the County mandates no adverse effects to natural resources, not merely consistency with DEQ or state guidelines.

Additionally, the attempt to dismiss the spring's significance based on a single winter's precipitation total fails to acknowledge that springs often respond to cumulative hydrologic patterns, not just short-term rainfall deficits. The dry 2024–2025 winter may explain some reduced flows, but this does not prove that construction had no impact, especially when community observations link changes in spring behavior with construction timelines and disturbance.

Points Made in Comment 2.
PWB experts assert that "the post-construction grading and topography will be as shown on proposed project plans," and that "excavation, movement, or mounding of soils during construction will have no long-term impact on the fundamental structure of either the Springwater or Troutdale aquifers." This statement is entirely belied by the applicant's failure to design a resource-protecting stormwater system in the first instance. Further, this statement overlooks key impacts of permanent changes in grading and topography that are depicted in post-construction plans. By modifying the natural land contours—such as altering historic drainage paths at the western and eastern discharge points—the project has changed surface water flow patterns and reduced infiltration areas. This decrease in infiltration limits the amount of water that can percolate into the ground, thereby diminishing the potential for natural recharge of the Springwater aquifer. Recharge of shallow aquifers is highly dependent on surface infiltration, and reducing this infiltration area compromises the natural hydrologic function.

Additionally, PWB's claim that the Troutdale Formation "will be entirely unaffected by the project" is misleading and incorrect. Well log data from the area indicate that local wells draw from both the Springwater and Troutdale aquifers, with screened depths ranging from approximately 50 feet to over 300 feet. Further, while the Troutdale Formation is buffered by a consolidated sandstone layer, to assume complete isolation disregards potential vertical connectivity through fractures or faults. Given the importance of both aquifers to regional water supply, it is not sufficient to rely solely on generalized hydrogeologic assumptions when evaluating compliance with Multnomah County's strict "no adverse effect" standard on natural resources.

Points Made in Comment 8.
Exhibit N.43, highlighted permanent topography during excavation and construction and maintained through post-construction. In S.29, PWB experts acknowledge this permanent change. This wholly conflicts with MCC 39.7515(B).

CONCLUSION

Here we demonstrate that the applicant has not met the standard required under MCC 39.7515(B), which prohibits adverse effects to natural resources, in particular water resources. The flawed design of the flow spreader, inaccurate groundwater volume estimates, and failure to match pre-development discharge conditions have already resulted in measurable and permanent harm, including erosion, sediment transport, and disrupted hydrology. Reliance on DEQ compliance and downplaying site size do not excuse these impacts, nor do they satisfy the stricter County requirements. The observed and potential effects on spring activity, aquifer recharge, and surface water behavior underscore the need for site-specific hydrologic accountability. Given these risks, and the applicant's demonstrated underestimation of impacts to date, the burden of proof lies solely with PWB to demonstrate that the project will not result in adverse effects. To date, they have not done so.

Multnomah County

LUP Hearings <lup-hearings@multco.us>

#T3-2022-16220: Response to S.29

1 message

Cottrell CPO <cottrellcpo@gmail.com> Mon, May 19, 2025 at 10:19 AM
To: LUP Hearings <LUP-hearings@multco.us>

External Sender - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information.

LUP,

With regards to the remand of T3-2022-16220, attached is our response to S.29.

Please acknowledge receipt of this email.

Thank you,
Cottrell CPO

Courter-CPO-PHCA Response to S.29.pdf
133K