

Mr. Moore's Direct Line: (512) 322-5881  
Email: [jmoore@lglawfirm.com](mailto:jmoore@lglawfirm.com)

April 15, 2010

**Via E-Filing  
and Hand Delivery**

Ms. LaDonna Castañuela  
Chief Clerk (MC 105)  
Texas Commission on Environmental Quality  
Bldg. F, Room 4301  
Austin, Texas 78711-3087

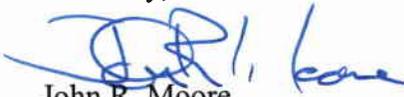
Re: In the Matter of the Application by Farmersville Investors, L.P.  
for TPDES Permit No. WQ0014778001  
TCEQ Docket No. 2008-1305-MWD; SOAH Docket No. 582-09-2895

Dear Ms. Castañuela:

Enclosed for filing please find an original and eight (8) copies of Applicant Farmersville Investors, L.P.'s Exceptions to the Administrative Law Judge's Proposal for Decision. Please have one copy file stamped and returned via our courier.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

  
John R. Moore

JRM/jdg  
1102102  
ENCLOSURES

cc: Service List  
Mr. Kyle Kruppa  
Mr. Brad B. Castleberry  
Mr. Jeffrey S. Reed

## Service List

### FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

### FOR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

The Honorable Sharon Cloninger  
Administrative Law Judge  
P. O. Box 13025  
Austin, Texas 78711-3025  
Tel: (512) 475-4993  
Fax: (512) 475-4994

### REPRESENTING THE EXECUTIVE DIRECTOR:

Kathy Humphreys, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3417  
Fax: (512) 239-0606

### REPRESENTING THE PUBLIC INTEREST COUNSEL:

Amy Swanholm, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

### REPRESENTING THE PROTESTANTS:

Richard Lowerre  
Marisa Perales  
Attorney At Law  
Lowerre, Frederick, Perales, Allmon & Rockwell  
707 Rio Grande, Suite 200  
Austin, Texas 78701  
Tel: (512) 469-6000  
Fax: (512) 482-9346

Mr. Moore's Direct Line: (512) 322-5881  
Email: jmoore@lglawfirm.com

April 15, 2010

Honorable Sharon Cloninger  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

**VIA HAND DELIVERY**

Re: SOAH Docket No. 582-09-2895; TCEQ Docket No. 2008-1305-MWD;  
Application of Farmersville Investors, LP, for TPDES Permit No.  
WQ0014778001

**Subject: Exceptions to Proposal for Decision**

Dear Judge Cloninger:

Enclosed please find a copy of the Applicant Farmersville Investors, LP's Exceptions to the Administrative Law Judge's Proposal for Decision.

This document has been filed with the Chief Clerk in accordance with Order Nos. 1, 4 and 9 and TCEQ Rule 1.10, and served in accordance with Order No. 1 and TCEQ Rule 1.11.

Thank you.

Sincerely,



John R. Moore

JSR:jdg  
1102106

Enclosures

cc: Service List  
Mr. Kyle Kruppa  
Mr. Brad B. Castleberry  
Mr. Jeffrey S. Reed

**SOAH DOCKET NO. 582-09-2895  
TCEQ DOCKET NO. 2008-1305-MWD**

<b>APPLICATION OF FARMERSVILLE</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>INVESTORS, LP, FOR TPDES</b>	§	<b>OF</b>
	§	
<b>PERMIT NO. WQ0014778001</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**APPLICANT FARMERSVILLE INVESTORS, LP'S EXCEPTIONS**

Applicant Farmersville Investors, LP ("Farmersville" or "Applicant") files its exceptions to the findings of fact, conclusions of law, proposal for decision and proposed order, respectfully showing:

**I. INTRODUCTION**

Farmersville generally agrees with the findings of fact, conclusions of law, proposed order and proposal for decision ("PFD") submitted by Administrative Law Judge ("ALJ") Honorable Sharon Cloninger, except for portions discussed in Sections II (pertaining to dissolved oxygen modeling) and III (pertaining to supremacy of the permit) below.

**II. DISSOLVED OXYGEN MODELING**

Farmersville excepts to Proposed Findings of Fact ("FOF") 24, 25, 32 and 35, Conclusions of Law 8 and 10, and Ordering Provision 1. The ALJ accurately and appropriately finds that the receiving water body is an intermittent stream. Despite that finding, the ALJ recommends that the Executive Director perform additional computer modeling to determine whether an alternative effluent criterion for dissolved oxygen is necessary when discharge could occasionally be directly to Lake Lavon rather than to the intermittent stream.

**A. Background**

Chapter 307 of the Commission rules establishes surface water quality standards for waters of the State of Texas. *See gen.*, Exh. ED-10 at pg. 3, ln. 22 – pg. 5, ln. 3 (Murphy). The Commission has prepared “Procedures to Implement the Texas Surface Water Quality Standards” (“Implementation Procedures”), a guidance for implementation of the water quality standards in connection with permitting of wastewater treatment plant discharges. 30 TAC § 307.2(e); Exh. ED-10 at pg. 3, lns. 8-21 (Murphy); Exh. ED-12; Exh. APP-7 at pg. 8, ln. 18 – pg. 9, ln. 8 (Hunt). The guidance has been approved by the federal Environmental Protection Agency and is used by TCEQ personnel to ensure consistency in the interpretation of the rules and regulations to protect water quality. Exh. ED-10 at pg. 3, lns. 8-21 (Murphy); Exh. ED-12; Exh. APP-7 at pg. 8, ln. 18 – pg. 9, ln. 8 (Hunt); Exh. APP-6 at pg. 11, ln. 1 – pg. 12, ln. 13 (Young). The Guidance was admitted in the record and regularly referred to in the contested case hearing. No witness criticized the Guidance or challenged its applicability to the Farmersville Application.

The Application for Farmersville’s wastewater treatment plant was prepared in accordance with the Commission rules and guidance. Exh. App.-3 at pg. 5, ln. 11 – pg. 8 ln. 4 (Barry); *Id.* at pg. 8, lns. 11-14; *Id.* at Exhibit SB-2; *see also*, Tr. pg. 504 ln. 8-13 (Knowles) (application and permit meet all rules); Tr. pg. 521 lns. 8-10 (Knowles) (application and permit meet all rules). Ms. Lili Murphy employed the TCEQ guidance and performed the technical review of the Farmersville Application pursuant to the Chapter 307 rules and applicable TCEQ Guidance. Exh. ED-10 at pg. 8, lns. 6-8 (Murphy); *see gen.* Exh. APP-3 at pg. 5, ln. 11 – pg. 8, ln. 4 (Barry); *Id.* at pg. 8, lns. 11-14; *Id.* at Exhibit SB-2 at pg. 8, ln. 9 – pg. 10, ln. 17. She verified that the proposed

discharge point is into an intermittent unnamed tributary that then flows into Lake Lavon (Segment 0821) via the Elm Fork Arm. Exh. ED-10 at pg. 8, lns. 11-12 (Murphy); *id.* at pg. 9, lns. 9-10; Exh. APP-7 at pg. 11, ln. 21 – pg. 12, ln. 3 (Hunt); Exh. APP-6 at pg. 10, lns. 6-14 (Young). The ALJ acknowledges that “[t]here was no testimony offered during the hearing that the anti-degradation review was incorrect or that Ms. Murphy’s conclusions were flawed.” PFD, pg. 11. The ALJ then accurately and appropriately finds that the effluent will discharge to an intermittent stream. FOF 20 and 21. (*See also*, PFD, pg. 4.)

As part of the establishment of effluent limitations, the Commission, and in this case Mr. James Michalk, performed computer analysis of the potential of the proposed wastewater discharge to reduce dissolved oxygen (“DO”) levels in the receiving waters to levels below the criteria assigned to the waters. Exh. ED-14 at pg. 2, lns. 9-10; see gen. pg. 2, ln. 20 – pg. 10, ln. 11 (Michalk). DO criteria are minimum 24-hour mean DO concentrations assigned to a particular water body or portion of a water body. As described in the Texas Surface Water Quality Standards (30 TAC Chapter 307), these DO criteria indicate the DO levels are sufficient to support existing, designated, and attainable aquatic life uses. Exh. ED-14 at pg. 7, ln. 17 – pg. 8, ln. 2 (Michalk).

Mr. Michalk followed standard TCEQ modeling procedures in his analysis of the Farmersville Application and in making recommendations for effluent limitations. Exh. ED-14 at pg. 4, ln. 21 – pg. 5, ln. 2 (Michalk). He modeled the intermittent unnamed tributary, Elm Creek, and a portion of the Elm Creek arm of Lavon Lake. Exh. ED-14 at pg. 5, lns. 3-5 (Michalk); Exh. APP-6 at pg. 17, lns. 5–17 (Young). He used two types of modeling; steady-state DO modeling using QUAL-TX models for the unnamed tributary

and the Elm Creek system as well as Continuously Stirred Tank Reactor (CSTR) models for the arm of Lavon Lake. Exh. ED-14 at pg. 5, lns. 8-12 (Michalk); Exh. APP-6 at pg. 12, lns. 13-19; Exh. APP-6 at pg. 17, lns. 5-17 (Young). The QUAL-TX model was chosen because it is the standard analytical tool used by TCEQ for assessing DO impacts in streams and rivers and the CSTR model was chosen because it is the standard analytical tool used by TCEQ for assessing DO impacts in ponds, small lakes, and portions of larger lakes and bays. Exh. ED-14 at pg. 5, lns. 13-18; pg. 6, lns. 12-14 (Michalk). The modeling was valid and in compliance with TCEQ regulations and guidance. Exh. APP-7 at pg. 12, ln. 13 – pg. 13, ln. 3 (Hunt); Exh. APP-6 at pg. 17, ln. 18 – pg. 19, ln. 3 (Young).

DO levels in receiving waters are impacted not only by the DO content of the discharged treated effluent, but also by other oxygen-related constituents such as carbonaceous biochemical oxygen demand (CBOD) and ammonia-nitrogen (NH<sub>3</sub>-N). The draft permit establishes a minimum DO content for the effluent and maximum limits for CBOD and NH<sub>3</sub>-N. Exh. ED-14 at pg. 8, ln. 3 – pg. 9 ln. 11 (Michalk). Mr. Michalk memorialized the results of his DO modeling in a memorandum that was admitted as Exhibit ED-16. The Draft Permit for the Farmersville wastewater treatment plant properly reflects the recommendations contained in Mr. Michalk's memorandum. Exh. ED-14 at pg. 14, lns. 2-5 (Michalk). The application and the draft permit satisfy all the Commission requirements of 30 TAC Chapter 307, the Texas Surface Water Quality Standards. The effluent limitations contained in the draft permit will be adequate to ensure that the dissolved oxygen levels will be maintained above the criteria for the unnamed tributary and Lake Lavon. Exh. APP-6 at pg. 19, lns. 8-13 (Young); Tr. pg.

488, lns. 1-4 (Knowles) (draft permit meets all requirements); Tr. pg. 504, lns. 8-13 (Knowles) (application and permit meet all rules); Tr. pg. 521, lns. 8-10 (Knowles) (application and permit meet all rules).

**B. Argument and Authorities**

The ALJ recommends to the Commissioners of the TCEQ that they find for the Applicant on all referred issues, except that the dissolved oxygen (DO) requirement be modified with the assumption that, on occasion, discharge will be directly into Lavon Lake. This recommendation, while well intended, is contrary to the ALJ's other findings and would require the Executive Director's staff to perform modeling in a manner contrary to the standard procedures established pursuant to the TCEQ's Guidance: "Procedures to Implement the Texas Surface Water Quality Standards."

**1. Stream Characterization**

The ALJ makes her recommendation for additional computer modeling based on the OPIC's assertion that there is a *question* whether the discharge will be into an intermittent stream or at times directly into Lavon Lake. Based on that perceived uncertainty, OPIC recommends revising the dissolved oxygen requirement from 4 mg/L to 5 mg/L. Much of the live testimony at the hearing did involve the question of the level of the lake and whether on occasion the lake surface might reach near the discharge point. The factual dispute among the parties was whether the receiving water was properly characterized.

The great preponderance of the evidence is that the discharge of treated effluent will be into an intermittent stream, thence to Elm Creek, thence to Lavon Lake. Indeed,

there is no competent evidence to the contrary. As detailed above and below, each of the following witnesses testified that the discharge will be to an intermittent stream:

- Mr. Steve Barry
- Mr. Rex Hunt
- Dr. Jonathan Young
- Ms. Lily Murphy
- Mr. James Michalk

*No witness testified to the contrary.*

Mr. Steve Barry testified that the discharge route was to an intermittent stream in Farmersville's Application. Exh. APP-3, SB-2, pg. 4; APP-10, pg 8; Tr. at pg. 185, ln. 25 – pg. 186, ln. 5; pg. 196, lns. 14-20, pg. 196, ln. 24 – pg. 197, ln. 4; pg 197, ln. 18 – pg. 198, ln. 1, pg. 202, lns. 18-24; pg. 250, ln 2 – pg. 252, ln. 2.

Mr. James Michalk testified to the following:

**Q: How did you determine the extent of the normal pool elevation in this case?**

A: I used the elevations indicated in the USGS topographic map, then used aerial imagery from different years, comparing that with USGS lake level information. I then used more detailed evaluation information from the North Central Texas Council of Governments' 'dfwmaps.com' website, which provided estimated elevation information at 2-foot contour intervals.

**Q: Based on this information, what assumptions did you make concerning the extent of the lake up into the unnamed tributary during normal pool conditions?**

A: This information indicated that, under normal pool elevation conditions, the creek runs virtually all the way to the more open cove area before it becomes a part of Lavon Lake.

Exh. ED-14 at pg. 12, lns. 12-21 (Michalk).

Ms. Lily Murphy verified that the proposed discharge point is into an intermittent unnamed tributary that then flows into Lake Lavon (Segment 0821) via the Elm Fork Arm. Exh. ED-10 at pg. 8, lns. 11-12 (Murphy); *id.* at pg. 9, lns. 9-10.

Dr. Jonathan Young testified that the discharge was to an intermittent stream that flows to Lake Lavon. Exh. APP-6 at pg. 10, lns. 6-14 (Young). Each of these witnesses was questioned extensively about the discharge route and receiving waters and none recanted their testimony or waived about their conclusions. **No witness testified to the contrary.**

OPIC points to testimony that the “normal” pool elevation is 492 feet and that the Lake Lavon pool level has been above 492 feet. This does not change the character of the intermittent stream, which is one that is dry for at least one week each year. Tr. at pg. 606, lns. 11-18 (Murphy). Messrs. Michalk and Hunt and Dr. Young all testified that the stream could be at an elevation lower than the “conservation” pool elevation and still be a stream. Exh. ED-14, pg. 11, ln. 18 – pg. 13, ln. 20 (Michalk); Tr. at pg. 296, ln. 17 – pg. 298, ln. 8; pg. 302, ln. 3 – pg. 310, ln. 7 (Young); pg. 297 lns. 16-20 (Hunt). This is because of localized low areas, scouring, riffing, or other factors. Tr. at pg. 283, ln. 9 – pg. 284, ln. 2; pg. 302, ln. 17 – pg. 306, ln. 22 (Young).

While OPIC and Protestants threw many questions at the witnesses that were competent to testify about the nature of the receiving waters, no witness testified that the receiving waters were anything other than an intermittent stream. Each held to their position under cross-examination. Neither OPIC nor the Protestants provided any testimony or other evidence that the receiving waters were anything but an intermittent

stream. The great preponderance of the evidence is that the discharge is to an intermittent stream. **There is no evidence to the contrary.**

As to the characterization of the receiving water, the ALJ properly recommends the following Findings of Fact:

21. The immediate receiving stream, the unnamed tributary, was determined to be an intermittent stream with no significant life use and was properly assigned a dissolved oxygen (DO) tributary requirement of 2.0 mg/L.
22. Lake Lavon is a classified water body (Segment 0821) and is assigned contact recreation, public water supply, and high aquatic life use.

These Findings of Fact resolve the factual dispute about what is the nature of the receiving waters in the Applicant's favor.

## **2. Computer Modeling**

There was no factual dispute among the parties as to the proper computer modeling or proper and appropriate effluent standards concerning oxygen related constituents.

The only evidence in the record is that the modeling performed was accurate and appropriate to set a variety of effluent requirements, including DO. The evidence in the record is that the computer modeling applied conservative assumptions that are designed to represent conditions when DO is typically at its minimum, when conditions are hot and dry.

**Q. How is the modeling analysis designed to ensure that effluent limit recommendations will be environmentally protective?**

A. In order to ensure that modeling recommendations will be protective, the proposed discharge is evaluated using conservative assumptions that are designed to represent conditions when DO is typically at its minimum.

**Q. Please explain the conservative assumptions incorporated into the modeling analysis?**

A. The discharge is modeled at full permitted flow and at full permitted effluent limits, during hot and dry weather conditions. This combination of circumstances is unlikely to simultaneously occur for any significant period of time.

Exh. ED-14 at pg. 4, lns. 3-11 (Michalk).

There is no evidence that the lake levels are higher under hot and dry conditions, and logically the opposite is true. By modeling the impact of the effluent on the receiving waters under the "hot and dry" assumption, the Executive Director appropriately concluded that the effluent limits established in the draft permit will be protective under all conditions, even those that occur when the lake level is high.

There is no evidence that, even if the discharge were directly to Lake Lavon, the discharge parameters would be any different from those contained in the draft permit. To the contrary, all of the evidence is that the modeling assumptions are conservative and appropriate. Mr. Michalk testified:

**Q: Did you include any headwater flow in the DO model?**

A: No.

**Q: Why not?**

A: The unnamed tributary and Elm Creek are both considered intermittent streams. In order to ensure the model is protective under all conditions, intermittent streams are modeled with no headwater.

**Q: Why is this considered to be protective under all conditions?**

A: Headwater flow provides additional dilution, which can lessen the impact of a wastewater discharge on DO concentrations in a water body. Modeling these intermittent streams under hot and dry summertime conditions is usually the most restrictive case. Effluent limits that are predicted to be sufficient to maintain DO levels in the receiving water above their assigned DO criteria under these most limiting conditions are also predicted to be sufficient under less restrictive conditions.

Exh. ED-14, pg. 7, lns. 4-16 (Michalk) (emphasis added). All of the evidence in the record is that the model performed is conservative and ensures that the effluent standards will be protective under all conditions. **There is no evidence to the contrary.**

Moreover, the model used by Mr. Michalk considers the ultimate discharge to Lake Lavon and ensures adequate oxygen to support the aquatic life uses of the lake. Again, Mr. Michalk:

**Q: What water bodies did you model for this analysis?**

A: I modeled the unnamed tributary, Elm Creek, and a portion of the Elm Creek arm of Lavon Lake. Elm Creek itself was included in order to account for any potential combined impact resulting from the discharges from City of Farmersville's two permitted wastewater treatment plants (Permit Nos. 10442-001 and 10442-002).

**Q. What type of modeling did you perform on the unnamed tributary, Elm Creek, and the arm of Lavon Lake for your review of the Farmersville application?**

A. I performed steady-state DO modeling using QUAL-TX models for the unnamed tributary and the Elm Creek system. I used Continuously Stirred Tank Reactor (CSTR) models (also known as simplified pond models) for the arm of Lavon Lake.

**Q. Why did you use the QUAL-TX model?**

A. The QUAL-TX model was chosen because it is the standard analytical tool used by TCEQ for assessing DO impacts in streams and rivers.

**Q. Why did you use the CSTR model?**

A. The CSTR model was chosen because it is the standard analytical tool used by TCEQ for assessing DO impacts in ponds, small lakes, and portions of larger lakes and bays.

Exh. ED-14, pg. 5, lns. 3-18.

Mr. Michalk went on to testify that the dissolved oxygen limits contained in the draft permit will ensure that the dissolved oxygen criteria will be met or exceeded, both for the stream and for Lake Lavon. Exh. ED-14, pg. 8, ln. 3 – pg. 9, ln. 11 (Michalk). There was no evidence that, if Lake Lavon might sometime reach up to the discharge point, the modeling performed would be made inaccurate or inappropriate. Indeed, the

questions of modeling and lake levels were never tied to one another and were distinctly separated. Dr. Jonathan Young, an expert in computer modeling of dissolved oxygen impacts, was cross examined at length about whether the receiving waters were accurately characterized. When counsel for the Applicant attempted to determine what impact the stream characterization had on the computer modeling, Protestants' counsel objected that it was beyond the scope of the cross-examination.<sup>1</sup>

The clear and uncontroverted testimony of the only two experts qualified to testify about computer modeling, Mr. James Michalk and Dr. Jonathan Young, is that the computer modeling was performed using the appropriate receiving water characterization and appropriate input parameters. Neither Protestants nor the Public Interest Counsel asked any questions of either witness regarding computer modeling. In fact, neither Mr. Michalk nor Dr. Young was asked a single question in cross-examination by any party or the ALJ about the computer modeling. The pre-filed direct testimony of both Mr. Michalk and Dr. Young is that the computer modeling as performed was appropriate and accurate. That testimony is unchallenged and un-refuted.

Neither the Protestants nor OPIC sponsored any witness that was qualified to testify about computer modeling of oxygen related constituents. Protestants' one expert

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<sup>1</sup> "Q. [By Applicant's Attorney MR. MOORE] Dr. Young, in addition to analyzing whether the characterization of the receiving water body was accurate, you also were reviewing whether the computer modeling, performed by Mr. Michalk [at] the TCEQ, was adequate and appropriate, is that true?

A. Yes, sir.

Q. And what is your opinion?

MR. LOWERRE: Objection. This was not raised on cross-examination; he's going beyond cross.

MR. MOORE: You didn't ask anything about Mr. Michalk's modeling?

JUDGE CLONINGER: I don't recall at this time.

MR. LOWERRE: No. I didn't ask about his computer modeling either.

MR. MOORE: Okay. Then I'll withdraw the question."

Transcript at pg. 321, ln. 13 – pg. 322, ln. 6.

witness testified that the Applicant and the Application satisfied all of the regulations concerning the Texas Surface Water Quality Standards.

**3. Undue Burden on TCEQ Permitting Staff**

The waters of Texas are constantly changing. An intermittent stream is, by definition, in at least two forms: dry and flowing. In truth, any stream or river in Texas can be dry one day and subject to a torrential flood the next. Lake levels are mercurial as well. Any Texas lake can be down in droughts and over flood levels at other times. Indeed, if anything was learned about Lake Lavon in this case, it is that the lake is of intermittent surface elevations. In the vicinity of Farmersville's discharge point, it is at best an intermittent lake.

As it stands, the procedure for modeling DO related effluent standards imposes conservative criteria to ensure protection under all circumstances. If the Commissioners were to accept the ALJ's recommendation, what is the Executive Director to do in the next case? Shall he model for all possible conditions of every stream, river and lake, even though those alternative conditions are less demanding in terms of oxygen requirements? Mr. Michalk, the TCEQ modeler, is expected to follow standard TCEQ modeling approaches, as he did, to avoid having to apply the model to a variety of speculative stream and lake conditions. If the Executive Director is to perform DO modeling for all conditions of the widely variable streams, rivers, lakes and tidal areas of Texas, many more computer modelers will be needed, and the exercise will not ensure better protection of the receiving waters or their uses.

### C. Conclusion

Farmersville's wastewater treatment plant will discharge to an intermittent stream. The uncontroverted testimony is clear and the ALJ reached the only possible conclusion in that regard. The computer modeling was performed in accordance with the procedures established by the Implementation Procedures in proper consideration of the receiving waters. The uncontroverted testimony is clear and the ALJ reached the only possible conclusion in that regard. The ALJ's recommendation that additional computer modeling be performed is misplaced and will not lead to better protection of the waters of the State of Texas.

In the absence of any evidence that a higher dissolved oxygen requirement in the permit would be required if the discharge were to Lake Lavon, it would be an arbitrary act for the Commission to issue a permit with a different limit. That is the case even if the great preponderance of the evidence did *not* show that the discharge is to an intermittent stream. All evidence in the record is that the discharge is to an intermittent stream, and, indeed, the ALJ finds that the discharge is to an intermittent stream. Proposed Findings of Fact 20 and 21.

Setting a precedent that the Executive Director needs to perform computer modeling of water bodies under all of their possible conditions will result in a tremendous exhaustion of resources for no beneficial purpose. Computer modeling is already done with conservative assumptions and input parameters. More modeling does not mean more protection of the waters of the State.

### III. SUPREMACY OF PERMIT PROVISIONS

The ALJ recommends that the Commission adopt OPIC's suggestions regarding Amending the Application to conform to the Draft Permit specifications and adding language to the Draft Permit stating the provisions of the Draft Permit supersede the terms of the Application when the two are inconsistent. The Draft permit already has the suggested language. Standard Permit condition 10 reads:

10. Relationship to Permit Application

The Application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

Exh. ED-4, pg. 11. Any additional special provision would be purely redundant. Because of this language, it would be a meaningless act to revise the application as further suggested by OPIC and recommended by the ALJ.

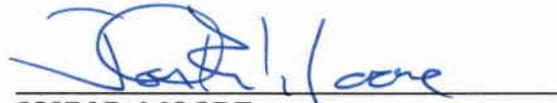
### IV. CONCLUSION AND PRAYER

Farmersville Investors, LP requests that its exceptions to the findings of fact, conclusions of law, proposed order and Proposal for Decision be granted in all respects, and that those findings, conclusions and/or ordering provisions be revised/clarified consistent with the relief discussed herein. Farmersville Investors, LP also prays for all other relief to which it is entitled.

Respectfully submitted,

**LLOYD GOSSELINK**  
**ROCHELLE & TOWNSEND, P.C.**  
816 Congress Ave., Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)

By:



JOHN R. MOORE  
State Bar No. 143248565

JEFFREY S. REED  
State Bar No. 24056187

BRAD B. CASTLEBERRY  
State Bar No. 24036339

**ATTORNEYS FOR APPLICANT,  
FARMERSVILLE INVESTORS, LP**

## CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of April, 2010, a true and correct copy of the foregoing Applicant Farmersville Investors, LP's Exceptions was provided by U.S. mail, hand-delivery or facsimile to the persons listed below:

**FOR THE CHIEF CLERK:**

LaDonna Castañuela  
TCEQ  
Office of Chief Clerk, MC-105  
Bldg. F, 3<sup>rd</sup> Floor  
Austin, Texas 78711-308  
Tel: (512) 239-3300  
Fax: (512) 239-3311

**FOR THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS:**

The Honorable Sharon Cloninger  
Administrative Law Judge  
300 W. 15<sup>th</sup> Street, Ste. 502  
Austin, Texas 78711-3025  
Tel: (512) 475-4993  
Fax: (512) 475-4994

**REPRESENTING THE EXECUTIVE  
DIRECTOR:**

Kathy Humphreys, Staff Attorney  
TCEQ  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3417  
Fax: (512) 239-0606

**REPRESENTING THE PUBLIC**

**INTEREST COUNSEL:**

Amy Swanholm, Attorney  
TCEQ  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

**REPRESENTING PROTESTANTS:**

Richard Lowerre  
Marisa Perales  
Attorney At Law  
Lowerre, Frederick, Perales, Allmon  
& Rockwell  
707 Rio Grande, Suite 200  
Austin, Texas 78701  
Tel: (512) 469-6000  
Fax: (512) 482-9346

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JOHN R. MOORE