

**SOAH DOCKET NO. 582-23-11653
TCEQ DOCKET NO. 2022-1732-MWD**

APPLICATION OF CIVITAS AT BUDA, LLC FOR NEW TPDES PERMIT NO. WQ0016154001	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROTESTANT GUADALUPE-BLANCO RIVER AUTHORITY’S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

Comes now the Guadalupe-Blanco River Authority (GBRA), Protestant in this matter, and files these Exceptions to the Proposal for Decision (PFD) and, in support thereof, would show the following:

I. INTRODUCTION

GBRA excepts to the Administrative Law Judge’s (ALJ) recommended action, proposed Findings of Fact, and proposed Conclusions of Law. The proposed Texas Pollution Discharge Elimination Program (TPDES) permit that is the subject of this proceeding that would allow the Applicant, Civitas at Buda, LLC (Applicant) to discharge a daily average flow of 500,000 gallons per day of treated wastewater (Draft Permit) is not protective of water quality in the Plum Creek watershed, and issuance of such a permit is contrary to the agreed-upon measures in the 2008 Plum Creek Watershed Protection Plan (PCWPP).

II. EXCEPTIONS AND CORRECTIONS

a. Exceptions to the PFD’s analysis and recommendations regarding the PCWPP that was approved by the TCEQ.

GBRA joined more than thirty local, federal, and state entities to develop the PCWPP to restore water quality in Plum Creek and its tributaries, and to ensure future watershed quality and health. Protestant Exhibit No. 3. One strategy agreed upon by the partners to the PCWPP, including the Texas Commission on Environmental Quality (“TCEQ”), was that all wastewater

treatment facilities in this watershed would work towards a permit treatment level of 5 mg/L biochemical oxygen demand (BOD) 5 mg/L total suspended solids (TSS), 2 mg/L ammonia nitrogen (NH₃) and 1 mg/L total phosphorus (TP) (5-5-2-1 Effluent Limit) for new facilities and voluntary action by existing plants. Protestant Exhibit No. 3, Page 75 (Bates No. 000130). The PCWPP was also considered by the Environmental Protection Agency (EPA) in reviewing Texas' submittal under Section 303(d) of the Clean Water Act in 2010. *See* Protestant Exhibit No. 5, Pages 10-26 (Bates Nos. 000311-000327). The EPA determined that the alternative pollution control requirements agreed upon in the PCWPP would result in water quality standards attainment in the Plum Creek watershed, and authorized moving Segment 1810 from the 303(d) list to the 4b category. Protestant Exhibit No. 5, Pages 10-11 (Bates Nos. 000311-000312).

GBRA excepts to and recommends rejection of Findings of Fact 30 and 31, which states that:

“ 30. The [PCWPP] describes itself as “a guidance document” and notes that it is “a voluntary, non-regulatory alternative to addressing water quality issues.”

31. The TCEQ assisted with the creation of the [PCWPP] but has not adopted its standards.”

GBRA also excepts to and recommends rejection of Conclusions of Law 10 which states that:

“The [PCWPP] standards are not regulatory, and the TCEQ is not required to follow them in issuing permits.”

GBRA additionally excepts to and recommends correction of Conclusions of Law 35 as follows:

“Segment 1810 has been removed from the 303(d) list, the state’s list of impaired and threatened waters. The EPA removed Segment 1810 from the 303(d) list in 2010 because it determined that pollution control requirements contained in the Plum Creek Watershed Protection Plan and agreed to implemented by local and state entities, including TCEQ, would work to achieve water quality standards.”

GBRA disagrees with the characterization of the PCWPP and its importance in action taken by the Executive Director on behalf of TCEQ. TCEQ was not only involved with the creation of the PCWPP, but approved the PCWPP and then presented it to EPA as evidence of alternative pollution control requirements that would be implemented to avoid listing Segment 1810 on the 303(d) list. EPA relied on this representation and removed Segment 1810 from the 303(d) list in 2010 because it determined that “other pollution control requirements implemented” by local and state entities, specifically the PCWPP, would work to achieve water quality standards. Protestant Exhibit 5, Page 10 (Bates No. 000311).

Now, the Executive Director is choosing to disregard the PCWPP in drafting permits affecting water quality, such as the Draft Permit.

The PFD includes several statements representing that the PCWPP is not a regulatory document, and that the TCEQ is not obligated to follow provisions in the PCWPP when issuing wastewater discharge permits. *See* Findings of Fact 30, 31; Conclusions of Law 10. It is not disputed that PCWPP, with dozens of entities participating in the partnership and creation of the

document, is not a regulatory document. It is a guidance document that should be used to inform decisions, including those of the TCEQ when permitting new facilities. The Executive Director should have at least considered the recommendations in the PCWPP when preparing the Draft Permit, and should encourage those that seek the privilege of discharging wastewater into state waters to adhere to the PCWPP's recommendations. As the state entity with the authority to implement plan measures, such as the 5-5-2-1 Effluent Limit in discharge permits in the watershed, TCEQ's role in creation and approval of the PCWPP was seen as a crucial commitment to the implementation of the PCWPP. Instead, the Executive Director is ignoring the recommendations that TCEQ agreed to in the PCWPP, and is recommending the Draft Permit with final limits of 10 mg/L BOD, 15 mg/L TSS, and 3 mg/L NH₃. Such effluent limits are not protective of water quality in the Plum Creek watershed, and are contrary to the goals in the PCWPP to restore water quality in the Plum Creek watershed.

The Executive Director's recommendation in the Draft Permit is also concerning because it sends a message to the other partners in the PCWPP as well as future permit applicants that even though the TCEQ committed to implementation of the goals in the PCWPP, the Executive Director is not willing to include wastewater discharge permit conditions consistent with the PCWPP. The Executive Director's unwillingness to even consider the PCWPP in reviewing Plum Creek watershed permit applications could discourage other partners from following the PCWPP, and the partners to the Plan will have a difficult time meeting the goals of the PCWPP. If inadequate progress is made in meeting the milestones in the PCWPP and subsequent updates, the "EPA will take appropriate action to add...Plum Creek to the 303(d) list...". Protestant's Exhibit No. 5, Page 22 (Bates No. 000323).

b. Exceptions to the PFD's analysis and recommendations whether the Draft Permit is protective of water quality.

GBRA disagrees with Findings of Fact and Conclusions of Law that state that the Draft Permit is protective of water quality in the Plum Creek watershed. GBRA, through its expert testimony, showed that TCEQ used incorrect assumptions and parameters in water quality monitoring that provided inaccurate results that would lead to degradation in the watershed in violation of the Texas Surface Water Quality Standards (TSWQS).

The TCEQ incorrectly measured the discharge route down Elm Creek, using an approximately 6.8 kilometer distance when the actual distance is approximately 5.4 kilometers. Osting Cross, Page 16, Lines 24-25, Page 17, Lines 1-2, 22-25. Using an incorrect and longer discharge route, such as TCEQ has done in the analysis relating to the Draft Permit, produces an analysis that provides additional time for the effluent to travel down the discharge route, resulting in increased consumption of ammonia nitrogen and more consumption of the biological oxygen demand entering the downstream reservoir. Osting Cross, page 18, Lines 1-13. TCEQ incorrectly assuming a longer discharge route produces unreliable results that would negatively impact water quality.

Further, TCEQ used inaccurate modeling information for the headwaters of SCS Reservoir 16, underestimated the depth of the SCS Reservoir 16, and estimated a larger surface area for SCS Reservoir 16. Osting Cross, Page 22, Lines 6-24; Page 83, Lines 15-19; Page 84, Lines 17-21. Mr. Osting determined that the inundated area of the headwaters was more like a reservoir and should be modeled as such. Osting Cross, Page 22, Line 5-10. The accuracy of using the correct modeling, of reservoir versus stream modeling, has an impact on determining biological oxygen demand. Osting Cross, Page 22, Lines 15-23. Further, smaller lake means less exposure to the atmosphere, and less opportunity to absorb oxygen from the atmosphere,

resulting in lower dissolved oxygen levels. Osting Cross, Page 84, Lines 17-21; Robertson Cross, Page 122, Lines 7-15.

By failing to conduct modeling with proper geometry, the TCEQ has created results showing a more favorable impact of the effluent on water quality than the impact that will be actually observed. A determination that the Draft Permit is protective of water quality cannot be made based on this inaccurate information, and GBRA has shown to the contrary that a degradation of water quality will occur in violation of the TSWQS.

GBRA excepts to and recommends rejection of Findings of Fact 36, 39, and 40 which state:

“ 36. TCEQ utilized proper geometric inputs in its water quality modeling analysis.

39. The Draft Permit’s proposed permit limits are in accordance with TCEQ standard operating procedures (SOPs) and are sufficiently protective of water quality and uses of the waters in the state.

40. Protestants did not present evidence that the Draft Permit violates a specifically applicable state or federal requirement.”

GBRA also excepts to and recommends rejection of Conclusions of Law 7 and 8 which state:

“ 7. Protestants did not rebut the prima facie demonstration by demonstrating that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement that relates to a matter referred by TCEQ. Tex. Gov’t Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.17(c).

8. The Draft Permit is protective of water quality and the existing uses of the receiving waters in accordance with applicable TSWQS.”

GBRA excepts to the above-referenced Findings of Fact and Conclusions of Law as the Draft Permit does not meet the legal requirements because the effluent limits in the Draft Permit are not protective of water quality in the Plum Creek watershed.

c. Exceptions to the PFD’s analysis and recommendations whether the Draft Permit is consistent with regionalization policy.

GBRA disagrees with Findings of Fact and Conclusions of Law that state that the Applicant complied with regionalization requirements. Before the TCEQ may approve a wastewater discharge permit, an applicant has the burden to show that no existing *or proposed* utility with wastewater treatment or collection facilities within three miles of the proposed facility is able to provide service to the applicant’s property, or that the applicant requested service from such a facility and was denied. Tex. Water Code § 26.0282. Existing and proposed facilities¹ were located within three miles of the proposed discharge at the time of the application. Dutta Cross, Page 149, Lines 15-18, Page 151, Lines 6-11. Applicant provided information that only the constructed wastewater treatment plant, operated by GBRA, was contacted regarding service. Dutta Cross, Page 152, Lines 14-16. Further, capacity was available from this facility to provide service to the proposed development. Dutta Cross, Page 152, Lines 17-22. The Applicant chose not to connect to the existing facility based on the cost to

¹ The Applicant identified a permitted GBRA wastewater treatment facility, and outfalls for four wastewater treatment facilities, within three miles of the proposed discharge. Administrative Record, Tab D, Page 226. The TPDES permits for this facility and outfalls are: GBRA – WQ0014377001; Creedmoor 216 Development – WQ0016106001; Continental Homes of Texas – WQ0015940001; Studio Estates – WQ0015933001. Administrative Record, Tab D, Page 226.

connect to the GBRA facility, but TCEQ did not review or confirm the Applicant's analysis of such costs to determine whether this position was valid. Dutta Cross, Page 154, Lines 4-9.

The Applicant failed to meet regionalization requirements as service was not requested from all entities with existing or proposed wastewater facilities within three miles of the proposed facility. Additionally, TCEQ did not adequately review the costs analysis provided by Applicant to determine that service from GBRA is not feasible. The Draft Permit thus has not complied with regionalization requirements in Texas Water Code § 26.0282.

GBRA excepts to and recommends rejection of Findings of Fact 43, 46, and 48 which state:

“ 43. Applicant's written communications with GBRA were sufficient.

46. Connecting to the GBRA facility would cost approximately \$2,761,345.00 to \$4,511,245.00 more than constructing a new plant.

48. The ED reviewed the cost analysis in accordance with its SOPs and IPs.”

GBRA excepts to and recommends rejection of Conclusions of Law 11 which state:

“ 11. The Application demonstrates compliance with TCEQ's regionalization policy. Tex. Water Code §§ 26.003, 26.081(a)-(b), (d); 26.0282.”

d. Exceptions to the recommended actions.

GBRA disagrees with the PFD's recommendation to grant the Draft Permit. Based on the reasons cited above, GBRA asserts that issuance of the Draft Permit should not be granted.

In the alternative, if the Draft Permit is to be issued, GBRA asserts that the Draft Permit should contain an 5-5-2-1 Effluent Limit.

III. CONCLUSION AND PRAYER

GBRA respectfully requests that the Commission grant its exceptions and recommend the PFD with the corrections as set out above. GBRA requests any other relief to which it is entitled.

Respectfully submitted,

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BY: 

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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 11th day of December 2023, a true and correct copy of the above and foregoing document was forwarded via e-mail or regular mail to the parties on the Service List.

Emily W. Rogers

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