

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 14, 2025

Peter Gregg

VIA EFILE TEXAS

John Reed Clay
John Andrew Scott

VIA EFILE TEXAS

Aubrey Pawelka

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Sheldon Wayne

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RE: SOAH Docket No. 582-24-05780; TCEQ Docket No. 2023-0862-MWD; *Application by Gilden Blair Blackburn and Timothy Edward Carter For New TPDES Permit No. WQ0016124001*

Dear Parties:

A Proposal for Decision (PFD) was issued in this case on March 10, 2025. The PFD recommended that the Texas Commission on Environmental Quality (Commission) issue the amended draft Texas Pollutant Discharge Elimination System (TPDES) permit sought by Gilden Blair Blackburn and Timothy Edward Carter (Applicants). The Protestants¹ and the Executive Director (ED) of the Commission filed exceptions to the PFD on March 25 and March 28, 2025, respectively. Applicants and the ED filed replies to Protestants' exceptions on April 8 and 9, respectively. The ALJs have considered the exceptions, replies, and evidence in the case, and the ALJs recommend the corrections found in the Corrected Proposed Order issued contemporaneously with this letter.

¹ The Protestants are FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC.

Protestants' Exceptions. Protestants' exceptions argue that the PFD wrongfully found that the Commission's water modeling was appropriate and that the ALJs disregarded evidence of site-specific data for the discharge route. Generally, Protestants reargue issues raised at the hearing. Additionally, Protestants' assertion that the site-specific data was available is unsupported by the record in this case. No such data was admitted at the hearing. While the ED's witness indicated that the water modeling team welcomes the submission of site-specific data, there is no indication that such data was provided to the Commission or that the data, if any, would be of sufficient quality to provide accurate representation of stream characteristics to allow it use over the default hydraulic coefficients. Also, Protestants' modeling expert did not incorporate any site-specific data into his modeling admitted in the record. Without the data in the record and evidence of the impact of that data on the modeling, Protestants' argument is without merit.

The ALJs make no changes based on Protestants' exceptions.

ED's Exceptions. The ED's exceptions focuses on certain typographical errors and misstatements in the PFD's findings of fact. No party filed responses to the ED's exceptions. Having considered the exceptions, the ALJs agree with them and make the following changes to the findings of fact in the Corrected Proposed Order filed contemporaneously with this letter:

4. The proposed discharge route is via a man-made ditch, **then to a roadside ditch**, then to an unnamed tributary, then to Price Lake, then to an unnamed tributary, then to an unnamed pond, then to an unnamed tributary, then to Grindstone Creek, then to the Brazos River below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin.

...

25. The ED issued her Response to Hearing Requests on September **1**, 2023.

...

35. The revised modeling used an uncalibrated QUAL-TX model for the upper reaches of the discharge route through the ~~advective~~ backwater of Price Lake. A continually-stirred tank reactor (~~CSTRCTSR~~) model was used for the remainder of Price Lake.

36. The QUAL-TX model used ~~default hydraulic coefficients–stream width coefficient of 10 meters or 0.01 kilometers.~~

37. Use of the default ~~hydraulic coefficients–stream width coefficient~~ is consistent with the TCEQ water quality assessment team’s Standard Operating Procedures (SOPs) when no site-specific data is available.

...

39. The revised modeling appropriately used the ~~default hydraulic coefficients 0.01 km default stream width coefficient~~ for these portions of the discharge route.

40. Pursuant to the SOPs, a ~~CSTRCTSR~~ model is appropriate for significant ponds, lakes, reservoirs, and portions of larger open water bodies, like bays.

...

42. The revised modeling appropriately used a CSTR model for the area of Price Lake outside of the ~~advective~~ backwater reach.

...

46. In the revised modeling, a shortened element length of 0.0425 km was used for ~~the advective portions of~~ the Price Lake backwater ~~reach~~.

In light of the ED’s exceptions, the ALJs correct their PFD as noted above. No other changes are made. With this letter and Corrected Proposed Order, the PFD is ready for the Commission’s consideration.

Exceptions Letter

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ALJ Signature(s):

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Andrew Lutostanski

Co-Presiding Administrative Law Judge

A handwritten signature in black ink, appearing to read "Brent McCabe", written above a horizontal line.

Brent McCabe

Presiding Administrative Law Judge

CC: Service List