

**SOAH DOCKET NO. 582-24-05780
TCEQ DOCKET NO. 2023-0862-MWD**

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| APPLICATION BY | § | BEFORE THE STATE OFFICE |
| GILDEN BLAIR BLACKBURN AND | § | |
| TIMOTHY EDWARD CARTER FOR | § | OF |
| NEW TPDES PERMIT NO. | § | |
| WQ0016124001 | § | ADMINISTRATIVE HEARINGS |

**GILDEN BLAIR BLACKBURN AND TIMOTHY EDWARD CARTER’S
REPLY TO PROTESTANTS’ EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW, Gilden Blair Blackburn (“Blackburn”) and Timothy Edward Carter (“Carter”) (collectively, “Applicants”) and file their Reply to Protestants’ Exceptions to Proposal for Decision, and in support thereof would show the following:

I. SUMMARY

The Administrative Law Judge (“ALJ”) correctly applied the facts to the applicable law in developing the proposal for decision (“PFD”). The Protestants’ exceptions to the PFD raise no new arguments and do nothing to call into question the correctness of the PFD. Rather, the Protestants’ exceptions merely repeat the same arguments they have already made in this docket, which have all been previously addressed through the parties’ closing arguments, replies, and the PFD itself. Accordingly, Applicants offer the below responses, in which Applicants urge that the ALJ reject the Protestants’ exceptions and proposed corrections to the PFD. To the extent necessary, Applicants incorporate their closing argument and reply to closing argument into this reply.

II. DISCUSSION

The Protestants ask the ALJ to reverse the reasoned decision set out in the PFD based on one primary issue: the QUAL-TX modeling analysis.

A. QUAL-TX Modeling Analysis

Protestants again seek to impose requirements that are not relevant to the Application. They do so with a variety of statements and assertions that have no support in the record; all while failing to point to any requirement the Applicant has failed to satisfy. As correctly set out in the PFD and supported by the record, absent site-specific data that is sufficiently rigorous and representative of local stream conditions, the TCEQ may properly rely on general hydraulic assumptions in determining how the proposed discharge would impact the subject streams and lake. PFD at p. 19-20.

In support of their exceptions, Protestants recycle the same arguments and evidence relied upon in their closing argument, including photographs of the receiving stream (which were never admitted into the Administrative Record and deemed insufficient for reliance in this docket) and the testimony of their expert witness Bruce Wiland. In rejecting those arguments and evidence, the ALJ correctly explains in the PFD, “[p]ictures and an anecdotal estimate from one day are not enough to establish the stream’s characteristics throughout the year across different conditions[.]” PFD at p. 19.

To date, Protestants have provided no measurements to support their generalized statements regarding stream flow data. *Id.* Without some sort of quantification to back Protestants photographs and observations, Protestants have provided no supportable assertion that the QUAL-TX modeling failed to accurately assess the dissolved oxygen within the receiving water or that the proposed discharge permit is not protective of water quality and does not meet all federal and state legal and technical requirements.

III. CONCLUSION

Applicants assert that the PFD is correct in all respects (other than those Findings of Fact

identified by the Executive Director in its exceptions) and that the ALJ should reject the Protestants' exceptions and proposed corrections to the PFD. Applicants further assert that the ALJ should accept the Executive Director's exceptions and proposed corrections to the PFD.

DATED April 8, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2025 a true and correct copy of the foregoing document has been served electronically upon all parties of record.


Peter T. Gregg