

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

**APPLICATION BY  
TIMOTHY EDWARD CARTER  
AND GILDEN B. BLACKBURN  
FOR TPDES PERMIT  
NO. WQ0016124001**

**§     BEFORE THE STATE OFFICE  
§  
§                     OF  
§  
§     ADMINISTRATIVE HEARINGS**

**PROTESTANTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S  
PROPOSAL FOR DECISION**

COMES NOW Protestants FM 1189, LLC, Bartlett Ranch Brock LLC, Series A 1189 Storage LLC, and Series A EGHB Investments LLC (collectively, "Protestants"), respectfully files this, their Exceptions to the Proposal for Decision, and in support thereof would show the following:

**I.       INTRODUCTION**

Protestants except to the Administrative Law Judge's ("ALJ") recommended Order, proposed Findings of Fact, and proposed Conclusions of law. The proposed Texas Pollution Discharge Elimination System (TPDES) Permit that is the subject of this proceeding would allow Timothy Edward Carter and Gilden B. Blackburn ("Applicants") to discharge an effluent flow of up 0.0375 million gallons per day in the interim phase and 0.075 million gallons per day in the final phase, is not protective of water quality, and does not meet all federal and state legal and technical requirements.

Specifically, the ALJ disregarded evidence of site-specific data regarding Protestants' streams and lake. Instead, the ALJ and the Agency were content to rely on their default

assumptions – assumptions that supposedly conform to the “typical” stream. Respectfully, Protestants are not concerned with the “typical” stream, they are concerned with their own stream and lake and the damaging impacts that Applicants’ proposed discharge will have on both the aquatic life and the beneficial use of those bodies of water. When Protestants site-specific data is considered, it is clear that the Permit does not adequately protect surface water quality and violates the Texas Surface Water Quality Standards.

## **II. EXCEPTIONS AND CORRECTIONS**

Protestants have provided clear and sufficient evidence that the Draft Permit is not protective of surface water quality and violates state requirements. TCEQ utilized inaccurate water modeling assumptions in its QUAL-TX modeling that will result in dissolved oxygen levels in the receiving waters lower than what is predicted in TCEQ’s modeling results. Protestants provided site-specific data which showed that the Draft Permit would result in degradation of surface water quality and violation of the Texas Surface Water Quality Standards. Protestants therefore take exception to the PFD’s conclusion that Protestants did not provide sufficient evidence to rebut the presumption that Applicants’ Draft Permit meets all federal and state legal and technical requirements and would be protective of surface water quality. (PFD, Page 22).

TCEQ drafted revised modeling using QUAL-TX and did not use model information specific to Price Lake and Price Lake backwaters, instead using standard hydraulic coefficients for stream dimensions, velocity, and flow characteristics of a “typical” Texas stream. (ED-JM-1, Page 13- 14 (Bates 0309); Exhibit ED-JM-3 (Bates 0327)). Protestants provided site-specific data to the Applicants and TCEQ on December 3, 2024. However, TCEQ refused to acknowledge the evidence presented to it that the receiving stream is *not* consistent with a typical Texas stream, and

disregarded all site-specific evidence, instead using assumptions as modeling inputs to predict the impact of the proposed discharge on the receiving waters, even though such inputs grossly differ from the site-specific characteristics of the receiving waters.

This modeling misrepresents the hydraulics of the first (upper) two reaches of the receiving stream along which the effluent will travel. By relying on incorrect modeling assumptions, rather than information specific to the receiving stream itself, the draft permit fails to show that it would not meet Texas Surface Water Quality Standards. The site-specific data shows that the actual stream is narrower than the standard hydraulic coefficients, which means that the pollutant will travel faster downstream and reach the deeper and more sensitive areas of Price Lake and Price Lake backwaters. (Protestant Closing Brief, Exhibit 3, Page 11).

In the Proposal for Decision (PFD), the ALJ stated that the TCEQ's QUAL-TX model for the upper reaches was performed pursuant to the Water Quality Assessment Team Methods for Analyzing Dissolved Oxygen in Freshwater Streams Using an Uncalibrated QUAL-TX Model ("SOPs") and that the effect of any site-specific data changes would have been negligible. (PFD, Page 22). However, TCEQ's own SOPs, provided by the ED in Exhibit ED-JM-5, recognize that the hydraulic depiction of the stream in the model has a large and direct bearing on the model results. (ED-JM-5, Page 2 (Bates 0039)). Further, Protestants provided evidence that if the velocity coefficient in the upper two reaches of the receiving stream is adjusted to actual widths and half of what the TCEQ's default equations predict, the model shows that the dissolved oxygen criteria of 5.0 mg/L in the Price Lake backwater will be violated. (Protestant Closing Brief, Exhibit 3, Page 12). The ALJ, in deferring to TCEQ's flawed water quality modeling and analysis, failed to take into account the actual impact of the proposed discharge on the receiving waters. Protestants

have provided clear evidence utilizing actual site-specific data of the receiving waters that the proposed discharge will degrade the water quality of the receiving waters in violation of state requirements, the Texas Surface Water Quality Standards.

Accordingly, Protestants except to and recommend rejection of Findings of Fact 18 and 19, which state:

“18. A Tier 1 antidegradation review determined that existing water quality uses will not be impaired by this permit action, and numerical and narrative criteria to protect existing uses will be maintained.

19. A Tier 2 review determined that no significant degradation of water quality is expected in Price Lake or Grindstone Creek, and existing uses will be maintained and protected.”

Protestants except to and recommend correction of Findings of Fact 38, as follows:

“38. ~~No site-specific data was available for~~ Protestants provided site-specific data for the man-made ditch, roadside ditch, unnamed tributary, or Price Lake backwater in the upper reaches of the discharge route.”

Protestants except to and recommend rejection of Findings of Fact 44, which states:

“44. The use of default element length was appropriate under the SOPs.”

Protestants except to and recommend correction of Findings of Fact 50, as follows:

“50. The QUAL-TX computer model used for the revised modeling may have had a programming bug that affected the results of the modeling. ~~However,~~ the effect was ~~negligible~~ substantial and did ~~not~~ require further revision of the draft permit.”

Protestants except to and recommend rejection of Findings of Fact 51, which states:

“51. The TCEQ’s revised modeling was appropriately performed and demonstrates that the limits in the Final Draft Permit will be protective of water quality.”

Protestants except to and recommend correction of Conclusion of Law 10, as follows:

“10. ~~No-party~~ Protestants rebutted the prima facie demonstration. Tex. Gov’t Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.117(c).”

Protestants except to and recommend rejection of Conclusion of Law 11, which states:

“11. The Final Draft Permit is adequately protective of water quality, including the protection of surface water, groundwater, and animals in accordance with applicable regulations.”

Protestants except to and recommend correction of Order 1, as follows:

“1. Applicants’ application for a new Texas Pollutant Discharge Elimination System Permit No. WQ0016124001 is ~~granted~~ denied as set forth in the Final Draft Permit.”

### **III. Conclusion**

Protestants respectfully request that the Commission grant their exceptions and recommend the Proposal for Decision with the corrections as set out above. Protestants additionally request any other relief to which they are entitled.

Respectfully submitted,

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/s/ John Reed Clay Jr.

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**ATTORNEYS FOR PROTESTANTS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served upon all counsel of record on March 25, 2025.

*/s/ John Reed Clay Jr.*

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John Reed Clay Jr.