

State Office of Administrative Hearings

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Chief Administrative Law Judge

August 26, 2025

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**RE: SOAH Docket No. 582-25-11135; TCEQ No. 2024-0677-MWD;
*Application of Quadvest, L.P. for New TPDES Permit
No. WQ0016247001***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ

electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF QUADVEST, L.P. FOR
NEW TPDES PERMIT NO. WQ0016247001**

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION OF QUADVEST, L.P. FOR NEW TPDES
PERMIT NO. WQ0016247001

TABLE OF AUTHORITIES

ABBREVIATION	MEANING
ALJ	Administrative Law Judge
App. Ex.	Applicant's Exhibit
Applicant	Quadvest, L.P.
Application	Application for new Texas Pollutant Discharge Elimination System permit
ED	Executive Director of the Texas Commission on Environmental Quality
Ex.	Exhibit
Facility	Trails at Cochran Ranch Wastewater Treatment Facility

ABBREVIATION	MEANING
Hockley Map	Hockley Mound Quadrangle United States Geological Survey Topographic Map
IPs	Implementation Procedures
L	Liter
<i>La Voz</i>	<i>Houston Chronicle d/b/a La Voz</i>
mg	Milligram
mg/L	Milligrams per liter
MGD	Million Gallons Per Day
NAPD	Notice of Application and Preliminary Decision
NORI	Notice of Receipt of Application and Intent to Obtain a Water Quality Permit
OPIC	Office of Public Interest Counsel
Part	Pt.
Protest. Ex.	Protestants' Exhibit
SOAH	State Office of Administrative Hearings
Subdivision	Trails at Cochran Ranch Subdivision
Sunny Side Map	Sunny Side Quadrangle United States Geographical Survey Topographical Map
TCEQ or Commission	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System
Tr.	Hearing Transcript
TSWQS	Texas Surface Water Quality Standards
USGS	United States Geological Survey

SOAH Docket No. 582-25-11135

Suffix: TCEQ

TCEQ Docket No. 2024-0677-MWD

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF QUADVEST, L.P. FOR NEW TPDES
PERMIT NO. WQ0016247001**

PROPOSAL FOR DECISION

Quadvest, L.P. (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (TCEQ or Commission) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016247001, which would authorize discharge not to exceed 250,000 gallons per day, or 0.25 million gallons per day (MGD), of treated domestic wastewater per day during the Final Phase. The wastewater would be discharged from the proposed Trails at Cochran Ranch Wastewater Treatment Facility (Facility) in Waller County, Texas, eventually flowing into the Brazos River below the Navasota River in Segment No. 1202 of the Brazos River Basin. The Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH) recommends the Application be granted.

I. JURISDICTION, PROCEDURAL HISTORY, AND NOTICE

A. JURISDICTION

No party challenged jurisdiction, which is addressed in the proposed order without further discussion herein.

B. PROCEDURAL HISTORY

Applicant filed the Application on November 14, 2022.¹ The Executive Director (ED) of TCEQ declared the application administratively complete on December 14, 2022.² The notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Houston Chronicle* on December 28, 2022, and in Spanish in the *Houston Chronicle d/b/a La Voz (La Voz)* on January 4, 2023.³ A copy of the complete Application was placed at the Hempstead Library in Waller County on January 9, 2023.⁴ The ED determined that the Application was technically complete and prepared a draft permit on March 7, 2023 (Draft Permit).⁵ The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Houston Chronicle* on April 19, 2023, and in Spanish in *La Voz* the same day.⁶ The NAPD was available for public viewing at the

¹ Applicant (App.). Ex. A, Part (Pt.) 2, Tab B at Bates A0106-07.

² App. Ex. A, Pt. 2, Tab B at Bates A0106-07.

³ App. Ex. A, Pt. 2, Tab B at Bates A0088-94.

⁴ App. Ex. A, Pt. 2, Tab B at Bates A0095.

⁵ App. Ex. A, Pt. 2, Tab C at Bates A0120-61.

⁶ App. Ex. A, Pt. 1, Tab B at Bates A0056-63.

Hempstead Library on April 26, 2023.⁷ A public meeting notice was published in English and Spanish in the *Houston Chronicle* and in *La Voz* on June 21 and June 22, 2023, respectively.⁸ The public meeting was held on July 18, 2023, at the Waller County Community Center.⁹

On August 28, 2024, the Commission considered several hearing requests concerning the Application during an open meeting and referred this matter to SOAH on September 4, 2024; the matter was docketed with SOAH on January 27, 2025.¹⁰

A preliminary hearing was held on March 21, 2025, via Zoom videoconference. At that time, Applicant, the ED, and the Office of Public Interest Counsel (OPIC) were named as parties. Additionally, Lisa Sellars; Michael Beck; Barry, Laurie, and Jeremy Bettis; Belinda Reeves; James Burton, Jr.; John Towler; Mary Anne Vaughn; and George and Cassie Collins (collectively Protestants) were also named as parties. Protestants are landowners and/or lessees who own or rent property near the proposed Facility.¹¹ After the preliminary hearing, Protestants were aligned.

⁷ App. Ex. A, Pt. 1, Tab B at Bates A0064.

⁸ App. Ex. A, Pt. 1, Tab B at Bates A0029-38.

⁹ App. Ex. A, Pt. 1, Tab B at Bates A0042-43.

¹⁰ App. Ex. A, Pt. 1, Tab A at Bates A0004-06.

¹¹ The ALJ has referred to the land occupied/used for grazing by the Protestants as Protestants' property, even though some of the Protestants are lessees.

On June 6, 2025, Applicant moved for summary disposition. ALJ Whitney L. Stoebner denied the motion during the prehearing conference on June 16, 2025.

ALJ Stoebner convened the hearing on the merits via Zoom videoconference on June 24, 2025. Applicant was represented by attorney Peter T. Gregg. The ED was represented by attorneys Harrison Malley and Caleb Shook. Attorney Josiah T. Mercer represented OPIC. Protestants were self-represented, and Ms. Sellars served as their designated party representative.

Applicant presented the rebuttal testimony of Mark Urback, Applicant's Executive Vice President of Engineering and Construction, and ten documentary exhibits.¹² The ED presented the testimony of

¹² App. Ex. 1 (Direct Testimony of Mark Urback (Urback Dir)). Mr. Urback has Bachelor of Science degrees in Ocean Engineering and Civil Engineering from Texas A&M University. He is a licensed professional engineer and has more than 37 years of experience in water and wastewater engineering, including planning, designing, and administering the services of wastewater treatment facilities in Texas. Throughout his career, he has worked on over 100 discharge permit applications. App. Ex. 1 (Urback Dir.) at 3:3-4:23. Applicant's admitted exhibits were App. Ex. A (Administrative Record); App. Ex. B (Supplemental Administrative Record); App. Ex. C (Map of Site Plan); App. Ex. D (Map Requested by TCEQ Office of Legal Services for Commissioner's Agenda); App. Ex. E (map); App. Ex. 1 (Urback Direct); App. Ex. 2 (Hockley Mound Quadrangle USGS Topographic Map); App. Ex. 3 (Sunny Side Quadrangle USGS Topographic Map); App. Ex. 4 (key of United States Geological Survey (USGS) symbols); and App. Ex. 5 (close up of Hockley Mound Quadrangle USGS Topographic Map).

Dr. Mary Anne Wallace¹³ and offered three documentary exhibits.¹⁴ Protestants presented the testimony of Ms. Sellars and Mr. Collins and offered 15 documentary exhibits.¹⁵ The record closed on July 23, 2025, with the filing of reply briefs.

C. NOTICE

In referring this matter to SOAH, the Commission identified only Ms. Sellars as an affected person.¹⁶ In their closing briefs, Protestants challenged the underlying permitting process arguing, in part, that the Commission's initial stakeholder engagement was lacking. Specifically, Protestants contend that numerous affected persons were not admitted as parties to this proceeding until the preliminary hearing. It is unclear whether Protestants raise this argument as a challenge to notice, and arguments regarding notice have not been previously raised. However, the inclusion of additional affected persons as parties during the preliminary hearing at SOAH is

¹³ Dr. Wallace has a Bachelor of Science in Biology from Stephen F. Austin State University, a Master of Science in Marine and Estuarine Science from Western Washington University, and a Ph.D. in Aquatic Resources from Texas State University. She has worked for TCEQ for almost 16 years and currently holds the position of Aquatic Scientist IV. In that capacity, she has worked on or reviewed over 1,300 permit applications. Dr. Wallace conducted the Texas Surface Water Quality Standards (TSWQS) implementation portion of the technical review in this matter. ED MW-1 (Direct Testimony of Dr. Wallace (Wallace Dir.)) at 3:1-4:4 (page numbers for Dr. Wallace's direct testimony reflect the actual page numbers as opposed to the Bates numbers).

¹⁴ The ED's admitted exhibits were: ED-MW-1 (Wallace Direct); ED-MW-2 (Resume of Dr. Wallace); ED-MW-3 (*2010 Procedures to Implement Texas Surface Water Quality Standards*); and Ex. F (Second Supplemental Administrative Record, Tab F submitted via eFile June 23, 2025).

¹⁵ Protestants' admitted exhibits were: Protestant (Protest.) Ex. A (Aerial Photographs of Property); Protest. Ex. B (Waller County Subdivision Regulations); Protest. Ex. C (Photograph of Ephemeral Drainage Path – Dry Branch); Protest. Ex. D (Photograph and Video of Erosion and Construction); Protest. Ex. E (TCEQ Photograph of Drainage Route); Protest. Ex. F (Texas Water Code section 11.086); Protest. Ex. G (*Motl v. Boyd*, 286 S.W. 458 (Tex. 1926)); Protest. Ex. H (Property Survey Map); Protest. Ex. I (TCEQ Surface Water Map Waller County); Protest. Ex. J (TCEQ Complaint Investigation Report); Protest. Ex. K (SOAH Preliminary Hearing Order); Protest. Ex. L (Conservation and Rural Land Use Position Statement); Protest. Ex. M (documents provided by Mr. Collins); Protest. Ex. N (documents provided by James Burton, III); Protest. Ex. O (documents provided by Ms. Reeves); Protest. Ex. Q (Direct Testimony of Ms. Sellars (Sellars Dir.)); Protest. Ex. R (USGS Map).

¹⁶ App. Ex. A, Pt. 1, Tab A at Bates A0004-05.

not indicative of a notice issue.¹⁷ Protestants have offered no evidence in support of any contention that TCEQ failed to comply with notice requirements. Upon review, the ALJ finds notice was proper.

II. APPLICABLE LAW

A. BURDEN OF PROOF AND PRIMA FACIE CASE

The TCEQ referred this case to SOAH under Texas Water Code section 5.556, which governs the referral of environmental permitting cases to SOAH upon request. Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3), which provides:

- (i-1) In a contested case regarding a permit application referred under section 5.556..., [of the] Water Code, the filing with the office of the application, the draft permit prepared by the executive director of the commission, the preliminary decision issued by the executive director, and other sufficient supporting documentation in the administrative record of the permit application establishes a prima facie demonstration that:
 - (1) the draft permit meets all state and federal legal and technical requirements; and
 - (2) a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.
- (i-2) A party may rebut a demonstration under Subsection (i-1) by presenting evidence that:

- (1) relates to ... an issue included in a list [of issues referred by the Commission] in connection with a matter referred under Section 5.556, Water Code; and
- (2) demonstrates that one or more provisions in the draft permit violate a specifically applicable state or federal requirement.
- (i-3) If in accordance with Subsection (i-2) a party rebuts a presumption established under Subsection (i-1), the applicant and the executive director may present additional evidence to support the draft permit.

Although this law creates a presumption, sets up a method for rebutting that presumption, and shifts the burden of production on that rebuttal, it does not change the underlying burden of proof. Accordingly, the burden of proof remains with the Applicant to establish by a preponderance of the evidence that the Application would not violate applicable requirements and that a permit, if issued consistent with the draft permit, would protect human health and safety, the environment, and physical property.¹⁸

In this case, the Application, the Draft Permit, and the other materials specified in Texas Government Code section 2003.047(i-1), were offered and admitted into the record at the preliminary hearing for all purposes.¹⁹

¹⁸ 30 Tex. Admin. Code § 80.17(a), (c).

¹⁹ The Administrative Record was admitted as Applicant's Exhibit A, and contains six sections, Tabs A-F. Tabs A-E were filed in two parts (Parts 1 and 2), and Tab F was provided at the hearing on the merits. Tab F provides a correction to Applicant's Exhibit A, Part 2, Tab C at Bates A0156 by removing a footnote that stated, "revised July 2007."

B. WASTEWATER DISCHARGE PERMIT REQUIREMENTS

Chapter 26 of the Texas Water Code requires a person seeking to discharge wastewater into “water in the state”²⁰ to file an application with TCEQ.²¹ TCEQ reviews the applications in accordance with 30 Texas Administrative Code chapter 281. Based on a technical review, TCEQ prepares a draft permit and a technical summary that discusses the application’s facts and significant factual, legal, methodological, and policy questions considered while preparing the draft permit.²²

Domestic wastewater treatment facilities in Texas are subject to wastewater discharge permit requirements. Standard requirements, which the TCEQ has adopted specifically for use in such permits are found in 30 Texas Administrative Code, chapter 305, subchapter F. The Commission has also adopted the Texas Surface Water Quality Standards (TSWQS), which are applicable to wastewater discharges in accordance with section 303 of the federal Clean Water Act and section 26.023 of the Texas Water Code. These standards are found in 30 Texas Administrative Code chapter 307. The purpose of the TSWQS is to (1) maintain the quality of water in the state in a manner that is consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and taking into consideration economic development of the state;

²⁰ “Water in the state” means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. Tex. Water Code § 26.001(5).

²¹ Tex. Water Code § 26.027(b).

²² 30 Tex. Admin. Code § 281.19, .21(b)-(c).

(2) encourage and promote development and use of regional and area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state; and (3) require the use of all reasonable methods to implement this policy.²³ The TSWQS identify specific uses for the state's surface water, including recreation, domestic water supply, and aquatic life and establish numerical and narrative criteria to protect those uses.²⁴ TCEQ has developed procedures used to implement the TSWQS, which are approved by the Commission and the federal Environmental Protection Agency.²⁵

C. WATER QUALITY

The TSWQS require that water in the state be maintained to preclude adverse toxic impacts to aquatic or terrestrial life.²⁶ This purpose has been implemented in narrative and numerical requirements. Under the narrative requirements, water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or other domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination thereof.²⁷ Numerical criteria related to toxicity to animal life and human health are found in 30 Texas Administrative Code section 307.6(c) and (d).

²³ 30 Tex. Admin. Code § 307.1; this rule is consistent with the policy contained in Texas Water Code section 26.003.

²⁴ 30 Tex. Admin. Code §§ 307.7, .10.

²⁵ 30 Tex. Admin. Code § 307.2(e); *Procedures to Implement the TSWQS* (IPs) is contained in Exhibit ED-MW-3.

²⁶ 30 Tex. Admin. Code §§ 307.4(d); .6(b)(1)-(2), (4).

²⁷ 30 Tex. Admin. Code §§ 307.4(d); .6(b)(4).

Appendix A of 30 Texas Administrative Code section 307.10 provides site-specific uses and criteria for classified segments; as discussed above, these uses include aquatic life uses. Appendix D provides site-specific uses and criteria for unclassified water bodies.²⁸ The TSWQS require dissolved oxygen concentrations to be sufficient to support existing, designated, presumed, and attainable aquatic life uses.²⁹ Waters that are not specifically listed in Appendix A or D of 30 Texas Administrative Code section 307.10 are assigned specific uses that are attainable or characteristic of those waters.³⁰

The Commission's antidegradation rule, in accordance with Texas Water Code section 26.003, seeks to maintain Texas water quality.³¹ The antidegradation policy consists of three tiers, and Tier 1 and Tier 2 are applicable here.³² Tier 1 states that existing uses and water quality sufficient to protect those existing uses must be maintained.³³ Under Tier 2, no activities subject to regulatory action that would cause degradation³⁴ of waters that exceed fishable or swimmable³⁵ quality are allowed unless it can be demonstrated to the Commission's satisfaction

²⁸ 30 Tex. Admin. Code § 307.10.

²⁹ 30 Tex. Admin. Code § 307.4(h).

³⁰ 30 Tex. Admin. Code § 307.4(l).

³¹ 30 Tex. Admin. Code § 307.5.

³² 30 Tex. Admin. Code § 307.5(b)(1)-(2).

³³ 30 Tex. Admin. Code § 307.5(b)(1).

³⁴ Degradation is the lowering of water quality by more than a de minimis extent, but not to the extent an existing use is impaired. 30 Tex. Admin. Code § 307.5(b)(2).

³⁵ Fishable or swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in and on the water. 30 Tex. Admin. Code § 307.5(b)(2).

that lowering the water quality is necessary for important economic or social development.³⁶ Water quality sufficient to protect existing uses must be maintained.³⁷

D. WATERCOURSE

In *Hoefs v. Short*, 273 S.W. 785 (Tex. 1925), the Texas Supreme Court established the basic criteria for a watercourse. While generally a watercourse must have a well-defined channel, bed, and banks, *Hoefs* recognized there are some circumstances in which the channel, bed, and banks are “slight, imperceptible, or absent,” yet a watercourse is still present.³⁸ Further, pursuant to *Hoefs*, while a current of water is required, a continuous flow of water is not obligatory; notably, a watercourse may include a stream that is dry for extended periods of time.³⁹ In *Domel v. City of Georgetown*, 6 S.W.3d 349, 356-57 (Tex. App.—Austin 1999, pet. denied), the Austin Court of Appeals held that a watercourse with perennial pools and defined banks was suitable for discharge even though the course of the water may have shifted due to flooding and erosion.

An intermittent stream is a stream that has a period of zero flow for at least one week during most years; where flow records are available, a stream with a seven-day, two-year flow of less than 0.1 cubic feet per second is considered

³⁶ 30 Tex. Admin. Code § 307.5(b)(2).

³⁷ 30 Tex. Admin. Code § 307.5(b)(2).

³⁸ *Hoefs v. Short*, 273 S.W. 785, 787 (Tex. 1925).

³⁹ *Hoefs*, 273 S.W. 787.

intermittent.⁴⁰ An intermittent stream with perennial pools is an intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.⁴¹

The parties have not provided and the ALJ has been unable to find a definition of ephemeral stream. In common usage, an ephemeral stream is defined as a stream that flows only briefly during and following a period of rainfall and in the immediate locality.⁴²

III. OVERVIEW OF THE PROPOSED FACILITY

The proposed Facility will serve the Trails at Cochran Ranch Subdivision (Subdivision).⁴³ The Facility will be located approximately 2.8 miles south of the intersection of Betka Road and Cochran Road in Waller County.⁴⁴ The Draft Permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0625 MGD in Interim I Phase, 0.125 MGD in the Interim II Phase, and 0.25 MGD in the Final Phase.⁴⁵ The treated effluent will be discharged via pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to

⁴⁰ 30 Tex. Admin. Code § 307.3(35).

⁴¹ 30 Tex. Admin. Code § 307.3(36).

⁴² *Ephemeral Stream*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/ephemeral%20stream> (last visited August 7, 2025).

⁴³ App. Ex. A, Pt. 2, Tab C at A0157.

⁴⁴ App. Ex. A, Pt. 2, Tab C at A0157.

⁴⁵ App. Ex. A, Pt. 2, Tab C at A0157.

Harris Creek, thence to Irons Creek, thence to the Brazos River Below the Navasota River in Segment No. 1202 of the Brazos River Basin.

The Facility will be a single-stage nitrification activated sludge process plant operated in the conventional mode; the Facility has not been constructed.⁴⁶ In the Interim I Phase, treatment units will include bar screens, an aeration basin, a final clarifier, sludge digester, and chlorine contact chamber.⁴⁷ In the Interim II Phase, treatment units will include bar screens, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber.⁴⁸ Treatment units in the Final Phase will include bar screens, four aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber.⁴⁹

Sludge generated from the Facility would be hauled by a registered transporter to the Mt. Houston Municipal Utility District Wastewater Treatment Facility (Permit No. WQ001154001) to be digested, dewatered, and then disposed of, with the bulk of the sludge from the plant accepting the sludge.⁵⁰ In addition, the Draft Permit authorizes the disposal of the sludge at a Commission-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.⁵¹

⁴⁶ App. Ex. A, Pt. 2, Tab C at A0157.

⁴⁷ App. Ex. A, Pt. 2, Tab C at A0157.

⁴⁸ App. Ex. A, Pt. 2, Tab C at A0157.

⁴⁹ App. Ex. A, Pt. 2, Tab C at A0157.

⁵⁰ App. Ex. A, Pt. 2, Tab C at A0157.

⁵¹ App. Ex. A, Pt. 2, Tab C at A0157.

IV. REFERRED ISSUES

The Commission referred the following issues to SOAH:

- A. Whether the Draft Permit is protective of animal life, including livestock and existing uses, in accordance with the TSWQS under 30 Texas Administrative Code chapter 307; and
- B. Whether the Draft Permit adequately identifies and properly characterizes the functioning of the discharge route.

V. DISCUSSION AND ANALYSIS OF REFERRED ISSUES

A. WHETHER THE DRAFT PERMIT IS PROTECTIVE OF ANIMAL LIFE IN ACCORDANCE WITH THE TSWQS

1. Applicant's and ED's Evidence

a) Standards Memorandum

On December 20, 2022, Dr. Wallace issued a Standards Memorandum regarding the Draft Permit.⁵² The memorandum provided the following information regarding the designated uses and dissolved oxygen criteria⁵³ of various points of the discharge route:

⁵² App. Ex. A, Pt. 2, Tab C at Bates A0163-64.

⁵³ Dissolved oxygen criteria represent the amount of dissolved oxygen needed in a water body to support the presumed uses of the water body. Ex. ED-MW-1 (Wallace Dir.) at 5:7-9.

Discharge Route Area	Designated Uses	Dissolved Oxygen
Segment No. 1202 of the Brazos River Basin	Primary Contact Recreation, High Aquatic Life Uses, and Public Water Supply	5.0 milligrams per liter (mg/L) ⁵⁴
Detention Pond and Channel	Limited Aquatic Life Use	3.0 mg/L
Unnamed Tributary Upstream of the Unnamed Impoundment	Limited Aquatic Life Use	3.0 mg/L
Unnamed Impoundment and Dodd Lake	High Aquatic Life Use	5.0 mg/L
Unnamed Tributary Downstream of Dodd Lake	High Aquatic Life Use	5.0 mg/L

Here, the Tier 1 antidegradation review preliminarily determined the existing water quality uses would not be impaired by the Draft Permit.⁵⁵ The Tier 2 review preliminarily determined no significant degradation of water quality is expected in the unnamed impoundment, Dodd Lake, and the unnamed tributary downstream of Dodd Lake, which have been identified as having high aquatic life uses.⁵⁶ Dr. Wallace opined existing uses would be maintained and protected.⁵⁷

⁵⁴ The Standards Memorandum notes these conclusions are based on Appendix A of the TSWQS. 30 Tex. Admin. Code § 307.10.

⁵⁵ App. Ex. A, Pt. 2, Tab C at Bates A0163.

⁵⁶ App. Ex. A, Pt. 2, Tab C at Bates A0163-64.

⁵⁷ App. Ex. A, Pt. 2, Tab C at Bates A0164.

b) Testimony of Dr. Mary Wallace

In conducting her portion of the technical review, Dr. Wallace reviewed the United States Geological Survey (USGS) map, landowner map, technical report, Applicant's site photos, TCEQ surface water viewers, Google Earth, the United States Fish and Wildlife Service's biological opinion on the State of Texas' authorization of the TPDES for endangered species, and TCEQ's *2010 Procedures to Implement the TSWQS* (IPs).⁵⁸ Dr. Wallace also reviewed Protestants' evidence, which she contended did not address this referred issue.⁵⁹

Dr. Wallace explained that the TSWQS provide the criteria used to ensure that water quality in Texas is maintained.⁶⁰ The IPs detail the procedures used when applying the TSWQS to permits.⁶¹ Pursuant to the TSWQS, water quality must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water.⁶²

Because the initial portion of the discharge route in the Draft Permit included unclassified waterbodies, Dr. Wallace also reviewed the permit under

⁵⁸ Ex. ED-MW-1 (Wallace Dir.) at 3:12-27.

⁵⁹ Ex. ED-MW-1 (Wallace Dir.) at 6:32-7:8.

⁶⁰ Ex. ED-MW-1 (Wallace Dir.) at 3:2-5.

⁶¹ Ex. ED-MW-1 (Wallace Dir.) at 3:28-30; ED-MW-3.

⁶² Ex. ED-MW-1 (Wallace Dir.) 6:32-7:8; 30 Tex. Admin. Code § 307.6(b)(4).

30 Texas Administrative Code section 307.4(h) and (l).⁶³ Based on the flow status, Dr. Wallace concluded there are limited aquatic life uses for the detention pond, channel, and before and after the unnamed tributary.⁶⁴

Dr. Wallace determined the unnamed impoundment, Dodd Lake, and unnamed tributary downstream of Dodd Lake were perennial water bodies with high aquatic life use.⁶⁵ Because these waters have high aquatic life uses, more stringent conditions were applied to the Draft Permit because higher dissolved oxygen criterion must be met to protect certain uses.⁶⁶ According to Dr. Wallace, under the established aquatic life uses and dissolved oxygen criterion present here, the Draft Permit is protective of aquatic life and of the existing uses of the unclassified and classified receiving waters.⁶⁷ Dr. Wallace opined the Draft Permit is also protective of livestock.⁶⁸ Dr. Wallace explained that because aquatic organisms are more sensitive to water quality components than terrestrial organisms, if the permit is protective of aquatic organisms then livestock should also be protected.⁶⁹

⁶³ As discussed above 30 Texas Administrative Code section 307.4(h) addresses the general criteria for aquatic life uses and dissolved oxygen and (l) addresses the assessment of unclassified waters for aquatic life uses.

⁶⁴ Ex. ED-MW-1 (Wallace Dir.) at 5:10-16.

⁶⁵ Ex. ED-MW-1 (Wallace Dir.) at 5:10-16.

⁶⁶ Ex. ED-MW-1 (Wallace Dir.) at 5:17-20.

⁶⁷ Ex. ED-MW-1 (Wallace Dir.) at 5:21-28.

⁶⁸ Ex. ED-MW-1 (Wallace Dir.) at 5:21-28.

⁶⁹ Ex. ED-MW-1 (Wallace Dir.) at 5:21-28.

Dr. Wallace conducted the Tier 1 and Tier 2 antidegradation reviews for the Draft Permit in accordance with Commission rules and the IPs.⁷⁰ She explained that Tier 1 reviews generally apply to waterbodies that have limited or minimal aquatic life uses in the first three miles of the discharge route.⁷¹ This review process ensures the existing uses and water quality are maintained.⁷² Here, the Tier 1 review preliminarily determined the existing water quality uses would not be impaired by the permit action, such that numerical and narrative criteria to protect the existing uses would be maintained.⁷³

Dr. Wallace assessed the entire area around Dodd Lake and the unnamed lake as an area of perennial high aquatic life in order to afford it as much protection as possible.⁷⁴ Regarding analysis related to endangered species, Dr. Wallace explained that TCEQ works from a memorandum of agreement with USGS relying on a 1998 biological opinion; while that opinion is considered outdated by many, it is comprehensive and Dr. Wallace was not concerned about its use.⁷⁵

⁷⁰ Ex. ED-MW-1 (Wallace Dir.) at 6:11-16. The Tier 2 review of the Draft Permit is addressed in the Standards Memorandum as discussed above. App. Ex. A, Pt. 2, Tab C at A0163-64.

⁷¹ Ex. ED-MW-1 (Wallace Dir.) at 6:2-10.

⁷² Ex. ED-MW-1 (Wallace Dir.) at 6:2-10.

⁷³ Ex. ED-MW-1 (Wallace Dir.) at 6:17-26; Applicant Ex. A, Pt. 2, Tab C at Bates A0163-64.

⁷⁴ Transcript (Tr.) at 171:20-172:1.

⁷⁵ Tr. at 172:2-174:23.

c) Testimony of Mark Urback

Mr. Urback opined that the Draft Permit meets all state and federal legal and technical requirements.⁷⁶ He agreed with the ED's findings regarding the issue of whether the Draft Permit is protective of animal life.⁷⁷ Mr. Urback stated that Protestants' evidence primarily consisted of invoices related to medical treatment of their horses.⁷⁸ Because the Facility is not yet operational, he maintained there was no nexus between the horses' medical issues and the Application or Draft Permit.⁷⁹

2. Protestants' Evidence

Ms. Sellars testified that Protestants grow hay and raise cattle on their properties.⁸⁰ If the Application is approved, Ms. Sellars maintained it would increase the amount of water on Protestants' property, which would include chemicals; she expressed concern for Protestants' livestock.⁸¹

⁷⁶ App. Ex. 1 (Urback Dir.) at 5:8-15.

⁷⁷ App. Ex. 1 (Urback Dir.) at 8:26-9:13.

⁷⁸ App. Ex. 1 (Urback Dir.) at 9:20-10:7. These invoices are discussed further in the section regarding Protestants' evidence below.

⁷⁹ App. Ex. 1 (Urback Dir.) at 9:20-10:7.

⁸⁰ Tr. at 34:17-24.

⁸¹ Tr. at 34:1-9.

Protestants provided a copy of a grazing lease held by the Collinses.⁸² Pursuant to the lease, the Collinses are permitted to graze cattle and/or horses on the property.⁸³

Protestants also provided a series of invoices issued to Ms. Reeves from Performance Equine Sports Medicine.⁸⁴ The invoices reflect various services provided to Ms. Reeves's horses from February 2023 to October 2024.

3. Arguments of the Parties

Applicant and the ED contend the Draft Permit is protective of animal life, including livestock and existing uses, and further argue Protestants failed to provide substantive evidence regarding this issue.

OPIC concedes Applicant has met its burden as to this referred issue.

Protestants contend the Draft Permit jeopardizes the natural ecosystem and threatens the livelihood and safety of surrounding residents, who raise livestock. Specifically, Protestants argue that the discharge route will cause stagnant water, which will result in mosquito breeding and the development of pathogens; according to Protestants these will pose a risk to livestock. Further, Protestants maintain that

⁸² Protest. Ex. M at 04.

⁸³ Protest. Ex. M at 04.

⁸⁴ Protest. Ex. O.

the livestock and other wildlife will drink water from the pooled effluent, which could result in health issues.

4. ALJ's Analysis

Water in the state must be maintained to preclude adverse toxic impacts on aquatic or terrestrial animal life, including livestock, caused by contact, consumption of aquatic organisms, and/or consumption of water.⁸⁵ Water bodies are assigned specific uses and criteria, including aquatic life uses.⁸⁶ The TSWQS also require that dissolved oxygen concentrations be sufficient to sustain existing, designated, presumed, and attainable aquatic life uses.⁸⁷ In addition, TCEQ's antidegradation rule seeks to maintain water quality in the state.⁸⁸ Specifically, existing uses must be maintained to satisfy Tier 1, and there can be no more than a de minimis reduction in water quality of fishable/swimmable waters to satisfy Tier 2.⁸⁹

The evidence demonstrated that the Draft Permit is protective of animal life, including livestock and existing uses, in accordance with the TSWQS. Dr. Wallace, a biologist with extensive experience in reviewing similar applications, conducted the technical review regarding this issue. She determined that portions of the discharge route had high aquatic life uses and, therefore, more stringent conditions were

⁸⁵ 30 Tex. Admin. Code § 307.6(b)(4).

⁸⁶ 30 Tex. Admin. Code § 307.10.

⁸⁷ 30 Tex. Admin. Code § 307.4(h).

⁸⁸ 30 Tex. Admin. Code § 307.5.

⁸⁹ 30 Tex. Admin. Code § 307.5(b)(1)-(2).

applied to the Draft Permit; specifically, these areas were required to meet higher dissolved oxygen criterion. Further, Dr. Wallace completed the Tier 1 and Tier 2 reviews in accordance with Commission rules and IPs and determined the permit action would not impair existing water quality uses and that existing uses would be maintained and protected. Because aquatic animals are more sensitive to water quality components than terrestrial organisms, Dr. Wallace opined that the Draft Permit would also be protective of livestock.

While Protestants contend the effluent poses a health risk to livestock and other wildlife, they provided no substantive evidence in support of these contentions. The veterinary invoices provided by Ms. Reeves reflect treatment to her horses for conditions that occurred prior to the construction of the Facility and fail to demonstrate a connection between Applicant's discharge of effluent and the health of the horses. Further, Protestants did not provide expert testimony in support of their contention that the discharge route would cause stagnant pools resulting in the breeding of mosquitos and harmful pathogens, which would negatively impact the health of local livestock and wildlife.

Accordingly, there is no evidence to demonstrate that animal life, including livestock, would be negatively impacted were the Draft Permit to be granted, and Protestants did not rebut the presumption as to this referred issue.

B. WHETHER THE DRAFT PERMIT ADEQUATELY IDENTIFIES AND PROPERLY CHARACTERIZES THE FUNCTIONING OF THE DISCHARGE ROUTE

1. Applicant's and ED's Evidence

a) Testimony of Mark Urback

Mr. Urback opined the Draft Permit adequately identifies and properly describes the discharge route.⁹⁰ Mr. Urback and his colleagues determined the discharge route for the Application.⁹¹ He first identified the point of discharge as the outfall location, which is a pipe at the Facility with GPS coordinates of 29.980378 N (latitude) and 95.99123 W (longitude).⁹² From the outfall location, Mr. Urback traced the flow path of the discharge through detention ponds, channels, tributaries, lakes, creeks, and rivers.⁹³ Using USGS maps, he identified and classified the waterbodies along the route.⁹⁴ Mr. Urback also walked the discharge route.⁹⁵

The Draft Permit identifies the discharge route as flowing from a pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to

⁹⁰ App. Ex. 1 (Urback Dir.) at 8:20-24.

⁹¹ App. Ex. 1 (Urback Dir.) at 6:16-19.

⁹² App. Ex. 1 (Urback Dir.) at 6:21-27.

⁹³ App. Ex. 1 (Urback Dir.) at 6:27-28.

⁹⁴ App. Ex. 1 (Urback Dir.) at 6:28-7:2.

⁹⁵ Tr. at 140:15-141:7.

Harris Creek, thence to Irons Creek, thence to the Brazos River Below Navasota River in Segment No. 1202 of the Brazos River Basin.⁹⁶

Mr. Urback agreed with Protestants that the discharge route may contain an intermittent channel, which he described as a channel or stream that flows seasonally or when it receives water from rainfall run off; however, he did not agree that it contains an ephemeral stream.⁹⁷ He described intermittent channels as tributaries that are dry during portions of the year; phrased another way, intermittent channels do not always carry flow but are a defined flow route.⁹⁸ According to Mr. Urback, a stream is not excluded as a discharge route because it does not flow continuously.⁹⁹ Intermittent streams can receive effluent and transport it downstream and they often support moderate or high aquatic life uses, as demonstrated with the discharge route described in the Draft Permit.¹⁰⁰ According to Mr. Urback, TCEQ routinely grants discharge permits when the discharge route is classified as an intermittent watercourse.¹⁰¹

As to Protestants' contention that the water along the discharge route will not follow a defined channel during periods of rain, Mr. Urback stated that the flow along

⁹⁶ App. Ex. 1 (Urback Dir.) at 7:4-9.

⁹⁷ App. Ex. 1 (Urback Dir.) at 7:16-22.

⁹⁸ Tr. at 143:11-144:5.

⁹⁹ App. Ex. 1 (Urback Dir.) at 7:20-26.

¹⁰⁰ App. Ex. 1 (Urback Dir.) at 7:20-26.

¹⁰¹ App. Ex. 1 (Urback Dir.) at 7:20-26.

the discharge route will be contained within the normal channel.¹⁰² Absent additional stormwater, Mr. Urback opined the discharge would remain within the demarcated discharge route.¹⁰³ Mr. Urback acknowledged that during the site visit there was no water flow in the course; at that time, he was unable to trace one primary route through the property leased by Ms. Sellars.¹⁰⁴

b) Testimony of Dr. Mary Wallace

As part of her review, Dr. Wallace used USGS topographic maps, TCEQ surface water viewers, Google Earth, evidence provided by Protestants, GPS coordinates, technical reports, and site photographs.¹⁰⁵ Applicants are required to submit a USGS topographic map with their application; the map must be of 1:24,000 scale; depict the wastewater treatment plant surrounded by a circle showing a one-mile radius; and highlight the discharge route.¹⁰⁶ By the time Dr. Wallace reviews a permit, she can assume the map is correct and in compliance with TCEQ requirements.¹⁰⁷ Dr. Wallace then uses the USGS wastewater viewer, which has different layers, including a USGS national map layer.¹⁰⁸ According to Dr. Wallace, this map layer is more detailed than the USGS topographic map submitted with the

¹⁰² Tr. at 142:16-143:5.

¹⁰³ Tr. at 143:6-10; 151:5-19.

¹⁰⁴ Tr. at 151:20-152:1.

¹⁰⁵ Ex. ED-MW-1 (Wallace Dir.) at 3:19-27; 7:19-23.

¹⁰⁶ Tr. at 159:22-160:11.

¹⁰⁷ Tr. at 160:12-20.

¹⁰⁸ Tr. at 160:21-161:13.

applications.¹⁰⁹ Dr. Wallace also uses the TCEQ surface water viewer, which depicts streams and watercourses, in order to verify what she observes on the wastewater viewer.¹¹⁰

Dr. Wallace stated the dotted lines portrayed on the USGS map represent an intermittent stream.¹¹¹ To her knowledge, USGS does not map ephemeral streams.¹¹² If, during the review, TCEQ observes pools in site photos, aerial views, or site visits, TCEQ will refer to an intermittent stream as “intermittent with pools.”¹¹³ This designation ensures a higher level of protection for the movement of aquatic life within the stream, and a higher level of dissolved oxygen must be maintained.¹¹⁴ An intermittent stream with pools is depicted with dotted, dashed lines.¹¹⁵

Dr. Wallace found the discharge route contained in the Application to be appropriate.¹¹⁶ Further, she opined the Draft Permit included all necessary requirements.¹¹⁷ Based on her review of the photographs provided by Protestants, Dr. Wallace disagreed that the discharge route is an ephemeral stream; further, none

¹⁰⁹ Tr. at 161:11-20.

¹¹⁰ Tr. at 161:24-162:5.

¹¹¹ Tr. at 163:17-164:10.

¹¹² Tr. at 164:3-8.

¹¹³ Tr. at 164:10-17.

¹¹⁴ Tr. at 164:10-20.

¹¹⁵ Tr. at 164:21-22.

¹¹⁶ Ex. ED-MW-1 (Wallace Dir.) at 8:1-3.

¹¹⁷ Ex. ED-MW-1 (Wallace Dir.) at 9:1-5.

of Protestants' exhibits altered her opinion regarding the suitability of the discharge route.¹¹⁸ Dr. Wallace stated that the review of the TSWQS is limited to surface water discharge to protect water quality.¹¹⁹ TCEQ does not have jurisdiction to address flooding or erosion issues in the wastewater permitting process.¹²⁰

Dr. Wallace's initial site visit confirmed the defined watercourse depicted in the Draft Permit.¹²¹ According to Dr. Wallace, nothing that she observed during her initial site visit undermined the discharge route as it was depicted in the maps.¹²² Ms. Sellars later invited Dr. Wallace back for an additional site visit; during the second site visit, Dr. Wallace again observed a defined watercourse; the water was contained in a channel, even across the sandy loam pasture.¹²³ Dr. Wallace acknowledged she has not been to the site during times when the water has dispersed across the land and contended this would be outside the Commission's scope of review.¹²⁴

c) United States Geological Survey Maps

Applicant provided a series of USGS topographical maps, including the 2022 Hockley Mound Quadrangle (Hockley map) and the 2022 Sunny Side

¹¹⁸ Ex. ED-MW-1 (Wallace Dir.) at 8:15-25.

¹¹⁹ Ex. ED-MW-1 (Wallace Dir.) at 8:26-30.

¹²⁰ Ex. ED-MW-1 (Wallace Dir.) at 8:26-30.

¹²¹ Tr. at 165:4-19.

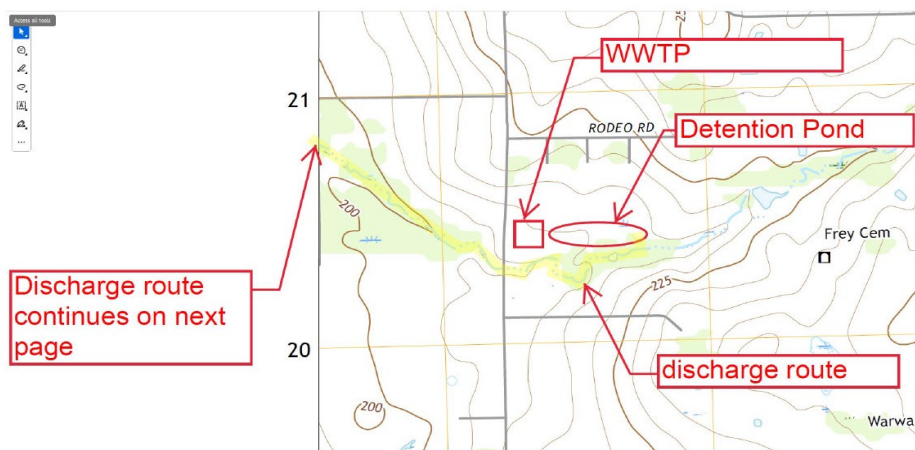
¹²² Tr. at 166:18-23.

¹²³ Tr. at 166:18-167:1; 170:24-171:6.

¹²⁴ Tr. 170:24-171:11.

Quadrangle map (Sunny Side map), and the key associated with those maps.¹²⁵ The Hockley map depicts the area of the discharge route closest to the Facility and Protestants' property.¹²⁶ The Sunny Side map is a continuation of the Hockley map and is highlighted to depict the discharge route as it proceeds to Dodd Lake to the unnamed tributary.¹²⁷

The USGS map key provides that intermittent streams are depicted on the maps using a solid blue line, which is broken with a series of three blue dots, and followed by another solid blue line.¹²⁸ Based on the Hockley map, included below, the discharge route in the area closest to the Facility and Protestants' property is an intermittent stream:¹²⁹



¹²⁵ App. Exs. 2-5.

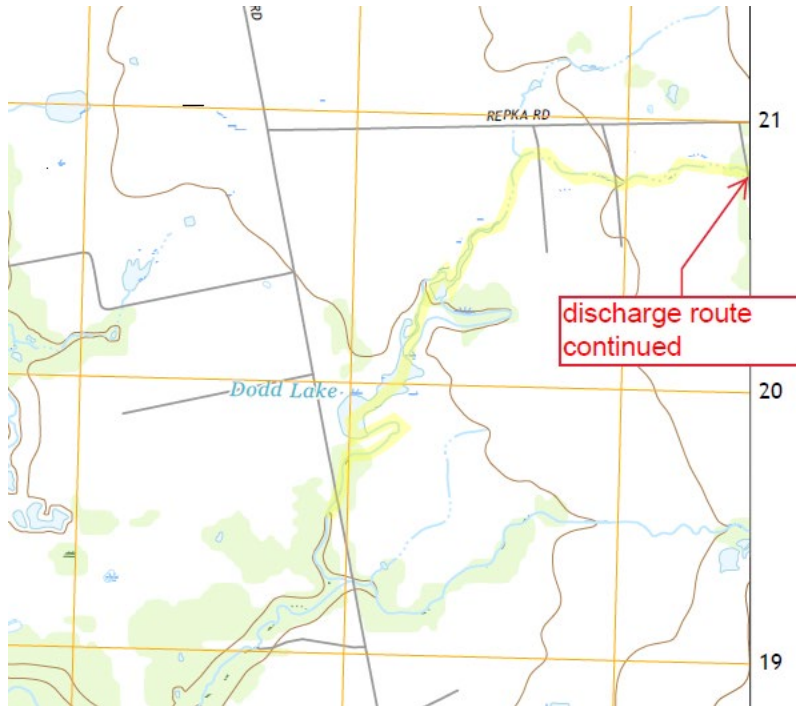
¹²⁶ App. Exs. 2, 5.

¹²⁷ App. Ex. 3.

¹²⁸ App. Ex. 4.

¹²⁹ App. Exs. 2, 4, 5.

The Sunny Side map, provided below, depicts a solid blue line connecting Dodd Lake to the portion of the discharge route that is an intermittent stream; a solid blue line represents a perennial stream.¹³⁰



2. Protestants' Evidence

a) Testimony of Lisa Sellars

Ms. Sellars stated that the Draft Permit would allow discharge of effluent and stormwater through an ephemeral drainage path.¹³¹ She acknowledged that Protestants' characterization of the discharge route as an ephemeral path was based not on an expert opinion, but on the personal observations of landowners who have

¹³⁰ App. Exs. 3-4.

¹³¹ Protest. Ex. Q (Sellars Dir.) at 5:3-9.

50 years of familiarity with the land at issue.¹³² Ms. Sellars conceded experts have stated that this is not the best description.¹³³ According to Ms. Sellars, this ephemeral path carries water only during periods of heavy rainfall or intense storms.¹³⁴ She contended the watercourse lacks banks and a bed and instead consists of a series of flat or undulating low points.¹³⁵ Ms. Sellars acknowledged that her conclusion regarding the lack of banks and bed is based on her own observations and not an expert opinion.¹³⁶

Ms. Sellars stated the USGS maps are not reflective of what actually happens on the land.¹³⁷ She contended the USGS topographic maps depict the discharge route as blue dotted lines, which refer to undefined areas or areas that have not been surveyed.¹³⁸ She disagreed that the maps provided evidence of a water boundary or pathway.¹³⁹ Ms. Sellars testified that approximately one mile into the discharge route, water pours into a county ditch and onto the Collinses' property.¹⁴⁰ Contrary to what is stated in the Draft Permit, Ms. Sellars asserted that there is no definite flow route

¹³² Tr. at 48:13-49:13.

¹³³ Tr. at 33:12-21.

¹³⁴ Protest. Ex. Q (Sellars Dir.) at 15-22; Tr. at 33:6-25.

¹³⁵ Protest. Ex. Q (Sellars Dir.) at 5:20-30, 7:24-31; Tt. at 33:12-25; Protest. Ex. M.

¹³⁶ Tr. at 49:15-50:25.

¹³⁷ Tr. at 67:24-68:13, 80:5-16.

¹³⁸ Tr. at 71:22-72:5. A review of the USGS map key demonstrates the blue dotted/dashed lines refer to indefinite or surveyed marine shorelines, which would not be relevant to this proceeding. These are distinctive from the markings used to delineate intermittent streams which, as discussed previously, consist of a solid blue line followed by a series of three blue dots or dashes, and then followed by another solid blue line. App. Ex. 4.

¹³⁹ Tr. at 72:6-13.

¹⁴⁰ Tr. at 57:16-58:1; Protest. Ex. D.

from the Collinses' property to the Hunter's property, then to the impoundment and Dodd Lake.¹⁴¹ While she acknowledged the USGS map showed a connection between Dodd Lake and the discharge point, she maintained no such connection actually exists.¹⁴²

When the experts conducted their site visit, the area was not covered in water.¹⁴³ In periods of heavy rain, Ms. Sellars explained, there is not a defined route for the water, and Protestants cannot anticipate where the water will flow; water covers the pastures for miles.¹⁴⁴ The water accumulates on the ground and eventually dissipates back into the watershed.¹⁴⁵ Mr. Collins has several culverts aligning his driveway that have been washed out by the water.¹⁴⁶ During dry times, small puddles of water will form.¹⁴⁷ Ms. Sellars contended these shallow pools form in flat areas.¹⁴⁸

Previously, there was a green space that absorbed much of the water; however, the topography has changed, due to the introduction of housing, streets, and concrete associated with the Subdivision.¹⁴⁹ Ms. Sellars maintained there would not be enough

¹⁴¹ Tr. at 58:2-8.

¹⁴² Tr. 73:2-20.

¹⁴³ Tr. at 45:20-47:13.

¹⁴⁴ Tr. at 34:25-35:9.

¹⁴⁵ Tr. at 33:12-25.

¹⁴⁶ Tr. at 38:12-22.

¹⁴⁷ Tr. at 35:10-15.

¹⁴⁸ Tr. at 35:10-20.

¹⁴⁹ Tr. at 34:10-16.

green space to absorb the water.¹⁵⁰ If the Draft Permit is approved, Ms. Sellars opined the Facility will send even more water through this area.¹⁵¹

Ms. Sellars contended the Draft Permit should be denied due to its legal deficiencies and environmental concerns.¹⁵² However, Ms. Sellars conceded she is not alleging that the Draft Permit violates a specific TCEQ rule because she is not familiar with those provisions.¹⁵³ Her concerns are based on her knowledge of the land adjacent to the Facility. According to Ms. Sellars, the discharge route will illegally divert surface waters onto private property absent consent or an easement; Ms. Sellars maintained this diversion of water in conjunction with stormwater runoff will potentially result in property damage, erosion, risk of groundwater contamination, and environmental impacts.¹⁵⁴ The Protestants are already experiencing runoff from the construction of the Subdivision causing water and mud to accumulate on their properties.¹⁵⁵ If the Draft Permit is not denied, Ms. Sellars contended it should be revised to incorporate onsite retention, reuse, and recycling practices for the wastewater and stormwater at issue.¹⁵⁶

¹⁵⁰ Tr. at 34:10-16.

¹⁵¹ Tr at 34:1-9, 66:25-67:9.

¹⁵² Protest. Ex. Q (Sellars Dir.) at 6:16-18.

¹⁵³ Tr. at 66:2-67:9.

¹⁵⁴ Protest. Ex. Q (Sellars Dir.) at 5:32-6:7.

¹⁵⁵ Tr. at 32:3-33:5; 59:12-17; Protest. Ex. Q (Sellars Dir.) at 7:32-8:6; Protest. Ex. J.

¹⁵⁶ Protest. Ex. Q (Sellars Dir.) at 6:18-23.

b) Testimony and Evidence of George Collins

Mr. Collins purchased his property in 1994 and has resided there since 1998.¹⁵⁷ In the 30 years he has owned the property, it has been dry for significant portions of the year.¹⁵⁸ During heavy rain events, water flows through the property but does not exclusively adhere to the discharge route; he contends there is no direct flow path across his property.¹⁵⁹ Rather, the water backs up and flows through multiple routes across approximately 30 acres.¹⁶⁰

Using an aerial photograph from Google maps, Mr. Collins created a diagram mapping the discharge route.¹⁶¹ Mr. Collins stated that the discharge route may not carry the wastewater flow and, depending on the amount of sediment, it may follow one of two “splits.”¹⁶²

c) Photographs and Video Evidence

Protestants provided several groups of photographs and a video, which are described below:

- Protestants’ Exhibit C includes two photographs, which Protestants contend demonstrate the ephemeral nature of the discharge route.¹⁶³

¹⁵⁷ Tr. at 113:23-24.

¹⁵⁸ Protest. Ex. M.

¹⁵⁹ Protest. Ex. M.

¹⁶⁰ Protest. Ex. M.

¹⁶¹ Tr. at 111:24-112:3; Protest. Ex. M.

¹⁶² Tr. at 111:24-112:3; Protest. Ex. M.

¹⁶³ Tr. at 33:6-36:12; Protest. Ex. C.

Both photographs depict water flowing in a wooded area.¹⁶⁴ In the top photograph, the water appears to have crested the bank on the left side and that area appears muddy.¹⁶⁵ The second photograph depicts a stream that appears to split around an outcropping of land and then reconvenes around a natural dam of fallen trees and sticks.¹⁶⁶ The photographs are not dated. Further, it is unclear what portion of the discharge route is depicted.

- Protestants' Exhibit D includes a photograph and a video. The photograph depicts a wooden bridge surrounded by water containing green plants; according to Ms. Sellars, the photograph was taken on the Hunter property, known as Trog Ranch, before Dodd Lake.¹⁶⁷ Protestants' Exhibit D also contains a video that shows water pouring from the discharge route into the county ditch on the Collinses' property.¹⁶⁸ The footage shows water moving along the fence line of a grassy pasture. Water has exceeded the banks and entered the adjacent pastureland.¹⁶⁹
- Protestants' Exhibit E includes a series of photographs from September 17, 2024, taken by a TCEQ watermaster deputy.¹⁷⁰ According to Ms. Sellars, they depict the discharge route from Cochran Road to Mr. Burton's property to Mr. Collins's property, which is at the

¹⁶⁴ Protest. Ex. C.

¹⁶⁵ Protest. Ex. C.

¹⁶⁶ Protest. Ex. C.

¹⁶⁷ Protest. Ex. D. Ms. Sellars testified that Protestants' Exhibit D depicts algae growing in the water; however, it is unclear from the photograph whether the water contains algae or plants. Notably, there appear to be ferns growing next to the bridge. No evidence was provided demonstrating when this photograph was taken. Tr. at 56:10-57:22.

¹⁶⁸ Tr. at 57:23-58:1.

¹⁶⁹ The evidence failed to demonstrate when this video footage was taken.

¹⁷⁰ Tr. at 36:13-37:6. Ms. Sellars requested that the watermaster look at the discharge route, but his supervisors advised this was a TCEQ permitting issue; watermasters are responsible for monitoring watercourses. Tr. at 42:16-43:15. Each page of Protestants' Exhibit E includes four unnumbered photographs, shown in two rows. For identification purposes, the ALJ will refer to the photographs by their page number, row (the top row as "Row 1" and the bottom row as "Row 2"), and photo number (the left photo as "Photo 1" and the right photo as "Photo 2").

end of the one-mile route.¹⁷¹ Ms. Sellars testified conditions were dry when the photographs were taken.¹⁷² They depict numerous areas that appear to be dry culverts.¹⁷³ There are also several photographs that appear to contain slow, moving water.¹⁷⁴ Other photographs reflect pools of standing water.¹⁷⁵

- Protestants' Exhibit M contains photographs taken by Mr. Collins in September 2023.¹⁷⁶ The photographs depict a dry creek bed.
- Protestants' Exhibit N contains photographs submitted by Mr. Burton.¹⁷⁷ The photographs were taken on April 26, 2025. It is unclear what portion of the discharge route they depict. Some of the photographs depict water contained within banks in wooded areas.¹⁷⁸ Other photographs depict muddy areas or areas with pools.¹⁷⁹ There are also photographs depicting areas of what appear to be shallow, flowing water.¹⁸⁰ Additionally, some of the photographs depict wider areas of water in the pastures.¹⁸¹

¹⁷¹ Tr. at 37:7-12; 37:23-38:3.

¹⁷² Tr. at 37:13-18.

¹⁷³ Protest. Ex. E at p. 02, Row 1, Photos 1-2 and Row 2, Photos 1-2; p. 07, Row 1, Photo 1.

¹⁷⁴ Protest. Ex. E at p. 05, Row 1, Photos 1-2 and Row 2, Photo 2.

¹⁷⁵ Protest. Ex. E at p. 01, Row 1, Photo 1 and Row 2, Photo 1; p. 08, Row 1, Photo 1.

¹⁷⁶ Protest. Ex. M; Tr. at 113:2-5.

¹⁷⁷ Protest. Ex. N. The photographs in Protestants' Exhibit N are not numbered within the exhibit. The ALJ will use the same identification system referenced in Protestants' Exhibit E.

¹⁷⁸ Protest. Ex. N. at p. 02, Row 1, Photos 1-2 and Row 2, Photos 1-2; p. 14, Row 2, Photos 1-2; p. 16, Row 2, Photos 1-2; p. 17, Row 1, Photo 1 and Row 2, Photo 1.

¹⁷⁹ Protest. Ex. N. at p. 01, Row 2, Photo 1; p. 04, Row 1, Photo 2 and Row 2, Photo 2; p. 07, Row 2, Photo 2; p. 15, Row 2, Photo 2; p. 17, Row 2, Photo 2.

¹⁸⁰ Protest. Ex. N at p. 01, Row 2, Photo 2; p. 05, Row 2, Photo 2; p. 10, Row 1, Photo 2; p. 11, Row 2, Photos 1-2; p. 12, Row 1, Photos 1-2 and Row 2, Photos 1-2.

¹⁸¹ Protest. Ex. N at p. 05, Row 1, Photo 2; p. 06, Row 1, Photos 1-2 and Row 2, Photo 1.

d) Maps

Protestants provided a copy of a topographic map that appears to have been obtained from a USGS map-building tool. The map depicts the discharge route. A blue dashed line is used to depict portions of the discharge route. The map does not bear the same identifying seal as the USGS map provided by Applicant, nor does it include topographic contours, delineations of longitude and latitude, or a scale.

3. Arguments of the Parties

Applicant and the ED contend the discharge route is adequately and properly identified in the Draft Permit. They argue that under *Domel*, the discharge route is suitable even though flooding and erosion may have changed the watercourse over time.¹⁸² Accordingly, Applicant and the ED argue the Draft Permit should be granted.

OPIC contends Applicant failed to meet its burden regarding this issue. Specifically, OPIC argues that Protestants provided evidence demonstrating the Application and Draft Permit fail to accurately portray the discharge route. OPIC's concerns rely heavily on the Protestants' familiarity with the land at issue. OPIC finds Protestants' observations undermine the sufficiency of the Draft Permit and argues the permit should be denied or, alternatively, remanded for further examination of the discharge route.

Protestants contend the discharge route is not a legally recognized watercourse but rather is an ephemeral stream, void of bed and banks. Based on this argument,

¹⁸² *Domel*, 6 S.W. 3d 353-56.

Protestants contend the discharge route cannot receive wastewater effluent. In support of this contention, Protestants rely, in part, on *Motl v. Boyd*, 286 S.W. 458 (Tex. 1926), which held that “[a] water course, river, or stream consists of a bed, banks, and a stream of water.”¹⁸³ They argue that absent defined bed, banks, a current of water, and sustained or seasonal flow, the discharge route here is insufficient. Protestants also argue that the Texas Water Code prohibits a person from diverting or impounding the natural flow of surface waters in a manner that damages the property of another.¹⁸⁴ According to Protestants, permitting the release of 250,000 gallons of effluent per day without a defined drainage system will result in standing water, erosion, and flooding.

In addition, Protestants argue that USGS has improperly characterized the discharge route on its topographic maps and that certain portions of the proposed discharge route do not actually exist as they are depicted. According to Protestants, the effluent will not remain in a defined path but will diffuse over the land. In support of this contention, Protestants maintain that the proposed discharge route is already subject to flooding during heavy rains and argue that effluent will exacerbate these flooding issues. For these reasons, Protestants argue the Draft Permit should be denied.

¹⁸³ *Motl v. Boyd*, 286 S.W. 458, 467 (Tex. 1926). The ALJ is mindful of the subsequent negative treatment of *Motl*, which does not undermine the definition of watercourse it provides. However, while *Motl* provides a definition of watercourse, additional case law, discussed below, provides further clarification regarding the definition of watercourse.

¹⁸⁴ Texas Water Code § 11.086(a) (“No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding to continue, in a manner that damages the property of another by overflow of the water diverted or impounded.”).

4. ALJ Analysis

The admitted photographic evidence demonstrates that at least portions of the discharge route include a well-defined channel, bed, and banks.¹⁸⁵ Further, even if portions of the banks and bed on the discharge route are slight, imperceptible, or absent, this would not prohibit the discharge route from being characterized as a watercourse.¹⁸⁶ As to the flow of water in the proposed route, it is uncontested that portions of the discharge route are dry at times. The lack of continuous flow, however, does not preclude the discharge route from meeting the definition of a watercourse; phrased another way, the lack of continuous flow does not mean the discharge route is an ephemeral stream.¹⁸⁷ Mr. Urback and Dr. Wallace concurred that while portions of the discharge route could be considered an intermittent channel or stream, or an intermittent stream with pools, the discharge route was not an ephemeral stream. Notably, Dr. Wallace stated that to her knowledge, USGS does not map ephemeral streams; accordingly, the presence of the discharge route on the USGS topographic maps further undermines Protestants' characterization of the discharge route as an ephemeral stream.

Dr. Wallace opined the Draft Permit adequately identified and properly characterized the discharge route. She based this opinion on numerous sources, including the USGS topographic maps and the evidence provided by Protestants. Moreover, Dr. Wallace's site visits confirmed the watercourse as depicted on the

¹⁸⁵ It is unclear whether the admitted photographs depict the entirety of the discharge route.

¹⁸⁶ *Hoefs*, 273 S.W. at 787.

¹⁸⁷ *Hoefs*, 273 S.W. at 787.

USGS maps. The USGS maps relied upon here are relatively recent, having been completed in 2022.

Protestants contend the USGS maps are not reflective of the actual conditions because they maintain there is no connection between the discharge point and Dodd Lake. This contention, however, is not based on an expert opinion but rather is based solely on Protestants' personal observations. The ALJ is mindful that Protestants have decades of experience with the land surrounding the Facility. While the ALJ respects the concerns of Protestants as related to the discharge route, their lay opinions are outweighed by the expert opinion of Dr. Wallace and the evidence she relied upon, including the USGS topographic map, which the ALJ finds to be reliable.

For these reasons, the ALJ finds the Draft Permit adequately identifies and properly characterizes the functioning of the discharge route, and Protestants have not rebutted the presumption regarding this referred issue.

VI. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, excluding the ED and OPIC.¹⁸⁸ The Commission is to consider the following applicable factors in allocating these costs among the other parties:

- the party who requested the transcript;

¹⁸⁸ 30 Tex. Admin. Code § 80.23(d)(1)-(2). The ED and OPIC are excluded because they are statutory parties who are precluded by law from appealing the Commission's decision. *See* Tex. Water Code §§ 5.228, .273, .275, .356.

- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits to the various parties of having the transcript; and
- any other factor which is relevant to a just and reasonable assessment of costs.¹⁸⁹

Here, no party presented evidence regarding the amount of the costs incurred, nor any argument regarding how the costs should be assessed. As discussed above, neither OPIC nor the ED may be assessed transcript costs.¹⁹⁰

The ALJ ordered the parties to arrange for and have a court reporter attend the hearing. Though the ALJ does not have specific information regarding the ability of Protestants to pay the costs of the transcript, the ALJ is mindful that Protestants were self-represented and indicated they were unable to pay for an expert witness; based on this assertion, the ALJ finds that Protestants may not have the financial ability to pay for the cost of the transcription. Both parties participated in the hearing. The transcript was equally beneficial to Applicant and Protestants. Unlike Applicant, Protestants will not financially benefit from the creation of the Facility. Neither party submitted a position or argument regarding how these costs should be allocated.

Upon review of the factors, the ALJ recommends that the Commission assess the entirety of the transcript costs to Applicant.

¹⁸⁹ 30 Tex. Admin. Code § 80.23(d)(1).

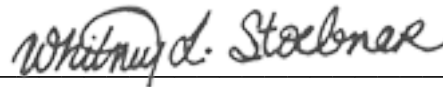
¹⁹⁰ 30 Tex. Admin. Code § 80.23(d)(2).

VII. CONCLUSION AND RECOMMENDATION

Based on the foregoing analysis, the ALJ finds Applicant met its burden of proof on the two issues referred by the Commission and recommends the Application should be granted. In further support of this recommendation, the ALJ has prepared the Findings of Fact and Conclusions of Law incorporated within the accompanying proposed Order of the Commission.

Signed August 26, 2025.

ALJ Signature:

A handwritten signature in dark ink, reading "Whitney L. Stoeber", is written over a horizontal line.

Whitney L. Stoeber

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER

GRANTING APPLICATION BY QUADVEST, L.P.

FOR TPDES PERMIT NO. WQ0016247001

SOAH DOCKET NO. 582-25-11135;

TCEQ DOCKET NO. 2024-0677-MWD

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Quadvest, L.P. (Applicant) for new Texas Pollutant Discharge Elimination System Permit (TPDES) No. WQ0016247001 in Waller County, Texas. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Whitney L. Stoebner with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on June 24, 2025.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Application

1. Applicant filed its application (Application) for a new TPDES permit with the TCEQ on November 14, 2022.
2. The Application requested authorization to discharge treated domestic wastewater from a proposed new wastewater treatment facility (Facility), which will be located approximately 2.8 miles south of the intersection of Betka Road and Cochran Road in Waller County, Texas.
3. The Facility will serve the Trails at Cochran Ranch Subdivision (Subdivision).
4. On December 14, 2022, the TCEQ Executive Director (ED) staff determined the Application was administratively complete.
5. On March 7, 2023, the ED determined that the Application was technically complete and prepared a draft permit (Draft Permit).

The Facility

6. The Facility has not been constructed.
7. The Facility will be a single-stage nitrification activated sludge process plant operated in the conventional mode.
8. In the Interim I Phase, treatment units will include bar screens, an aeration basin, a final clarifier, sludge digester, and chlorine contact chamber. In the Interim II Phase, treatment units will include bar screens, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. Treatment units in the Final Phase will include bar screens, four aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber.
9. Sludge generated from the Facility is hauled by a registered transporter to the Mt. Houston Municipal Utility District Wastewater Treatment Facility (Permit No. WQ001154001) to be digested, dewatered, and disposed of with the bulk of sludge from the plant accepting the sludge.

The Draft Permit

10. The Draft Permit would authorize the discharge of treated domestic wastewater at an average daily flow not to exceed 0.0625 million gallons per day (MGD) in Interim I Phase, 0.125 MGD in the Interim II Phase, and 0.25 MGD, or 250,000 gallons per day, in the Final Phase.
11. The Draft Permit authorizes the disposal of the sludge generated from the Facility at a Commission-authorized land Application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.
12. The treated effluent will be discharged via pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to Harris Creek, thence to Irons Creek, thence to the Brazos River Below the Navasota River in Segment No. 1202 of the Brazos River Basin.
13. The designated uses for the detention pond and channel and the unnamed tributary upstream of the unnamed impoundment are limited aquatic life uses. The unnamed impoundment, Dodd Lake, and unnamed tributary Downstream of Dodd Lake are high aquatic life uses.
14. The designated use for Segment No. 1202 of the Brazos River Basin is primary contact recreation, high aquatic life uses, and public water supply.

Notice and Jurisdiction

15. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Houston Chronicle* on December 28, 2022.
16. The NORI was published in Spanish in the *Houston Chronicle d/b/a La Voz (La Voz)* on January 4, 2023.
17. A copy of the complete Application was placed at the Hempstead Branch Library in Waller County, Texas on January 9, 2023.
18. The Notice of Application and Preliminary Decision (NAPD) was published in English in the *Houston Chronicle* on April 19, 2023.

19. The NAPD was published in Spanish in *La Voz* on April 19, 2023.
20. A public meeting notice was published in English in the *Houston Chronicle* on June 21, 2023.
21. A public meeting notice was published in Spanish in *La Voz* on June 21, 2023.
22. The public meeting was held on July 18, 2023, which was the end of the public comment period.
23. On August 28, 2024, the Commission considered several hearing requests regarding the Application during an open meeting, determined Lisa Sellars was an affected person, and granted her request for a hearing.
24. On September 4, 2024, the Commission issued an Interim Order directing the following issues be referred to SOAH, and setting the maximum duration date of the hearing at 180 days from the date of the preliminary hearing until the date the proposal for decision is issued by SOAH:
 - A. Whether the Draft Permit is protective of animal life, including livestock and existing uses, in accordance with the Texas Surface Water Quality Standards (TSWQS) in 30 Texas Administrative Code chapter 307; and
 - B. Whether the Draft Permit adequately identifies and properly characterizes the functioning of the discharge route.

Proceedings at SOAH

25. This matter was docketed with SOAH on January 27, 2025.
26. A preliminary hearing was convened by Administrative Law Judge (ALJ) Whitney L. Stoeber on March 21, 2025, via Zoom videoconference. Applicant, the ED, and the Office of Public Interest Counsel (OPIC) were named as parties. Additionally, Lisa Sellars; Michael Beck; Barry, Laurie, and Jeremy Bettis; Belinda Reeves; James Burton, Jr.; John Towler; Mary Anne Vaughn; and George and Cassie Collins (collectively Protestants) were also named as parties.

27. Jurisdiction was noted by the ALJ, and the Administrative Record was admitted.
28. After the preliminary hearing, the Protestants were aligned, and Ms. Sellars was appointed as their spokesperson.
29. Protestants are landowners/lessees who own or rent property near the proposed Facility.
30. On June 6, 2025, Applicant filed a Motion for Summary Disposition as to all issues. The ALJ denied the motion for Summary Disposition on June 16, 2025.
31. The hearing on the merits was convened by ALJ Stoebner via Zoom videoconference on June 24, 2025. Applicant was represented by attorney Peter T. Gregg. Attorneys Harrison Malley and Caleb Shook appeared on behalf of the ED. Attorney Josiah T. Mercer represented OPIC. Ms. Sellars served as the designated party representative on behalf of Protestants. The record closed on July 23, 2025, with the filing of the reply briefs.

Issue A Whether the Draft Permit is protective of animal life, including livestock and existing uses, in accordance with the TSWQS

32. Protestants grow hay and keep livestock on their properties. The Collinses hold a grazing lease on property owned by Mr. Towler. The Collinses are permitted to graze cattle or horses on the property. Ms. Reeves owns horses.
33. The dissolved oxygen criteria for the discharge route are 5.0 milligrams per liter (mg/L) for Segment No. 1202; 3.0 mg/L for the detention pond and channel; 3.0 mg/L for the unnamed tributary upstream of the unnamed impoundment; 5.0 mg/L for the unnamed impoundment and Dodd Lake; and 5.0 mg/L for the unnamed tributary downstream of Dodd Lake.
34. Tier 1 and Tier 2 antidegradation reviews ensure existing uses and water quality are maintained.
35. The Tier 1 and Tier 2 antidegradation reviews were performed in a manner consistent with the TSWQS and the Implementation Procedures (IPs).

36. A Tier 1 antidegradation review preliminarily determined the existing water quality uses would not be impaired by discharge pursuant to the Draft Permit.
37. A Tier 2 antidegradation review preliminarily determined no significant degradation of water quality was expected in the unnamed impoundment, Dodd Lake, and the unnamed tributary downstream of Dodd Lake, which were identified as having high aquatic life uses.
38. Because these waters have high aquatic life uses, more stringent conditions were applied to the Draft Permit because higher dissolved oxygen criterion were required to be met to protect certain uses.
39. Aquatic organisms are more sensitive to water quality components than terrestrial organisms.
40. Because the Draft Permit is protective of aquatic organisms, terrestrial organisms, such as livestock, will also be protected.
41. Numerical and narrative criteria to protect existing uses will be maintained.
42. Protestants' evidence did not overcome the prima facie demonstration that the Draft Permit is sufficiently protective of animal life, including livestock, and existing uses.
43. The Draft Permit is protective of animal life, including livestock, and existing uses, in accordance with the TSWQS.

Issue B: Whether the Draft Permit adequately identifies and properly characterizes the functioning of the discharge route

44. Applicants are required to submit a United States Geological Survey (USGS) topographic map of 1:24,000 scale with their applications. The USGS map must depict the wastewater treatment plant, surrounded by a circle depicting a one-mile radius from the plant, and highlighting the discharge route.
45. Here, Applicant identified the point of discharge at the outfall location, which is a pipe located at the Facility with GPS coordinates of 29.980378 N (latitude) and 95.99123 W (longitude).

46. From the outfall location, Applicant traced the flow path of the discharge route and used USGS topographic maps to identify and classify the waterbodies.
47. The Draft Permit identifies the discharge route as flowing from a pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to Harris Creek, thence to Irons Creek, thence to the Brazos River Below the Navasota River in Segment No. 1202 of the Brazos River Basin.
48. The discharge route identified in the Draft Permit does not contain constant flow; at times, portions of the discharge route are dry.
49. During periods of heavy rain or storms, water along the proposed discharge route diffuses onto Protestants' property.
50. Flooding issues are beyond the scope of this proceeding.
51. Photographic evidence demonstrates that at least portions of the discharge route contain a defined bed and banks.
52. Ephemeral streams flow only briefly during and following a period of rainfall and in the immediate locality.
53. Ephemeral streams are not depicted on USGS topographic maps.
54. Intermittent streams have a period of zero flow for at least one week during most years. Intermittent streams are depicted on USGS topographic maps.
55. Intermittent streams may also be categorized as intermittent with pools. Intermittent streams with pools have a higher level of protection for aquatic life.
56. Intermittent streams can receive and transport effluent downstream.
57. In preparing the Draft Permit, TCEQ staff relied on USGS topographic maps, TCEQ surface water viewers, Google Earth, evidence provided by Protestants, GPS coordinates, technical reports, and site photographs.

58. The discharge route identified in the Draft Permit is depicted on 2022 USGS topographic maps. The portion of the discharge route that flows through Protestants' property depicted on the 2022 Hockley Mound Quadrangle map is an intermittent stream.
59. The 2022 Sunny Side Quadrangle USGS map demonstrates that there is a connection between the discharge point and Dodd Lake.
60. TCEQ conducted two site visits to the discharge route, and these site visits confirmed the discharge route described in the Draft Permit is a defined watercourse, contained in a channel.
61. Protestants' evidence did not overcome the prima facie demonstration that the discharge route identified in the Draft Permit is adequately identified and properly characterized.
62. The discharge route described in the Draft Permit is a watercourse/water in the state.
63. The Draft Permit adequately identifies and properly characterizes the functioning of the discharge route.

Transcription Costs

64. The ALJ required that the hearing on the merits be transcribed.
65. The parties did not file a copy of the invoice for the transcription costs.
66. The parties did not provide their positions regarding the allocation of the transcription costs.
67. The evidence demonstrated that payment of the transcription costs may be a hardship for Protestants.
68. All parties participated in the hearing on the merits.
69. All parties benefited equally from having the transcript.
70. Applicant should pay 100 percent of the transcription costs.

II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.
2. SOAH has jurisdiction to conduct a hearing and prepare a proposal for decision in contested cases referred by the Commission under Texas Government Code section 2003.047.
3. Notice was provided in accordance with Texas Water Code sections 5.115 and 26.028, Texas Government Code sections 2001.051 and .052, and 30 Texas Administrative Code sections 39.405 and .551.
4. The Application is subject to the requirements in Texas Government Code section 2003.047(i-1)-(i-3).
5. Applicant's filing of the Administrative Record established a prima facie demonstration that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .127(h).
6. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to one of the Referred Issues; and (2) demonstrates that one or more provisions in the Draft Permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).
7. If a party rebuts the prima facie demonstration, the Applicant and the ED may present additional evidence to support the Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).
8. Applicant retains the burden of proof on the issues regarding the sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

9. The burden of proof is by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
10. A person seeking to discharge wastewater into “water in the state” must file an application with TCEQ. Tex. Water Code § 26.027(b).
11. Water in the state includes groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. Tex. Water Code § 26.001(5).
12. TCEQ reviews the application in accordance with 30 Texas Administrative Code chapter 281. Based on a technical review, TCEQ prepares a draft permit and technical summary that discusses the application’s facts and significant factual, legal, methodological, and policy questions considered while preparing the draft permit. 30 Tex. Admin. Code §§ 281.19, .21(b)-(c).
13. TCEQ has adopted the TSWQS, which are applicable to wastewater discharges in accordance with section 303 of the federal Clean Water Act and section 26.023 of the Texas Water Code. These standards are found in 30 Texas Administrative Code chapter 307.
14. The purpose of the TSWQS is to (1) maintain the quality of water in the state in a manner that is consistent with public health and enjoyment, propagation and protections of terrestrial and aquatic life, operation of existing industries, and taking into consideration economic development of the state; (2) encourage and promote development and use of regional and area-wide wastewater collection, treatment, and disposal systems to serve the wastewater and disposal needs of the citizens of the state; and (3) require the use of all reasonable methods to implement this policy. 30 Tex. Admin. Code § 307.1.
15. The TSWQS identify specific uses for the state’s surface water, including recreation, domestic water supply, and aquatic life and establish numerical and narrative criteria to protect those uses. 30 Tex. Admin. Code §§ 307.7, .10.

16. TCEQ has developed procedures used to implement the TSWQS, which are approved by the Commission and the Environmental Protection Agency. 30 Tex. Admin. Code § 307.2(e).
17. Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination thereof. 30 Tex. Admin. Code § 307.6(b)(1)-(2), (4).
18. Site-specific uses and criteria for classified segments of watercourses are provided in Appendix A of 30 Texas Administrative Code section 307.10. Appendix D provides site-specific uses and criteria for unclassified water bodies. 30 Tex. Admin. Code § 307.10.
19. The TSWQS require dissolved oxygen concentrations to be sufficient to support existing, designated, presumed, and attainable aquatic life uses. 30 Tex. Admin. Code § 307.4(h)(1).
20. The Commission's antidegradation rule, in accordance with Texas Water Code section 26.003, seeks to maintain Texas water quality. 30 Tex. Admin. Code § 307.5.
21. Under Tier 1 of the antidegradation rule, existing uses and water quality sufficient to protect those uses must be maintained. 30 Tex. Admin. Code § 307.5(b)(1).
22. Under Tier 2 of the antidegradation rule, no activities subject to regulatory action that would cause degradation of waters that exceed fishable or swimmable quality are allowed unless it can be demonstrated to the Commission's satisfaction that lowering the water quality is necessary for important economic or social development. Water quality sufficient to protect existing uses must be maintained. 30 Tex. Admin. Code § 307.5(b)(2).
23. The Draft Permit is protective of animal life, including livestock and existing uses, in accordance with the TSWQS in 30 Texas Administrative Code chapter 307.
24. A watercourse generally must have a well-defined channel, bed, and banks. However, there are some circumstances where the channel, bed, and banks are

“slight, imperceptible, or absent,” yet a watercourse is still present. *Hoefs v. Short*, 273 S.W. 785, 787 (Tex. 1925).

25. A watercourse does not require a continuous flow of water and may include a stream that is dry for extended periods of time. *Hoefs*, 273 S.W. at 787.
26. An intermittent stream is a stream that has a period of zero flow for at least one week during most years; where flow records are available, a stream with a seven-day, two-year flow of less than 0.1 cubic feet per second is considered intermittent. 30 Tex. Admin. Code § 307.3(35).
27. An intermittent stream with perennial pools is an intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second. 30 Tex. Admin. Code § 307.3(36).
28. The Draft Permit adequately identifies and properly characterizes the functioning of the discharge route.
29. No transcript costs may be assessed against the ED or OPIC because TCEQ’s rules prohibit the assessment of any costs to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).
30. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
31. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), it is reasonable for Applicant to be assessed 100 percent of the transcription costs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Application of Quadvest, L.P. for Texas Pollutant Discharge Elimination System Permit No. WQ0016247001 is granted.
2. Applicant must pay 100 percent of the transcription costs.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by Texas Government Code § 2001.144 and 30 Texas Administrative Code § 80.273.
5. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.