

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

April 23, 2025

Bradford Eckhart  
Texas Commission on Environmental Quality

VIA EFILE TEXAS

Josiah Mercer  
TCEQ, Public Interest Counsel

VIA EFILE TEXAS

Bryan J. Moore  
Coats Rose

VIA EFILE TEXAS

Rusty King

VIA EFILE TEXAS

**RE: Docket Number 582-25-01926.TCEQ; TCEQ Docket No. 2024-1385-MWD; *Application of Kelly Ranch Estates, LLC for TPDES Permit No. WQ0016370001***

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**

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**APPLICATION OF KELLY RANCH ESTATES, LLC FOR  
TPDES PERMIT NO. WQ0016370001**

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**PROPOSAL FOR DECISION ON SUMMARY DISPOSITION**

Kelly Ranch Estates, LLC (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (Commission or TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016370001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The Administrative Law Judge (ALJ) granted Applicant's motion for summary disposition and recommends the draft permit (Draft Permit)<sup>1</sup> be issued.

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<sup>1</sup> Ex. AR-4 (Tab C) at 2-58.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

Matters of notice and jurisdiction were undisputed; therefore, those matters are addressed in the Findings of Fact and Conclusions of Law in the Proposed Order attached to this Proposal for Decision (PFD) without further discussion here.

Applicant filed the Application on June 28, 2023.<sup>2</sup> The Executive Director (ED) of the Commission determined that the Application was administratively and technically complete and prepared the Draft Permit. On September 26, 2024, the Commission referred the matter to the State Office of Administrative Hearings (SOAH) for a hearing, upon Applicant's request of a direct referral.

On December 3, 2024, State Office of Administrative Hearings (SOAH) ALJ Linda Brite convened a preliminary hearing via videoconference. The administrative record and jurisdictional documents were admitted into evidence,<sup>3</sup> and SOAH took jurisdiction. The following appeared and were admitted as parties: Applicant, the ED, TCEQ's Office of Public Interest Counsel (OPIC), Melissa Erhardt, James Daniels, Gary Grissum, Kathy Grissum, Lynn Lundquist, Scott Lundquist, Alicia Pulpan, and Rusty King.

On January 15, 2025, protestants Melissa Erhardt, James Daniels, Gary Grissum, Kathy Grissum, Lynn Lundquist, Scott Lundquist, and Alicia Pulpan

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<sup>2</sup> Ex. AR-4 (Tab C) at 29.

<sup>3</sup> Exs. AR-1 through AR-7.

withdrew their hearing requests contesting the Application pursuant to a settlement agreement. Rusty King (Protestant) remains as the sole protestant in this matter.

Neither Protestant nor OPIC filed testimony or exhibits by the February 3, 2025 deadline.<sup>4</sup> On February 11, 2025, Applicant filed a motion for summary disposition (MSD) requesting a PFD in its favor as a matter of law. No party filed a response. On March 5, 2025, after considering the pleadings, evidence, and applicable law, the ALJ granted the MSD due to the lack of evidence rebutting the prima facie demonstration; and the ALJ concluded the Commission should issue the Draft Permit without alteration.<sup>5</sup>

## **II. APPLICABLE LAW, BURDEN OF PROOF, AND PRIMA FACIE CASE**

Applicant, as the moving party, bears the burden of proof by a preponderance of the evidence.<sup>6</sup> The Application was filed after September 1, 2015, and the Commission referred it to SOAH under Texas Water Code section 5.556, which governs referral of environmental permitting cases to SOAH.<sup>7</sup> Therefore, this case is subject to Texas Government Code section 2003.047(i-1)-(i-3), as enacted in 2015,<sup>8</sup> which provides:

(i-1) In a contested case regarding a permit application referred under Section 5.556 [of the] Water Code, the filing with [SOAH] of the

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<sup>4</sup> See Order No. 2 Adopting Procedural Schedule and Setting Hearing (Dec. 10, 2024).

<sup>5</sup> Order No. 3 Granting Motion for Summary Disposition (Mar. 5, 2025).

<sup>6</sup> 30 Tex. Admin. Code § 80.17(a); 1 Tex. Admin. Code § 155.427.

<sup>7</sup> Tex. Water Code §§ 5.551(a), .556.

<sup>8</sup> Acts 2015, 84th Leg., R.S., ch. 116 (S.B. 709), §§ 1 and 5, eff. Sept. 1, 2015.

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 submitted under Subsection (e) 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.<sup>9</sup>

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. The burden of proof remains with Applicant to establish by a preponderance of the evidence that the Application would not violate

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<sup>9</sup> *Accord* 30 Tex. Admin. Code § 80.17(c).

applicable requirements and that a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property.<sup>10</sup>

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), which are collectively referred to as the prima facie demonstration, were offered and admitted into the record at the preliminary hearing on December 3, 2024.<sup>11</sup>

Summary disposition of a contested case shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.<sup>12</sup>

### **III. SUMMARY DISPOSITION EVIDENCE**

Based on the administrative record, Applicant presented uncontested summary disposition evidence establishing the following relevant facts.

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<sup>10</sup> 30 Tex. Admin. Code § 80.17(a), (c).

<sup>11</sup> See Exs. AR-1 through AR-7.

<sup>12</sup> 30 Tex. Admin. Code § 80.137(c).

The new TPDES Permit No. WQ0016370001 would authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day.

The facility will be located approximately 1,000 feet west of the intersection of Kelly Road and U.S. Route 377, in Parker County, Texas 76035. The treated effluent will be discharged to Bear Creek, thence to Benbrook Lake in Segment No. 0830 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Bear Creek. The designated uses for Segment No. 0830 are primary contact recreation, public water supply, and high aquatic life use.<sup>13</sup>

The facility will be an activated sludge process plant operated in the complete mix with single stage nitrification mode. Treatment units in the Interim I phase will include bar screens, four aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber. Treatment units in Interim II phase will include bar screens, five aeration basins, two final clarifiers, five sludge digesters, two chlorine contact chambers, and a dechlorination chamber. Treatment units in the Final phase will include bar screens, two aeration basins, two final clarifiers, two sludge digesters, two chlorine contact chambers, and two dechlorination chambers. The facility has not been constructed.<sup>14</sup>

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<sup>13</sup> AR-4 (Tab C) at 72-73.

<sup>14</sup> AR-4 (Tab C) at 73.

In accordance with 30 Texas Administrative Code section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review has determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has determined that no significant degradation of water quality is expected in Bear Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected.<sup>15</sup> The ED determined that the Draft Permit, if issued, meets all statutory and regulatory requirements.<sup>16</sup>

No evidence was presented to rebut the prima facie demonstration that the Draft Permit meets all state and federal legal and technical requirements and, if issued, would protect human health and safety, the environment, and physical property.

#### **IV. ANALYSIS AND RECOMMENDATIONS**

After the administrative record was admitted and established the prima facie demonstration, Protestant had the burden to demonstrate that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement.<sup>17</sup>

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<sup>15</sup> Ex. AR-3 (Tab B) at 4.

<sup>16</sup> Ex. AR-4 (Tab C) at 22.

<sup>17</sup> Tex. Gov't Code § 2003.047(i-2)(2).



Neither Protestant nor OPIC filed testimony or exhibits; and neither Protestant nor OPIC filed a response to the MSD. Therefore, no evidence was presented to rebut the prima facie demonstration.

The ALJ finds no genuine issue as to any material fact, because no party presented any evidence to rebut the prima facie presumption that the Draft Permit meets all applicable legal and technical requirements, and, if issued, would be protective of public and environmental health and safety. Therefore, the uncontroverted evidence shows that the Draft Permit meets all applicable legal and technical requirements, and, if issued, would be protective of human health and safety, the environment, and physical property.

The ALJ recommends that the Commission adopt the attached proposed order containing Findings of Fact and Conclusions of Law, and issue the Draft Permit to Applicant.

**Signed April 23, 2025**

ALJ Signature:

A handwritten signature in cursive script that reads "Linda Brite".

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Linda Brite

Presiding Administrative Law Judge



## **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

### **AN ORDER GRANTING THE APPLICATION OF KELLY RANCH ESTATES, LLC FOR TPDES PERMIT NO. WQ0016370001; SOAH DOCKET NO. 582-25-01926 TCEQ DOCKET NO. 2024-1385-MWD**

On \_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Kelly Ranch Estates, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ003074000. A Proposal for Decision (PFD) was presented by Linda Brite, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH), after granting Applicant's Motion for Summary Disposition on March 5, 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 TPDES Permit No. WQ003074000 with the Commission on June 28, 2023.
2. The Application requested authorization to discharge treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day.
3. The Executive Director (ED) of the Commission determined that the Application was administratively and technically complete; completed the technical review of the application; and prepared a draft permit (Draft Permit) and made it available for public review and comment.

### **The Draft Permit**

4. The facility will be located approximately 1,000 feet west of the intersection of Kelly Road and U.S. Route 377, in Parker County, Texas 76035.
5. The facility will be an activated sludge process plant operated in the complete mix with single stage nitrification mode. Treatment units in the Interim I phase will include bar screens, four aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber. Treatment units in Interim II phase will include bar screens, five aeration basins, two final clarifiers, five sludge digesters, two chlorine contact chambers, and a dechlorination chamber. Treatment units in the Final phase will include bar screens, two aeration basins, two final clarifiers, two sludge digesters, two chlorine contact chambers, and two dechlorination chambers. The facility has not been constructed.
6. The treated effluent will be discharged to Bear Creek, thence to Benbrook Lake in Segment No. 0830 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Bear Creek. The designated uses for Segment No. 0830 are primary contact recreation, public water supply, and high aquatic use.

7. A Tier 1 antidegradation review determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained.
8. A Tier 2 review determined that no significant degradation of water quality is expected in Bear Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected.
9. The Draft Permit, if issued, meets all statutory and regulatory requirements.

### **Notice and Jurisdiction**

10. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal was published in the *Weatherford Democrat*, a newspaper regularly published or generally circulated in Parker County, on October 21, 2023.
11. The Notice of Receipt of Application and Preliminary Decision was published in the *Weatherford Democrat* on March 16, 2024.
12. The public comment period ended on April 30, 2024.
13. On July 25, 2024, the ED filed the Response to Comments.
14. Upon Applicant's request of a direct referral, this matter was referred to SOAH for a contested case hearing on September 26, 2024.
15. The notice of the preliminary hearing was published in the *Community News*, a newspaper regularly published or generally circulated in Parker County, on November 1, 2024. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

### **Proceedings at SOAH**

16. On December 3, 2024, SOAH ALJ Linda Brite convened the preliminary hearing in this case via videoconference. Applicant, the ED, TCEQ's Office of Public Interest Counsel (OPIC), Melissa Erhardt, James Daniels,

Gary Grissum, Kathy Grissum, Lynn Lundquist, Scott Lundquist, Alicia Pulpan, and Rusty King appeared and were named parties.

17. Jurisdiction was noted by the ALJ, and the administrative record was admitted into the record.
18. On January 15, 2025, Melissa Erhardt, James Daniels, Gary Grissum, Kathy Grissum, Lynn Lundquist, Scott Lundquist, and Alicia Pulpan withdrew their hearing requests contesting the Application pursuant to a settlement agreement.
19. Rusty King (Protestant) remains as the sole protestant in this matter.
20. Pursuant to Order No. 2, the deadline for Protestant and OPIC to pre-file direct testimony and exhibits was February 3, 2025; and the deadline for parties to file responses to dispositive motions was February 24, 2025.
21. Neither Protestant nor OPIC pre-filed direct testimony or exhibits.
22. On February 11, 2025, Applicant filed a motion for summary disposition requesting a PFD in its favor as a matter of law. No response to the motion was filed.
23. On March 5, 2025, the ALJ granted Applicant's motion for summary disposition, finding that there was no genuine issue as to any material fact and that Applicant was entitled to summary disposition as a matter of law. The record closed that day.
24. No party rebutted the prima facie demonstration that the Draft Permit meets all legal and technical requirements.
25. The Draft Permit, if issued, would protect human health and safety, the environment, and physical property.

## **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 to prepare a PFD 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 5.114 and 26.028; Texas Government Code sections 2001.051 and 2001.052; and 30 Texas Administrative Code sections 39.405 and 39.551.
4. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).
5. Applicant's filing of the administrative record established a prima facie case 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).
6. 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).
7. To rebut the prima facie demonstration, 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).
8. No party rebutted the prima facie demonstration. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.117(c).
9. The Draft Permit contains sufficient provisions to protect human health and safety, the environment, and physical property.

**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. Kelly Ranch Estates, LLC's Application for new TPDES Permit No. WQ0016370001 is granted as set forth in the Draft Permit.
2. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117. If there is any conflict between the Commission's Order and the ED's Responses to Public Comment, the Commission's Order prevails.
3. All other motions, request 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 section 2001.144 and 30 Texas Administrative Code section 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.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Brooke Paup, Chairman, For the Commission**