

**SOAH DOCKET NO. 582-25-15495  
TCEQ DOCKET NO. 2024-1696-MWD**

<b>APPLICATION OF</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>JIRETEN, LLC FOR TPDES</b>	§	<b>OF</b>
	§	
<b>PERMIT NO. WQ0016336001</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**CITIZENS AGAINST BUTCHER ROAD MUD’S EXCEPTIONS TO THE  
PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS:

Protestant Citizens Against Butcher Road MUD (“CABRM”) submits these Exceptions to the Administrative Law Judge’s November 24, 2025 Proposal for Decision, and urges the denial of Jireten, LLC’s (“Jireten” or “Applicant”) Application for TPDES Permit No. WQ0016336001 (hereinafter, the “Application”). For support, CABRM respectfully offers the following:

**I. Introduction & Summary**

The ALJ should have recommended that the Application be denied. The evidence demonstrates that the dissolved oxygen (“DO”) modeling performed by the Executive Director (“ED”) and relied upon by Jireten to meet its burden of proof is so flawed as to be unable to support a finding that the Permit meets all applicable dissolved oxygen standards. Furthermore, the comprehensive evaluation of water quality required for a valid Tier 2 anti-degradation review has not been performed. In addition, no evaluation of the potential for the discharge to cause the excessive growth of aquatic vegetation was performed, despite the admission by the ED’s staff that nutrients in the discharge “certainly” had the potential

to stimulate the growth of aquatic vegetation. Given these considerations, the Draft Permit authorizes a discharge that has a reasonable potential to result in a violation of the Texas Surface Water Quality Standards (“TSWQS”). Thus, the terms of the Permit violate 30 Texas Administrative Code § 305.531(4). For this reason, the Application should have been recommended for denial.

The ALJ therefore erred in recommending that the Application be granted. CABRM objects in particular to Finding of Fact Nos. 19, 20, 21, 22, 23, and 24, as well as Conclusion of Law Nos. 9 and 10. The ALJ should revise the PFD accordingly before it is considered by the Commission.

## **II. The ALJ erred with respect to water quality issues.**

The Water Quality Standards applicable to Jireten’s Application include the Tier 1 anti-degradation review (30 Tex. Admin. Code § 307.5(b)(1)), Tier 2 anti-degradation review (30 Tex. Admin. Code § 307.5(b)(2)), and the general criteria of the TSWQS (30 Tex. Admin. Code § 307.4). The Tier 1 anti-degradation standard requires protection of the existing uses of receiving waters, while the Tier 2 standard protects against the degradation of water quality, even if that degradation does not result in an impairment of existing uses.

### **A. The Tier 1 anti-degradation standard was not met due to fatal flaws in the modeling of dissolved oxygen.**

The potential impacts of Jireten’s discharge upon DO in the receiving waters have not been accurately modeled by the ED, particularly within Pond 1.<sup>1</sup> Dr. Peter Zamora,

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<sup>1</sup> CABRM agrees with the position of Protestants Ellis County and the City of Waxahachie regarding the issue of dissolved oxygen, and adopts the arguments presented by Ellis County and the City of Waxahachie on this issue.

witness for Ellis County, has demonstrated the numerous flaws in the use of an uncalibrated QUAL-TX model that employs model defaults. The modeling performed by the ED indicating compliance with the dissolved oxygen standards is unreliable due to its reliance on unsupported assumptions. On the other hand, the modeling performed by Dr. Zamora more closely reflects reality. Dr. Zamora's testimony demonstrated that the proposed discharge has a reasonable potential to result in a violation of the applicable Water Quality Standards. In particular, the discharge proposed to be permitted has a reasonable potential to lower dissolved oxygen to such a degree as to impair the maintenance of existing uses as required by 30 Texas Administrative Code § 307.5(b)(1). Therefore, the Draft Permit violates 30 Tex. Admin. Code § 305.531(4).

Thus, the ALJ erred in Finding of Fact Nos. 19, 20, and 21, and Conclusion of Law No. 9, and CABRM requests that they be revised accordingly.

**B. No proper Tier 2 analysis was performed.**

The Texas Supreme Court has established that the Application of the Tier 2 anti-degradation standard involves consideration of a complex set of ecological circumstances. *Save Our Springs Alliance, Inc. v. Texas Commission on Environmental Quality*, 713 S.W.3d 308 (Tex. 2025), *reh'g denied* (June 20, 2025). No such evaluation was performed by any expert in this case. Mr. James Michalk testified that he made no evaluation of the impact of the discharge upon overall water quality.<sup>2</sup> And Ms. Jenna Lueg Terven, the witness presented by the ED as an expert to address Water Quality Standard compliance,

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<sup>2</sup> Tr. Vol. 1 at 140:12 – 141:8.

testified that she made no determination of whether the proposed discharge would cause a significant lowering of water quality in Pond 1.<sup>3</sup> She further testified that she made no evaluation of the impact that the discharge would have on the overall water quality in Pond 1.<sup>4</sup> Because the ED failed to properly analyze the Tier 2 anti-degradation standard in line with Texas law, a reasonable potential for violation of TCEQ Rules exists, and issuance of the Permit would violate 30 Tex. Admin. Code § 305.531(4).

Thus, the ALJ erred in Finding of Fact No. 22 and Conclusion of Law No. 9, and CABRM requests that they be revised accordingly.

**C. The analysis of nutrients and aquatic vegetation was flawed.**

The Water Quality Standards also establish certain requirements for particular parameters. With regard to nutrients, the Water Quality Standards provide that, “Nutrients from permitted discharges or other controllable sources must not cause excessive growth of aquatic vegetation that impairs an existing, designated, presumed, or attainable use.” 30 Tex. Admin. Code § 307.4(e).

TCEQ’s expert on permit compliance with the applicable Water Quality Standards testified that the discharge would potentially contain both phosphorus and nitrogen, and those nutrients “certainly” had the potential to stimulate the growth of aquatic vegetation, but she made no evaluation of how much aquatic vegetation would be grown as a result of the discharge.<sup>5</sup> In light of the evidence that the discharge will contain nutrients, and the absence of any evaluation of the impact of those nutrients upon the growth of aquatic

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<sup>3</sup> Tr. Vol. 1 at 39:12-15.

<sup>4</sup> Tr. Vol. 1 at 154:22-25.

<sup>5</sup> Tr. Vol. 1 at 138:14 – 140:2.

vegetation, the record established a reasonable potential for the discharge to lead to the violation of the applicable Water Quality Standards related to nutrients.

Thus, the ALJ erred in Finding of Fact No. 23 and Conclusion of Law No. 9, and CABRM requests that they be revised accordingly.

### **III. The ALJ erred with respect to TCEQ's location requirements.**

TCEQ Rules at 30 Tex. Admin. Code § 309.12 provide that the Commission may not issue a permit for a new facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction, or operational features, minimizes the possible contamination of water in the State. That same Rule provides that, in performing this evaluation, the Commission may consider climatological conditions. 30 Tex. Admin. Code § 309.12(4). The area of the proposed plant is subject to climatological conditions that include extreme precipitation events. These climatological events result in flooding of nearby properties, such as the adjacent property owned by Dr. Abdul Badr.

The major rainfall events occurring in this area—which result in significant inundation of nearby properties and increased exposure of sensitive populations, such as children—prevent a finding that the proposed location minimizes the potential contamination of water in the State.



**Photo taken December 24, 2023 of Dr. Badr’s Children in Standing Water Resulting from Rainfall Event<sup>6</sup>**



**October 28, 2023 Photo of Dr. Badr’s House after Rainfall Event<sup>7</sup>**

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<sup>6</sup> Ex. CABRM-103.

<sup>7</sup> Ex. CABRM-106.

The extent of inundation in this area creates the potential for contamination to spread over a broader area than locations that are not as flood prone. Accordingly, in light of climatological conditions at the site, it cannot be said that the proposed location minimizes the possible contamination of water in the State. As such, the Application fails to comply with 30 Tex. Admin. Code § 309.12.

Thus, the ALJ erred in Finding of Fact No. 24 and Conclusion of Law No. 10, and CABRM requests that they be revised accordingly.

#### **IV. Conclusion**

For the reasons set forth above, CABRM respectfully requests that the Commission deny the Application.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

By my signature below, I certify that on December 15, 2025, a true and correct copy of the foregoing document was served upon the counsel of record listed below via electronic service.

/s/ Eric Allmon

Eric Allmon

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