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**RE: RIDGE CREEK, LLC V. TENNESSEE DEPARTMENT OF ENVIRONMENT AND
CONSERVATION, APD Case No. 04.30-224331J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL& GAS

IN THE MATTER OF:

RIDGE CREEK, LLC,
Petitioner,

v.

**TENNESSEE DEPARTMENT OF
ENVIRONMENT AND
CONSERVATION,**
Respondent.

APD Case No. 04.30-224331J

INITIAL ORDER

This matter was heard de novo on May 8, 9, and 28, 2025, in Nashville, Tennessee, before Administrative Judge Richard Murrell, appointed by the Secretary of State's Administrative Procedures Division (APD) to sit on behalf of the Tennessee Board of Water Quality, Oil & Gas, upon the petition for permit appeal filed by the Petitioner, Ridge Creek, LLC (Petitioner), pursuant to TENN. CODE ANN. § 69-3-105(i). Attorney William Penny represented the Petitioner. Senior Associate Counsel Patrick Parker represented the Respondent, the Tennessee Department of Environment and Conservation (TDEC).

INTRODUCTION AND RELEVANT HISTORY

This case arises from an appeal of the TDEC's denial of an Aquatic Alteration Permit (ARAP) submitted by the Petitioner.¹ The Petitioner requested a permit to impact a 0.09-acre wetland and 465 linear feet of streams related to a proposed 11-acre impoundment. The site for this impoundment is on the Petitioner's property in Lewis County, Tennessee. The Petitioner intends to build the impoundment in the upper reach of a small stream, which the Petitioner identified as "D7" and described as a "first-order stream." It is an unnamed tributary of Little Swan

¹ The Petitioner also applied for a Section 401 permit from the US Army Corps of Engineers under the Clean Water Act.

Creek. The valley where D7 is located is referred to as Peavyhouse Hollow, and D7 was sometimes referred to as the Peavyhouse branch during the proceedings. Little Swan Creek is an “Exceptional Tennessee Water” (ETW) as that term is defined by statute or rule.

Following TDEC’s denial of the ARAP on June 22, 2022, the Petitioner filed its appeal dated July 18, 2022, with the Board. The appeal was docketed with APD for an administrative judge to conduct a contested case hearing, which was originally set for October 21, 2022.² Eight pre-hearing conferences were held or scheduled in this matter. A Motion for Summary Judgment filed February 24, 2023, was argued at one of those settings. There were multiple continuances, all by agreement, for responses and replies before the argument was held. The transcript of that argument was filed on July 31, 2023. The order denying that motion was issued on August 3, 2023. None of the issues presented in the Motion for Summary Judgment are addressed in this order.³

This matter was scheduled for a hearing five times before it was finally held over several days beginning on May 8, 2025. Each postponement was by agreement of the parties and for good cause.⁴ This order considers the merits of the application based on the evidence presented, including expert testimony from both sides. Many facts involved are not disputed. The interpretation of the data and its implications for the permit, as well as the application of regulations, are contested. The Petitioner bears the burden of proof on each contested issue. During the hearing, eight witnesses testified, and 45 exhibits were entered into evidence.

² The Petitioner previously raised issues about the timeliness of TDEC’s review of its application by filing a Petition for Declaratory Order on March 8, 2022. That Petition was settled, and none of those issues are part of this proceeding.

³ The Motion for Summary Judgment chiefly concerned the use of a research paper, *Probabilistic Monitoring of Streams Below Small Impoundment in Tennessee*, written by a TDEC staff member, Debroah Arnwine. The Petitioner asserted that the research paper was used as an un-promulgated rule because it was cited to support the denial of the permit. The Motion was denied.

⁴ Both the attorneys representing the parties had major health challenges during the pendency of this matter, and each had post-hearing medical issues that caused further delays before the record was closed.

ISSUES FOR DETERMINATION

The Petitioner identified three alternatives in its ARAP application for the location of a “keyway,” which is the central structure of a dam. The third of those alternatives (Alternative 3) requires a permit because its placement would impact water flow, raising concerns about whether the disruption of the flow from D7 after building the dam and creating the impoundment would cause a condition of pollution.⁵ The Petitioner must first prove that it would not; otherwise, the proposed site is ineligible for a permit. If the Petitioner proves that Alternative 3 will not cause a condition of pollution, the Petitioner must then prove that the overall project, as proposed, would not cause a condition of pollution. Additionally, the Petitioner must demonstrate that Alternative 3 was the least impactful option that still meets the project’s stated purpose. The Petitioner argues that the amount of water reasonably available in its Alternative 1, which does not require a permit and is, by definition, less impactful,⁶ is insufficient to achieve its intended goals.⁷

SUMMARY OF DETERMINATION

It is determined that the Petitioner did not prove by a preponderance of evidence that the construction of a keyway and dam as proposed at the Alternative 3 site would not cause a condition of pollution due to loss of flow in D7. Even if the loss of flow would not cause a condition of

⁵ TDEC denied the permit because it found that the impoundment would cause a condition of pollution resulting from reduced flow.

⁶ Alternative 1 would impound a wet weather conveyance rather than D7, or another stream or a significant source of groundwater.

⁷ The Petitioner states the issue and its burden of proof as having to show that it is more likely than not that Alternative 1 was not practicable to satisfy the project purpose, and that any impact to groundwater flow under Alternative 3 was de minimis, and therefore, will not cause harm to fish and aquatic life or other classified uses downstream. However, as discussed below, limiting the question of loss of flow to only groundwater is more narrow than what is required by statute or rule.

pollution, the Petitioner did not demonstrate that Alternative 3 is the least impactful alternative that would achieve the project's goals.

FINDINGS OF FACT

1. Ridge Creek, LLC (the LLC), is owned by Howard Varnedoe. Mr. Varnedoe used the LLC to purchase approximately 600 to 700 acres in Lewis County, Tennessee, between 2016 and 2017.⁸

2. Mr. Varnadoe is a financial advisor and a pastoral minister. He is transitioning from his role as a financial advisor to full-time pastoral ministry at a church he is starting in Spring Hill, Tennessee.

3. As a child, Mr. Varnadoe enjoyed outdoor activities like swimming and fishing. He wanted to offer similar opportunities to members of the church he's starting, along with potentially inviting other groups, all free of charge.

4. Mr. Varnadoe contends that the property's lake feature, which will be created by the impoundment at issue, will attract hundreds of visitors who will, in turn, spend money at Walmart and other businesses that sell outdoor equipment or gasoline. While Mr. Varnadoe contends this will contribute to the tax base in Lewis County, he offered no quantifiable data to suggest that the impact would be measurable.

5. At some point during the application process, Mr. Varnadoe included that an additional goal of the project was to help with fire suppression. This goal was related to the value of timber on the property owned by the LLC. However, the Petitioner did not describe how that goal could be achieved or even if the presence of the proposed lake would actually assist in fire suppression.

⁸ Other testimony describes the property as consisting of 684 acres.

6. The application was submitted by the Petitioner on September 16, 2020, and sought a permit for the project's goal to create an 11-acre lake located on the property by using Alternative 3.

7. The Petitioner hired BDY as consultants to evaluate the project because they had prior experience with permitted impoundments and possessed the necessary qualifications.

8. Sam Parish, a hydrologic expert with BDY, walked the property in 2017 to determine if any of the numerous unnamed tributaries throughout the various hollows within Ridge Creek's 684 acres would meet the overall project goals.

9. BDY found that a stream in Peavyhouse Hollow that they named "D7" would satisfy the Petitioner's requirements.

10. The geologic formation in which Peaveyhouse Hollow is located is part of the western Highland Rim and consists of the Fort Payne rock formation, characterized by its cherty material and impermeable shale at the base.

11. This mature formation features steep ridges with many valleys, including Peavyhouse Hollow. As precipitation falls, some of it is absorbed by the clay covering the ridges and, through gravity, seeps through cracks and faults as it moves downward until it reaches the impermeable layer, usually near the bottom of the valley. Here, D7 is one of the springs that carry groundwater on its way to larger tributaries and eventually to Little Swan Creek. D7 also transports surface water from the upstream watershed through the valley and to those tributaries.

12. In 2018, the Petitioner, through its consultants BDY, began pre-application meetings with Robert "Robbie" Baker, who is a permit writer with TDEC.

13. The proposed project also required a permit from the United States Army Corps of Engineers, with whom Mr. Baker consulted. In October 2020, Mr. Baker notified Mr. Parish of questions that needed to be resolved to move forward with either permit.

14. The Petitioner, through its consultants, provided a response in September 2021.

15. Mr. Baker made a site visit on October 21, 2021.

16. After considerable delay, Mr. Baker assembled a team to evaluate what he considered a complex application and scheduled site visits in March of 2022.

17. The last updated information provided was the keyway design. TDEC received the design plan⁹ on or about June 11, 2022. TDEC issued its denial of the permit on June 22, 2022.

18. The denial was based on TDEC's conclusion that constructing the dam under Alternative 3 would cause a "condition of pollution" downstream. TDEC included other bases of denial in the denial letter. However, the conclusion regarding the "condition of pollution" is a threshold decision. No permit can be issued for an activity that would cause a "condition of Pollution." A conclusion that an issued permit would cause a condition of pollution pretermits a detailed analysis of the other impacts and the possible need for mitigation.¹⁰

19. TDEC concluded the dam would cause a condition of pollution because it determined that the stream to be impounded would suffer a loss of approximately half its flow from all sources captured by the dam.

⁹ The Petitioner included information about a French drain and bubbler system for the lake, with the design plan for the keyway.

¹⁰ Had TDEC decided that the impacts on the stream did not cause a condition of pollution, TDEC would have classified the impacts according to severity and evaluated mitigation plans and the antidegradation statement submitted by the Petitioner. Any proposed approval of the permit would have been subject to a public hearing and comment period.

20. The likely effects of flow loss include alterations to the hydrologic regime, temperature shifts, changes in dissolved oxygen levels, sediment transportation problems, metal seepage, nutrient issues, and shifts in the biological community.¹¹

21. The keyway is an impervious feature that is dug into the bedrock to block upstream groundwater and surface water, allowing the lake to form. The parties agreed that the keyway base would be set at an elevation of 760 feet above sea level.

22. Along with the previously submitted information and observations made during site visits, TDEC concluded that the proposed keyway at the Alternative 3 location would create a condition of pollution with downstream impacts that would occur or are likely to occur.

23. The Petitioner estimates that the design for Alternative 3 would create an 11-acre lake and hold 9,987,241.73 cubic feet of water.

24. The Petitioner estimated that Alternative 1 would create an 8-acre lake and hold 1,538,889.67 cubic feet of water.

25. Alternative 1 would impound a wet weather conveyance but not a “stream” within the meaning of the Act. The permit application process would not apply to Alternative 1.

26. The Petitioner’s evaluation of the alternative locations and environmental impacts was based on the consultant’s data developed using test results obtained in August of 2018 and 2019. The data, including the flow field data report, was taken during the driest season for this location.

27. The flow in the stream and the wet weather conveyance above the Alternative 1 site are greatly enhanced during other seasons at this location. The Petitioner provided no testing or monitoring data other than what it collected in August 2018 and 2019.

¹¹ TDEC staff members Deborah Arnwine and Jonathan Burr testified regarding the likely effects of the loss of flow. Their testimony was based on extensive work experience and field studies.

28. The Petitioner's expert witnesses were Sam Parish and David Jackson, both with BDY. Their testimony was based on their analysis of the hydrologic and other characteristics of the location determined through numerous site visits over an extended period, as well as the submitted plans. It also relied on the reading and monitoring data collected in August 2018 and 2019.

29. Mr. Jackson opined that the dam, if constructed at the Alternative 3 location, would intercept approximately 0.04 cubic feet per second of the flow in D7.

30. Mr. Jackson used a demonstrative drawing, entered as EXHIBIT 45, to depict his description of where the interception and recharge¹² for the impoundment would occur.

31. Mr. Jackson contended that the flow from a monitoring station identified as station 2, which is located upstream from Alternative 3, would circumvent the dam by way of a proposed French drain system.

32. Mr. Jackson acknowledged that impounded water, particularly at depths exceeding ten feet, permits the settling and concentration of minerals and metals to levels that could be detrimental as they seep through an earthen dam. Mr. Jackson testified that this potential impact would be offset by the installation of a proposed bubbler system designed to prevent the expected concentration levels.¹³

33. Brian Ham is employed by TDEC and was recognized in this matter as an expert in hydrogeology and geology. Mr. Ham became involved in evaluating the Petitioner's permit

¹² "Recharge" is not specifically defined by rule but refers to the hydrological process of surface water replenishing groundwater, especially in the context of protecting sensitive aquatic ecosystems like springs in karst areas.

¹³ Mr. Jackson also spoke of enhanced compaction techniques that could be used in the construction of the keyway to reduce the amount of seepage. It was unclear if that reduction was quantified or made part of the application at the time of the denial.

application in March 2022. He reviewed the data, design plans, and supplemental information submitted by the Petitioner. Mr. Ham noted that the headwaters of D7 mainly consisted of spring flow and that the reaches upstream were considered wet-weather conveyances.

34. Mr. Ham was asked to help Mr. Baker and his team answer questions about the water source for the springs and the groundwater flow at the site. Mr. Ham was primarily focused on groundwater components, examining elevations, the locations of springs, the landscape, and the types of geology, as well as the abundant variety of information regarding flow and geology contained in the application and supplemental information.

35. Mr. Ham agreed with the Petitioner's expert's description of the Highland rim aquifer system and the Fort Payne formation as a confining unit providing the base for the groundwater table to build above.

36. Mr. Ham testified that the design of the dam and keyway would extend from one valley wall to the other and would effectively seal off water flow down to the base level of 760 feet above sea level, which is the level of the impermeable bedrock.

37. The keyway and dam would serve to capture all groundwater flow in the headward part of the valley as it moves toward the springs. By anchoring into bedrock as a confining surface and building the dam upward from valley wall to valley wall, all of the groundwater above the dam will be contained, along with all surface water from the watershed above the dam, all of which would otherwise contribute to the flow of D7.

38. The design of the dam includes an emergency spillway that will give water a place to discharge before the water crests behind the dam.

39. Mr. Ham noted that additional springs emerged above the 760-foot level. The Petitioner's flow data indicated that, at flow station 2, closest to but downstream of the proposed

dam, the flow was 0.2 cubic feet per second (cfs). The Petitioner's flow data further downstream, at flow station 4, indicated a flow of 0.48 cfs. Mr. Ham opined that the dam at Alternative 3 would reduce the flow of D7 by about half.¹⁴ Mr. Ham based this determination on the greater area of the upstream watershed compared to the contributions from the ridge tops to the valley floor downstream from Alternative 3.

40. Mr. Ham opined there would be minimal influence from the ridgetops to the bottom of the valley to recharge the flow of D7 below Alternative 3.

41. Mr. Ham testified that using temperature variations at different monitoring stations is insufficient to conclude the existence of a deeper or more distant groundwater source that would not be affected by the proposed dam. He noted that the temperature reading was higher than expected for a deeper groundwater source, that the site's geology does not suggest such a source, and that other environmental factors likely explain the temperature differences.

42. Mr. Ham opined that the French drain would be ineffective in redirecting upstream groundwater flow and would not provide any significant flow downstream. The French drain is planned to be built on the downstream side of the proposed dam, which is designed to capture all of the groundwater upstream. Therefore, no upstream flow would enter the French drain.

43. Mr. Jackson testified that the purpose of the French drain is to capture groundwater that is downstream of the keyway but would be covered by thousands of cubic yards of dirt, of which the dam will be constructed.

44. Mr. Ham confined his analysis to the data submitted by the Petitioner.

¹⁴ Mr. Ham used EXHIBIT 28 to graphically illustrate the recharge area, indicating that both groundwater and surface water (which mimics the groundwater flow) would be captured from the highest topographical features at the top of the ridges down the valley walls to the bottom of the valley. He also illustrated that the recharge area headward from the proposed dam comprised a significantly larger area than the ridge walls below the site, indicating the difference in potential volume of contribution to flow available below the site of Alternative 3.

45. Mr. Ham noted that all the springs in close proximity to each other, including D7, and to Alternative 3, share a signature that suggests their groundwater recharge is the same—the entire watershed above the site of Alternative 3. Therefore, it is likely that the design of the keyway and dam will eliminate the recharge source, causing those proximal springs to dry up.

46. Mr. Ham shared his analysis in a meeting with Mr. Baker and his team after the last site visit and prior to the issuance of the denial of the permit.

47. Mr. Baker explained the steps in the permit review process after receiving the application. The first decision is whether the proposed project would have more than a de minimis impact on Tennessee’s waters. If the project has more than a de minimis impact, a justification must be provided demonstrating an important contribution to the community’s social or economic needs, not just those of the applicant.

48. The next step is to assess whether the project would cause a permanent significant loss of resource value in habitat, which requires evaluating several resource values identified in the applicable rules. If such a loss is expected to occur, consideration of compensatory mitigation is examined to ensure that there is either a zero net loss or a gain in resource value in the affected area.

49. However, impacts that change water quality constitute conditions of pollution; these impacts cannot be offset by compensatory mitigation.

50. The site visits in October¹⁵ 2021 revealed a babbling creek with minnows, whereas the pictures from August 2018 and 2019 showed much drier conditions with water seeps. The August observations reflect the worst-case scenario for keeping an impoundment filled, whereas the October observations reflect the more typical scenario.

¹⁵ October is also considered a dry month in terms of expected annual precipitation.

51. Because the installation of the keyway and dam at the Alternative 3 location would reduce the flow by approximately half, there would be a significant impact on the aquatic life downstream from the dam. The result would be a violation of the biological integrity standard and would, by definition, constitute a condition of pollution.

52. The Petitioner's application for the ARAP was denied because no activities causing a condition of pollution may be authorized, and compensatory mitigation cannot be used to offset a condition of pollution.

53. Mr. Baker reviewed the mitigation plan submitted by the Petitioner, but, because the denial was not based on habitat loss, he did not evaluate the adequacy of the mitigation plan. The ARAP was denied because the diminution of flow would create a condition of pollution.

54. Mr. Jackson, in rebuttal, emphasized that the eight-acre lake created by Alternative 1 would be insufficient for fire suppression on the Petitioner's property.

55. Mr. Jackson interprets the flow data to indicate that, at each flow station, there is incrementally more volume added from the valley walls to the channel on the valley floor, and that each segment operates independently from contributions of upstream segments.

56. Mr. Jackson did not provide data quantifying flow contributions to D7 from the entire watershed above Alternative 3, which would include surface flow during wetter seasons.

57. Mr. Jackson did not offer any data from other projects with similar hydrogeologic characteristics to support his opinion that impounding a stream to create an 11-acre, 9.5 million cubic foot lake has de minimis impacts downstream from the dam.

58. Mr. Jackson did not offer any testimony regarding chemical or biological changes in the impounded water, the likelihood of seepage, and the potential for downstream impacts that are not flow-related.¹⁶

59. Mr. Jackson believes that the addition of an aeration system¹⁷ and enhanced compaction in the keyway construction were not adequately considered by TDEC in denying the ARAP.¹⁸ But Mr. Jackson did not provide data to demonstrate how these methods reduce or eliminate alterations to water quality.

CONCLUSIONS OF LAW

1. The Board of Water Quality, Oil & Gas (the Board) has jurisdiction to hear and render a decision in this contested case proceeding pursuant to TENN. CODE ANN. § 69-3-105(i) and 69-3-110. Pursuant to TENN. CODE ANN. § 69-3-110(a), the undersigned administrative judge heard this matter sitting alone for the Board. The Board, not TDEC, is the “agency” as defined by TENN. CODE ANN. § 4-5-102(2). *See* TENN. CODE ANN. § 69-3-105 (giving the Board the authority to issue rules and decide contested cases).

2. The Petitioner is an aggrieved person under TENN. CODE ANN. § 69-3-105(i) and TENN. COMP. R. & REGS. 0400-40-07-.04(9)(c).

3. In this case, the Petitioner has the burden of proof to show by a preponderance of the evidence that the denial does not comply with the Tennessee Water Quality Control Act of 1977,

¹⁶ Mr. Jackson mentioned the addition of a bubbler system and indicated that such a system reduced anoxic conditions on a different project that was successfully permitted in East Tennessee. However, there was no quantification of the impact of the bubbler system and no testimony to correlate that experience to the site in question.

¹⁷ It is unclear whether the aeration system is the same as the bubbler system, which releases air bubbles at the bottom of the lake, or refers to additional methods of adding oxygen.

¹⁸ In his rebuttal testimony, Mr. Jackson stated that the “extra compaction” would also be applied to the lakebed. It is unclear whether that information was shared with TDEC before the denial. Mr. Jackson indicated that the bubbler system and extra compaction were not in the ARAP application but were included in the response to the Corps’ Request for Information and discussed with TDEC during meetings.

TENN. CODE ANN. §§ 69-3-101 to -148 (the “Act”), or the rules promulgated thereunder. *See* TENN. CODE ANN. § 69-3-105(i); TENN. COMP. R. & REGS. 1360-04-01-.02(3) and (5); *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 525 (Tenn. 2013) (TENN. CODE ANN. § 69-3-105(i) “authorizes the Board to reverse or modify the Commissioner’s permit decisions when those decisions fail to comply with the [The Water Quality Control Act]” and “[t]he Act, in turn, specifies that the Commissioner’s permitting decision must comply with the regulations promulgated by the Board.”).

4. The Tennessee Water Quality Control Act (Act) gives the commissioner of the Department of Environment and Conservation (commissioner) the authority to grant permits authorizing discharges or activities such as the one proposed by the Petitioner and allows the commissioner to impose conditions on such permits to accomplish the purposes of the Act. TENN. CODE ANN. § 69-3-108(g)(1).

5. The Act specifically states that “under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.” TENN. CODE ANN. § 69-3-108(g)(2).

6. TENN. COMP. R. & REGS. 0400-40-03-.03(3)(o) provides as follows: “Flow - Stream or other waterbody flows shall support the fish and aquatic life criteria.”¹⁹

7. “Pollution” means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state, including, but not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

- a. Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

¹⁹ TENN. COMP. R. & REGS. 0400-40-03-.03(3) details the fish and aquatic life criteria in subsections (a)-(n).

b. Result or will likely result in harm, potential harm or detriment to the health of animals, birds, fish, or aquatic life;

c. Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

d. Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

TENN. CODE ANN. § 69-3-103(30).

8. Antidegradation only applies to permissible activities. TENN. COMP. R. & REGS. 0400-40-03-.06. The purpose of Tennessee's standards is to fully protect existing uses of all surface waters as established under the Act. Existing uses are those actually attained in the waterbody on or after November 28, 1975.

9. The ARAP rules state that no individual permit shall be granted if there is a practicable alternative to the proposed activity that would have less adverse impact on resource values, so long as the alternative does not have other significant adverse environmental consequences. TENN. COMP. R. & REGS. 0400-40-07-.04(5)(b).

DISCUSSION

The first issue to be determined in this case is whether the Petitioner has proven by a preponderance of the evidence that the disruption of the flow from D7 after building the dam would not cause a condition of pollution. The petitioner has not. While the Petitioner established that the groundwater inputs below the Alternative 3 site would be preserved, this did not account for the other sources of recharge for D7 from the broader watershed above the site.

The burden is on the Petitioner to provide a scientifically defensible reason for concluding that the proposed alteration is de minimis. TDEC's conclusion that there would likely be a significant loss of flow in D7 included an analysis of both surface and groundwater sources of recharge.

The Petitioner presented an extensive rebuttal establishing that the groundwater inputs below the proposed dam would remain unchanged after its construction. However, the undersigned administrative judge could not find evidence that the overall flow of D7 would not be significantly impacted by capturing all the sources of recharge in the upper reaches of the watershed that feeds D7. Evidence of the babbling creek that characterizes the area in months other than August supports TDEC's conclusion of significant loss of flow over the course of a year.

The Petitioner's evidence that seepage could be minimized by extra compaction and that the quality of the water in the proposed lake could be improved with an aeration system was not enough to prove that the likely effects of loss of flow would be prevented. Mitigation cannot offset a condition of pollution. There was also insufficient evidence to indicate that the loss of flow would be temporary or would be restored. Rather, the Petitioner argued that there would be no loss of flow because the lateral inputs of groundwater into D7 below the dam would be sustained. Even if those lateral inputs are unaffected, the Petitioner left unaddressed the loss of other upstream contributions.

Even if the Petitioner proved there would be no condition of pollution created by the project under Alternative 3, the undersigned administrative judge could not order a permit to be issued because an impoundment at Alternative 1 would be less impactful. While the Petitioner contends the resulting lake would be too small to provide fire suppression for the Petitioner's timberland, it is questionable whether that purpose would justify authorizing the more impactful Alternative 3. The fire suppression described would be for the private use of the Petitioner if, in fact, it were practical for use. Private use is unlikely to justify the impairment of waters of the state.

Under the circumstances, TDEC was justified in denying the permit as presented; therefore, the appeal is **DENIED**. The policy reasons for this decision are to uphold the laws of the State of

Tennessee and to facilitate the fair and efficient management of the permitting process set out therein.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **25th day of November 2025**.

A handwritten signature in blue ink, reading "Richard M. Murrell", written over a horizontal line.

RICHARD M. MURRELL
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **25th day of November 2025**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL, AND GAS (the Board)**, called an Initial Order, was entered on **November 25, 2025**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **December 10, 2025**. A new 30 day period for the filing of an appeal to the Board (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued. Filing instructions are included at the end of the document.¹

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied you may file an appeal, which must be **received** by APD no later than 30 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order and/or Other Earlier Orders:** You may appeal the decision, together with any earlier order issued by the Administrative Judge you specifically choose to appeal, to the Board, by filing an Appeal of the Initial Order with APD. An Appeal of the Initial Order should include your name and the above APD case number and state that you want to appeal the decision to the Board, specifying any earlier order(s) issued by the Administrative Judge that you also want to appeal, along with the specific reasons for your appeal. APD must **receive** your written Appeal no later than 30 days after the entry of the Initial Order, which is no later than **December 26, 2025**.² The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Board Decides to Review the Initial Order:** In addition, the Board may give written notice of its intent to review the Initial Order within the longer of 30 days or 7 days after the first board meeting to occur after entry of the Initial Order. No later than 7 days after the entry of an Initial Order, TDEC shall file, and serve, a Notice of Filing containing the date of the next Board meeting. No later than 7 days after the next Board Meeting, TDEC shall file, and serve, a Notice of Filing setting forth what action, if any, the Board took with respect to the Initial Order.

¹ See TENN. CODE ANN. §§ 68-201-108 (Air Pollution Control Board); 68-211-113, 68-212-113, 68-212-215, 68-215-115, 68-215-119 (Underground Storage Tanks and Solid Waste Disposal Control Board); TENN. CODE ANN. §§ 60-1-401, 69-3-110, 68-221-714 (Board of Water Quality, Oil & Gas).

² The deadline to file an appeal of the initial order (15 versus 30 days) in cases brought under the Tennessee Water Quality Control Act of 1977, TENN. CODE ANN. § 69-3-101, et seq., is an issue currently under review in a case before the Tennessee Supreme Court. *Jamesway Construction, Inc. v. David Salyers, P.E.*, No. M2023-01704-SC-R11-CV.

NOTICE OF APPEAL PROCEDURES

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Board renders a Final Order affirming, modifying, remanding, or vacating the administrative judge's Initial Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by APD within 7 days of the date of entry of the Initial Order, which is no later than **December 2, 2025**. See TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," within 60 days of the date the Initial Order becomes a Final Order. See TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.filings@tnsos.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102