

**SOAH DOCKET NO. 582-20-1895  
TCEQ DOCKET NO. 2019-1156-IWD**

**APPLICATION OF  
PORT OF CORPUS  
CHRISTI AUTHORITY  
OF NUECES COUNTY  
FOR TPDES PERMIT  
NO. WQ0005253000**

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**BEFORE THE STATE  
OFFICE OF  
ADMINISTRATIVE  
HEARINGS**

**Closing Statement on Behalf of Audubon Texas**

To the Administrative Law Judges Rebecca Smith and Cassandra Quin,

On behalf of Audubon Texas, and our 70,000+ Texas members, thank you for the opportunity to provide this closing statement. We have been and continue to be deeply appreciative of the court’s patience and consideration shown to our organization and positions, and to all the parties during these respectful deliberations.

Audubon holds three leases in the vicinity of the proposed outfall. These leases are held for purposes of providing and maintaining nature preserve habitat for migratory and resident birds. We currently hold two (2) leases on the south and northeastern ends of Harbor Island, through the years 2037 and 2051, respectively, in addition to a lease closer to shore in Redfish Bay, site of the state scientific area.

These leases are held and the preserves managed for the purposes of providing habitat for nesting, roosting, loafing and overwintering birds. These islands currently support Osprey, Roseate Spoonbill, Great Blue Heron, Great Egret, Brown Pelican, American White Pelican, Royal Tern, Ring-billed Gull, Long-billed Dowitcher, and other associated species. They have been maintained faithfully for years by our partners at Coastal Bend Bays and Estuaries Program (CBBEP).

Consistent with documents and statements provided throughout this process, Audubon Texas remains principally concerned with scientific concerns around the planned discharge location<sup>1</sup>, and respectfully asks that this particular permit will be denied.

The preconstruction modelling performed by the applicant and submitted for consideration by the Texas Commission on Environmental Quality does not sufficiently or unequivocally show that discharge impacts will not result in mortality events of larval fish or other essential building blocks of the ecosystem.<sup>2</sup> The modelling in the application used incomplete inputs<sup>3</sup>, neglected to account for bathymetric anomalies at the proposed outfall site<sup>4</sup>, and broadly, could not recommend sufficient reassurances to the question of whether the proposed site would cause harm: “Without analytical data that is reflective of the actual effluent to be discharged following final treatment, a determination on the reasonable potential of the effluent to cause toxicity on the receiving water could not be made.”<sup>5</sup> Additionally, it is not clear how the significant changes in modelling the zone of initial dilution (referenced throughout the proceedings as the ZID), taking the effluent percentage from 1.95 percent to 18.4%--an order-of-magnitude change--can

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<sup>1</sup> Ex. PAC-1 at 6, lines 15-16; p. 10, lines 7-8 and 11-14.

<sup>2</sup> Ex. PAC-4 at 7, lines 12-14.

<sup>3</sup> Ex. PAC-2 at 18, lines 11-13.

<sup>4</sup> Ex. PAC-2 at 13, lines 27-28.

<sup>5</sup> Ex. ED-SG-1 at 8, lines 19-22.

yield a conclusion assured of protection of aquatic life without a more rigorous review and more accurate inputs to the model.<sup>6</sup>

The treatment of federally endangered and threatened species in the watershed is also confounding. Segment 2481 is acknowledged to host the Northern Great Plains population of piping plovers, *Charadrius melodus* Ord, which is listed as a “threatened” (aquatic-dependent) species under the federal Endangered Species Act,<sup>7</sup> but because the Port of Corpus Christi (POCC) facility is not a petroleum facility, (it was) “therefore, not expected to have an effect on this species.” The conclusion that there would be no species impacts appears to derive from the fact that no Environmental Protection Agency review of the draft permit is required, because the POCC facility is not a petroleum facility.<sup>8</sup> That fact alone cannot conclusively yield a conclusion of no impacts, it simply means that no inquiry was conducted into potential impacts to the Piping Plover. Said another way, this assertion of no anticipated effects is not a scientific conclusion, but an administrative one: because the facility is not a petroleum facility, the law does not require further review, and therefore, no impacts to threatened or endangered species should be anticipated. Regardless of the subject limitations in this particular process, the presence of a federally-listed threatened species could prove to be a costly complication down the road under other laws and proceedings. Hence, it would seem prudent to address such concerns sooner rather than later.

In our view, this process (understandably) suffers from a lack of precedent for this type of facility, which is reflected in one of the prevailing themes of this broader discussion over the lack of numerical thresholds for salinity levels. However, too many uncertainties have been left

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<sup>6</sup> Ex PAC-2 at 9, lines 10-29.

<sup>7</sup> Ex. ED-MW-1 at 11, lines 4-5.

<sup>8</sup> Ex. ED-MW-1 at 11, lines 5-8.

unexplored (field bathymetry significantly different from the information presented in the application<sup>9</sup> or considered under modelling, modelling errors<sup>10</sup>, etc.) or subjected to sufficient due diligence. More study, inclusive of actual conditions and in consideration of the type of proposed facility, is merited prior to issuing this or any similar permit. This is the first facility of its type to be built on the Texas coast, and we must get it right. Qualified scientists have made compelling arguments for an offshore outfall, it is a recommendation consistent with *Marine Seawater Desalination Diversion and Discharge Zones* by the Texas General Land Office and Texas Parks and Wildlife Department<sup>11</sup>, and there are too many uncertainties and variables to recommend the proposed location in the permit application.

Whether select parties met their legal and procedural obligations is a question for the court. Audubon Texas has appreciated the opportunity to be acknowledged as a stakeholder by all parties and to be included in this process.

Very respectfully,



Scott Moorhead

Policy Director, Audubon Texas

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<sup>9</sup> Ex. PAC-2 at 13, lines 27-28.

<sup>10</sup> Ex. PAC-2 at 18, lines 11-13.

<sup>11</sup> Ex. PAC-7 at 13.

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