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www.ogeecheeriverkeeper.org
Working Together to Protect the Ogeechee, Canoochee and Coastal Rivers

May 13, 2025

Via E-Mail

Georgia Environmental Protection Division
Watershed Protection Branch
2 MLK Jr. Dr., 1470A East Tower,
Atlanta, Georgia 30334
EPDcomments@dnr.ga.gov

Re: NPDES Permit No.: GA0050354 for Effingham County Board of Commissioners - South Water Reclamation Facility

To whom it may concern:

Ogeechee Riverkeeper 501(c)(3) (ORK) works to protect, preserve, and improve the water quality of the Ogeechee River basin, which includes the Canoochee River, tributary streams, and all of the streams flowing out to Ossabaw Sound and St. Catherine's Sound. The Ogeechee River system drains more than 5,500 square miles across 20 counties in Georgia. ORK works with local communities to retain the ecological and cultural integrity of rivers, streams, wetlands, and related habitats throughout the Basin. One of ORK's primary roles is as watchdog on permits throughout the watershed that could pose a significant threat to its water quality and aquatic environments.

ORK's comments on the National Pollution Discharge Elimination System (NPDES) permit for Effingham County's South Water Reclamation Facility address two concerns. First, having greater clarity around the the reuse system and prioitization of discharge locations incorporated into the NPDES permit will reassure ORK about the expected impacts of this facility. Second, ORK has concerns about the legality of the Water Quality Based Effluent Limitations (WQBELs) following recent U.S. Supreme Court decisions. ORK asks that these concerns be fully addressed by the Georgia Environmental Protection Division (EPD) and confirms that it can ensure the Ogeechee River's water quality will be protected and preserved before it issues this permit.

First, clearer expectations, procedures, and additional details relating to the anticipated volume and destinations of the treated effluent, especially as it relates to the reuse system, would be beneficial to include in the permit. Under Effingham County's current LAS Permit No. GAJ020016, the county is permitted to distribute up to 1.0 MGD to reuse customers. However, the permit leaves discrepancies about the volume to be permitted for reuse. Section 5.2 notes that a maximum of 1.6 MGD will be permitted under this permit, with an additional 0.272 MGD for land application. However, no limit explicit limit for reuse is given here or anywhere else in the permit, beyond the 3.0 MGD

maximum for the whole permit. ORK asks the the permit terms explicitly clarify that, if reuse customer demand exist, the entirety of the 3.0 MGD may be distributed to through the reuse system.

Additionally, ORK request that the permit also include terms that creates a prioritization system for the effluent. Specifically, ORK asks that treated effluent is distributed through the reuse system before discharges are sent to either the land application system or directly discharged to the Ogeechee River, whenever reuse customer demand exists. Similarly, discharges should be sent to the land application system before direct discharges to the Ogeechee. Only when there is no reuse customer demand and no remaining land application capacity exist should the treated effluent be directly discharged to the Ogeechee River. This prioritization system offer not only the strong ensurances of protection to the Ogeechee River's water quality, it also reduces water supply demands through the delivery of reuse water to customers who would otherwise use groundwater or treated surface water.

Second, there is uncertainty around the use and inclusion of Water Quality Based Effluent Limitations (WQBELs) in NPDES permits following the U.S. Supreme Court's decision in *San Francisco v. EPA*.¹ In this decision, the Supreme Court holds that "[33 U.S.c] §1311(b)(1)(C) does not authorize the EPA to include "end-result" provisions in NPDES permits." The Court defines these "end-result" requirements as "provisions that do not spell out what a permittee must do or refrain from doing," but rather "make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants." Instead of the permittee's responsibility for the end-result requirement, the Court states that it is the EPA (and, therefore, the states authorized to issue NPDES permits through their environmental departments, *i.e.* Georgia and the EPD) to determine "what steps a permittee must take to ensure that water quality standards are met."

Under these instructions, it is unclear whether WQBELs are allowed to be used or included under this new interpretation of 33 U.S.C. § 1311(b)(1)(C). The WQBELs do not instruct the permittee about "what steps [it] must take to ensure that water quality standards are met," and appear to focus only on the end results. ORK urges EPD to consider whether these WQBELs should be included in this NPDES permit and any future permit. Further, EPD must still be mindful of its continuing duty to meet water quality standards when issuing NPDES permits in this changing legal landscape. If WQBELs cannot be used or included, EPD must determine whether the remaining permit terms are sufficient to ensure that water quality standards will still be met. If the remaining permit terms cannot achieve this requirement, EPD cannot issue the permit. ORK strongly urges EPD to fully consider its permitting strategy and approach in light this recent Supreme Court decision.

Thank you in advance for your time and consideration; please let me know if you have any questions:

ben@ogeecheeriverkeeper.org.

Ben Kirsch, Legal Director
Ogeechee Riverkeeper

¹ *City and County of San Francisco, California v. Environmental Protection Agency*, 604 U.S. ____ (No. 23-753). Available at: https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf