

CHIEF CLERKS OFFICE

PAGE  
2007 APR 19 PM 4:04

TEXAS  
COMMISSION  
OF ENVIRONMENTAL  
QUALITY

April 19, 2007

**Protestants BRIEF**

Re: City of Weston EXCEPTIONS  
to Judge Ramos Proposal Of Decision

To: *The Honorable Sarah G. Ramos*  
Administrative Law Judge  
Texas Commission of Environmental Quality  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701

*Soak Docket No. 582-06-2770 TCEQ No. 2006-0199-MWD Permit No. WQ0014602001*

Dear Honorable Judge Ramos,

As we stated in our April 9<sup>th</sup> Brief...

We the protestants in this case hearing still agree with your Proposal of Decision you have recommended to the TCEQ Commissioners. We are in hopes the Commissioners will support your decision as well.

We still believe you expertly based your recommendation by decisions based on law, common sense, good science, and fiscal responsibility just as the TCEQ Philosophy and Mission Statement implies in their Biennial Report.

Our documentation of over 220 petitioners, the testimony of 12 actual flood event witnesses, *and* the actual experiences, arguments, and research the protestants brought forth during the hearing all confirm this particular proposed WWTP still is not in a suitable place.

We also still agree the original application compiled by the City of Weston did not include adequate information relating to the many concerns brought forth during the hearing.

We still believe your recommendation protects the surrounding land owners. the land owners along Honey Creek, Honey Creek itself, and even the highly possible liabilities the City of Weston taxpayers would endure when future floods occur.

Therefore, the Protestants involved in this proposed permit application still support your Findings of Fact and Conclusion of Law and all agree this application should be denied.

*Our next 3 pages include our Rebuttals to The City of Westons Exceptions...*

## I. Re: The Flood Issues

In reference to the City of Weston's Exceptions to the Proposal For Decision prepared by Angela M. Stepherson, she states "Lawrence Ringley, a Registered Professional Land Surveyor, confirmed in his testimony for the protestants that most professionals use FEMA maps as their only source of information for determining the location of the 100-year floodplain". Ms. Stepherson did not ask Lawrence Ringley in what context is the information from the FEMA maps used by professionals. Some prospective buyers of property, Title Insuring Agencies or mortgage companies request that the Surveyor reflect upon their Boundary Survey Plat, the approximate location of the 100-year floodplain according to the FEMA map for that community. This is necessary for them to determine the overall value of the property and what area is available for the construction of homes, buildings, roads, etc. In the event a residential home or a commercial building is planned to be constructed near the 100-year floodplain limits as reflected on the Surveyors plat, additional information is required. The building permitting authority and the property owner's insurance underwriter will require an Elevation Certificate to be prepared by a Registered Professional Land Surveyor or a Registered Professional Engineer to determine the Base Flood Elevation for the area and the minimum finish floor elevation for the proposed structure. The 100-year floodplain reflected on the current (1996) FEMA map in the area of the proposed wastewater treatment plat is identified as "Zone A". FEMA defines Zone A as "No base flood elevation determined". This is common in the unincorporated areas of the county in which FEMA or a Professional Engineer has not performed an actual detailed flood study. As shown on the Buffer Zone Map included in the Application and also on Exhibit Applicant-20, Weston's Engineer, Michael A James, P.E. has annotated the 100-year floodplain as "approximate 100-year floodplain". Mr. James testified that he and his firm did not conduct a detailed flood study of the area nor did he conduct an on-the-ground Topographic Survey or even measure a few ground elevations in the area of Honey Creek and the proposed plat. Based upon our Surveying experiences, the history of floods in the area and the lack of an actual on-the-ground survey or study, we feel the applicants statement that the proposed wastewater treatment plant will not be located in the 100-year floodplain is unverifiable.

The FEMA map used by Mr. James has a revision date of January 19, 1996. On that same map, FEMA has the following note: "Map revised January 19, 1996 to update corporate limits, to update map format, to add roads and road names, to incorporate previously issued letters of map revision, and to incorporate previously issued letters of map amendment".

Ms. Stepherson states "not a single protestant witness was qualified to provide expert testimony on the specific issue" and later states "the PFD inappropriately treats various lay opinions offered by those witnesses as if they were expert opinions". In the first paragraph on page 4 of the Exceptions to the Proposal For Decision prepared by Ms. Stepherson, she describes that Michael Gidney and Nina Ringley testified that County Road 170 near the proposed wastewater treatment plant site has been raised and a new bridge built in just the last few years. The last sentence of that paragraph, Ms. Stepherson states "Those improvements alleviate the flooding that might have previously occurred in that area". It appears now that she is offering her expert opinion on Hydrology.

**II. Re: The treated effluent applied for Irrigation  
Will not seep into ground water or spring-fed ponds**

As protestants testified, the proposed WWTP application did not make any reference on the application the many springs located very near *in* Honey Creek, nor of the protestants "very visual" spring-fed cattle pond located just feet away. Protestants provided proof and/or testimony throughout the three day hearing regarding these issues.

These observations (as testified in the hearing) can be visibly seen by any lay person standing near the WWTP vicinity but Mr. James failed to report these findings in his own personal observations as well as in his permit application. Therefore, contrary to page 9, Protestants still continue their belief that the field report from Mr. James included in his application was both inadequate and inaccurate.

On page 10, in regards to past rainfall regards... After reviewing these rainfall charts it is evident the rainfall records clearly indicate the heavy rainfall years that coincide with the Protestants actual accounts, numerous related newspaper weather articles and the testimony of local witnesses regarding the many major and minor flood occurrences in and around the WWTP vicinity.

On page 7 Applicant makes reference to their Exhibit 23 which is the TCEQ Groundwater Impact Evaluation. After our conversations with Mr. Paul Askenasy, the Agronomist of TCEQ, we feel certain his recommendations might have been different if he had known of all the floods (major and/or minor) and of the continued water saturation problems of this area. **His** application showed a "cattle pond" located just above the WWTP location. Protestants provided proof during the hearing that this "cattle pond" is in fact a Emergency Flood Control Lake, Site 10 on the County Maps. This same map provided by the US Dept of Conservation (now NRCS) also reveals that the proposed WWTP is actually surrounded by **four** Emergency Flood Control Lakes which definitely indicates the flooding hazards of the WWTP area. Clyde Hogue, the District Conservationist, also provided a written letter that was read during the testimony of Nina Ringley describing the reasons why these EF control lakes were built. We feel Mr. Hogues information regarding this Flood Control Structure should be relavent to this WWTP site and should not be removed as the applicant requests. Protestants also agree that based on the lack of information provided to TCEQ in the application, the Groundwater Evaluation Study was inaccurate for a correct assessment.

On Page 12 regarding testimony of Nina Ringley... After reviewing her testimony on pages 533, 573, and 574 of the transcript, Ms Ringley clearly and consistently indicates the visual evidence of springs in Honey Creek. Her life-long (40 plus years) family history living on or near the area gives more than valid association with this application. Photos of actual springs with landmarks proving their location were actually brought to the hearing but she knew they would not be admitted because they were not pre-filed.

Also on page 12... Applicant makes reference to the water wells. Even though the Water Well Reports of the McKees had the wrong address the placement of the well was correct and is located within the radius the application requested. As testified by the Protestants there actually was three active nearby wells *not on the application*. The fact still remains, that in this particular rural area, everyone, including the applicant's engineer, should know wherever there is an active rural mailbox visible there is going to be a well servicing that resident nearby. Close observation of the geology maps also indicate evidence of these wells existing that were not included on the application. Protestants therefore agree the Applicant *did not* make every effort to identify all the water wells within TCEQ's required radius.

In reference to the "blue line" (page 11)... This might have to do with directly above the proposed WWTP site there is a photo of an old barn in the application. By this barn was originally an old homestead with an active well. This blue line is probably what serviced that well and is connected to Honey Creek. Protestants feel this "blue line" IS connected to a shallow water table and is a natural stream that should be protected. Therefore, again we feel applicant left pertinent information out of the application that might indicate serious risks to the natural streams and course of of Honey Creek.

Testimony by The Applicants; the City Mayor Patty Harington, the Engineer Mr. James, and the developer Mr. Scott Norris conclude that they were not aware of the past flooding issues when the application was filed with TCEQ nor did any reside any where near this area, therefore,  
*Protestants continue to feel this application should be DENIED.*

Sincerely,

Nina Dowell Ringley & Lawrence Ringley, John & Irene Dowell  
Tom & Sue Crossland, Mike & Eleanor McKee