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State Office of Administrative Hearings

Chief Administrative Law Judge

July 26, 2022

Mary Smith
General Counsel
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F, Room 4225
Austin, TX 78753

**Re: SOAH Docket No. 582-22-0585; TCEQ Docket No. 2021-1001-MWD;
Application of City of Granbury**

Dear Ms. Smith:

The undersigned Administrative Law Judges (ALJs) issued a Proposal for Decision (PFD) in this matter on June 20, 2022. Exceptions were timely filed by the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission); the City of Granbury (Granbury); and protestants Victoria Calder, Granbury Fresh, James and Stacy Rist, and Bennett's Camping Center and RV Ranch (collectively, Protestants). The ED and Granbury timely filed responses to Protestants' exceptions, and Protestants timely filed a response to Granbury's exceptions. The Office Of Public Interest Council filed a letter stating that it maintained the positions set forth in its closing briefs but did not submit exceptions or replies.

The ED's exceptions consist of recommended corrections to errors in the text on pages 27 and 70 of the PFD, and to Finding of Fact (FOF) Nos. 17, 25, and 86. In addition, the ED recommends changing "mean DO criteria" to "daily mean DO criteria" for clarification. The ALJs agree with these corrections and recommend they be accepted.

Protestants' exceptions concern nuisance odors and buffer zone requirements; the modeling of five-day carbonaceous biochemical oxygen demand (CBOD_5); potential impact to recreational uses of the subject water bodies; nutrient limits and the expected impact to algae growth; and the anti-degradation review. The ALJs do not consider Protestants' exceptions at pages 11-12, which rely on evidence not admitted into the evidentiary record but included as an offer of proof.

As to the remainder of the exceptions, Protestants reiterate their arguments made during the hearing and in post-hearing briefs, which the ALJs have already addressed at great length in the PFD; that analysis is not repeated here. Finally, Protestants urge that instead of the transcript costs being split as the ALJs suggest (50 percent to Granbury and 25 percent each to the two Protestant groups), Granbury should bear all of the costs. As justification, Protestants cite Granbury's request for a one-day turnaround, the number of witnesses presented, and Granbury's ability to pay. Those factors were considered by the ALJs, and they do not change their recommendation as to transcript costs.

Granbury does not take exception to the PFD *per se*, but requests the addition of a FOF stating that the discharges authorized in the Draft Permit are shown to be necessary for important economic and social development. The Commission's IPs suggest this is a factor that might justify approval of a permit when a discharge is expected to degrade water quality. In the PFD, the ALJs determined that the Draft Permit would *not* lower water quality by more than a de minimis extent; if the Commission disagrees, it might nonetheless approve the permit by finding that the lowering of water quality is important for social or economic development.

Protestants oppose the inclusion of Granbury's proposed FOF, arguing that the alternative issue was not raised in the public notice and was not among the issues the Commission referred to SOAH. Protestants contend they have not had the opportunity to conduct discovery or present evidence on an alternative argument that more-than-de-minimis degradation is justified by social or economic need. The ALJs agree and decline to recommend the additional finding proposed by Granbury.

In sum, the ALJs recommend that both Granbury's and Protestants' exceptions be rejected. The PFD and Proposed Order should be adopted as written, save for the corrections identified in the ED's exceptions.

SOAH has now concluded its involvement in this matter, and the case is being remanded to the Commission. *See Tex. Gov't Code § 2003.051(a).*

Pratibha J. Shenoy

Pratibha J. Shenoy

Co-Presiding Administrative Law Judge

Sarah Starnes

Sarah Starnes

Presiding Administrative Law Judge

SS/tt

cc: Parties of Record