

**SOAH DOCKET NO. 582-22-02856  
TCEQ DOCKET NO. 2022-0326-MWD**

**APPLICATION OF RESTORE THE § BEFORE THE STATE OFFICE  
GRASSLANDS LLC AND §  
HARRINGTON/TURNER § OF  
ENTERPRISES, LP §  
(TPDES PERMIT NO. WQ0016003001) § ADMINISTRATIVE HEARINGS**

**APPLICANTS’ EXCEPTIONS AND REQUEST FOR CORRECTIONS TO THE  
ORDERING PARAGRAPHS OF THE PROPOSAL FOR DECISION**

Restore the Grasslands LLC (“RTG”) and Harrington/Turner Enterprises, LP (“HTE”) (“Applicants”) file their Exceptions to the Proposal for Decision (“PFD”) in this matter. Applicants respectfully request that the ordering paragraphs to the PFD be clarified to give direction to the parties with regard to Issue E in this matter. Accordingly, Applicants submit this Supporting Brief as follows:

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

Applicants seek approval of Texas Pollutant Discharge Elimination System (“TPDES”) permit No. WQ0016003001 (the “Draft Permit”) in the above-referenced docket, which was filed on May 26, 2021, with the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”). Because the Application was filed after September 1, 2015, the Application is subject to the procedural requirements adopted pursuant to House Bill (“HB”) 801, 76th Legislature (1999), and Senate Bill (“SB”) 709, 84th Legislature (2015), both implemented by the Commission in its rules under 30 Texas Administrative Code Chapters 39, 50, and 55. *See* TEX. GOV’T CODE § 2003.047(i-1)-(i-3). The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. *See id.*

One of the major changes to the contested case hearing process as a result of SB 709 is that the filing of the Draft Permit, the preliminary decision issued by the Executive Director (“ED”)

and other documentation establishes a prima facie case that a Draft Permit meets all applicable state and federal legal and technical requirements and that the Draft Permit, if issued, will protect human health and safety and the environment. *See id.* The statute further provides that a party may only rebut this prima facie case by: (1) presenting evidence relating to one of the issues the Commission referred; and (2) demonstrating that a Draft Permit violates an applicable state or federal requirement. *See id.* The statute also provides that the applicant and the executive director may present additional evidence to support a Draft Permit. *See id.*

On May 20, 2022, the Commission granted hearing requests and referred the matter to SOAH for a hearing. The State Office of Administrative Hearings (“SOAH”) held a preliminary hearing on August 29, 2022, during which Administrative Law Judge (“ALJ”) Rebecca Smith determined that SOAH had jurisdiction. A contested case hearing (“CCH”) was held on February 7 – 10, 2023.

On April 27, 2023, ALJ Rebecca Smith issued a Proposal for Decision (“PFD”) in this matter. After considering the comments received and the evidence presented at the CCH, it was recommended that the Draft Permit complies with the statutory and regulatory requirements, and that Applicants established their prima facie case of the meeting the statutory and regulatory requirements. The PFD recommended approval of the Draft Permit if Applicants were unable to reach an agreement with the North Texas Municipal Water District (“NTMWD”) for wastewater service either directly or through a member city, or as directed by the Commission.

In any event, Protestants have failed to rebut Applicants’ prima facie case, or its evidence, and have failed to establish that the Draft Permit violates a specifically applicable state or federal requirement, and that the State’s regionalization policy discussed in the PFD does not dictate that

the Draft Permit be denied. The issues for consideration, which were presented at the Hearing, are items A-L from TCEQ's referral to SOAH.

## **II. APPLICANTS RAISE NO EXCEPTIONS OR OBJECTIONS TO THE PROPOSAL FOR DECISION**

As outlined below, Applicants do not raise any exceptions or objections with respect to issues "A-D" and "F-L" that were referred to SOAH for consideration. However, Applicants do except to issue E and the lack of clarity in the Ordering Paragraphs of the PFD:

### **A. Whether the Draft Permit is protective of livestock, wildlife, and wildlife habitats:**

Applicants raise no exceptions or objections to the PFD's determination that the Draft Permit is protective of livestock, wildlife, and wildlife habitats. *See* PROPOSAL FOR DECISION at pp. 17-21.

### **B. Whether the Draft Permit is protective of the requesters' and their families' health and safety:**

Applicants raise no exceptions or corrections to the PFD's determination that the Draft Permit protective of the requestors' and their families' health and safety. *See id.* at pp. 21-22.

### **C. Whether the Draft Permit complies with applicable siting requirements in 30 Texas Administrative Code Chapter 309, including adequate prevention of nuisance odors:**

Applicants raise no exceptions or corrections to the PFD's determination that the Draft Permit complies with applicable siting requirements in 30 Texas Administrative Code Ch. 309, including adequate prevention of nuisance orders. *See id.* at pp. 34-38.

### **D. Whether Applicants substantially complied with applicable notice requirements:**

Applicants raise no exceptions to the determination that the PFD's Draft Permit complied with applicable notice requirements. *See id.* at pp. 27-28.

**E. Whether issuance of the Draft Permit is consistent with TCEQ's regionalization policy and Texas Water Code §§ 26.081 and 26.0282, and 30 Texas Administrative Code Chapter 351, Subchapter C, including consideration of need for the proposed facility and designation of a regional entity:**

The PFD recommends that the parties be instructed to attempt to reach an agreement with regard to terms of service. Applicants have made a diligent and good faith attempt to negotiate wastewater service with NTWD and its customer cities of Parker and Murphy to no avail. Applicants will, however, continue in this effort if so ordered. Applicants agree with the PFD that the Commission has not been petitioned to order NTMWD to provide wastewater service to Applicants, however, because NTMWD is a party to these proceedings Applicant agrees with the ED that no such petition should be required and that Applicants should not be required to start the application process over. It is Applicant's further position that in any event they have met the requirements under Issue E for the permit to be issued.

**F. Whether the Draft Permit complies with the Texas Surface Water Quality Standards and is protective of surface and groundwater quality, including requesters' use and enjoyment of their property:**

Applicants raise no exceptions or corrections to the PFD's determination Draft Permit complies with the Texas Surface Water Quality Standards and is protective of surface and groundwater quality, including requesters' use and enjoyment of their property. *See id.* pp. 12-17.

**G. Whether the antidegradation review complies with applicable regulations and the Draft Permit includes adequate nutrient limits:**

Applicants raise no exceptions or corrections to the PFD's determination that the antidegradation review complies with applicable regulations and the Draft Permit includes adequate nutrient limits. *See id.* at pp. 22-27.

**H. Whether Applicants substantially complied with applicable notice requirements:**

Applicants raise no exceptions or corrections to the determination that the PFD's Draft Permit complied with applicable notice requirements. *See* Proposal for Decision at pp. 27-28.

**I. Whether the Application is accurate and contains all required information:**

Applicants raise no exceptions or corrections to the PFD's determination that the Application is accurate and contains all required information. *See id.* at pp. 28-31.

**J. Whether Applicants are legal entities:**

Applicants raise no exceptions or corrections to the PFD's determination that the Application is accurate and contains all required information. *See id.* at pp. 31-34.

**K. Whether the Draft Permit includes adequate provisions to control vectors:**

Applicants raise no exceptions or corrections to the PFD's determination that the Draft Permit includes adequate provisions to control vectors. *See* Proposal for Decision at pg. 47.

**L. Whether the Draft Permit's monitoring requirements comply with applicable regulations:**

Applicants raise no exceptions or corrections to the PFD's determination that the Draft Permit's monitoring requirements comply with applicable regulations. *See id.*

**M. Whether Applicants' compliance history raises any issues regarding Applicants' ability to comply with the material terms of the permit that warrant denying or altering the terms of the Draft Permit:**

Applicants raise no exceptions or corrections to the PFD's determination that Applicants' compliance history raises no issues regarding Applicants' ability to comply with the material terms of the permit that warrant denying or altering the terms of the Draft Permit. *See* Proposal for Decision at pp. 49-50.

### **III. APPLICANT'S OBJECTIONS AND EXCEPTIONS TO THE PROPOSED ORDER**

Applicants object to the ordering paragraph 1 of the PFD on the basis that the Order is inconsistent with the PFD's analysis and proposes an outright denial of the Draft Permit. Clearly, the ALJ's analysis shows that the Applicants' have met their burden with respect to issues A-D and F-L. The only exception is related to Item E, which merely offers an opportunity for Applicants to negotiate terms of service with NTMWD, and/or allow the TCEQ to order such service. Accordingly, Applicants recommend the following language in place of paragraph 1 of the current proposed Order with existing paragraphs 2-6 renumbered:

1. Restore the Grasslands LLC ("RTG") and North Texas Municipal Water District ("NTMWD") shall immediately negotiate in good faith to reach an agreement for NTMWD to provide wastewater service to RTG either directly or through a customer city. Any such agreement must be mutually acceptable to each of RTG and NTMWD in their sole discretion.
2. In the event that RTG and NTMWD are unable to reach a mutually acceptable agreement within thirty (30) days after the date of this Order, then the Texas Commission on Environmental Quality (the "Commission") shall set appropriate terms.
3. If the Commission fails or refuses to set such terms within an additional sixty (60) days from the date of this Order, then the Application for Texas Pollutant Discharge Elimination System Permit No. WQ0016003001 is granted effective as of such sixtieth (60<sup>th</sup>) day.

**IV. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Applicants respectfully requests that the Texas Commission on Environmental Quality consider their exceptions and amend the Ordering Paragraphs of the PFD.

Respectfully submitted,

**COATS | ROSE**

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**TCEQ DOCKET NO. 2022-0326-MWD**  
**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2023, a copy of the foregoing Pleading was served on all person listed either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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