

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

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

APPLICANTS’ FINAL REPLY BRIEF

Restore the Grasslands LLC (“RTG”) and Harrington/Turner Enterprises, LP (“HTE”) (collectively “Applicants”) submit their final reply brief in response to the City of Parker’s, City of Murphy’s (“Murphy”) and the Individual Protestants’ (collectively “Protestants”) Exceptions to the Proposal for Decision (“PFD”) and in further support show the following:

The Applicants’ permit should be approved because it meets the specific issues in this matter as well as Texas Commission on Environmental Quality (“TCEQ”) rules. The TCEQ’s Executive Director (“ED”)—an objective administrator lacking any inherent interest to seek the Draft Permit’s approval or disapproval—explicitly disagrees with the Protestants’ various claims that the Draft Permit should not be approved. The ED supports the PFD’s determination that Applicants met their “burden of proof on referred issues A, B, C, D, F, G, H, I, J, K, and L” and further argues that the regionalization considerations of referenced issue E should not apply. *See* ED’s Exceptions to PFD at pg. 1. Applicants agree with the ED’s determination that their prima facie case was not successfully rebutted and that the Draft Permit meets all applicable state or federal requirements. *See id.* at pgs. 1; 3-4. Applicants also agree with the ED that if the permit is not issued, the Commission should, in the alternative, direct North Texas Municipal Water District to negotiate and reach an agreement for service by a date certain. *See id.* at pg. 10.

While the PFD and the ED have properly determined that the Applicants' Draft Permit meets all applicable water quality requirements, Protestants' position seeks to impose requirements that are not appropriate or required for a permit with such a limited proposed wastewater volume flow. For instance, Copper and Zinc limits are not required for wastewater flows of 1.0 MGD or less. Yet, Murphy's Exceptions to the PFD offers to rewrite what is required or necessary under the TCEQ's explicit and on-point rules and regulations. *See* Murphy's Exceptions to PFD at pp. 1-2. Similarly, dichlorination is not required for wastewater flows of less than 0.5 MGD. Still, Murphy would have the Commission require Applicants to conduct acute and chronic WET testing and UV disinfection despite the Murphy's acknowledgement that TCEQ rules explicitly provide that wastewater permits with such limited wastewater flows are *not* subject to such requirements. *See id.* at pp. 3-4.

Murphy further argues, while simultaneously acknowledging that TCEQ witness Mr. Dubke had consistently determined that the dissolved oxygen level in Maxwell Creek will be within the minimum required dissolved oxygen level of 5.0 mg/L, that Applicants should be held to a higher standard than is explicitly required by TCEQ rules for its Draft Permit. *See id.* at pg. 5. The evidentiary record clearly demonstrates that the Draft Permit is protective of the waters of the state relating to dissolved oxygen.

Protestants also take the position that HTE is not a valid legal entity. *See id.* at 8-10. Once again, the record clearly shows that HTE is a recognized corporation, and the ED agrees with the PFD's determination that the Protestants' concerns are not material to the approval of the Draft Permit.

In conclusion, Protestants have failed to rebut Applicants demonstration and the ED's determination that they are entitled to permit approval in this matter. Specifically, Protestants have failed to establish that the Draft Permit violates any applicable state or federal requirement, and the PFD properly agrees with the sole exception of its application of the regionalization policy of the Commission. Based on the administrative record, the evidence presented at hearing, the relevant items outlined by Applicants in this brief, legal arguments, and the fact that the Draft Permit meets all statutory and regulatory requirements. Applicants incorporate their previous brief in this matter by reference and request the permit's approval.

WHEREFORE, based on the above reasons, Applicants respectfully request that the TCEQ grant the application for New TPDES Permit No. WQ16003001, or in the alternative require that North Texas Municipal Water District as the regional provider must negotiate in good faith to provide wastewater service directly or through a customer city to the Applicants.

Respectfully submitted,

COATS | ROSE

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CERTIFICATE OF SERVICE

I hereby certify that on June 6th, 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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