

Mr. Aldredge's Direct Line: (512) 322-5859  
[jaldredge@lglawfirm.com](mailto:jaldredge@lglawfirm.com)

TCEQ 000

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April 13, 2023

Ms. Laurie Gharis, Chief Clerk  
Office of the Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**VIA ELECTRONIC FILING AND  
REVIEWED FIRST-CLASS MAIL**

APR 18 2023

By          H

Re: Application by Bahamas Laguna Azure, LLC for TPDES Permit No. WQ0016186001  
Comments and Hearing Request by City of Royse City

Dear Ms. Gharis:

Please accept this comment letter on behalf of the City of Royse City, Texas ("Royse City"). Royse City is a Home Rule municipality that holds Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010366001, which authorizes Royse City to discharge treated domestic wastewater in Rockwall County, Texas. Royse City respectfully submits the following written comments on the application filed by Bahamas Laguna Azure, LLC ("Applicant") for TPDES Permit No. WQ0016186001 (the "Application") and the Executive Director's preliminary decision on the Application along with the initial draft TPDES Permit No. WQ0016186001 (the "Draft Permit"). In addition, Royse City hereby requests a contested case hearing on the Application and Draft permit. These public comments and hearing request are submitted in accordance with Chapter 5, Subchapter M and Section 26.028 of the Texas Water Code, and Title 30, Chapter 55 of the Texas Administrative Code. Please add the following contacts to your official mailing list for this matter using the following contact information provided in accordance with TCEQ Rule 55.251(c):

James T. Aldredge and David J. Klein, on behalf of City of Royse City  
816 Congress Ave., Ste. 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Fax: (512) 472-0532

### **Background and Affectedness**

The Texas Commission on Environmental Quality ("TCEQ") may grant a hearing request when the request is submitted by an affected person under TCEQ's rules. An affected person is one who has a personal justiciable interest in the Application not common to members of the general public. In determining whether a hearing requestor is an affected person, the commission must consider all factors including, for governmental entities, the entity's statutory authority over or interest in the issues relevant to the Application.

As a home-rule municipality, Royse City has statutory authority and interest in operating and maintaining a domestic waste or sewer collection and treatment system. Royse City operates and maintains sewer collection facilities in close proximity to the development proposed to be treated by the waste facility proposed in the Application. TCEQ has issued TPDES Permit No. WQ0010366001 to Royse City that authorizes Royse City to maintain a wastewater treatment facility to serve development in and around Royse City. Royse City has constructed and currently maintains a wastewater treatment facility that serves the immediate area ("Royse City WWTP"). Royse City is authorized to discharge 0.50 million gallons of treated domestic waste effluent per day on average to Sabine Creek. Enclosed with this letter as Exhibit A is a map illustrating the location of the Royse City WWTP relative to the plant proposed by the Application.

In addition, Royse City is served by the North Texas Municipal Water District's ("NTMWD") Sabine Creek Wastewater Project ("Sabine Creek WWTP"), which is authorized by TCEQ through TPDES Permit No. WQ0014469001. NTMWD provides wastewater collection, treatment, and disposal services to Royse City on a wholesale basis. Royse City maintains and operates a sewer collection system that ties into NTMWD's regional wastewater collection and treatment system. Royse City operates wastewater collection lines, including an existing 30-inch gravity main, within the boundaries of the service area proposed in the Application. In fact, Royse City operates an existing eight-inch collection line that runs directly underneath the proposed treatment plant site. Royse City is also developing a 42-inch gravity main to run parallel to the existing 30-inch main underneath the Applicant's proposed service area. Royse City currently has the capacity to accept the volume of flows that would be treated by the Applicant's facility.

Moreover, the entire area proposed to be served by the facility requested to be authorized by the permit is within the service area authorized by the Public Utility Commission of Texas to be served exclusively by Royse City under Sewer Certificate of Convenience and Necessity ("CCN") No. 20813. For these reasons, Royse City has a personal justiciable interest in the Application that is not common to members of the general public. Royse City qualifies as an affected person under the applicable rules, and its hearing request should be granted.

The Applicant filed the Application on July 1, 2022. The Application requests a permit to authorize the Applicant to discharge treated domestic waste approximately 2.0 miles southeast of the intersection of Farm-to-Market Road 548 and Interstate Highway 30, in Rockwall County, Texas. In its final phase, the Draft Permit, if issued, would authorize the Applicant to discharge 0.525 million gallons of treated domestic waste to Sabine Creek downstream of Royse City's authorized discharge location. The proposed location of the facility that would be authorized if the Draft Permit is issued is approximately 1.10 miles south of the Royse City WWTP. The proposed daily average effluent limits are 10 milligrams per liter ("mg/l") Carbonaceous Biochemical Oxygen Demand, 15 mg/l Total Suspended Solids, and 3 mg/l Ammonia Nitrogen with no numerical limit on nutrients such as Total Phosphorus or Total Nitrogen.

### **Regionalization Policy**

The Application proposes to construct a wastewater treatment facility approximately 1.10 miles south of the Royse City WWTP and to discharge waste into the same water body that Royse

City is authorized to discharge to. The Application correctly identifies in Attachment 12 both the Royse City WWTP and NTMWD's Sabine Creek WWTP as being within a three-mile radius of the plant proposed in the Application. The Applicant included copies of unsigned letters to Royse City and NTMWD requesting service. However, the Application does not include any responses to those letters as required by TCEQ's form TPDES application and instructions for completing the same. Consequently, the Application incorrectly asserts that there are no collection or treatment facilities within the three-mile radius that have capacity and are willing to serve the area proposed to be served in the Application.

In fact, Royse City's collection system has capacity to accept the volume of flows proposed to be treated and discharged in the Application, and NTMWD's Sabine Creek WWTP has capacity to treat and dispose of those same flows. Royse City is willing to connect the area and development described in the Application to its nearby existing collection system, which then feeds into NTMWD's Sabine Creek WWTP.

The area proposed by the Applicant to be served by the requested treatment facility is within Royse City's Sewer CCN. Under that CCN, Royse City has the exclusive right to provide retail sewer service in the same area. The Applicant does not have legal authority to serve any customers within the area it has relied on to justify the requested permit, including justification of flows.

Issuance of the proposed permit as preliminarily decided by the Executive Director would be inconsistent with the State's regionalization policy. The commission should deny the application because it fails to demonstrate any need for a new point-source discharge of waste into waters of the state. Alternatively, the commission should grant Royse City's hearing request and refer this matter to the State Office of Administrative Hearings for consideration of the Application's inconsistency with the State's regionalization policy.

### **Surface Water Quality Standards/Antidegradation**

As noted in Water Quality Division staff's memorandum dated August 11, 2022, the Application is subject to a Tier 2 antidegradation review. Program staff preliminarily determined that no significant degradation of water quality is expected in Sabine Creek if the Draft permit is ultimately issued. The technical memorandum misstates the applicable legal requirement. The Tier 2 antidegradation rule does not allow a discharge into fishable/swimmable quality receiving waters if such discharge will not cause "significant degradation" of water quality. Rather, the antidegradation policy prohibits any discharge "that would cause degradation of waters that exceed fishable/swimmable quality[.]" In other words, TCEQ's rules expressly prohibit any regulated activity that would degrade water quality at all—not ones that would cause "significant" degradation.

The rule defines "Degradation" as "a lowering of water quality by more than a de minimis extent, but not to the extent that an existing use is impaired." The Draft Permit, if issued, will lower water quality in the receiving waters by more than a de minimis extent and will impair existing

Ms. Laurie Gharis  
April 13, 2023  
Page 4 of 4

uses. Consequently, the resulting discharge will degrade water quality, which is prohibited by TCEQ rules.

Moreover, Royse City believes that the proposed effluent limitations and Draft Permit, if issued, will also fail to maintain TCEQ's numerical surface water quality standards. The proposed discharge will most likely lower dissolved oxygen concentrations in the receiving waters below the allowable limits at the proposed effluent limits. At a minimum, the Draft Permit should be revised to include a more stringent set of effluent limits as well as a limit on Total Phosphorus and Total Nitrogen. Without these more stringent effluent limits, the resulting discharge will overload the receiving waters with nutrients, which will further degrade water quality.

For all of these reasons, Royse City respectfully requests that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Royse City's comments and refer this matter to the State Office of Administrative Hearings.

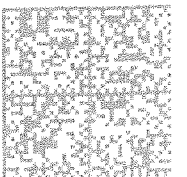
Thank you for your consideration of these comments and hearing request.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James', with a stylized flourish extending to the right.

James Aldredge

copy: Jason Day, City Attorney  
David J. Klein, of the Firm  
Chloe Daniels, of the Firm



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# First Class Mail

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TCEQ MAIL CENTER  
AJ

**Lloyd**  
**Gosselink**  
ATTORNEYS AT LAW

Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Avenue Suite 1900 Austin, Texas 78701

TO:

Ms. Laurie Gharis, Chief Clerk  
Office of the Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

78524 000

1/0700 123 9145



## Christina Bourque

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, April 14, 2023 8:21 AM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016186001  
**Attachments:** 2023.04.13 Royse City Comment and HR on BLA TPDES WQ00161800011.pdf

H

**From:** sbilliot@lglawfirm.com <sbilliot@lglawfirm.com>  
**Sent:** Thursday, April 13, 2023 11:45 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016186001

**REGULATED ENTY NAME** BAHAMAS WWTP

**RN NUMBER:** RN111531638

**PERMIT NUMBER:** WQ0016186001

**DOCKET NUMBER:**

**COUNTY:** ROCKWALL

**PRINCIPAL NAME:** BAHAMAS LAGUNA AZURE LLC

**CN NUMBER:** CN606036655

**FROM**

**NAME:** James Aldredge

**EMAIL:** [sbilliot@lglawfirm.com](mailto:sbilliot@lglawfirm.com)

**COMPANY:** Lloyd Gosselink Rochelle & Townsend, P.C.

**ADDRESS:** 816 CONGRESS AVE 1900  
AUSTIN TX 78701-2442

**PHONE:** 5123225800

**FAX:**

**COMMENTS:** Please see the attached public comment on behalf of the City of Royse City.



816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
512.322.5800 p  
512.472.0532 f  
lglawfirm.com

Mr. Aldredge's Direct Line: (512) 322-5859  
jaldredge@lglawfirm.com

April 13, 2023

Ms. Laurie Gharis, Chief Clerk  
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Texas Commission on Environmental Quality  
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Austin, Texas 78711-3087

**VIA ELECTRONIC FILING AND**  
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Ms. Laurie Gharis  
April 13, 2023  
Page 2 of 4

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Ms. Laurie Gharis  
April 13, 2023  
Page 4 of 4

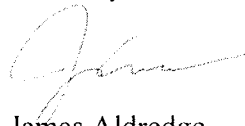
uses. Consequently, the resulting discharge will degrade water quality, which is prohibited by TCEQ rules.

Moreover, Royse City believes that the proposed effluent limitations and Draft Permit, if issued, will also fail to maintain TCEQ's numerical surface water quality standards. The proposed discharge will most likely lower dissolved oxygen concentrations in the receiving waters below the allowable limits at the proposed effluent limits. At a minimum, the Draft Permit should be revised to include a more stringent set of effluent limits as well as a limit on Total Phosphorus and Total Nitrogen. Without these more stringent effluent limits, the resulting discharge will overload the receiving waters with nutrients, which will further degrade water quality.

For all of these reasons, Royse City respectfully requests that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Royse City's comments and refer this matter to the State Office of Administrative Hearings.

Thank you for your consideration of these comments and hearing request.

Sincerely,



James Aldredge

copy: Jason Day, City Attorney  
David J. Klein, of the Firm  
Chloe Daniels, of the Firm

## Christina Bourque

---

**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, January 4, 2023 1:33 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0016186001  
**Attachments:** LJK to TCEQ Re CCH for Bahamas Laguna WQ0016186001 (002).pdf

H

**From:** ywilkerson@lglawfirm.com <ywilkerson@lglawfirm.com>  
**Sent:** Wednesday, January 4, 2023 11:33 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016186001

**REGULATED ENTY NAME** BAHAMAS WWTP

**RN NUMBER:** RN111531638

**PERMIT NUMBER:** WQ0016186001

**DOCKET NUMBER:**

**COUNTY:** ROCKWALL

**PRINCIPAL NAME:** BAHAMAS LAGUNA AZURE LLC

**CN NUMBER:** CN606036655

**FROM**

**NAME:** Yvette Wilkerson

**EMAIL:** [ywilkerson@lglawfirm.com](mailto:ywilkerson@lglawfirm.com)

**COMPANY:** Lloyd Gosselink

**ADDRESS:** 816 CONGRESS AVE Suite 1900  
AUSTIN TX 78701-2442

**PHONE:** 5123225828

**FAX:**

**COMMENTS:** North Texas Municipal Water District formal request for hearing.

January 4, 2022

Ms. Laurie Gharis  
Chief Clerk (MC 105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**VIA FIRST CLASS MAIL**  
**AND ELECTRONIC FILING**

RE: Bahamas Laguna Azure LLC – Application for New TPDES Permit  
Proposed Permit Chambers Grove Municipal Utility District WWTP TPDES  
Permit No. WQ0016186001  
Request for Contested Case Hearing (446-13/-69)

Dear Ms. Gharis:

On behalf of North Texas Municipal Water District (“NTMWD”), please consider this letter as providing comments on and a formal request for a contested case hearing on the above-referenced Texas Pollutant Discharge Elimination System (“TPDES”) permit application (“Application”) filed with the Texas Commission on Environmental Quality (“TCEQ”) by Bahamas Laguna Azure LLC (“Applicant”) and the associated draft permit for the proposed TPDES Permit No. WQ0016186001 (“Draft Permit”).

TCEQ received this application on July 1, 2022. The Application is for a new TPDES permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 525,000 gallons per day. The TPDES permit authorizes discharge into an unnamed tributary, thence to Sabine Creek, thence to South Fork Sabine River, thence to Lake Tawakoni in Segment 0507 of the Sabine River Basin. The Applicant asserts that the proposed WWTP will service the Applicant’s single and multi-family residential development located approximately 2.0 miles southeast of the intersection of FM 548 and IH-30 in Rockwall County Texas.

## **I. REQUEST FOR CONTESTED CASE HEARING**

NTMWD is a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution that was created by the Texas Legislature in 1951 to serve regional water and wastewater needs in the area north and east of Dallas. Today, NTMWD provides wastewater service to this area from fourteen (14) NTMWD-owned or operated wastewater treatment plants (“WWTP”). Many of these WWTPs operate in and discharge to tributaries of the Trinity River,

including the East Fork Trinity River and Sabine River Basin.<sup>1</sup> Flows from the Sabine Creek WWTP discharge into the Sabine River Basin.

NTMWD requests a contested case hearing, as NTMWD is an “affected person” within the meaning of 30 Tex. Admin. Code §§ 55.103 and 55.203. An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by issuance of the Draft Permit.<sup>2</sup> All relevant factors must be considered by the TCEQ in determining affected persons status, including: (1) whether the interest claimed is one protected by the law under which the Application will be considered; (2) distance restrictions or other limitations imposed by law on the affected interest; (3) whether a reasonable relationship exists between the interest claimed and the activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on use of the impacted natural resource by the person; (6) whether the requestor submitted comments on the Application that were not withdrawn; and, (7) *for governmental entities, their statutory authority over or interest in the issues relevant to the Application*.<sup>3</sup> Additionally, the TCEQ may consider: (1) the merits of the Application, including whether the Application meets the requirements for permit issuance; (2) the Executive Director’s (“ED’s”) analysis and opinions; and (3) other expert reports, affidavits, opinions, and data.<sup>4</sup>

## **II. NTMWD HAS A PERSONAL JUSTICIABLE INTEREST AFFECTED BY THE APPLICATION AND DRAFT PERMIT**

For the reasons set forth herein, NTMWD is an affected person, as defined by 30 Tex. Admin. Code §§ 55.103 and 55.203. NTMWD has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is not common to the general public and that would be adversely affected should the Draft Permit be issued. The Applicant’s proposed WWTP seeks to collect, transport, treat, and discharge wastewater within three miles of the collection system connecting to NTMWD’s regional system. The proximity of the proposed WWTP to NTMWD’s existing regional system calls into question the need for the permit and/or

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<sup>1</sup> Sister Grove Regional Waste Resource Recovery Facility Phase I Facilities, TPDES Permit No. 15693001; Wilson Creek WWTP, TPDES Permit No. WQ0012446001; Rowlett Creek WWTP, TPDES Permit No. WQ0010363001; Floyd Branch WWTP, TPDES Permit No. WQ0010257001; South Mesquite Creek RWWTP, TPDES Permit No. WQ0010221001; Seis Lagos WWTP, TPDES Permit No. WQ0011451001; Squabble Creek WWTP, TPDES Permit No. WQ0010262001; Buffalo Creek WWTP, TPDES Permit No. WQ00102047001; Frisco Cottonwood Creek WWTP, TPDES Permit No. WQ0010172002; Stewart Creek West WWTP, TPDES Permit No. WQ0014008001; Farmersville No. 1 WWTP, TPDES Permit No. WQ0010442001; Bear Creek WWTP, TPDES Permit No. WQ0014577001; Panther Creek WWTP, TPDES Permit No. WQ0014245001; Sabine Creek WWTP TPDES Permit No. WQ0014469001.

<sup>2</sup> 30 Tex. Admin. Code § 55.103.

<sup>3</sup> *Id.* § 55.203(c) (emphasis added).

<sup>4</sup> *Id.* § 55.203(d).

whether the permit conditions should be changed or altered given the availability of NTMWD's nearby regional system pursuant to TEXAS WATER CODE § 26.0282.

NTMWD is an affected person because the proposed action would interfere with its existing system—including the Sabine Creek WWTP—that collects, transports, and treats wastewater within three miles of Applicant's proposed WWTP. Specifically, the Application indicates the proposed WWTP will provide wastewater collection and treatment services to the Applicant's single and multi-family residential development located approximately 2.0 miles southeast of the intersection of FM 548 and IH-30 in Rockwall County Texas, with the majority of this service area being within three miles of the Sabine Creek WWTP's primary service area (as indicated in Attachment A). NTMWD has expended significant time, effort, and resources over many years planning, financing, and constructing infrastructure, including constructing the Sabine Creek WWTP. NTMWD's efforts would be undermined if the TCEQ issues the Draft Permit without regard to the availability of service from the NTMWD system.

### **III. DISPUTED FACTS AND LAW TO BE REFERRED FOR A CONTESTED CASE HEARING.**

In addition to the foregoing bases to grant NTMWD's hearing request, NTMWD reasserts that it is an affected person and thus entitled to a hearing, because of the proximity of the proposed WWTP and proposed development to NTMWD's nearby regional system. In accordance with 30 Tex. Admin. Code § 55.201(d)(4)(B), NTMWD requests that the following issues be referred to a contested case hearing:

1. Whether there is a need for the Draft Permit given the proximity of NTMWD's regional system.
2. Whether the application should be denied or the Draft Permit terms and conditions altered given the availability of NTMWD's regional system.

In short, an additional treatment and disposal facility within this area is not necessary. It is not in the public interest for TCEQ to issue a new discharge authorization when wastewater services are available within three miles of the proposed WWTP.

### **IV. CONCLUSION**

For the foregoing reasons and because this request substantially complies with the requirements of a contested case hearing request per 30 Tex. Admin. Code § 55.201, NTMWD files these comments on and requests a contested case hearing in this matter regarding the above-listed issues. NTMWD reserves the right to raise and pursue any and all issues that may be relevant to its interest in the event of a contested case hearing. All official communication may be directed to my attention at:

January 4, 2022  
Page 4

Ms. Lauren J. Kalisek  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5847  
Email: [lkalisek@lglawfirm.com](mailto:lkalisek@lglawfirm.com)

I appreciate your attention to this request. Please do not hesitate to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Kalisek".

Lauren J. Kalisek

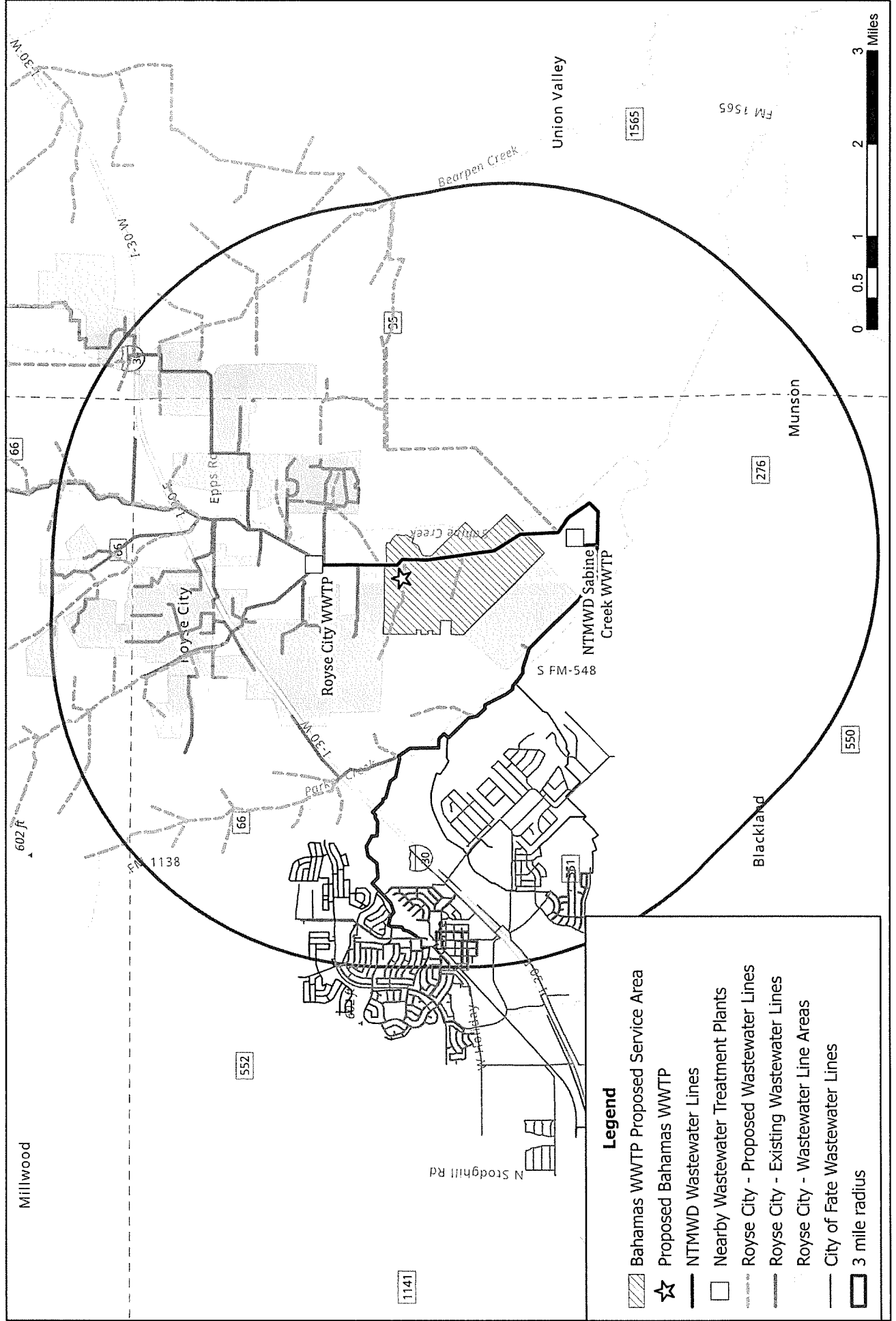
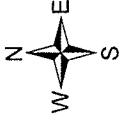
LJK

# **Attachment A**



# Bahamas Laguna Azure, LLC - Bahamas WWTP

## Nearby Wastewater Treatment Plants and Collection Systems



## Kimberly Muth

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**From:** PUBCOMMENT-OCC  
**Sent:** Thursday, August 17, 2023 1:27 PM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0016186001  
**Attachments:** 2023.08.16 Renewal of Royse City Comments and HR.pdf

H

**From:** sbilliot@lglawfirm.com <sbilliot@lglawfirm.com>  
**Sent:** Wednesday, August 16, 2023 4:20 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0016186001

**REGULATED ENTY NAME** BAHAMAS WWTP

**RN NUMBER:** RN111531638

**PERMIT NUMBER:** WQ0016186001

**DOCKET NUMBER:**

**COUNTY:** ROCKWALL

**PRINCIPAL NAME:** BAHAMAS LAGUNA AZURE LLC

**CN NUMBER:** CN606036655

**NAME:** Nathan Vassar

**EMAIL:** [sbilliot@lglawfirm.com](mailto:sbilliot@lglawfirm.com)

**COMPANY:** Lloyd Gosselink Rochelle & Townsend, P.C.

**ADDRESS:** 816 CONGRESS AVE Suite 1900  
AUSTIN TX 78701-2442

**PHONE:** 5123225800

**FAX:**

**COMMENTS:** Please see the attached Reply to ED's Response to Comments on behalf of the City of Royse City.

August 16, 2023

Ms. Laurie Gharis  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, Texas 78711-3087

**VIA FIRST-CLASS MAIL  
AND ELECTRONIC FILING**

RE: Reply to Executive Director's Response to Public Comments  
Application for Proposed TPDES Permit No. WQ0016186001  
Applicant: Bahamas Laguna Azure, LLC

Dear Ms. Gharis:

Please accept this letter and reply to the Executive Director's ("ED's") Response to Comments ("RTC") on behalf of the City of Royse City, Texas ("Royse City"). Royse City is a Home Rule municipality that holds Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010366001, which authorizes Royse City to discharge treated domestic wastewater in Rockwall County, Texas. Royse City respectfully submits the following letter renewing its objections to the application filed by Bahamas Laguna Azure, LLC ("Applicant") for TPDES Permit No. WQ0016186001 (the "Application") and the Executive Director's preliminary decision on the Application along with the initial draft TPDES Permit No. WQ0016186001 (the "Draft Permit"). In addition, Royse City hereby renews its request for a contested case hearing on the Application and Draft permit. Royse City submitted its initial comments and contested case hearing request on April 13, 2023. The ED filed its RTC on the Application on July 14, 2023. Additionally, please update the following contact information in your official mailing list for this matter:

Mr. Nathan E. Vassar and Mr. David J. Klein, on behalf of Royse City  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Phone: 512-322-5867  
Fax: 512-472-0532

**I. AFFECTEDNESS DETERMINATION**

The Texas Commission on Environmental Quality (the "Commission" or "TCEQ") may grant a hearing request when the request is submitted by an affected person under TCEQ's rules. An affected person is one who has a personal justiciable interest in the Application not common to members of the general public. In determining whether a hearing requestor is an affected person,

the Commission must consider all factors including, for governmental entities, the entity's statutory authority over or interest in the issues relevant to the Application.

As a home-rule municipality, Royse City has statutory authority and interest in operating and maintaining a domestic water or sewer collection and treatment system. As provided in Royse City's original comment letter, it operates and maintains its own wastewater treatment plant ("Royse City WWTP") that serves the immediate area and is authorized to discharge 0.50 million gallons of treated domestic waste effluent per day on average to Sabine Creek. In addition, Royse City is served by the North Texas Municipal Water District's ("NTMWD") Sabine Creek Wastewater Project ("Sabine Creek WWTP"), which such facility information provided in full detail in such original comments.

Moreover, the entire area proposed to be served by the facility requested to be authorized by the permit is within the service area authorized by the Public Utility Commission of Texas to be served exclusively by Royse City under sewer Certificate of Convenience and Necessity ("CCN") No. 20813. The Applicant does not have legal authority to serve any customers within the area it has relied on to justify the requested permit. For these reasons, Royse City has a personal justiciable interest in the Application that is not common to members of the general public. Royse City qualifies as an affected person under the applicable rules, and its hearing request should be granted.

## **II. ANTIDegradation/SURFACE WATER QUALITY STANDARDS (RTC Comments 2-5)**

In its initial comments and hearing request, Royse City noted that in Water Quality Division staff's memorandum dated August 11, 2022, the Application is subject to a Tier 2 antidegradation review. Program staff preliminarily determined that no significant degradation of water quality is expected in Sabine Creek if the Draft permit is ultimately issued. The technical memorandum misstates the applicable legal requirement. The Tier 2 antidegradation rule does not allow a discharge into fishable/swimmable quality receiving waters if such discharge will not cause "significant degradation" of water quality. Rather, the antidegradation policy prohibits any discharge "that would cause degradation of waters that exceed fishable/swimmable quality[.]" In other words, TCEQ's rules expressly prohibit any regulated activity that would degrade water quality at all—not ones that would cause "significant" degradation. In its RTC, the ED stated that the August 11, 2022, memorandum was superseded by a December 6, 2022, technical memorandum. This memorandum states that no waterbodies with "exceptional," "high," or "intermediate" ALUs were present within the stream reach assessed, so no Tier II assessment was required or performed.

Royse City disagrees with this conclusion. The rule defines "degradation" as "a lowering of water quality by more than a *de minimis* extent, but not to the extent that an existing use is impaired." The Draft Permit, if issued, will lower water quality in the receiving waters by more than a *de minimis* amount, will impair existing uses, and more stringent review should be undertaken. For these reasons Royse City renews its concerns related to antidegradation.

Moreover, in its initial comments and hearing request Royse City stated its position that the proposed effluent limitations and Draft Permit, if issued, will also fail to maintain TCEQ's numerical surface water quality standards. The proposed discharge will most likely lower dissolved oxygen concentrations in the receiving waters below the allowable limits at the proposed effluent limits. At a minimum, the Draft Permit should be revised to include a more stringent set of effluent limits as well as a limit on Total Phosphorus and Total Nitrogen. Without these more stringent effluent limits, the resulting discharge will overload the receiving waters with nutrients, which will further degrade water quality. In its RTC, the ED stated that DO modeling analyses had been undertaken and the results showed that even at maximum effluent limit concentrations for each of the proposed flow phase were adequate to ensure that instream DO levels will consistently be protected and maintained. Royse City disagrees with this conclusion and renews its concerns related to water quality standards.

### **III. REGIONALIZATION POLICY (RTC Comment 6)**

The Application proposes to construct a wastewater treatment facility approximately 1.10 miles south of the Royse City WWTP and to discharge waste into the same water body that Royse City is authorized to discharge to. The Application correctly identifies in Attachment 12 both the Royse City WWTP and NTMWD's Sabine Creek WWTP as being within a three-mile radius of the plant proposed in the Application. According to the RTC, the Water Quality Division staff at TCEQ concluded that the proposed permit is consistent with Texas' Regionalization policy. Royse City disagrees with this conclusion and renews its objections to the Application and Permit on the basis of regionalization.

Royse City's collection system has capacity to accept the volume of flows proposed to be treated and discharged in the Application, and NTMWD's Sabine Creek WWTP has capacity to treat and dispose of those same flows. Royse City is willing to connect the area and development described in the Application to its nearby existing collection system, which then feeds into NTMWD's Sabine Creek WWTP.

As highlighted in Royse City's initial comments, the area proposed by the Applicant to be served by the requested treatment facility is within Royse City's Sewer CCN. Under that CCN, Royse City has the exclusive right to provide retail sewer service in the same area. Here, the City emphasizes again that the Applicant does not have legal authority to serve any customers within the area it has relied on to justify the requested permit, including justification of flows.

Issuance of the proposed permit as preliminarily decided by the Executive Director would be inconsistent with the State's regionalization policy. Royse City renews its hearing request and asks the commission to refer this matter to the State Office of Administrative Hearings for consideration of the Application's inconsistency with the State's regionalization policy.

### **IV. CONCLUSION**

For all of these reasons, Royse City respectfully requests that the TCEQ deny the Application or alternatively hold a contested case hearing on the issues raised in Royse City's initial comments and refer this matter to the State Office of Administrative Hearings.

August 16, 2023  
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Thank you for your consideration of these comments and hearing request. If you or your staff have any questions regarding this matter, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan E. Vassar". The signature is fluid and cursive, with the first name "Nathan" and last name "Vassar" clearly legible, and "E." in the middle.

Nathan E. Vassar

NEV/yxw

*cc: (via electronic mail only)*  
*Mr. Jason Day, City Attorney*  
*Mr. David J. Klein, Lloyd Gosselink Rochelle & Townsend, P.C.*  
*Ms. Chloe Daniels, Lloyd Gosselink Rochelle & Townsend, P.C.*  
*Ms. Ashley Rich, Lloyd Gosselink Rochelle & Townsend, P.C.*