SOAH DOCKET NO. 582-22-0585
TCEQ DOCKET NO. 2021-1001-MWD

APPLICATION OF CITY OF GRANBURY, FOR TPDES PERMIT NO. WQ0015821001	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROTESTANTS GRANBURY FRESH, VICTORIA CALDER, BENNETT'S CAMPING CENTER & RV RANCH, AND STACY AND JAMES RIST'S REPLY TO CLOSING ARGUMENTS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Protestants Granbury Fresh, Victoria Calder, Bennett's Camping Center & RV Ranch, and Stacy and James Rist (collectively, "Protestants") submit this Reply to Closing Arguments regarding the above-referenced matter. Protestants urge the Honorable Administrative Law Judges (ALJs) to recommend denial of the Applicant City of Granbury's ("Applicant", "the City", or "Granbury") application for new Texas Pollution Discharge Elimination System (TPDES) Permit No. WQ0015821001. In support, Protestants would respectfully show the following:

Introduction

Neither the City nor the Executive Director of the Texas Commission on Environmental Quality (ED) have offered a sufficient basis for the ALJs to find that the City has met its burden of proof in this matter to support permit issuance. The Office of Public Interest Counsel (OPIC) has recognized that the City in fact did not meet its burden. Since issuance of the requested permit would violate applicable laws and regulations, the Application should be denied.

The City seems to allege that its permit must be granted because the City alleges that the permit is needed. To the degree that denial of the permit would create a hardship for the City, that hardship is of the City's own making. It is the City that chose to pursue a permit for a site that could not possibly meet the buffer zones plainly set forth in the TCEQ rules. It is the City that purposefully sought to add bacteria and nutrients to a waterway already impaired for bacteria that is extremely sensitive to nutrients. It is the City that has failed to address its inflow and infiltration

and capacity issues, creating backups and overflows.[1] The City's pleas ignore the fact that, "[t]he failure of an agency to follow the clear, unambiguous language of its own rules is arbitrary and capricious, and will be reversed."[2] Issuance of the permit would violate the clear unambiguous language of several TCEQ rules, rendering any decision to issue the permit arbitrary and capricious. Poor decision making by the City in seeking the requested permit would not justify an arbitrary decision by the Commission to grant the requested permit.

Under Texas Water Code § 26.0282, the Commission may deny a permit based on a consideration of need. The Commission does not conversely *have to* grant a permit just because the City says it really needs one. The City has numerous alternatives to expand wastewater capacity if needed.[3]

If issued, the draft permit would violate applicable requirements to abate and control nuisance odors. The draft permit would authorize an un-aerated equalization basin closer than 500 feet from the nearest property line, in violation of 30 Tex. Admin. Code § 309.13(e). Neither the ED nor the City even contend otherwise in their Closing Arguments. The draft permit would also authorize a BNR Anaerobic Zone within 500 feet from the property line, violating the same prohibition of putting lagoons with zones of anaerobic activity that close to the property line. In these ways, issuance of the permit would violate the clear and unambiguous language of the TCEQ rules related to odor buffer zones.

The draft permit, if issued, would also violate the Texas water quality standards. Protestants' modeler James Machin raised a fact issue as to the impacts the discharge will have on dissolved oxygen (DO) concentrations in the receiving waters. The City has not met its burden of proof, as its modeler failed to adjust the re-aeration rate in his QUAL-TX model after adjusting the depths, which by his own admission could have resulted in lower DO concentrations. No modeling under critical conditions indicated that dissolved oxygen would be maintained above the required 5.0 mg/l established in the TCEQ rules. The draft permit would also impair the recreational uses of Rucker Creek by raising bacteria levels in the creek and loading nutrients into

[1] COG Exhibit 100, pp. 2-3.
[2] *Frank v. Liberty Ins. Corp*,, 255 S.W.3d 314, 324 (Tex. App. – Austin, 2008), *pet. denied.*
[3] COG Exhibit 101, 7-8; Tr. Vol. 2, 185:11-17.

the creek, which can cause algal blooms. Issuance of the permit would violate the clear and unambiguous language of the TCEQ rules relating to the protection of water quality.

Issue A: Whether the draft permit complies with applicable requirements to abate and control nuisance odors, as set forth in 30 Tex. Admin. Code § 309.13(e)

A. Contrary to contentions by the Executive Director and the City, the Applicant must demonstrate that the facility meets the requirements of 30 Tex. Admin. Code § 309.13 *at the time of application*, which the City has failed to do.

Both the City and the Executive Director in argument contend that Granbury can delay a specific showing of compliance with the buffer zone requirements of 30 Tex. Admin. Code § 309.13(e) until *after* issuance of the draft permit. The Executive Director goes so far as to support issuance of the permit based on speculation that if Granbury's facility does not meet the required buffer zones of § 309.13(e)(1), then after permit issuance the City of Granbury can attempt to meet one of the other odor control alternatives in 30 TAC § 309.13(e)(2) or (3).[4] In fact, the Executive Director's Closing Arguments offer virtually no other defense for the ED's conclusion that issuance of the draft permit would be compliant with 30 TAC § 309.13 Similarly, the City relies heavily on a contention that the permit should be found to comply with 30 TAC § 309.13(e) simply because the permit generally requires that the City comply with 30 TAC § 309.13(e). The City likewise relies upon a subsequent review of construction plans by the TCEQ Water Quality Plans and Specifications Team as if that review can substitute for a substantive determination of compliance with the site suitability standards of 30 TAC § 309.13 prior to permit issuance.

These positions are contrary to the explicit language of Chapter 309, the regulatory history of Chapter 309, and TCEQ precedent in applying Chapter 309. The buffer zone requirements of 30 TAC § 309.13(e)(1) are found within Subchapter B of Chapter 309. At § 309.10(a), the rules state that the standards of this subchapter , **"are to be applied in the evaluation of an application for a permit** to treat and dispose of domestic wastewater and for obtaining approval of construction plans and specifications."[5] The Texas Water Commission expressed the same intent

[4] ED's Closing Arguments at p. 8. Notably, the Executive Director's technical staff did not take the same position, as the Executive Director's legal counsel now forwards as a convenient litigation position. *See* direct testimony of Gordon Cooper that § 309.13(e) provides *applicants* with three options to satisfy the requirements of that rule. Ex. ED-1, p. 10.

[5] 30 TAC § 309.10(a).

within the preamble to the adoption of § 309.13, saying that, **"[t]his subchapter is intended to be utilized in** both **the evaluation of permit applications** and the review/approval of construction plans and specifications."[6] As mentioned in Protestants' Closing Arguments, TCEQ previously implemented this intent when denying the application by Far Hills Utility District for TPDES Permit No. WQ0014555001. The Commission's final order in that case recognized that a showing of compliance with § 309.13 could not be delayed, saying that, **"[t]he Commission may not issue a permit for a wastewater treatment plant if the facility does not meet the requirements of 30 Tex. Admin. Code § 309.13**."[7]

The City of Granbury must establish now that its proposed facility is compliant with the requirements of 30 Tex. Admin. Code § 309.13(e), and that demonstration must be based upon the record now before the ALJs. The City has attempted to demonstrate compliance with the buffer zone requirements of 30 Tex. Admin. Code § 309.13(e)(1). The City has made no attempt to demonstrate compliance with the alternatives of 30 Tex. Admin. Code § 309.13(e)(2) or 30 Tex. Admin. Code § 309.13(e)(3). Speculation that perhaps the City will try to meet one of those alternatives in the future does not provide the required demonstration that the facility complies with 30 Tex. Admin. Code § 309.13(e). Satisfaction of alternative § 309.13(e)(2) would require the development and submission of an engineering report that the City has not even attempted to provide. Satisfaction of alternative § 309.13(e)(3) would require that the City currently possess additional property interests that the City simply does not own.

The draft permit provision generally requiring that the permittee comply with the requirements of 30 TAC § 309.13(e) does not somehow save the City's application. The representations within the permit application establish the authorized locations of the treatment plant units, the property boundary for the facility, and the property interests held by the City of Granbury. As the record shows, construction and operation of the facility in accordance with these representations would violate the requirements of 30 TAC § 309.13(e). Properly applying 30 TAC § 309.13(e) at the time of application requires more than simply an assumption that a particularized demonstration of compliance will be made after the permit is issued.

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[6] 14 Tex. Reg. 4892 at 4893 (Sep. 22, 1989) (to be codified at 30 Tex. Admin. Code § 309.13) (Tex. Water Comm'n) (Attachment A to Protestants' Closing Arguments).

[7] Final Order, p. 6. *Application by Far Hills Utility District for TPDES Permit No. WQ0014555001.* TCEQ Docket No. 2005-1899-MWD. (Emphasis added) (Attachment C to Protestants' Closing Arguments).

B. Neither Granbury nor the Executive Director demonstrate that the proposed un-aerated equalization basin complies with the applicable odor buffer zone.

As discussed in Protestants' Closing Arguments, the TCEQ rules explicitly state that:

> Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line.[8]

The term "e.g.," means "for example."[9] Thus, by rule, un-aerated equalization basins constitute lagoons with zones of anaerobic activity. As such, un-aerated equalization basins must be located at least 500 feet from the nearest property line. Raw sewage stinks, and has the potential to stink badly. No amount of technical jargon or gymnastics can change that fundamental fact. So, the rule is purposefully structured to remove any room for an applicant to reasonably claim that an un-aerated equalization basin is not a "lagoon with zones of anaerobic activity." Of course, that has not stopped the City from unreasonably making such a claim. In arguments, neither the Executive Director nor the City contend that the plant will not include an un-aerated equalization basin. In fact, the Executive Director's Closing Arguments do not even acknowledge the existence of a 500-foot buffer zone set forth by rule for certain units. Instead, the Executive Director's Closing arguments merely state that § 309.13(e)(1) requires an applicant to provide a 150-foot buffer zone around all wastewater plant units.

Since the proposed un-aerated equalization is located closer than 500 feet to the nearest property line, the requirement of 30 TAC § 309.13(e) has not been met.

C. The City errs in claiming that the BNR Anaerobic Zone is not a lagoon with zones of anaerobic activity.

Within its Closing Arguments, the City continues to contend that, "[t]here will be no lagoons with zones of anaerobic activity at the East Plant."[10] This is seemingly based on a contention that the BNR Anaerobic Zone at the plant is not a lagoon and will not contain zones of anaerobic activity. The City is wrong on both counts.

[8] 30 TAC § 309.13(e)(1).
[9] Black's Law Dictionary "e.g.," (11th ed., 2019).
[10] Granbury's Closing Arguments at p. 15.

As explained in Protestants' Closing Arguments, the BNR Anaerobic Zone is a lagoon. The City refers to its own expert to say that a "lagoon" is "a pond-like impoundment, often created by digging a hole in the ground or building a berm, and then lining the impoundment with a clay or synthetic liner."[11] The BNR Anaerobic Zone will be authorized to be contained within a pond-like impoundment, thus, meeting even the description of the term "lagoon" set forth in the City's Closing Arguments.

In fact, the Executive Director's staff processing of the application reflected a position by the staff that the BNR Anaerobic Zone *is* a "lagoon" as that term is used in 30 TAC § 309.13(e)(1). The TCEQ Permit Specialist for the matter, Mr. Gordon Cooper, on May 7, 2019 wrote the City's engineers to say that the 500-foot buffer zone would apply to anaerobic basin if the basin was allowed to "go septic."[12] While staff improperly exempted the BNR Anaerobic Zone from the requirements of § 309.13(e)(1) based upon operational representations by the City, the Executive Director staff never found that the BNR Anaerobic Zone was not a lagoon. TCEQ staff have not subsequently said otherwise, and the Executive Director's Closing Arguments make no contention that the BNR Anaerobic Zone is not a lagoon.

Thus, if the BNR Anaerobic Zone includes Zones of anaerobic activity, it is subject to the 500-foot buffer zone requirement of 30 TAC § 309.13(e)(1). On this point, the City alleges that none of the effluent within the treatment processes will have a detention time long enough to become "anaerobic," with the City in argument defining "anaerobic" as "completely deoxygenated."[13] The City's argument fails because the City is applying an incorrect definition of the term "anaerobic." As noted in Protestants' Closing Arguments, the TCEQ rules characterize "anaerobic" processes as those that occur in the absence of *free* oxygen; not the total absence of oxygen.[14] Even if operated in the manner that the City of Granbury claims, the biological processes within the BNR Anaerobic Zone will still be authorized to take place in the absence of free oxygen. This constitutes "anaerobic" activity as the term "anaerobic" is used within the TCEQ rules.

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[11] Granbury's Closing Arguments at p. 15.
[12] COG Exhibit 304, p. 5.
[13] Granbury's Closing Arguments at p. 16. Ironically, on one of the pages cited, the narrative in the application states that, "Next, the wastewater flows through one set of two BNR anaerobic, anoxic, and aeration basins, respectively, then to one of three MBR basins." ARE A at 0601. In this fashion, the application itself characterizes the BNR Anaerobic Basin as anaerobic.
[14] *See, e.g.,* 30 TAC § 285.2(3).

Issue B: Whether the draft permit is protective of water quality

Issue D: Whether the draft permit is protective of the health of the requesters and their families, livestock, and wildlife, including endangered species

Issue E: Whether the proposed discharge will adversely impact recreational activities

The ED's and City's conclusion that the draft permit is protective of water quality, is protective of the health of the requesters and their families, livestock, and wildlife, and does not adversely impact recreational activities is not supported by the evidence. The ED and City failed to address the known public health impacts to human and animal health associated with the toxins produced by Cyanobacteria and Golden Algae.[15] Evidence was presented that the City's discharge had a high potential for excessive algal growth particularly in the high recreational summer months.[16] Cyanobacteria algae may be present in the Lake Granbury system.[17] It can cause death to animals and have human health impacts.[18] The best the ED can do to try to overcome its evidence problem is state that the total phosphorus (TP) limit would "help prevent" toxic effects and excessive aquatic growth.[19] "Help prevent" is not the required standard. The Tier 2 antidegradation rule requires that there cannot be more than a *de minimis* impact to water quality. This failure will be discussed more below. The ED and Granbury also did not address or analyze the potential impact from the addition of total nitrogen (TN) on excessive algae growth even though this problem was raised by the Protestants.[20]

Section 307.7(b)(4)(E) requires nutrient criteria when appropriate to protect human health and an overgrowth of aquatic life.[21] The ED failed to perform any analysis or modeling to determine the impact from nutrient loading to the receiving waters.[22] The ED's phosphorus limit is based upon TCEQ policy and worksheets, and not impact analysis of the specific stream. This methodology develops a point system to lead the staff to decide to require nutrient limits or not. It does not determine or analyze the limit necessary to protect the receiving waters.[23] In the methodology utilized by the ED for analysis of TP, all that was accomplished was a determination

[15] ED's Closing Arguments, p. 10, 1-2.
[16] Exh. GF-500, 9:16.
[17] Exh. GF-500, pp. 13-14.
[18] *Id.*
[19] ED's Closing Arguments, p. 11.
[20] ED's Closing Arguments, pp. 13, 18; Exh. GF-500, 21-22.
[21] ED's Closing Arguments, p. 12.
[22] Exh. GF-500, p. 16.
[23] ED's Closing Arguments, p. 13.

that TP will cause an impact. Whether the 1.0 or the 0.5 mg/l TP limit is adequate to protect the receiving waters cannot be determined.[24] Therefore, there is no information developed or provided to make the determination that "the draft permit will provide adequate protection for aquatic life." Further, the ED, as well as the City, did not look at TN despite testimony that this nutrient has the potential to become the driving constituent for excessive algae growth.[25] They choose not to in this case even though the ED has analyzed TN as a nutrient causing excessive algae growth in other TPDES permits.[26] Because of this decision, no conclusion can be made as to the impact of TN on Rucker Creek or Rucker Creek Cove and the City's burden of proof on this point has not been satisfied.

The ED failed to determine the impact of the additional loading of *E. coli* on recreation on Rucker Creek or Rucker Creek Cove. Essentially, the ED looked up in a table and included a permit condition limiting the discharge of *E. coli* to what was stated in the table 126 CFU/100 ml.[27] No evaluation was made on the impact or not to Rucker Creek or Rucker Creek cove. Historically, fecal coliform and *E. coli* have been found in high concentrations in Rucker Creek cove including as high as 6,100 CFU/100 ml.[28] Similar problems exist in other coves in Lake Granbury. The problem was so prevalent, the Lake Granbury Watershed Protection Plan was developed in 2010 under the TCEQ's guidance. The Plan suggested efforts needed to be made to reduce Bacteria loadings.[29] The plan was essentially ignored by the ED. The City attempted to provide some evidence regarding *E. coli*. However, the evidence was based upon the flawed QUAL-2K that was not based upon critical conditions and assumed an *E. coli* concentration of 1 CFU in the discharge rather than the permitted 126 CFU allowed by the permit.[30]

Protestants' expert Steve Esmond, P.E. believed that the discharge of the TCEQ recommended concentration of *E. coli* would aggravate the water quality problem of *E. coli* in Rucker Creek and Rucker Creek Cove.[31]

[24] Exh. GF-500, pp. 21-22.
[25] Exh. GF-500, p. 21, 29:14-20.
[26] Exh. GF-507, p. 6.
[27] 30 TAC § 307.7(b)(1)(A)(i); Admin Record-0185.
[28] Exh. GF-307.
[29] Exh. GF-306, p. 11.
[30] COG Exhibits 610 and 611.
[31] Exh. GF-300, 14:14-16.

The ED's and the City's conclusion that the proposed discharge will not adversely impact recreational activities is not supported by the evidence as discussed above and is not supported by ED witness Mr. Paull's testimony. The ED does not identify anything Mr. Paull did in his review that substantiates he looked at bacteria or nutrient impacts either directly from the discharge or the potential for nuisance algae growth in the cove or increases in *E. coli* counts over the critical period.

Issue G: Whether the modeling complies with the applicable regulations to ensure the draft permit is protective of water quality

The ED asserts that because it followed the tables and defaults for its QUAL-TX model that the 5 mg/l DO requirement is met and is protective of water quality. However, the DO criteria of 5 was not met in the initial ED model run. The DO was estimated to be 4.81 mg/l.[32] According to the ED, this is close enough based upon staff guidance allowing a .20 mg/l variance. The staff guidance has not been promulgated as a rule.

The problem with the ED modeling gets worse. Protestants pointed out that the default input barometric pressure was wrong. All parties agreed that the barometric pressure at the discharge point was as represented by Protestants. Using the site-specific barometric pressure, the modeled DO by Protestants' expert Mr. Machin was 4.03 mg/l.[33] The ED's modeling with the corrected barometric pressure was in a range of 4.63 to 4.65 mg/l.[34]

The ED's response to all of this is curious for several reasons. The ED states that "[t]he protestants witness, Mr. Machin, changed one model parameter to make the model more pessimistic but did not refine the model with other site-specific information to make the model more representative of actual conditions, some of which would have likely resulting in less pessimistic results."[35] Mr. Machin corrected an error in the model that just happened to make the modeled DO even lower. Why would changes to correct a model input parameter be any different than correcting where the discharge point should be if the model is supposed to be representative otherwise? The implication is the QUAL-TX model has the equivalent of knobs that can be turned to make the outcome better or worse depending upon the desired output. The ED and Granbury

[32] ED-13, 16:21.
[33] Exh. GF-400, 6:6.
[34] ED-13, 16:25-27.
[35] ED's Closing Arguments, p. 16.

also argue that they could not reproduce what Mr. Machin had done. However, neither chose to cross examine him.

The City attempted to bolster the ED's modeling and antidegradation review by having a new type of model, QUAL2K, run by a modeler, Mr. Tim Osting, and a biologist, Mr. David Flores, to review some of its outputs. Mr. Osting's model is not used by the TCEQ and more importantly had a fatal flaw because Mr. Osting failed to adjust his re-aeration co-efficient resulting in results that were not useable.[36] Further, the QUAL2K was not calibrated to during critical conditions over a period of time as is required but to only one day.[37]

Issue H: Whether the ED's antidegradation review was accurate

Issue I: Whether the nutrient limits in the draft permit comply with applicable Texas Surface Water Standards

Mr. Paull, after reviewing his checklists, found that no significant degradation of water quality would occur in Rucker Creek if the requirements in the draft permit were met, including his suggested phosphorus limit.[38] In other words, there would be more than a *de minimis* impact to water quality if the Granbury permit did not have a phosphorus limit. Yet, Mr. Paull did not determine whether the phosphorus limits imposed were sufficient to avoid a more than *de minimis* impact to water quality.

The City's witness agreed with Mr. Paull that there would be no significant degradation. However, Mr. Flores testified that he relied on Mr. Osting's model results to form his opinions. With the modeling error identified above in Mr. Osting's model, Mr. Flores' opinions must be disregarded as they were based on flawed results.[39]

Mr. Flores makes a statement that the assimilative capacity is part of the Tier 2 review.[40] Protestants discuss this interpretation in their Closing Arguments and do not agree.[41] However, even if true, no effort was made, or evidence provided, to determine what the assimilative capacity of Rucker Creek and Rucker Creek Cove were. The only modeling provided by the Applicant was

[36] Tr. Vol. 2, 362:4-7, 14-16.
[37] Protestants' Closing Arguments, p. 11.
[38] ED's Closing Arguments at p. 13; ED-11 at p. 10; Tr. Vol. 1, pp. 121-128.
[39] Granbury's Closing Arguments, pp. 37- 38.
[40] COG Exhibit 700, 37:10-20.
[41] Protestants' Closing Arguments, pp. 24-25.

proved to be flawed and it also was only calibrated to one day, not the whole critical period. The statement that the "result of the proposed discharge will not exceed the assimilative capacity of the waterbodies therefore will be insignificant---i.e., de minimis"[42] cannot be substantiated or confirmed since the information needed to support this claim is not available.

The City in its Closing Arguments also reviews the ED's approach to nutrient screening and concludes that because of the nutrient limits imposed there will not be an excessive growth of aquatic vegetation that will impair existing uses.[43] As discussed above, no modeling or other effort was undertaken showing the TP limits were sufficient to protect water quality and similarly, there was no analysis of the impact of not having a nitrogen limit. Following TCEQ policy numbers for effluent sets alone are not enough.

Transcript Costs

At 30 TAC § 80.23, TCEQ establishes the following factors to be considered in allocating transcript costs:

(A) the party who requested the transcript;
(B) the financial ability of the party to pay the costs;
(C) the extent to which the party participated in the hearing;
(D) the relative benefits to the various parties of having a transcript;
(E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;
(F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
(G) any other factor which is relevant to a just and reasonable assessment of costs.

Taken together, the regulatory factors weigh heavily towards assessing all transcript costs to the applicant. The City of Granbury is an incorporated municipality with taxing authority for which costs associated with wastewater service are part of a city budget for a service the City has chosen to provide. On the other hand, Stacy and Jim Rist, as well as Victoria Calder are only

[42] Granbury's Closing Arguments, pp. 39-40.
[43] Granbury's Closing Arguments, p. 41.

individuals. Granbury Fresh is a local organization of individual residents seeking to protect their health and property interests. Bennett's Camping Center & RV Ranch is a small business that has found itself needing to participate in this matter in order to protect its ability to continue to effectively conduct business.

As to participation, no protestant participated in the hearing in a manner as to overly-burden the record. Where possible, the Protestants combined resources including joint witnesses and briefing. Protestants presented only three fact witnesses and three expert witnesses. In comparison, the City presented eight witnesses, with a claim that all eight were experts. The City stands to benefit much more greatly by the creation of the transcript. The transcript enables the consideration of the City's application, which enables the City the ability to pursue a treatment plant that will provide the City with an income stream far into the future. On the other hand, the Protestants' only benefit is the ability to preserve the status quo and avoid the harm which the City seeks to inflict upon the area. The presentation of Protestants' offer of proof was the sole portion of the hearing that was not attributable to Applicant's pursuit of the permit.

In this case, the application errors and delay in modeling by the City further justify assessing all transcript costs upon the Applicant. The City chose a site that it knew could not possibly meet the buffer zones plainly set forth in the TCEQ rules. The City's decision to pursue an application under those circumstances has already necessitated the expenditure of significant funds by Protestants in legal and technical assistance that could have been avoided. Furthermore, early in the application process, the City was aware of the significant water quality problems caused by the proposed discharge. Rather than awaiting the performance of additional water quality modeling until after receiving Protestants' testimony, the City should have performed further modeling at that time – while the permit was still under technical review or even before the site was purchased. Such modeling would have further revealed the deficiencies in the required water quality demonstrations. At the least, proper consideration of such impacts would have avoided the necessity of additional modeling that resulted in the offer of proof during the hearing.

Ultimately, the City's permit should be denied for the reasons set forth above. This denial further confirms the appropriateness of assessing all transcript costs upon the City. For these reasons, Protestants ask that 100% of the transcript costs of the proceeding be assessed against the City.

Conclusion & Prayer

For the reasons stated above, Protestants respectfully request that the Honorable ALJs recommend to the Commissioners of the Texas Commission on Environmental Quality that the City of Granbury's application for new TPDES permit number WQ0015821001 be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this date, April 18, 2022, in accordance with the applicable service procedures.

/s/ Eric Allmon
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