

**SOAH DOCKET NO. 582-23-11658**  
**TCEQ DOCKET NO. 2022-1157-DIS**

<b>APPLICATION BY GRBK EDGEWOOD, LLC FOR THE CREATION OF ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1</b>	§ § § §	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**ELLIS COUNTY’S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, Ellis County (County or Protestant) and files this, its Exceptions to the Proposal for Decision (PFD) and, in support thereof, would show the following:

**I. INTRODUCTION**

Protestant agrees with the Administrative Law Judges’ (ALJs) recommendation that the proposed application (Application) for creation of the Ellis Ranch Municipal Utility District No. 1 (District) should be denied. The ALJs properly recommend that the permit should be denied because GRBK Edgewood, LLC (Applicant) did not meet its burden of proving that the proposed District’s creation meets all applicable state law requirements, namely that the Applicant failed to properly prove that the construction costs and tax rates are reasonable, that the creation will not have an unreasonable effect on groundwater levels and recharge in the region, that the District is economically feasible, and that the Applicant’s request for road powers meets the applicable requirements. However, Protestant excepts to certain proposed Findings of Fact and Conclusions of Law in the PFD, as detailed below. Specifically, in addition to the deficiencies in the Application listed above, the Applicant failed to properly prove that the District’s proposed water and wastewater rates are reasonable and failed to demonstrate that creation of the District will not have an unreasonable effect on natural runoff, drainage, and water quality in the region.

## II. EXCEPTIONS AND CORRECTIONS

### A. Exceptions to the PFD's analysis and recommendations regarding the reasonableness of projected water and sewer rates.

Protestant excepts to the ALJs' conclusion that the Applicant met its burden on the issue of reasonableness of projected water and sewer rates. The ALJs are correct in noting that "[a]lthough the District's construction costs are greater than projected, the evidence does not show the extent to which this will impact the water and sewer rates." Proposed Finding of Fact No. 33. This accurate finding, however, is that the Applicant did not present evidence that the water and wastewater rates presented are reasonable and therefore did not meet its burden to demonstrate that the proposed District's projected water and sewer rates are reasonable.

The Preliminary Engineering Report (Applicant's Exhibit 4) represents that there are no other comparable water or wastewater services in the area to compare the District's projected water and wastewater rates. *See* Applicant's Exhibit 4 at Page 13 (GRBK000562); PFD at 26. Inexplicably, the Executive Director's witness Mr. Paynter then states in his testimony that the water and wastewater rates were comparable to other systems and that this analysis was "based on the information provided." The statement is conclusory and unsupported. Mr. Paynter was clear that he did not do an independent analysis outside of the information that was provided by the Applicant. *See* Tr. 142:16 – 143:4 (Paynter). The ALJs appear to rely on this testimony in reaching the conclusion that the proposed rates are comparable to others in the area, and therefore reasonable. *See* PFD Page 31. Considering the Applicant did not provide information about comparable rates from other providers, the ALJs' finding of fact should properly have been that the record does not contain sufficient evidence to show that the District's water and wastewater rates are reasonable compared to other providers in the area. Further, as the ALJs correctly point out, "the ALJs note that if the capital costs of the water and sewer infrastructure are greatly

underestimated, the proposed rates could result in the utility operating at a loss such that it would not be economically feasible, resulting in the necessity for increased rates.” PFD Page 31. Due to the severely underestimated costs of this project, it is probable that the listed rates as greatly underestimated. Therefore, the Protestant excepts to and recommends the amendment of Finding of Fact Nos. 34 and 35, as follows:

“34. There is insufficient evidence in the record to show that tThe District’s water and wastewater rates are reasonable compared to other taxing authorities in the area.

35. There is insufficient evidence in the record to show that tThe District’s water and sewer rates are reasonable as proposed.”

The Protestant also excepts to and recommends amendment of Conclusion of Law No. 10 as follows:

“10. Insufficient evidence was presented to establish that tThe District’s water and sewer rates are reasonable. Tex. Water Code § 54.021(b)(2)”

**B. Exceptions to the PFD’s analysis and recommendations regarding whether the proposed District and the systems and subsequent development within the proposed District will have an unreasonable effect on natural run-off rates and drainage. (Tex. Water Code §§ 54.021(b)(3)(E)).**

Protestant excepts to the ALJs’ conclusion that the Applicant met its burden on the issue of whether the development and its systems and subsequent development within the proposed District will have an unreasonable effect on natural run-off rates and drainage. The ALJs are correct in noting that the Applicant provided “scant” information about the drainage, and that the Applicant’s experts provided no evidence or substantive information about the natural run-off rates before development in order to compare it to the post development rates. *See* PFD Pages 39, 41. Based on the conclusory nature of the evidence provided, the County contends that the PFD should find that the Applicant did not present enough evidence to demonstrate that this development and its systems will not have an unreasonable effect on natural run-off rates and drainage. Therefore,

the Protestant excepts to and recommends the amendment of Finding of Fact Nos. 46 and 47, as follows:

“46. There is insufficient evidence in the record to show that tThe District will not change overall patterns of runoff.

47. There is insufficient evidence in the record to show that tThe proposed District, and the systems and subsequent development within the proposed District, will not have an unreasonable effect on natural run-off rates and drainage.”

The Protestant also excepts to and recommends amendment of Conclusion of Law No.

12, as follows:

“12. The District and its systems and subsequent development will not have an unreasonable effect on: land elevation, subsidence, ~~natural runoff rates and drainage, water quality,~~ or total tax assessments on all land located within the district. Insufficient evidence was presented to establish that the District and its systems and subsequent development will not have an unreasonable effect on: natural runoff rates and drainage, and water quality. Tex. Water Code § 54.021(b)(3)(A)-(B), (E)-(G) and 30 Texas. Admin. Code § 293.11(d)(5)(H)(i)-(ii), (v)-(vi).”

**C. Exceptions to the PFD’s analysis and recommendations regarding whether the proposed District and the systems and subsequent development within the proposed District will have an unreasonable effect on water quality. (Tex. Water Code §§ 54.021(b)(3)(F)).**

Protestant excepts to the ALJs’ conclusion that the Applicant met its burden on the issue of whether the systems and subsequent development within the proposed District will have an unreasonable effect on water quality. The County understands that the Texas Commission on Environmental Quality (TCEQ) recently discussed this water quality requirement and noted that the TCEQ looks at comparable impacts of other developments and compliance with applicable stormwater requirements. PFD Pages 47-49. However, here, the County disagrees with the ALJs’ assessment because the Applicant did not meet its burden to show that it met these factors because:

(1) there is insufficient evidence to show that this proposed development will result in the typical

impacts from a residential development due to the particular water bodies located downstream, and (2) there are no water quality controls on a local level for this particular development.

Specifically, as noted in Mr. Tim Osting's testimony on behalf of Protestant, this is a unique situation different from a typical residential development because the proposed District is located directly upstream from and has proposed to discharge wastewater into water bodies that are already at the limit of meeting state water quality standards. (Protestant Ex. 3 – 17: 25 – 18: 4 (Osting)). There has been no analysis by the Applicant or the TCEQ about the combined effects of the proposed wastewater discharge and the increased storm water runoff. (Protestant Ex. 3 – 18:16-20 (Osting)). Further, the Applicant did not provide and the ED did not examine the effects of the development associated with the proposed District on stormwater quality after construction is complete. (ED-AP-1 11:12-15 (Paynter)). Because the Applicant has not provided sufficient evidence about the effect of this development on these particular water bodies, it has not met its burden under Texas Water Code § 54.021(b)(3)(F).

Further, the TCEQ's deference to local authority regulations regarding stormwater requirements implies that the local authorities in question actually *have* such regulations in place. Here, no local authority has regulations regarding stormwater quality control for the area of the proposed District. (Protestant Ex. 3 – 8:5-20 (Osting)). As a result, a finding that the proposed District will be designed, constructed, operated and maintained in compliance with local requirements is inappropriate, the Applicant has not provided sufficient evidence about the effect of this development regarding non-point source water quality, and therefore the Applicant has not met its burden under Texas Water Code § 54.021(b)(3)(F). The Protestant therefore excepts to and recommends the amendment of Finding of Fact Nos. 49, 50 and 51, as follows:

“49. The District's stormwater collection, conveyance, and detention facilities will be designed, constructed, operated, and maintained in compliance with all federal, state, and

local requirements. However, no requirements regarding stormwater quality controls exist in the area.

50. The District will bring an increase in concentrations of nitrate, phosphorus, sediment, and other constituents that effect water quality, over concentrations found in open space runoff; however, and there is insufficient evidence in the record to show that the increase will be similar to that from other comparable systems in the area.

51. There is insufficient evidence in the record to show that tThe District will not have an unreasonable effect on water quality.”

The Protestant also excepts to and recommends amendment of Conclusion of Law No. 12, as follows:

“12. The District and its systems and subsequent development will not have an unreasonable effect on: land elevation, subsidence, ~~natural runoff rates and drainage, water quality,~~ or total tax assessments on all land located within the district. Insufficient evidence was presented to establish that the District and its systems and subsequent development will not have an unreasonable effect on: natural runoff rates and drainage, and water quality. Tex. Water Code § 54.021(b)(3)(A)-(B), (E)-(G) and 30 Texas. Admin. Code § 293.11(d)(5)(H)(i)-(ii), (v)-(vi).”

#### **D. Exceptions to the recommended actions.**

The Protestant agrees with the PFD’s recommendation to deny the Application based on insufficient evidence that the construction costs and tax rates are reasonable, that the creation will not have an unreasonable effect on groundwater levels and recharge in the region, that the District is economically feasible, and that the Applicant’s request for road powers meets the applicable requirements. However, the Protestant disagrees with the above listed Findings of Fact and Conclusions of Law because the Applicant has likewise not met its burden of proof in this case on these statutory requirements, specifically that the Applicant failed to show that the proposed District presented reasonable water and wastewater rates, and that the proposed District and its systems and subsequent development will not have an unreasonable effect on natural run-off, drainage, and water quality. Based on the reasons cited above, the Protestant asserts that the Application to create the proposed district should not be granted.

### III. CONCLUSION AND PRAYER

The Protestant respectfully requests that the TCEQ grant its exceptions and recommend the PFD with the corrections as set out above. The Protestant respectfully requests any other relief to which they are entitled.

Respectfully submitted,

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BY:   
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### **CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on March 18, 2024, a true and correct copy of the above and foregoing document was served on all parties via electronic filing service provider.

  
Emily W. Rogers