

**SOAH DOCKET NO. 582-24-12113  
TCEQ DOCKET NO. 2023-1406-DIS**

<b>APPLICATION FOR THE CREATION OF BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY AND JOHNSON COUNTY</b>	§ § § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
--	----------------------------	---

**APPLICANTS MISKIMON MANAGEMENT III, LLC AND BUFFALO HILLS  
DEVELOPMENT, LLC'S REPLY TO ELLIS COUNTY'S EXCEPTIONS TO THE  
PROPOSAL FOR DECISION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicants, Miskimon Management III, LLC and Buffalo Hills Development, LLC, submits its Reply to the Exceptions to the Proposal for Decision (PFD) filed by Protestant Ellis County in this case.

**Protestant's attempt to impose improper burdens on Applicant should be rejected.**

**A. Reasonableness of projected construction costs, tax rates, and water and sewer rates.**

Protestant's exception to the ALJs analysis and recommendation that Applicant has met its burden on the issue of reasonableness of projected construction costs, tax rates and water and sewer rates based on the argument that Applicant did not provide reasonable projected costs and a detailed rate analysis based on reasonable unit costs is a poorly founded argument. Protestant claims that the Applicant has undervalued costs and provided no meaningful support for any of its itemized costs or supporting documentation to the Texas Commission on Environmental Quality (TCEQ or Commission), which is false and contrary to the views of the Administrative Law Judge (ALJ)<sup>1</sup> and the Executive Director (ED) of the Commission.<sup>2</sup> As previously stated in Applicant's

---

<sup>1</sup> State Office of Administrative Hearings Docket No. 582-24-12113 (Proposal for Decision).

<sup>2</sup> State Office of Administrative Hearings Docket No. 582-24-12113 (Executive Director's Closing Argument)

Closing Brief, it was the Applicant who provided an engineering report, supporting documentation and testimony from its expert Melissa Lopez that established that the estimated unit costs reflected actual previous bids from prior projects or current bids from reputable contractors on the current project.<sup>3</sup> This is in stark contrast to the testimony of the Protestant's Expert Dennis Lozano which did not include any report or itemized costs to support his conclusory testimony to back up the claims made by the Protestant.<sup>4</sup> The ED and ALJ both had the opportunity to hear the testimony of Mr. Lozano and found that such cost estimates provided by the Applicant were reasonable. Since the Protestant has provided no supporting evidence to support why such estimates are invalid, the only logical finding is that the Applicant has met its burden on this issue.

Applicant is required to include its projected tax rate and water and wastewater rates in the Engineering Report. The District's projected debt service tax rate for water, wastewater and drainage facilities, is \$0.9815 per \$100 of assessed value.<sup>5</sup> Mr. Lozano acknowledged that the tax rates are within statutory limits and comparable to other jurisdictions and that the water and sewer rates are similar to those in other taxing jurisdictions.<sup>6</sup> Protestant's argument depends entirely on the assumption that construction costs and a higher contingency will cause the District to exceed this rate with the faulty logical leap that creation of the District is not feasible as a result. Although the Applicant disagrees with these assumptions the Protestant is relying on, it notes that the developer will only be reimbursed for amounts up to the \$1 tax rate cap as pointed out by the Office of Public Interest Counsel (OPIC).<sup>7</sup> Estimates are not certainties and the slight increases to costs will only impact the developer who may not be able to obtain full reimbursement for all items

---

<sup>3</sup> *Lopez Pre-Filed Test.* at 29.

<sup>4</sup> *See Lozano Pre-Filed Test.* at 41.

<sup>5</sup> MMBD Ex. 3 – 9:13-16.

<sup>6</sup> Ellis County Ex. 1 at 10.

<sup>7</sup> OPIC Closing at 13.

as envisioned. Notwithstanding the foregoing, the evidence provided by the Applicant shows that the proposed combined tax rate will support the project based on factual estimates and the ED, ALJ and OPIC have all recognized that based on all such available evidence such projected costs are reasonable. Accordingly, Protestant's exceptions to proposed Findings of Fact Nos. 30, 32, 34 and 53 and Amendments to Conclusion of Law No. 11 and 14 should be rejected.

**B. Effect of District on Groundwater Level Within the Region.**

Protestant's exception to the ALJs finding that Applicant has established that the District, its system, and the subsequent development within the District will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source seeks to apply an improper standard of proof. Applicant has previously reached out to Mountain Peak SUD which indicated that no negative impact is expected and the engineer for the District has reviewed the topographical drainage patterns and determined that there was no anticipated impact on the recharge capability of a groundwater source.<sup>8</sup> Although the Protestant provided no argument to show why creation of the District will have a negative impact on groundwater, it is proposing an unreasonable and unprecedented standard of independent analysis and review by the TCEQ as a requirement to a finding that creation of the District would have no adverse effect on groundwater levels. Such policy has not been applied to a District creation in the past and a departure to a new standard would not serve the public interest. The Applicant has met its burden on this issue through its filings and supporting testimony. Protestant's exceptions to proposed Findings of Fact Nos. 40 and 42 and Amendments to Conclusion of Law No. 12 and 14 should be rejected.

---

<sup>8</sup> MMBHD Ex. 3 (Heroy direct) at 14.

**C. Effect of District on natural run-off rates and drainage.**

Protestant's exception to the ALJs finding that Applicant has established that the District, its system, and the subsequent development within the District will not have an unreasonable effect on natural run-off rates and drainage again seeks to apply an improper standard of proof. Protestant argues that Applicant has provided little information about run-off rates and has provided little substantive information, but this is not supported by the record. Applicant has previously shown that the District's drainage system will include detention ponds and includes plans for necessary infrastructure to convey and redirect stormwater to follow current drainage patterns.<sup>9</sup> Applicant also had its expert Ken Heroy testify about the drainage and construction plans and noted that stormwater design will be addressed locally and must comply with the approvals of Ellis County before construction.<sup>10</sup> Justin Taack of the TCEQ testified that stormwater quality is not addressed in MUD creation<sup>11</sup> and the Protestant once again appears to be proposing a standard of review that far exceeds the scope of review by the TCEQ and is not necessary for the Applicant to meet its burden.

Applicant has produced sufficient evidence to meet its burden of proof to show that the District will not have an unreasonable effect on natural run-off rates and drainage. Protestant, on the other hand, failed to introduce competent evidence to conclusively establish the District will have an unreasonable effect on natural run-off rates and drainage. Accordingly, Protestant's exception to the ALJs Proposed Findings of Fact Nos. 44 and 45 and Conclusions of Law Nos. 12 and 14 should be rejected.

---

<sup>9</sup> MMBHD Ex. 22 (Technical Memorandum) at 4.

<sup>10</sup> MMBHD Ex. 3 (Heroy direct) at 14-15.

<sup>11</sup> OPIC Closing at 15 (citing Ex. ED-JT-1 (Taack direct) at 13).

#### **D. District's effect on water quality**

Protestant's exception to the ALJs analysis and recommendation that Applicant met its burden on whether the systems and subsequent development within the proposed District will not have an unreasonable effect on water quality is deeply flawed. Protestant argues that the TCEQ should evaluate the impact on water quality using an undefined standard to evaluate the impact to water quality from the proposed discharge from the wastewater treatment plant or from storm water runoff from the development. Protestant essentially contends that, since it has not established any water quality regulations, no application for the creation of a municipal utility district should be approved in any area of the county that lies outside the boundaries or extraterritorial jurisdiction (ETJ) of a city. However, this is not the standard set forth by the Texas Legislature or the Commission.

Applicant's Preliminary Engineering Report states that the following:

All construction within the District will include erosion control measures which comply with the Storm Water Pollution Prevention Plans (SWPPP) overseen by TCEQ. Also, all wastewater will be collected and treated in a wastewater treatment facility that is permitted and approved by TCEQ, which should minimize the effects on surface water quality. Therefore, the proposed District should have minimal effect on water quality.<sup>12</sup>

In its Technical Memorandum, TCEQ approved Applicant's water quality review.<sup>13</sup> Applicant's engineering experts also testified that, because "treatment and disposal of wastewater from the MUDs will be done in accordance with the terms of a wastewater discharge permit being obtained from the TCEQ," No adverse effect on the water quality of ground or surface water is anticipated as a result of this development.<sup>14</sup>

To require the TCEQ to review and apply the design criteria of local jurisdictions, or create

---

<sup>12</sup> MMBHK Ex. 16 at 14

<sup>13</sup> MMBHK Ex. 22 at 4.

<sup>14</sup> MMBHK Ex. 3 at 14-15.

regulations where none exist, is not practical and would shift the responsibility for such future approvals away from the appropriate parties. No one disputes that the District will be in compliance with all applicable regulations and ordinances if constructed as planned. Therefore, Protestant's exception to proposed Findings of Fact No. 49 and Conclusions of Law Nos. 12 and 14, and its attempt to create a new standard for approving MUD applications, should be rejected.

### **Conclusion.**

Protestant's exceptions and argument against the creation of the proposed district essentially seek to change the approval standard by shifting the burden of proof. Rather than evaluating the reasonableness of tentative cost estimates, projected rates, and the potential impact on water and the environment, Protestant proposes evaluating the reasonableness of post-completion costs, rates, and the district's effects after it has been established. This proposed standard goes well beyond the legal requirements for approving an application and places the applicant in an untenable position.

A post-completion evaluation of the proposed district, as suggested by Ellis County, could only be properly conducted once all improvements have been completed. At the current stage, the plans, cost estimates, and projections are preliminary, and the applicant will be subject to regulations from various governing bodies during the development process. The statute does not require that an applicant first complete the development before applying to create a municipal utility district.

Protestant's exception to Proposed Findings of Fact No. 54 and Conclusions of Law Nos. 14 and 15, along with its attempt to impose a new standard for approving MUD applications, should therefore be rejected. The applicant has met all statutory requirements for approval and respectfully requests that its application for the creation of Brahman Ranch MUD be granted, along

with any other relief to which it may be entitled.

Respectfully submitted,

By: /s/ Matthew McPhail

James G. Ruiz      State Bar No. 17385860

[jruiz@winstead.com](mailto:jruiz@winstead.com)

Matthew McPhail      State Bar No. 24074692

[mmcphail@winstead.com](mailto:mmcphail@winstead.com)

**WINSTEAD PC**

900 W. 5th St., Suite 900

Austin, Texas 78701

(512) 370-2800

(512) 370-2850 (Fax)

**ATTORNEYS FOR APPLICANTS  
MISKIMON MANAGEMENT III, LLC  
AND BUFFALO HILLS DEVELOPMENT,  
LLC**

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2025, a copy of the foregoing document was served on all persons listed via electronic mail.

Emily Rogers  
Stefanie Albright  
Rae Fregeolle-Burk  
Kimberly Kelley  
Bickerstaff Heath Delgado Acosta LLP  
3711 S. MOPAC Expy, Suite 300  
Austin, Texas 78746  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)  
[salbright@bickerstaff.com](mailto:salbright@bickerstaff.com)  
[rfburk@bickerstaff.com](mailto:rfburk@bickerstaff.com)  
[kkelley@bickerstaff.com](mailto:kkelley@bickerstaff.com)

Pranjal Mehta  
TCEQ  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
[pranjal.mehta@tceq.texas.gov](mailto:pranjal.mehta@tceq.texas.gov)

Kayla Murray, Staff Attorney  
Allie Soileau, Staff Attorney  
TCEQ  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
[Kayla.Murray@tceq.texas.gov](mailto:Kayla.Murray@tceq.texas.gov)  
[Allie.Soileau@tceq.texas.gov](mailto:Allie.Soileau@tceq.texas.gov)

/s/ Matthew McPhail

Matthew McPhail