

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

March 12, 2025

James Ruiz  
Attorney for Applicants

**VIA EFILE TEXAS**

Kayla Murray and Allie Soileau  
Attorneys for ED

Pranjal Mehta  
Attorney for OPIC

Stefanie Albright  
Attorney for Ellis County

**RE: Docket No. 582-24-12113; TCEQ No. 2023-1406-DIS; *Application for the Creation of Brahman Ranch Municipal Utility District of Ellis and Johnson Counties***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15th Street Austin, Texas 78701  
Phone: 512-475-4993 | [www.soah.texas.gov](http://www.soah.texas.gov)

# **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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## **APPLICATION FOR THE CREATION OF BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS AND JOHNSON COUNTIES**

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### **TABLE OF CONTENTS**

I.	Notice, Jurisdiction, and Procedural History .....	2
II.	Applicable Law .....	3
III.	The Proposed Development and the Request for Service.....	8
IV.	Petition .....	9
A.	Sufficiency of the Petition.....	9
B.	Whether the Project is Feasible, Practicable, Necessary, and Would Benefit the Land Included in the District.....	10
1.	Availability of Comparable Service.....	11
2.	Construction Costs, Tax Rates, and Water and Sewer Rates.....	12

a)	Applicants’ Evidence and Position.....	12
b)	Ellis County’s Evidence and Position .....	14
c)	ED’s and OPIC’s Evidence and Position .....	16
d)	ALJ’s Analysis.....	17
3.	Unreasonable Effects .....	18
a)	Land Elevation .....	19
b)	Subsidence .....	20
c)	Groundwater Levels and Recharge .....	20
d)	Natural Run-off Rates and Drainage .....	22
e)	Water Quality .....	23
f)	Total Tax Assessments on All Land Located Within the Proposed District.....	25
C.	Complete Justification .....	26
D.	Road Powers .....	27
V.	Transcript Costs .....	28
VI.	Conclusion.....	29

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**APPLICATION FOR THE CREATION OF BRAHMAN RANCH  
MUNICIPAL UTILITY DISTRICT OF ELLIS AND JOHNSON  
COUNTIES**

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**PROPOSAL FOR DECISION**

Miskimon Management III, LLC and Buffalo Hills Development, LLC (collectively, Applicants) filed a petition (Petition) with the Texas Commission on Environmental Quality (TCEQ or Commission) requesting the creation of the Brahman Ranch Municipal Utility District of Ellis and Johnson Counties (District) for a planned residential development. The Administrative Law Judge (ALJ) recommends that the Commission grant Applicants' Petition.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law in the Proposed Order attached to this PFD.

Applicants filed the Petition with the Commission on February 21, 2023. The Petition was declared administratively complete on February 22, 2023. At its November 8, 2023 open meeting, TCEQ voted to refer this matter to SOAH. On February 22, 2024, this matter was docketed at SOAH.

A preliminary hearing was held on April 10, 2024. Applicants, Ellis County, TCEQ's Executive Director (ED), and the Office of Public Interest Counsel (OPIC) were named as parties.

The hearing on the merits was held on September 26, 2024, before ALJ Rebecca Smith in SOAH's hybrid hearing room. Applicants were represented by attorney James Ruiz; Ellis County was represented by attorney Stefanie Albright; the ED was represented by attorney Kayla Murray and Allie Soileau; and OPIC was represented by attorney Pranjal Mehta.

Applicants introduced 20 exhibits into evidence and presented the testimony of four witnesses: Rich Miskimon, Applicants' managing member; Melissa Lopez, P.E. and Ken Henroy, P.E., both of whom worked on Applicants' preliminary engineering report; and Applicants' real estate market expert Cassie Gibson. Ellis County introduced two exhibits and presented the testimony of its expert

witness Dennis Lozano, P.E. The ED introduced four exhibits into evidence and presented the testimony of Justin Taack, who manages TCEQ's Districts Section.

The record closed on January 17, 2025, after submission of written closing arguments.

## **II. APPLICABLE LAW**

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, and the Commission's administrative rules found at 30 Texas Administrative Code chapter 293. A MUD may be created either through special law enacted by the Legislature or, pursuant to general law, through administrative order of the Commission.<sup>1</sup>

The purposes of a MUD include the control and distribution of storm water, floodwater, rivers and streams for irrigation and "all other useful purposes;" reclamation and irrigation or drainage of lands; and the preservation of water and other natural resources of the state.<sup>2</sup> To accomplish these purposes, a MUD is given authority and power to "purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside or outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary" to, among other things, distribute water; control wastewater collection and disposal; gather, conduct, divert,

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<sup>1</sup> Tex. Water Code §§ 54.018-.021.

<sup>2</sup> Tex. Water Code § 54.012.

and control local storm water; irrigate the land; alter land elevation where needed; and provide parks and recreational facilities for a district's inhabitants.<sup>3</sup> A MUD may also exercise eminent domain, acquire power to construct and maintain roads and related improvements, authorize contracts, manage street lighting, enforce real-property restrictions, and (subject to various required approvals and other constraints) issue bonds to finance its projects backed by the MUD's revenues or ad valorem taxes imposed on the properties within the district.<sup>4</sup>

Land within the corporate limits or extraterritorial jurisdiction (ETJ) of a city may not be included within a district without the city's written consent.<sup>5</sup> An applicant must send a request for consent to the city, signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls.<sup>6</sup> If the city does not give consent within 90 days after receipt of the request, "a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district."<sup>7</sup> If the city and the petitioners fail to execute a mutually agreeable contract for the requested water or sanitary service within 120 days after the city received the petition, this failure "shall constitute authorization for the inclusion of the land in the district

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<sup>3</sup> Tex. Water Code § 54.201.

<sup>4</sup> Tex. Water Code §§ 54.209, .234-.237, .501-.604.

<sup>5</sup> Tex. Water Code § 54.016(a).

<sup>6</sup> Tex. Water Code § 54.016(a); *see also* Tex. Local Gov't Code § 42.042(b).

<sup>7</sup> Tex. Water Code § 54.016(b); *see also* Tex. Local Gov't Code § 42.042(b).

under the provisions of this section.”<sup>8</sup> At that point, the applicant may file a petition with the Commission for the creation of the district.<sup>9</sup>

A petition requesting creation of a district shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district.<sup>10</sup> Further, under Texas Water Code section 54.015, the petition shall:

1. describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;
2. state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and
3. include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated “\_\_\_\_\_ County Municipal Utility District No. \_\_\_\_\_.” (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.<sup>11</sup>

The Commission’s rules also require the petition to include the following: evidence that it was filed with the county clerk; a map, market study, preliminary plan, and preliminary engineering report; a certificate by the central appraisal district

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<sup>8</sup> Tex. Water Code § 54.016(c); *see also* Tex. Local Gov’t Code § 42.042(c).

<sup>9</sup> Tex. Water Code § 54.016(d).

<sup>10</sup> Tex. Water Code § 54.014.

<sup>11</sup> Tex. Water Code § 54.015.



indicating the owners and tax valuation of land within the proposed district; and affidavits by those persons desiring appointments by the Commission as temporary directors.<sup>12</sup> If the petition includes a request for road powers, the Commission's rules also require evidence addressing the location and cost of the proposed roads, among other details.<sup>13</sup>

If the Commission receives one or more hearing requests and determines that a hearing is necessary, the petition is referred to SOAH for hearing.<sup>14</sup> The issues to be determined at the hearing are the "sufficiency of the petition" (which in context would include compliance with Texas Water Code section 54.015 or other procedural prerequisites) and "whether the project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district."<sup>15</sup> In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

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<sup>12</sup> 30 Tex. Admin. Code § 293.11(a)(6), (d).

<sup>13</sup> 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a)(4), (7)-(9), (b).

<sup>14</sup> See Tex. Water Code §§ 49.011, 54.019-.020; Tex. Gov't Code §2003.047.

<sup>15</sup> Tex. Water Code § 54.020(a).

- (A) land elevation;
- (B) subsidence;
- (C) groundwater level within the region;
- (D) recharge capability of a groundwater source;
- (E) natural run-off rates and drainage;
- (F) water quality; and
- (G) total tax assessments on all land located within a district.<sup>16</sup>

The Commission shall grant the petition if it conforms to the requirements of Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district.<sup>17</sup> The Commission shall deny the petition if it does not conform to the requirements of Texas Water Code section 54.015, or if the project is not feasible, practicable, necessary, or a benefit to the land in the district.<sup>18</sup> If the Commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the Commission shall exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.<sup>19</sup>

Applicants bear the burden of proof by a preponderance of the evidence.<sup>20</sup>

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<sup>16</sup> Tex. Water Code § 54.021(b).

<sup>17</sup> Tex. Water Code § 54.021(a).

<sup>18</sup> Tex. Water Code § 54.021(d).

<sup>19</sup> Tex. Water Code § 54.021(c).

<sup>20</sup> 30 Tex. Admin. Code §§ 80.17(a), .117(a)-(b); *see also Granek v. Texas State Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App. — Austin 2005, no pet.).

### **III. THE PROPOSED DEVELOPMENT AND THE REQUEST FOR SERVICE**

The District consists of approximately 438.7 acres located mostly in Ellis County, with a small part in Johnson County.<sup>21</sup> It is located south of the City of Venus (Venus) and southeast of the City of Midlothian (Midlothian). The proposed development would consist of single-family residences.<sup>22</sup> Applicants originally estimated they would build 1,411 houses, but they later reduced the number to 1,390 because some of the area consisted of wetlands where houses could not be built.<sup>23</sup> At the time the Petition was filed, the District was entirely within the ETJs of Venus and Midlothian.<sup>24</sup> In other words, part of the district was within Venus's ETJ and part was within Midlothian's ETJ.

On April 19, 2022, Applicants submitted requests for consent to the creation of the District to Venus and Midlothian.<sup>25</sup> Applicants did not receive a written response from either city within 90 days.<sup>26</sup> On August 1, 2022, Applicants petitioned both Venus and Midlothian for water and sewer services.<sup>27</sup> Applicants did not receive

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<sup>21</sup> App. Ex. 16 at 5.

<sup>22</sup> App. Ex. 1 (Miskimon direct) at 7.

<sup>23</sup> App. Ex. 1 (Miskimon direct) at 7; Hearing Transcript (Tr.) at 28.

<sup>24</sup> App. Ex. 16 at 5.

<sup>25</sup> App. Exs. 8, 9.

<sup>26</sup> App. Ex. 1 at 4, 5.

<sup>27</sup> App. Exs. 10, 11.

a written response to either of those petitions. Later, on March 24, 2023, Applicants entered into a development agreement with Venus.<sup>28</sup>

On September 25, 2023, Applicants recorded a petition to release its property from Midlothian's ETJ.<sup>29</sup> This release occurred by operation of law on November 14, 2023.<sup>30</sup>

#### **IV. PETITION**

##### **A. SUFFICIENCY OF THE PETITION**

No party disputed that the Petition addressed the components required by Texas Water Code sections 54.014 and .015.

Texas Water Code section 54.014 requires a petition to be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. Applicants own the land to be included in the District and Mr. Miskimon, as the managing member, executed the Petition on behalf of both Applicants.<sup>31</sup> The ALJ concludes that section 54.014's requirements are satisfied.

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<sup>28</sup> App. Ex. 1 (Miskimon direct) at 4.

<sup>29</sup> App. Ex. 13.

<sup>30</sup> App. Ex. 1 (Miskimon direct) at 6.

<sup>31</sup> App. Ex. 1 (Miskimon direct) at 2.

Texas Water Code section 54.015 requires a petition to do the following:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and

(3) include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated “\_\_\_\_\_ County Municipal Utility District No. \_\_\_\_\_.” (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.

The ALJ similarly concludes that the Petition satisfies section 54.015’s requirements because it contains all three necessary items.<sup>32</sup>

**B. WHETHER THE PROJECT IS FEASIBLE, PRACTICABLE, NECESSARY, AND WOULD BENEFIT THE LAND INCLUDED IN THE DISTRICT**

After determining that the Petition conforms to the requirements of Texas Water Code sections 54.014 and 54.015, the next determination is whether “the project is feasible and practicable and is necessary and would be a benefit to the land

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<sup>32</sup> App. Ex. 14 at 1, 3, Ex. A.

to be included in the district.”<sup>33</sup> This determination is made after considering the factors listed in Texas Water Code section 54.021(b).

### **1. Availability of Comparable Service**

The first factor is “the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities.”<sup>34</sup> Based on Applicants’ evidence, the District will receive retail water service from Mountain Peak Special Utility District (Mountain Peak).<sup>35</sup> Mountain Peak’s water certificate of convenience and necessity (CCN) includes the land within the District’s boundaries,<sup>36</sup> and therefore Mountain Peak has the right to provide retail water service. Mr. Heroy testified that Applicants and the MUD will fund the construction of the public water infrastructure necessary for this service.<sup>37</sup> Mr. Heroy also testified that the District is not within any sewer CCN and that no entity was able or willing to provide wastewater treatment to the District.<sup>38</sup>

No party presented any evidence to contradict Applicants’ evidence on comparable services, and no party argues that comparable service is available.

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<sup>33</sup> Tex. Water Code § 54.021(a).

<sup>34</sup> Tex. Water Code § 54.021(b)(1).

<sup>35</sup> App. Ex. 3 (Heroy direct) at 7.

<sup>36</sup> App. Ex. 3 (Heroy direct) at 7.

<sup>37</sup> App. Ex. 3 (Heroy direct) at 8.

<sup>38</sup> App. Ex. 3 (Heroy direct) at 7, 8.

## **2. Construction Costs, Tax Rates, and Water and Sewer Rates**

In determining whether the project is feasible, practicable, and necessary, and whether it would be a benefit to the land included in the District, the Commission must next consider the reasonableness of projected construction costs, tax rates, and water and sewer rates.<sup>39</sup> The Commission considers whether these costs and rates were reasonable when the Petition was submitted and does not consider future projections.<sup>40</sup>

### **a) Applicants' Evidence and Position**

Applicants primarily rely on the preliminary engineering report they filed with the TCEQ as the basis for their cost estimate. The preliminary engineering report forecasts total costs to be \$63,850,000, broken down into \$46,400,000 for water, wastewater, and drainage;<sup>41</sup> and \$17,450,000 for roads.<sup>42</sup> The estimates are based on costs in February 2023,<sup>43</sup> the time the report was filed.

Applicants' witness Ms. Lopez calculated the costs for the preliminary engineering report.<sup>44</sup> Ms. Lopez has worked with residential subdivisions, including

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<sup>39</sup> Tex. Water Code § 54.021(b)(2).

<sup>40</sup> *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order at § III.3 (November 6, 2023).

<sup>41</sup> App. Ex. 16 at 9.

<sup>42</sup> App. Ex. 16 at 10.

<sup>43</sup> App. Ex. 2 (Lopez direct) at 8.

<sup>44</sup> App. Ex. 2 (Lopez direct) at 8.

water and sewer design and MUD creation, since 2015.<sup>45</sup> She testified that she first determined the necessary infrastructure, which consisted of both on-site and off-site facilities.<sup>46</sup> Off-site facilities would be the waterlines to connect to Mountain Peak.<sup>47</sup> She then estimated costs based on previous bids, except that she based the cost of the wastewater treatment plant on an actual bid from the company that will build the plant.<sup>48</sup> She also testified that, based on the proposed development plan, she did not expect the developer would be required to construct infrastructure or incur development expenses beyond those that are normal for the development of a single-family residential community in the market.<sup>49</sup>

As for tax rates, Applicants contemplate a District tax rate of \$0.9815 per \$100 valuation.<sup>50</sup> According to the preliminary engineering report, this rate is in line with other districts close to the proposed District, which have tax rates ranging from \$0.9200 up to \$1.0000.<sup>51</sup> TCEQ rules provide for a maximum tax rate of \$1.00 per \$100 valuation.<sup>52</sup>

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<sup>45</sup> App. Ex. 5.

<sup>46</sup> Tr. at 26.

<sup>47</sup> Tr. at 26.

<sup>48</sup> Tr. at 29.

<sup>49</sup> App. Ex. 2 (Lopez direct) at 8.

<sup>50</sup> App. Ex. 16 at 12.

<sup>51</sup> App. Ex. 16 at 12.

<sup>52</sup> 30 Tex. Admin. Code § 293.59(k)(3)(C).



Applicants also presented evidence regarding projected water and sewer rates. The preliminary engineering report projects that District customers will have an average monthly water bill of \$65.84, based on water use of 10,000 gallons per month and will have an average monthly wastewater bill of \$60.75, based on a flat monthly charge.<sup>53</sup> The water rates are based on Mountain Peak's rates, which are not altered regardless of whether the District is created. Mr. Heroy testified that the water and sewer rates are reasonable when compared to other taxing authorities in the area.<sup>54</sup>

### **b) Ellis County's Evidence and Position**

Ellis County's expert witness, Mr. Lozano, testified about projected costs. Mr. Lozano testified that he used the detailed cost estimates included in the preliminary engineering report and then compared the unit prices for individual cost items to bid projects of similar scope in different areas of the state.<sup>55</sup> He testified that the projected costs were understated by more than 70 percent, based on the following:

- Using unit prices from construction contracts awarded in 2023, he determined that on-site water facilities were \$8.8 million, as opposed to Applicants' estimation of \$6.2 million. He added that the off-site water, sanitary sewer, and storm sewer costs were understated by 41%, 30%, and 38%, respectively.<sup>56</sup>
- When he calculated Applicants' unit cost (measured in dollars per gallon per day) of treatment capacity, the result was a unit cost of approximately \$6 per gallon per day. According to Mr. Lozano,

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<sup>53</sup> App. Ex. 16 at 12.

<sup>54</sup> App. Ex. 3 (Heroy direct) at 15.

<sup>55</sup> Ellis County Ex. 1 at 8.

<sup>56</sup> Ellis County Ex. 1 at 9.

wastewater treatment plants similar to those that would be required in this case cost in the range of \$25-\$30 per gallon per day.<sup>57</sup>

- The projected costs only included “a modest 10% contingency,” which is more in line with a high-confidence cost estimation at a late design phase, as opposed to an early phase, like the one the development at issue is in.<sup>58</sup>

Mr. Lozano also testified that because he found the cost estimates to be off by more than 70 percent:

any costs over what is shown in the [preliminary engineering report] would need to be funded by some means other than the project[ed] tax revenue available from the proposed district. Nowhere in the [preliminary engineering report] or other documents produced by the Applicant[s] is an additional funding source . . . identified. Therefore, there is insufficient information to determine the feasibility of the Project.<sup>59</sup>

Mr. Lozano agreed that the tax rates are within statutory limits and comparable to those in other similar taxing jurisdictions<sup>60</sup> and testified that he found the water and sewer rates proposed to be comparable to other rates.<sup>61</sup>

Ellis County argues that this case is similar to the petition to create Shankle Road MUD, in which the Commission denied the petition, finding that the applicant

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<sup>57</sup> Ellis County Ex. 1 at 9-10.

<sup>58</sup> Ellis County Ex. 1 at 10.

<sup>59</sup> Ellis County Ex. 1 at 10-11.

<sup>60</sup> Ellis County Ex. 1 at 10.

<sup>61</sup> Tr. at 40.

failed to support its conclusory statements of cost with evidence.<sup>62</sup> Ellis County argues that evidence is likewise lacking here.

**c) ED's and OPIC's Evidence and Position**

ED witness Mr. Taack testified that the projected costs, tax rates, and water and sewer rates were reasonable.<sup>63</sup> He emphasized that the TCEQ's rules only require estimates of costs because "developments will continue to develop over the course of numerous years, and costs can change and often do change."<sup>64</sup> He also testified that developers such as Applicants, are limited to a maximum tax rate of \$1.00 per \$100 assessed value, and that "[i]f additional funding is needed that would be done by the developer at their own expense."<sup>65</sup>

The ED also challenges Ellis County's assertion that this case resembles *Shankle Road*. The ED quotes from the then-Chairman's remarks:

Colleagues, I feel like we're in a position where it's difficult, or perhaps impossible for us to assess the costs because what the Petitioners have offered is conclusory, really no evidence or analysis to back up the conclusory statement about their projected costs. . . . What I'm looking for is a little bit more basis for the Petitioners' assertion and I don't find it.<sup>66</sup>

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<sup>62</sup> Ellis County Closing at 7 (citing *Petition for the Creation of Shankle Road MUD of Ellis County*, SOAH Docket No. 582-23-26772, TCEQ Docket No. 2023-0566-DIS (final order Dec. 5, 2024)).

<sup>63</sup> Ex. ED-JT-1 at 9.

<sup>64</sup> Ex. ED-JT-1 at 10.

<sup>65</sup> Ex. ED-JT-1 at 10.

<sup>66</sup> ED Reply at 2 (quoting Commissioner's Agenda Meeting, November 20, 2024, Agenda Item 1).

The ED argues that the evidence in this case provides more than “a little bit” of a basis for Applicants’ cost estimates.<sup>67</sup> OPIC agrees with the ED that Applicants have established the reasonableness of its costs.<sup>68</sup>

#### **d) ALJ’s Analysis**

The ALJ finds that Applicants have met their burden to establish the reasonableness of the projected costs, tax rates, and water and sewer rates. This case does not resemble *Shankle Road*, in which the applicant’s expert, who had little background in residential developments, provided no testimony about how any of the costs were estimated, did not initially include costs for the required wastewater treatment plants, and did not seem to have researched costs at all.<sup>69</sup> In short, the expert appeared to have “pulled his cost estimates out of thin air.”<sup>70</sup>

In contrast, Ms. Lopez has relevant experience. Ms. Lopez testified that she based costs on previous bids, and in the case of the wastewater treatment plant, an actual bid from the company that would be constructing the plant.<sup>71</sup> Applicants have shown the basis for their projected costs and evidence about why those costs should be considered reasonable. Although Mr. Lozano presented testimony questioning the

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<sup>67</sup> ED Reply at 2.

<sup>68</sup> OPIC Closing at 13.

<sup>69</sup> *Shankle Road*, SOAH Docket No. 582-23-26772, Proposal for Decision (PFD) at 36-37, 41, 43-44.

<sup>70</sup> *Shankle Road*, SOAH Docket No. 582-23-26772, PFD at 45.

<sup>71</sup> Tr. at 29.

total costs, the ALJ finds that at this stage, Applicants have met their burden to show that their projected construction costs are reasonable.

Likewise, although Ellis County argues that the costs may end up being more than can be reimbursed under a \$1.00 per \$100 assessed valuation tax rate, that argument would not show that the proposed tax rates are unreasonable. The rates are capped; Applicants, not the taxpayers, will be responsible for costs that exceed those rates.

The ALJ also finds that Applicants have met their burden to show that the projected water and sewer rates are reasonable by showing support for their projected costs, by showing that water will be provided by a utility, and by showing that the sewer rates are in line with other similar facilities.

### **3. Unreasonable Effects**

In determining whether a proposed MUD project is feasible, practicable, necessary, and would be a benefit to the land included, the Commission considers whether the “district and its system and subsequent development within the district will have an unreasonable effect on” seven factors: land elevation; subsidence; groundwater levels in the region; recharge capability of a groundwater source; natural run-off rates and drainage; water quality; and total tax assessments on all land

located with a district.<sup>72</sup> Here, Ellis County contends Applicants have not met their burden on any of these factors.<sup>73</sup>

**a) Land Elevation**

Applicants' Engineering Report includes the following information about land elevation:

The developer has no plans to significantly alter land elevations or the natural topography on land in the District. Proposed lots are anticipated to maintain a natural state whenever possible. Elevations may be lowered or raised as needed to provide positive drainage. Design of street improvements based on existing natural grades will be optimized to minimize excavation. Therefore, development of the District should not have any adverse effects on land elevation.<sup>74</sup>

Ellis County did not present any evidence to contradict Applicants' evidence on this topic but argues that the Applicants' evidence is conclusory and does not meet their burden of proof.<sup>75</sup> Neither the ED nor OPIC address this issue.

The ALJ disagrees and finds that although the evidence is not extensive, it is sufficient to show that the District, its system, and subsequent development within the District will not have an unreasonable effect on land elevation.

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<sup>72</sup> Tex. Water Code § 54.021(b)(3).

<sup>73</sup> While contending that Applicants have not met their burden on any of the factors in Code § 54.021(b)(3) (that is, have not met their burden of proving the proposed MUD will not have an unreasonable effect on the factors listed), Ellis County's brief addressed only the effect the MUD would have on groundwater levels and recharge, natural run-off rates and drainage, water quality, and total tax assessments. Ellis County Closing at 8-11.

<sup>74</sup> App. Ex. 16 at 14.

<sup>75</sup> Ellis County Reply at 4.

## **b) Subsidence**

Applicants' preliminary engineering report states the following about subsidence:

The District will receive its water from [Mountain Peak]. Ellis and Johnson Counties are located in Prairielands Groundwater Conservation District which regulates groundwater in the County. Therefore, the proposed District will have no effect on subsidence.<sup>76</sup>

As with land elevation, Ellis County did not present any evidence to contradict Applicants' evidence on this topic but generally argues that the Applicants' evidence is conclusory and does not meet their burden of proof.<sup>77</sup> Neither the ED nor OPIC address this issue.

Similar to the discussion on land elevation, the ALJ finds that although the evidence is not extensive, in the absence of any contrary evidence or reason to be suspect of it, Applicants' evidence is sufficient to show that the District, its system, and subsequent development within the District will not have an unreasonable effect on subsidence.

## **c) Groundwater Levels and Recharge**

Applicants' witness Mr. Heroy testified that there should be no impact on the groundwater levels because the MUD will receive water from Mountain Peak.<sup>78</sup> He

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<sup>76</sup> App. Ex. 16 at 14.

<sup>77</sup> Ellis County Reply at 4.

<sup>78</sup> Ex. 3 (Heroy direct) at 14.

also testified that the MUD “will not significantly change current topographical drainage patterns so there is no anticipated impact on the recharge capability of any groundwater source.”<sup>79</sup>

Ellis County presented no evidence on groundwater levels or subsidence and argues that Applicants failed to meet their burden to show that the MUD would lead to no unreasonable effect on groundwater levels and recharge within the region.<sup>80</sup> Ellis County also notes that the ED’s staff only relied upon the Application and did not conduct its own analysis.<sup>81</sup> Both the ED and OPIC argue that Applicants have met its burden on this issue.<sup>82</sup>

In the absence of countervailing evidence, Applicants’ evidence indicating that the MUD would have no adverse effect on groundwater levels or recharge capability is sufficient to meet its burden of proof. Applicants will be obtaining water from Mountain Peak, not from its own wells. Additionally, TCEQ has previously determined that it “does not consider the proposed district’s water supply source to be a consideration for the groundwater issue.”<sup>83</sup>

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<sup>79</sup> Ex. 3 (Heroy direct) at 14.

<sup>80</sup> Ellis County Closing at 8-9.

<sup>81</sup> Ellis County Closing at 8-9.

<sup>82</sup> ED Closing at 3; OPIC Closing at 14.

<sup>83</sup> Commissioner’s October 25, 2023, Agenda, discussing *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ Docket No. 2022-0532-DIS.



#### **d) Natural Run-off Rates and Drainage**

The proposed drainage system for the District will include street curbs and gutters with flumes or inlets and will be conveyed through overland flow and culvert connections.<sup>84</sup> The Preliminary Engineering Report states the following about runoff:

Runoff from the District will be collected in detention ponds before outfalling into tributaries of Boggy Branch, then to Cottonwood Creek, and ultimately to Chambers Creek. Development of the District will increase the natural runoff rates when compared to the present undeveloped state of the land; however, the ponds will be designed to mitigate any effect on downstream runoff rates.<sup>85</sup>

Mr. Heroy testified that all drainage construction plans must be approved by Ellis County before construction.<sup>86</sup>

Ellis County did not present any evidence relating to runoff rates and drainage and argues that Applicants failed to meet their burden of proof on this issue. Ellis County argues that the Preliminary Engineering Report provides little substantive information on the topic and merely states that it will increase the natural runoff rates but that runoff would be collected in detention ponds before outfalling into tributaries of Boggy Branch. In particular, Ellis County argues this is deficient

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<sup>84</sup> App. Ex. 22 at 4; App. Ex. 3 (Heroy direct) at 12.

<sup>85</sup> App. Ex. 16 at 14.

<sup>86</sup> App. Ex. 3 (Heroy direct) at 14-15.

because it does not provide information about the natural run-off rates to allow any kind of comparison.<sup>87</sup>

Both ED and OPIC contend that Applicants have met their burden of proof.<sup>88</sup> OPIC points out that the ED's witness Mr. Taack testified that stormwater quality is not addressed in MUD creation application, but that a district must comply with relevant local design criteria.<sup>89</sup>

The only evidence on this issue indicates that the District, its system, and subsequent development within the District will not have an unreasonable effect on natural run-off rates and drainage. The ALJ credits Mr. Taack's testimony that stormwater will be addressed locally, which is consistent with Mr. Heroy's testimony that the District will need to obtain Ellis County approval. This is sufficient to meet Applicants' burden of proof.

#### **e) Water Quality**

Mr. Heroy testified that the District should have a minimal effect on water quality because "all wastewater will be collected and treated in a wastewater treatment facility that is permitted and approved by TCEQ."<sup>90</sup> Ms. Lopez testified that storm water discharge would be similar to other single-family residential

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<sup>87</sup> Ellis County Closing at 9.

<sup>88</sup> ED Closing at 4; OPIC Closing at 15-16.

<sup>89</sup> OPIC Closing at 15 (citing Ex. ED-JT-1 (Taack direct) at 13).

<sup>90</sup> App. Ex. 3 (Heroy direct) at 10.

developments in North Texas, including those close to the proposed District site.<sup>91</sup> Mr. Heroy testified that construction within the District will include erosion control measures that will comply with the Storm Water Pollution Prevention Plans overseen by TCEQ.<sup>92</sup>

Ellis County did not present any evidence on water quality and argues that the Applicants' evidence is merely conclusory.<sup>93</sup> Ellis County also contends that the evidence is insufficient to show that there would be no unreasonable effect due to storm water quality because "the TCEQ does not review any stormwater design criteria from any applicable entity to determine whether the stormwater facilities are sufficient to protect water quality from runoff in the proposed MUD."<sup>94</sup>

ED and OPIC argue that the Applicants have met their burden of proof on this issue.<sup>95</sup> The ED's witness Mr. Taack testified that the Commission does not conduct an in-depth examination of water quality at the district creation stage. Instead, such an examination is conducted under other permitting processes, including the process to obtain a Texas Pollutant Discharge Elimination System permit for the wastewater treatment plant.<sup>96</sup>

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<sup>91</sup> App. Ex. 2 (Lopez direct) at 9.

<sup>92</sup> App. Ex. 3 (Heroy direct) at 10.

<sup>93</sup> Ellis County Closing at 10.

<sup>94</sup> Ellis County Closing at 10 (citing Tr. at 49).

<sup>95</sup> ED Closing at 4; OPIC Closing at 16-17.

<sup>96</sup> Ex. ED-JT-1 at 12.

The ALJ finds that Applicants have met their burden of proof to show that the District, its systems, and subsequent development will not have an unreasonable effect on water quality. Applicants have presented sufficient evidence to show that they will comply with appropriate regulations to ensure water quality will be maintained.

**f) Total Tax Assessments on All Land Located Within the Proposed District**

As discussed above, Applicants contemplate a District tax rate of \$0.9815 per \$100 valuation.<sup>97</sup> According to the Preliminary Engineering Report, this rate is in line with other districts close to the proposed District, which have tax rates ranging from \$0.9200 up to \$1.0000.<sup>98</sup> Applicants project the total tax rate within the Ellis County portion of the District to be \$2.504131 per \$100 valuation and the total tax rate within the Johnson County portion of the District to be \$2.862427 per \$100 valuation.<sup>99</sup> Applicants presented testimony from witness Cassie Gibson that this total tax rate is “a comparable rate to other successful projects in the area.”<sup>100</sup>

Ellis County argues that, because Applicants have underestimated construction costs, the District may require a tax rate “substantially higher than the tax rate proposed.”<sup>101</sup>

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<sup>97</sup> App. Ex. 16 at 12.

<sup>98</sup> App. Ex. 16 at 12.

<sup>99</sup> App. Ex. 16 at 15.

<sup>100</sup> App. Ex. 4 at unnumbered page 4.

<sup>101</sup> Ellis County Closing at 11.

The ED argues that tax rates for each particular bond issue will be reviewed and justified on its own economic feasibility merits prior to the issuance of any bonds by the District.<sup>102</sup> OPIC argues that the Applicants have met their burden on this issue.<sup>103</sup>

The parties' arguments resemble those they made when discussing the reasonableness of the projected tax rates. Similarly, because there is evidence that the projected total tax assessment is in line with similar jurisdictions, because there is a statutory cap to the District's tax rate, and because the TCEQ will conduct a later review, the ALJ finds that the District, its systems, and subsequent development within the District will not have an unreasonable effect on total tax assessments on all land located within the District.

### **C. COMPLETE JUSTIFICATION**

Commission rules require that the preliminary engineering report include "complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district," the substantive statutory standard governing the Commission's disposition of the Petition.<sup>104</sup> Based on the foregoing analysis of

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<sup>102</sup> ED Closing at 4.

<sup>103</sup> OPIC Closing at 18.

<sup>104</sup> Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.11(c)(5)(J).

subsidiary factors and other evidence, the ALJ concludes that Applicants have met this burden.

#### **D. ROAD POWERS**

With respect to their request for road powers, Commission rules required Applicants to include (1) a “preliminary layout” showing the proposed location for all road facilities to be constructed, acquired, or improved by the District; (2) a “cost analysis and detailed cost estimate of the proposed road facilities . . . with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement”; and (3) a “narrative statement that will analyze the effect of the proposed facilities upon the district’s financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.”<sup>105</sup> The preliminary engineering report addressed each of these matters,<sup>106</sup> and the ED determined that the proposed roads “appear to benefit the proposed District,” that “financing appears feasible,” and that Applicants’ request for road powers should be granted.<sup>107</sup> No party has contested any of these matters apart from their broader complaints about the District that have already been addressed. The ALJ concludes that Applicants met their burden of proof as to road powers.

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<sup>105</sup> 30 Tex. Admin. Code § 293.202(a)(7)-(9), (b).

<sup>106</sup> App. Ex. 16 at 10.

<sup>107</sup> Ex. ED-JT-3 at 0025.

## V. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, and when doing so, must consider the following factors:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits to the various parties of having a transcript; and
- any other factor which is relevant to a just and reasonable assessment of costs.<sup>108</sup>

Additionally, the Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.<sup>109</sup>

Applicants argue that the transcript costs should be assessed among the parties because Ellis County's hearing request has resulted in substantial expenses and delays for Applicants.<sup>110</sup> Ellis County contends that Applicants should bear all transcript expenses because they are the ones who gain from the MUD creation. The ED and OPIC take no position on cost apportionment.

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<sup>108</sup> 30 Tex. Admin. Code § 80.23(d)(1).

<sup>109</sup> 30 Tex. Admin. Code § 80.23(d)(2); *see* Tex. Water Code §§ 5.228, .273, .275, .356.

<sup>110</sup> App. Closing at 23.

Considering the Commission's factors, the ALJ finds that the transcript was ordered by the ALJ, not requested by either party, and no party has claimed a financial inability to pay transcript costs. The parties all participated in the hearing and all benefitted equally from having the transcript. Unlike Applicants, Protestants do not stand to profit from the creation of this MUD and are seeking only to maintain the status quo. Based on these factors, the ALJ recommends that the Commission assess most of the transcript expenses to Applicants, with the costs apportioned 85 percent to Applicants and 15 percent to Ellis County.

## **VI. CONCLUSION**

For the reasons stated, the ALJ recommends finding that Applicants met their burden to establish that their Petition to create the District should be granted. In support of this recommendation, the ALJ has prepared Findings of Fact and Conclusions of Law incorporated within the accompanying Order of the Commission.

**Signed March 12, 2025**

ALJ Signature:

A handwritten signature in cursive script that reads "Rebecca S. Smith". The signature is written in dark ink and is positioned above a horizontal line.

Rebecca Smith  
Presiding Administrative Law Judge



# **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

## **AN ORDER GRANTING PETITION FOR CREATION OF BRAHMAN RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY AND JOHNSON COUNTY; TCEQ DOCKET NO. 2023-1406-DIS, SOAH DOCKET NO. 582-24-12113**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the petition (Petition) for creation of Brahman Ranch Municipal Utility District of Ellis County. A Proposal for Decision (PFD) was issued by Rebecca Smith, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) and considered by the Commission.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

### **I. FINDINGS OF FACT**

1. On February 21, 2023, Miskimon Management III, LLC and Buffalo Hills Development, LLC (collectively, Applicants) filed a Petition with the Commission for the creation of the Brahman Ranch Municipal Utility District of Ellis County and Johnson County (District).
2. The proposed municipal utility district (MUD) is for a planned residential development comprised of approximately 438.7 acres located mostly in Ellis County, with a small part in Johnson County. It is located south of the City of

Venus (Venus) and southeast of the City of Midlothian (Midlothian). The proposed development would consist of single-family residences.

3. Applicants originally estimated they would build 1,411 houses, but they later reduced the number to 1,390 because some of the area consisted of wetlands where houses could not be built.
4. The Petition was declared administratively complete on February 22, 2023.
5. On July 4, 2022, the Petition was posted at three locations convenient to the public, within the boundaries of the land proposed to be added to the district.
6. On July 7, 2022, notices of the Petition were published in the *Cleburne Times Review*.
7. The Commission received timely hearing requests filed by numerous parties and, at an open meeting on November 8, 2023, determined that the City of Midlothian and Ellis County were affected persons and referred this matter to SOAH for a contested case hearing.
8. On April 10, 2024, the ALJ held a preliminary hearing in this matter. Applicants, Ellis County, the Commission's Executive Director (ED), and the Office of Public Interest Counsel (OPIC) were admitted as parties.
9. The hearing on the merits was held September 26, 2024, before ALJ Rebecca Smith in SOAH's hybrid hearing room in Austin, Texas, which has capabilities for persons to attend in person and by videoconference. Applicants were represented by attorney James Ruiz; Ellis County was represented by attorney Stefanie Albright; the ED was represented by attorney Kayla Murry; and OPIC was represented by attorney Pranjal Mehta.
10. The record closed on January 17, 2025, after submission of written closing arguments.

### ***Request for Service***

11. When originally proposed, the District was to be located partially within Venus's extraterritorial jurisdiction (ETJ) and partially within Midlothian's ETJ.
12. On April 19, 2022, Applicants delivered their request for consent to the creation of the District to Venus and Midlothian and did not receive a written response within 90 days.
13. On August 1, 2022, Applicants petitioned Venus for water and sewer services and did not receive a written response.
14. On August 1, 2022, Applicants petitioned Midlothian for water and sewer services and did not receive a written response.
15. The 120-day period for reaching a mutually-agreeable contract expired without a contract for service.
16. On March 20, 2023, Applicants entered into a Consent and Development Agreement with Venus, in which Venus consented to the creation of the District in its ETJ in exchange for compliance with certain development requirements.
17. On November 14, 2023, the portion of the District proposed to be located within Midlothian's ETJ was released from the Midlothian ETJ based on a Petition for Release of Area from Extraterritorial Jurisdiction, making that property within the unincorporated area of Ellis County, outside the ETJ of any other city or town.

### ***Sufficiency of Petition***

18. Applicants are the owners of the land to be included in the District.
19. Applicants signed the Petition.
20. The Petition was signed by a majority in value of the holders of title to the land within the proposed district, as indicated by the tax rolls of the central appraisal district.

21. The Petition describes the boundaries of the proposed district by metes and bounds.
22. The Petition states the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition.
23. The Petition includes a name of the district that is generally descriptive of the locale of the district followed by the words Municipal Utility District.

***Availability of Comparable Service from Other Systems***

24. The land to be included in the District is located within Mountain Peak Special Utility District's (Mountain Peak) water certificate of convenience and necessity (CCN). Mountain Peak currently holds the legal right to provide retail water service to the District once water infrastructure is built and conveyed.
25. The land to be included in the District is not located within any sewer CCN.
26. The District will construct the water, wastewater, drainage, and roadway facilities, including a sewer treatment plant.

***Reasonableness of Projected Construction Costs, Projected Tax Rates, and Projected Water and Sewer Rates***

27. In the preliminary engineering report, Applicants estimated the District's total construction costs will be \$46,400,00.
28. In the preliminary engineering report, Applicants estimated the District's costs for the road system to serve the District will be \$17,450,000.
29. The developer will pay all up-front utility costs and can only be reimbursed in the amount allowed by a MUD tax rate of \$1.00 per \$100 assessed value.
30. Applicants' projected construction costs are reasonable.
31. The proposed District will have an ad valorem tax rate of \$0.9815 per \$100 valuation.

32. Applicants' proposed tax rates are reasonable.
33. District customers are projected to have an average monthly water bill of \$65.84, based on water use of 10,000 gallons per month, and an average monthly wastewater bill of \$60.75, based on a flat monthly charge.
34. The proposed water and sewer rates are reasonable.

#### ***Effect on Land Elevation***

35. Applicants do not plan to significantly alter land elevations or the natural topography of land in the District.
36. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on land elevation.

#### ***Effect on Subsidence***

37. The District will receive its water from Mountain Peak, which is regulated by Prairielands Groundwater Conservation District.
38. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on land subsidence.

#### ***Effect on Groundwater Levels and Groundwater Recharge Capability***

39. The District will receive its water from Mountain Peak, who has a CCN to serve the property within the District, and will be within the Prairielands Groundwater Conservation District, which regulates groundwater.
40. Runoff from the District will generally follow existing topographical flow patterns, and therefore development of the District will have little to no effect on aquifer recharge.
41. The Commission does not regulate groundwater and does not consider the source of a proposed MUD's water supply in evaluating how groundwater levels and recharge capability may be impacted.

42. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source.

#### ***Effect on Natural Run-off Rates and Drainage***

43. The District's drainage systems will include street curbs, gutters with inlets, detention ponds, and an internal storm drain conduit.
44. The District's detention ponds will be designed to mitigate any effect on downstream runoff rates.
45. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on natural run-off rates and drainage.

#### ***Effect on Water Quality***

46. All construction in the District will include erosion control measures that comply with the Storm Water Pollution Prevention Plans overseen by TCEQ.
47. All wastewater in the District will be collected and treated in a wastewater treatment facility that must be permitted and approved by TCEQ.
48. The Commission has a separate permitting process for wastewater treatment plants and does not regulate those matters as part of the MUD-approval process.
49. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on water quality.

#### ***Effect on Total Tax Assessments***

50. The total overlapping tax rate within the District for Ellis County is projected to be \$2.504131 per \$100 valuation, which is reasonable and comparable to other districts in North Texas.
51. The total overlapping tax rate within the District for Johnson County is projected to be \$2.862427 per \$100 valuation, which is reasonable and comparable to other districts in North Texas.

52. The combined projected tax rate for the District must not exceed \$1.00 per \$100 valuation pursuant to 30 Texas Administrative Code section 293.59(k)(3)(C).
53. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on total tax assessments on all land located within the proposed district.

### ***Complete Justification for Creation of the District***

54. Applicants have shown that the District is feasible, practicable, necessary, and will benefit all of the land to be included in the District.

### ***Request for Road Powers***

55. The Petition requests the Commission to grant the District the authority to provide roads.
56. Applicants provided a preliminary layout as to the known roads and major thoroughfares and a cost estimate of the proposed road facilities.
57. Applicants established that the funding of the road improvements is financially and economically feasible.

### ***Allocation of Transcript Costs***

58. The transcript was ordered by the ALJ, not requested by either party.
59. No party has claimed a financial inability to pay transcript costs.
60. The parties all participated in the hearing, and all benefitted equally from having the transcript.
61. Unlike Applicants, Protestants do not stand to profit from the creation of this MUD and are seeking only to maintain the status quo.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code chs. 49, 54; Texas Constitution, article XVI, section 59.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this hearing, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Applicants and TCEQ have satisfied all applicable public notice requirements. Tex. Water Code § 49.011; 30 Tex. Admin. Code § 293.12.
4. Applicants carry the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
5. Applicants satisfied the requirements applicable when a MUD is proposed to be located within the limits or ETJ of a city. Tex. Water Code § 54.016(a)-(d); Tex. Local Gov't Code § 42.042(a)-(f).
6. Applicants' Petition conforms to the requirements of Texas Water Code sections 54.014 and 54.015 and is otherwise sufficient. Tex. Water Code §§ 54.014, .015, .021; 30 Tex. Admin. Code §§ 293.11(a), (d).
7. If the Commission finds that the petition conforms to the requirements of Texas Water Code section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the Commission shall find so by its order and grant the petition. Tex. Water Code § 54.021(a).
8. If the Commission finds that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall so find by its order and deny the petition. Tex. Water Code § 54.021(d).
9. In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the Commission shall consider the availability of comparable service from other systems; the reasonableness of projected construction costs, tax rates, and water and sewer rates; and whether the district and its system and subsequent development



within the district will have an unreasonable effect on land elevation, subsidence, ground water level within the region, recharge capability of a groundwater source, natural run-off rates and drainage, water quality, and total tax assessments on all land located within a district. Tex. Water Code § 54.021(b).

10. Applicants met their burden of proof regarding the availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1).
11. Applicants met their burden of proof regarding reasonableness of projected construction costs, tax rates, and water and sewer rates. Tex. Water Code § 54.021(b)(2).
12. Applicants met their burden of proving that the District, its systems, and subsequent development will not have an unreasonable effect on land elevation, subsidence, groundwater levels and recharge capability within the region, natural run-off rates and drainage, water quality, or total tax assessments on all land located within the District. Tex. Water Code § 54.021(b)(3).
13. Applicants' request for road powers meets all applicable requirements. Tex. Water Code § 54.234; 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a), (b).
14. Applicants met their burden of proof to show that the project and District are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021; 30 Tex. Admin. Code § 293.11(d)(5)(J).
15. Applicants' Petition should be granted.
16. No transcript costs may be assessed against the ED or OPIC because the Commission's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).
17. Factors to be considered in assessing transcript costs include the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to

the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

18. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is 85 percent to Applicants and 15 percent to Ellis County.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. The Petition by Applicants Miskimon Management III, LLC and Buffalo Hills Development LLC for creation of Brahman Ranch Municipal Utility District of Ellis County and Johnson County is granted.
2. The reporting and transcript costs are allocated 85 percent to Applicants and 15 percent to Ellis County.
3. All other motions, any requests for specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
4. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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Brooke Paup, Chair

For the Commission