

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 25, 2025

David Tuckfield
Attorney for Applicant

VIA EFILE TEXAS

Kayla Murray and Allie Soileau
Attorneys for ED

Pranjal Mehta
Attorney for OPIC

Joshua Katz
Attorney for City of Hays

Victoria Rose
Attorney for Aligned Protestants

**RE: Docket Number 582-24-15644.TCEQ; Texas Commission on
Environmental Quality No. 2023-1588-DIS; Hays Commons
MUD**

Dear Parties:

Applicant, the Executive Director (ED), and the Aligned Protestants filed exceptions to the Proposal for Decision in this matter. Applicant also filed a reply to the other parties' exceptions.

I. APPLICANT’S EXCEPTIONS

The ALJ recommends granting the Applicant’s exceptions regarding the use of the word “discharge” at various points. Thus, the ALJ recommends making the following changes:

On page 26 of the PFD:

Applicant’s plan to ~~discharge~~ land apply treated water subject to a TCEQ permit is sufficient to meet its burden.

To the following findings of fact:

39. The Petition anticipates ~~discharging~~ land applying treated wastewater and using that discharge to irrigate specific land.
40. Applicant’s ~~discharge~~ land application plan requires a separate TCEQ permit, and the application for that permit is separate from the Petition.
41. Applicant’s plan to ~~discharge~~ land apply water subject to a TCEQ permit is sufficient to meet its burden to show that the District and its system and subsequent development within the District will not have an unreasonable effect on water quality.

The ALJ does not recommend making any additional changes to the PFD based on Applicant’s exceptions.

II. ED’S EXCEPTIONS

The ALJ recommends accepting the ED’s exceptions, which request the addition of the following regarding temporary directors:

Finding of Fact

Applicant established that Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. requested to be temporary directors and (1) are each at least 18 years old; (2) are each a resident of the State of Texas; and (3) each either owns land subject to taxation within the proposed District or is a qualified voter within the proposed District. Additionally, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located.

Conclusion of Law

Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. qualify to be temporary directors under Texas Water Code sections 54.022 and 54.102.

Proposed Order

Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. are named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.

Additionally, the ALJ recommends accepting the exception to Ordering Provision No. 6, so that the ordering provision would state:

6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties and affected persons.

The ALJ also recommends accepting the ED's exception requesting that the following be added as an ordering provision:

This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.

III. ALIGNED PROTESTANTS' EXCEPTIONS

Aligned Protestants begin their exceptions with a request to take "judicial notice" of a new exhibit. The record has closed, and the proposed exhibit—a letter—is not something that can be officially noticed under Texas Government Code section 2001.090(a). The ALJ does not recommend taking notice of this exhibit. Additionally, Aligned Protestants argue that the continued negotiation for service from the City of Austin means that comparable service is available from other systems. For the reasons set out in the PFD, negotiations that have not reached an agreement do not make alternative service available.

Additionally, the ALJ does not recommend making any changes based on the following arguments from the Aligned Protestants for the reasons set out in the PFD:

- costs are unreasonable because of Hays County regulations;
- the Commission must consider the effect of pumping groundwater in this MUD application;
- the MUD application is the appropriate context for an in-depth evaluation of Applicant's TLAP application; and
- Applicant failed to meet its burden of proof or that specific findings are unsupported by record evidence.

The Aligned Protestants' remaining exceptions will be addressed. The Aligned Protestants contend, based on a few sentences (or, in one case, part of a sentence), that the PFD improperly shifted the burden of proof to them on the issue of cost

and unreasonable effects on groundwater. The ALJ believes that when those sentences are read in context, set out below, it is clear that no shifting of the burden of proof has occurred:

Applicant has evidence that the costs, tax rates, and water and sewer rates are in line with other construction. Other than a different estimate of the cost of drilling three wells, discussed above, Aligned Protestants do not contend those costs exceed what would be expected for the area. The Commission is not charged with determining what Hays County will do. It can only look at whether the proposed costs and rates are reasonable. The ALJ finds that the Applicant has established they are.¹

and

Instead, the Commission construes these factors as relating to how the project's impervious cover will affect groundwater levels or recharge capacity of groundwater as compared to similar single-family developments in the region. In this case, there is testimony that the development plan includes "considerable pervious surface in the form of open space, natural drainage corridors, and the predominantly single family residential land use." There is also testimony that no facilities are planned that would impact groundwater recharge in any unusual way. The development plan involves more impervious cover than would be allowed under Austin rules without a variance. Nevertheless, no evidence suggests that the development anticipated in the Petition and in the District's development plan, which provides for considerable pervious surface, would lead to an unreasonable effect on groundwater levels or recharge. Applicant has met its burden on this factor.²

¹ PFD at 20-21.

² PFD at 29 (internal citations omitted).

The ALJ does not recommend any changes based on these exceptions alleging a shifting burden of proof.

Nor does the ALJ recommend any changes based on Aligned Protestants' argument that the mistaken use of the word "discharge" in the context of a TLAP permit (addressed above) is a finding that Applicant will not comply with its permit. Similarly, the ALJ does not recommend deleting the "extraneous" finding that Applicant will need a TLAP permit.

In conclusion, the ALJ recommends making the following changes:

Body of the PFD

Applicant's plan to ~~discharge~~ land apply treated water subject to a TCEQ permit is sufficient to meet its burden. (on page 26)

Findings of Fact

39. The Petition anticipates ~~discharging~~ land applying treated wastewater ~~and using that discharge~~ to irrigate specific land.

40. Applicant's ~~discharge~~ land application plan requires a separate TCEQ permit, and the application for that permit is separate from the Petition.

41. Applicant's plan to ~~discharge~~ land apply water subject to a TCEQ permit is sufficient to meet its burden to show that the District and its system and subsequent development within the District will not have an unreasonable effect on water quality.

...

53. Applicant established that Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. requested to be temporary directors and (1) are each at least 18 years old; (2) are each a resident of the State of Texas; and (3) each either owns land subject to taxation within the proposed District or is

a qualified voter within the proposed District. Additionally, the majority are residents of the county in which the proposed District is located, a county adjacent to the county in which the proposed District is located, or if the proposed District is located in a county that is in a metropolitan statistical area designated by the United States Office of Management and Budget or its successor agency, a county in the same metropolitan statistical area as the county in which the proposed District is located. [new finding]

Conclusions of Law

18. Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. qualify to be temporary directors under Texas Water Code sections 54.022 and 54.102.

Ordering Provisions

6. CEQ's Chief Clerk shall forward a copy of this Order to all parties and affected persons.

New Ordering Provisions

Ryan Cunningham, Philip Roush, Devon Vo, Benjamin Cude, and Tyler Jay Brown, Jr. are named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.

This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the

Exceptions Letter

July 25, 2025

Page 8 of 8

petition for creation, nor as a commitment or requirement of the TCEQ in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for TCEQ consideration.

With those changes, the PFD is ready for consideration.

A handwritten signature in black ink that reads "Rebecca S. Smith". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Rebecca Smith,

Presiding Administrative Law Judge

CC: Service List