

**SOAH DOCKET NO. 582-24-15644
TCEQ DOCKET NO. 2023-1588-DIS**

PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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APPLICANT’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Although Hays Commons Municipal Utility District (“Applicant”) agrees with the ALJ’s reasoning and conclusions, Applicant provides the following Exceptions to the Proposal for Decision to assure clarity in the record:

A. Daniel Ryan’s Qualifications.

At page 24 of the PFD, the ALJ notes that the City argued that Daniel Ryan, the Applicant’s Engineer, has never personally designed a TLAP facility. Although this statement is merely a recitation of the City’s argument and not an actual finding, Applicant seeks to make it clear in the record that this statement is incorrect.

The record shows that Mr. Ryan has not designed a TLAP facility ***in the recharge zone.***¹ It is not surprising that despite this experience he has not designed a TLAP facility in the recharge zone because such facilities are “not common.”² Mr. Ryan was never asked the question as to whether he has designed ***any*** TLAP facilities. Applicant notes for the record that Mr. Ryan has personally designed TLAP systems including drip irrigation and spray irrigation for public and private clients ranging in size from 10,000 gpd to 450,000 gpd, and including Type 1 beneficial reuse (enhanced standards) and nutrient limits. The record shows that Mr. Ryan has extensive

¹ TR. Vol 1 at 122:3-4.

² TR. Vol 1 at 122:3-4.

experience with the design of wastewater plants. APPEX-2-01 at Page 004 shows some of the wastewater plants that he designed. Moreover, the record shows he has knowledge of “what environmental considerations need to be taken into account for a TLAP facility that would be in the recharge zone.”³

Because this issue does not form the basis for any particular Finding of Fact or Conclusion of Law, Applicant does not recommend any change in any proposed Finding of Fact or Conclusion of Law. Applicant does believe, however, that it would be appropriate for the ALJ to note in her cover letter to the Commission that the following sentence at page 24 of the PFD should be amended as follows (insertion shown by double underlines):

It notes that the ED’s staff did not perform modeling and that Daniel Ryan, the Applicant’s engineer, has never personally designed a TLAP facility in the recharge zone.

In addition, Applicant requests that the add the following line to the discussion of Applicant’s evidence at page 23 of the PFD (insertion shown by double underlines):

Applicant points out that its Engineer, Mr. Daniel Ryan has knowledge of “what environmental considerations need to be taken into account for a TLAP facility that would be in the recharge zone”⁴ and that the record shows that Mr. Ryan has extensive experience with the design of wastewater plants.⁵

B. Karst Features.

The ALJ was correct to conclude that “this proceeding addresses the petition for a MUD creation, not the TLAP application, which is subject to its own review and hearing process.”⁶ Nevertheless, in the PFD, the ALJ noted that At page 24 of the PFD that Mr. Rauschuber testified

³ TR. Vol 1 at 122:5-19.

⁴ TR. Vol 1 at 122:5-19.

⁵ APPEX-2-01 at Page 004.

⁶ PFD at 25.

about concerns with karst features associated with the TLAP facility.⁷ Although Applicant does not suggest any change to the PFD with respect to this issue, Applicant notes for the record that Special Provisions Nos. 21, 22, and 23 of the draft TLAP permit require a 250-foot buffer for caves, sinkholes, or other sensitive karst features. Furthermore, Special Provision No. 33 of the draft TLAP Permit requires that the features be buffered and that tailwater controls be constructed to divert effluent from the buffers. In addition, the draft permit includes several Special Provisions to address any recharge features discovered during excavation, construction, or operation of the facility. Finally, Special Provision No. 27 of the draft TLAP Permit requires a Texas-licensed Professional Engineer to certify in writing that the permanent best management practices or measures to protect sensitive features and the aquifer were constructed as designed within 30 days of completion and prior to use of the pond.

C. Use of the term “Discharge”

The PFD, at page 26 and at Findings of Fact 39, 40, and 41 (page 5 of the Proposed Order), use the word “discharge” with regard to the Texas Land Application Permit. A Texas Land Application Permit (TLAP) is by definition a “permit issued by the TCEQ for the land application and disposal of wastewater that **does not result in a discharge** to surface water in the state.”⁸

⁷ PFD at 25.

⁸ See *In The Matter Of A Renewal With Amendments Of A Texas Pollutant Discharge Elimination System (TPDES) General Permit Authorizing The Discharge Of Hydrostatic Test Water From Certain Vessels*, 2015 TX Commn on Env'tl Quality LEXIS 2093, *11, 2015 TX Commn on Env'tl Quality LEXIS 2093 (March 24, 2015) (emphasis added). See also, https://www.tceq.texas.gov/permitting/wastewater/municipal/WQ_Domestic_Wastewater_Permits.html, which states:

Domestic facilities that dispose of treated effluent by **discharge** into waters in the state are required to obtain a Texas Pollutant Discharge Elimination System (TPDES) permit.

Therefore, the reference to “discharge” at page 26 in the PFD should be changed as follows
(strike out shown by a double strike through and insertion shown by double underlines):

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

Furthermore, Findings of Fact 39, 40, and 41 (page 5 of the Proposed Order) should be modified as follows:

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.

Respectfully submitted,

THE AL LAW GROUP PLLC

/s/ David J. Tuckfield

David J. Tuckfield
State Bar Number: 00795996
david@allawgp.com
12400 West Hwy 71, Suite 350-150
Austin, TX 78738
Telephone: (512) 576-2481
Facsimile: (512) 366-9949

ATTORNEYS FOR APPLICANT

Domestic facilities that dispose of treated effluent by land application (surface irrigation, evaporation, drainfields or subsurface land application) are required to obtain a Texas Land Application Permit (TLAP) permit.

(emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 22nd day of June 2025 as follows:

By Texas electronic filing e service delivery:

TCEQ Executive Director

Kayla Murray, Staff Attorney
Allie Soileau, Staff Attorney
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-4761
Fax (512) 239-0626
kayla.murray@tceq.texas.gov
Allie.soileau@tceq.texas.gov

By email:

Keith Whittington
13511 Carpenter Ln
Manchaca TX 78652-3142
keith@lynxpropertyservices.com

TCEQ Office of Public Interest Counsel

Josiah T. Mercer
Pranjal Mehta
Assistant Public Interest Counsel
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
Josiah.Mercer@tceq.texas.gov
Pranjal.Mehta@tceq.texas.gov

City of Hays

Joshua Katz
Bickerstaff Heath Delgado Acosta LLP
Bldg. 1, Ste 300
3711 S Mopac Expy.
Austin Tx 78746-8013
jkatz@bickerstaff.com

Aligned Protestants:

Victoria Rose
Bill Bunch
Save Our Springs Alliance
4701 Westgate Blvd.
Ste. D-401, Austin, Texas 78745
Tel.: 512-477-2320
victoria@sosalliance.org
bill@sosalliance.org

/s/ David Tuckfield
David J. Tuckfield