

TCEQ DOCKET NO. 2025-1041-MIS

APPEAL BY CLYDE JOHNSON AND SONS HEREFORD RANCH, LTD. OF THE DECISION BY THE BOARD OF DIRECTORS OF JOHNSON RANCH MUNICIPAL UTILITY DISTRICT PURSUANT TO TITLE 30 TEXAS ADMINISTRATIVE CODE § 293.180	§ § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**JOHNSON RANCH MUNICIPAL UTILITY DISTRICT’S
RESPONSE TO PETITION**

The Texas Commission on Environmental Quality (“*TCEQ*” or the “*Commission*”) lacks jurisdiction over the issues raised in the above-referenced petition. Petitioner wants the Commission to weigh in on a multi-party contract dispute that is currently pending in Comal County District Court in a lawsuit brought by Petitioner.¹ The crux of the parties’ dispute concerns their respective, competing interpretations of the density limits in a multi-party agreement to develop land within the Johnson Ranch Municipal Utility District (the “*District*”) and whether Petitioner’s property within the District can lawfully be developed with high-density, multi-family housing without violating the density limits in the parties’ development agreement. TCEQ is not a party to that agreement; the Commission has no jurisdiction to adjudicate disputes arising under that agreement; and TCEQ has no authority to enforce the provisions of that agreement.

This dispute does not involve “the cost, purchase, or use of improvements constructed by a developer for the [D]istrict” as envisioned by the Commission’s controlling regulation – 30 Tex. Admin. Code § 293.180. This dispute does not involve a developer’s claim for reimbursement of the “cost” of “improvements” constructed by the developer for the District. This dispute does not

¹ See Pet. at 7 n.12.

involve a developer's "purchase" of "improvements" for the District, or the District's "use" of "improvements" constructed by a developer for the District and for which the developer has not been reimbursed. Indeed, this dispute does not involve any such constructed "improvements." Rather, this dispute involves Petitioner's plans to construct high-density, multi-family housing on its property within the District. Such construction has not commenced and such housing, if ever constructed, would not constitute "improvements constructed by a developer for the [D]istrict."

Petitioner is appealing to TCEQ in its capacity as an owner of land within the District, not as a developer of land within the District. Petitioner is not seeking or disputing reimbursement for the "cost" or "purchase" of "improvements" for the District, or for the District's "use" of "improvements constructed by [Petitioner] for the [D]istrict." The dispute between Petitioner and the District concerns Petitioner's desire to sell its land within the District to a developer for purposes of developing high-density, multi-family housing that the District maintains would be in violation of the density limits in the multi-party development agreement entered into by Petitioner, the District, the developer, and the City of Bulverde. *See* Pet., Ex. E (Johnson Ranch Subdivision Development Agreement). Petitioner, the District, and all other parties to that development agreement expressly agreed to "submit to the jurisdiction of the courts of Comal County, Texas," and "that any such courts shall be a proper forum for the determination of any dispute arising" under the development agreement. *Id.* at 15 (Art. XI, ¶ 11.02).

Accordingly, this is a dispute that belongs squarely in Comal County District Court and that is currently pending in that forum. TCEQ should decline Petitioner's invitation to interfere in a duplicative civil lawsuit pending in state district court and should reject Petitioner's appeal to the Commission for lack of jurisdiction.

I. ARGUMENT & AUTHORITY

Petitioner seeks to invoke the Commission's jurisdiction under Tex. Water Code § 54.239 and TCEQ's implementing regulations, 30 Tex. Admin. Code § 293.180, to avoid "the negative consequences of a potential failure to exhaust administrative remedies," Pet. at 8, despite the fact that the District has not pled failure to exhaust as an affirmative defense in the Comal County District Court case. Nevertheless, because Petitioner could find "no caselaw determining whether or not the appeal provisions of the [Water Code] and the [Administrative Code] are administrative remedies which must be exhausted as a prerequisite for judicial action," *id.*, Petitioner prophylactically petitioned TCEQ to avoid dismissal of its pending district court lawsuit against the District on grounds that Petitioner failed to exhaust its administrative remedies. As explained below, had Petitioner been even remotely diligent in its caselaw research, perhaps the Commission and the parties could have been spared the time and expense of processing and briefing Petitioner's meritless appeal to TCEQ.

In a published 2013 case, the Fourteenth Court of Appeals rejected the very same exhaustion of administrative remedies argument that Petitioner has needlessly sought to guard against by filing this appeal. *See Harris Cnty. Fresh Water Supply Dist. No. 61 v. FWO Dev., Ltd.*, 396 S.W.3d 639, 644-47 (Tex. App.—Houston [14th Dist.] Jan. 29, 2013, pet. denied). In an opinion penned by the Chief Justice, the Houston appellate court unequivocally held that "the Commission has not been vested with exclusive jurisdiction to determine this contract dispute, and [Petitioner] was not required to exhaust its administrative remedies before filing suit" in district court. *Id.* at 647; *see also id.* at 646 (noting the absence of "any Commission rule requiring the Commission to make an initial determination regarding a contract dispute between a district and a developer").

Notably, the Fourteenth Court’s opinion is one of only two reported decisions citing either Tex. Water Code § 54.239 or 30 Tex. Admin. Code § 293.180,² yet the case somehow escaped detection in Petitioner’s caselaw research. In any event, Petitioner’s appeal to TCEQ is not only entirely unnecessary, but also entirely without legal merit. Per the Fourteenth Court’s seminal opinion, this appeal is not an administrative remedy that Petitioner is required to exhaust. Moreover, as set forth below, this appeal is not an administrative remedy available to Petitioner. Petitioner has not stated and cannot state a cognizable claim under either Tex. Water Code § 54.239 or TCEQ’s implementing regulations in 30 Tex. Admin. Code § 293.180.

A. PETITIONER CANNOT INVOKE TCEQ’S JURISDICTION UNDER WATER CODE § 54.239

Petitioner cannot invoke TCEQ’s jurisdiction to hear an appeal under Tex. Water Code § 54.239 because there has been no “decision of a board involving the cost, purchase, or use of facilities” constructed by Petitioner for the District. *See also id.* § 54.238(2) (defining “facilities” as “improvements constructed by a developer for a district”).³ As the State Office of Administrative Hearings has aptly observed, “[t]he purpose of this statute, as reflected in the Bill Analysis by the Texas House of Representative’s Committee on Natural Resources, was to establish ‘an administrative remedy as an alternative to litigation for resolving disputes between MUD boards and developers over the cost, purchase or use of facilities.’”⁴ As discussed above,

² *See also Harris Cnty. Water Control v. 308 Furman, Ltd.*, No. 01-23-00177-CV, 2024 Tex. App. LEXIS 9062, 2024 WL 5249161 (Tex. App.—Houston [1st Dist.] Dec. 31, 2024, pet. denied).

³ *Cf.* 30 Tex. Admin. Code § 293.180(a) (requiring, as a prerequisite for appeal, “a decision of a board of directors of a Municipal Utility District . . . that involves the cost, purchase, or use of improvements constructed by a developer for the district”).

⁴ *Appeal by 308 Furman, Ltd. of the Decisions by the Board of Directors of Harris Cnty. Water Control and Improvement Dist. No. 89 Pursuant to Title 30 Tex. Admin. Code § 293.180*, SOAH Docket No. 582-18-3270, TCEQ Docket No. 2018-0414-DIS, Order No. 4 at 1 (Oct. 5, 2018) (citing House Comm. on Nat. Res., Bill Analysis, Tex. H.B. 1937, 73rd Leg., R.S. (1993)) (emphasis added).

Petitioner requests a hearing under Tex. Water Code § 54.239 in its capacity as a landowner, not as a developer. *See* Pet. at 2 (asserting that Petitioner is a landowner within the District that wants to sell its property to a developer).

Furthermore, Tex. Water Code § 54.239 requires a “decision of a board involving the . . . use of facilities,” whereas Petitioner merely complains that the District has slow-walked its request for water and wastewater (i.e., “utility”) services. In doing so, Petitioner concedes that the District’s Board of Directors (the “**Board**”) has *not* made a decision on Petitioner’s service request or otherwise has *not* made a decision to deny Petitioner the “use of facilities” within the District. Indeed, the very first section of Petitioner’s petition admits that “the Board has declined to take any official action on Petitioner’s request for service.” Pet. at 2. And the remainder of Petitioner’s petition is rife with such concessions. *See, e.g., id.* at 3 (conceding that “the Board failed to publicly deliberate and vote on Petitioner’s request for service”); *id.* (conceding that the Board failed “to hold a public hearing and vote on Petitioner’s request”); *id.* at 7 (conceding that “the Board has never made an official decision on Petitioner’s request for utility services”); *id.* (conceding that “the Board took no official action” on Petitioner’s service request).

Petitioner has not been “aggrieved by a decision of a board involving the . . . use of facilities” as required by Tex. Water Code § 54.239. The only “decision of” the Board that Petitioner has been “aggrieved by” is the Board’s decision to respond to Petitioner’s service request by sending a letter to Petitioner explaining the Board’s overarching concerns regarding Petitioner’s plans to market its property for high-density, multi-family development and why the District “is unable to approve plans in violation of the Development Agreement” entered into by Petitioner and the District. Pet., Ex. D at 2. More specifically, the letter explains the District’s position that “the density limitations in the Development Agreement preclude the proposed

development of [Petitioner's] tract at issue, as further development would cause the existing construction to fall out of compliance with density requirements.” *Id.*

The letter at issue is dated June 10, 2025, and is included as Exhibit D to Petitioner's petition. In an open meeting held the same day, the Board voted unanimously to approve issuance of the June 10 letter to Petitioner, as reflected in the published minutes of the Board's June 10 meeting. *See* Johnson Ranch Municipal Utility District of Comal County, Texas, Minutes of Meeting of the Board of Directors (June 10, 2025), *available at* https://files.ecatholic.com/24658/documents/2025/7/0610_25min.pdf?t=1753206423000 (attached hereto as ***Exhibit A***). The minutes of the Board's June 10 meeting also reflect that the Board entered into executive session at that meeting “to receive attorneys’ advice” on Petitioner's service request, which was Item 7b on the agenda for the Board's June 10 meeting. *See* Ex. A (minutes of June 10 meeting); Pet., Ex. B (agenda for June 10 meeting listing Petitioner's service request as Item 7b). Finally, the minutes of the Board's June 10 meeting unequivocally state that “no decisions were made and no votes were taken on the items discussed during the executive session.” Ex. A (minutes of June 10 meeting).

The June 10 letter to Petitioner, which the Board authorized, is not a “decision of a board involving the . . . use of facilities,” nor does the letter constitute a denial of Petitioner's service request. The letter does not purport to deny or otherwise decide Petitioner's service request, and the letter does not concern Petitioner's “use” of the District's “facilities.” Rather, the June 10 letter explains why the Board has not decided Petitioner's service request – i.e., because it would be futile to do so without first addressing the Board's overarching concerns that Petitioner's development plans violate the parties' development agreement. In other words, before the District commences the feasibility studies and other analyses necessary to decide Petitioner's request for

utility services, it should first be determined whether the high-density, multi-family development that Petitioner wants the District to commit to serve can even go forward in compliance with the parties' development agreement. That determination – i.e., the parties' dispute over the construction and application of their development agreement – is now before the Comal County District Court, which, as noted above, the parties' expressly agreed “shall be a proper forum for the determination of any dispute arising” under the development agreement. Pet., Ex. E at 15 (Art. XI, ¶ 11.02).

B. PETITIONER CANNOT PERFECT AN APPEAL UNDER 30 TEX. ADMIN. CODE § 293.180

Not surprisingly, Petitioner struggles to shoehorn its contract dispute with the District into the narrow regulatory confines of 30 Tex. Admin. Code § 293.180 – a rule entitled “Appeal of a Decision of the Board of [a] Municipal Utility District Regarding Facilities Constructed for the District.” As set forth above, Petitioner is not appealing a decision of the Board “regarding facilities constructed for the District;” thus, as one would reasonably expect, Petitioner cannot perfect an appeal under a rule that requires – as a foundational threshold for appeal – a Board “decision that involves the cost, purchase, or use of improvements constructed by a developer for the district.” 30 Tex. Admin. Code § 293.180(a).

Furthermore, Petitioner's petition for appeal under § 293.180 does not include the requisite information that “must be submitted” to TCEQ “[b]efore such an appeal will be considered” by the Commission. *Id.* The requisite information is lacking from Petitioner's petition because such information is germane to disputes that align with the Legislature's intent in enacting Tex. Water Code § 54.239, as implemented by the Commission through promulgation of § 293.180 – i.e., disputes between districts and developers over “the cost, purchase, or use of improvements constructed by a developer for the district.” For instance, Petitioner's petition does not include:

- “evidence that the decision involves the cost, purchase, or use of improvements constructed by a developer for the [D]istrict,” *id.* § 293.180(a)(1)(B);
- a certified copy of the minutes of a Board meeting that “include the decision being appealed,” *id.* § 293.180(a)(4);
- “a cost summary itemizing any monetary claims by” Petitioner, *id.* § 293.180(a)(5);
- “copies of any agreements with the [D]istrict or documentation from the [D]istrict authorizing [P]etitioner to construct the improvements or to enter into contracts for the improvements,” *id.* § 293.180(a)(8); and
- “copies of any reimbursements agreements executed by the [D]istrict involving the improvements in question,” *id.* § 293.180(a)(9).

Absent the foregoing information, the Commission should not even consider Petitioner’s petition. *See id.* § 293.180(a) (providing the foregoing information “must be submitted” to TCEQ “[b]efore such an appeal will be considered” by the Commission).

Moreover, even if TCEQ were to consider Petitioner’s petition, the Commission would not be able render a decision on the petition that takes into consideration the criteria that § 293.180 requires the Commission to consider. “In rendering its decision, the [C]ommission **shall** consider: (A) the suitability of and necessity for the facilities; (B) the reasonableness of the cost of the facilities; [and] (C) the economic viability of the district.” *Id.* § 293.180(c)(2)(A)-(C) (emphasis added). None of this information is included in Petitioner’s petition because none of it is even remotely relevant to the contract dispute between Petitioner and the District. Stated differently, further demonstrating that Petitioner is not appealing any decision within the scope of § 293.180 (i.e., a decision of the Board regarding facilities constructed for the District), Petitioner’s petition is devoid of the information necessary for the Commission to render a decision on the petition, such as the suitability of, necessity for, and reasonableness of the cost of “the facilities” – i.e., facilities constructed by a developer for the District, the cost, purchase, or use of which is the subject of a Board decision that aggrieves Petitioner.

C. PETITIONER’S REQUESTED RELIEF IS BEYOND TCEQ’S AUTHORITY TO GRANT

In its petition, Petitioner demands that TCEQ “reverse the District’s decision to deny utility services to” Petitioner. Pet. at 4; *see also id.* at 8 (“Petitioner seeks relief from TCEQ for the District’s refusal to provide utility services to [Petitioner’s] property in the District.”). Putting aside the fact that, as explained above, the Board has not decided Petitioner’s request for services, the Commission is not the arbiter of disputed utility service requests. TCEQ is not the state agency that decides whether someone has been unlawfully denied utility services, and the Commission has no authority to compel the provision of utility services. That is the job and jurisdiction of the Public Utility Commission (the “**PUC**”).

The PUC is the proper venue for a complaint regarding a refusal to provide utility services. *See* 16 Tex. Admin. Code Ch. 24, Subch. F. Jurisdiction over such disputes, including jurisdiction over a utility’s rates, operations, and services, was ceded from TCEQ to the PUC by the 83rd Texas Legislature in 2013. *See id.* § 24.1(b). As such, the PUC is the authority with jurisdiction over the rates, operations, and services of retail public utilities, as well as the rights and responsibilities of retail public utilities and consumers, which includes refusals of service, complaints, and the resolution of disputes between utility service providers and consumers. *See id.* § 24.1(a).

Specifically, the PUC regulates refusals to serve under its regulations in 16 Tex. Admin. Code § 24.157, which provide grounds for and prohibitions against refusals of service. Further, the PUC’s rules govern the resolution of service disputes, *id.* at § 24.155, and the filing and resolution of complaints, *id.* at § 22.242. Accordingly, a dispute between the District and Petitioner, in their respective roles as retail public utility and service applicant, would properly be brought before the PUC – not TCEQ – under the PUC’s rules governing refusals of service and procedures for resolving service disputes.

**II.
CONCLUSION & PRAYER**

For the foregoing reasons, TCEQ should decline to consider Petitioner's petition or should otherwise reject Petitioner's appeal to the Commission for lack of jurisdiction.

Respectfully submitted,

COATS | ROSE P.C.



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MUNICIPAL UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I hereby certify that, on October 10, 2025, the foregoing Response to Petition was filed electronically via TCEQ's eFiling System and a copy was mailed or emailed to all persons on the attached mailing list.



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TCEQ Docket No. 2025-1041-MIS

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TCEQ DOCKET NO. 2025-1041-MIS

APPEAL BY CLYDE JOHNSON AND	§	BEFORE THE TEXAS
SONS HEREFORD RANCH, LTD. OF THE	§	
DECISION BY THE BOARD OF	§	
DIRECTORS OF JOHNSON RANCH	§	COMMISSION ON
MUNICIPAL UTILITY DISTRICT	§	
PURSUANT TO TITLE 30 TEXAS	§	
ADMINISTRATIVE CODE § 293.180	§	ENVIRONMENTAL QUALITY

**JOHNSON RANCH MUNICIPAL UTILITY DISTRICT'S
RESPONSE TO PETITION**

EXHIBIT A

**JOHNSON RANCH MUNICIPAL UTILITY DISTRICT
OF COMAL COUNTY, TEXAS
MINUTES OF MEETING OF THE BOARD OF DIRECTORS**

June 10, 2025

The Board of Directors (the "**Board**") of the Johnson Ranch Municipal Utility District of Comal County, Texas (the "**District**") met in **regular** session, open to the public at 12:00 p.m. on June 10, 2025, at the Johnson Ranch Amenity Center located at 31020 Clover Pass, Bulverde, Texas 78163, pursuant to notice duly given in accordance with the law. The roll was called of the following members of the Board to wit:

Sheryl Short	President
Duane Wilson	Vice President
Peggy Braaten	Secretary
Arthur Seago	Treasurer
Kathy Phillips	Asst. Sec./Treasurer

and all Directors were present, except Director Braaten, thus constituting a quorum.

Also present or joining during the meeting were Victoria Harmon of DHJB Development, LLC ("**DHJB**"), a developer in the District; Kathy Munoz of Lennar Homes of Texas Land and Construction, Ltd. ("**Lennar**"), a developer in the District; Travis Rohwedder of the Guadalupe-Blanco River Authority ("**GBRA**"), the District's Operator; Kenny Watkins of Bleyl Engineering ("**Bleyl**"), the District's Engineer; and Patrick Lindner of Davidson Troilo Ream and Garza PC ("**DTRG**"), the District's Attorney.

The Board first considered the minutes of the May 13, 2025, regular meeting of the Board of Directors. The Board noted a correction in the minutes to the items listed for discussion in executive session. Upon a motion duly made by Director Seago and seconded by Director Wilson, the Board voted unanimously to approve the corrected minutes.

Next, the Board reviewed the report provided by the Guadalupe-Blanco River Authority ("**GBRA**"), the District's Operator. A copy of the report is included in the Board Packet, which is attached to these minutes as an exhibit. Mr. Rohwedder reported that recent rains had raised aquifer levels. He also addressed a recent operational incident with DNT involving valves being opened, resulting in pump over-pressurization and water being discharged into the streets. He stated that immediate action was taken to shut off the flow once GBRA had become aware of the issue. Mr. Lindner indicated he would send a letter to GBRA to ensure DNT is held responsible for reimbursement for the water loss.

In response to Director Short's question, Mr. Rohwedder explained that although Canyon Lake's water levels were lower, filtration processes ensured that water quality was not affected by dissolved solids.

Ms. Munoz then presented the development report for Johnson Ranch North. Ms. Munoz first reported that the stabilization of the area above Cumin Court in Johnson Ranch North was complete. However, after a visual inspection, Mr. Watkins expressed concerns that conditions remained unchanged, and he noted sediment accumulation, which he explained indicates inadequate revegetation along sidewalks. He also pointed out a lack of activity in the drainage channel above Cumin Court. Mr. Watkins requested that Mr. Nunley contact him via email so that he could respond with photographs of the relevant areas.

Next, Ms. Harmon presented the development report for Johnson Ranch South. She stated that Units 7, 8, and 9 in Section 3 are in final review by the City of Bulverde (the "**City**"). Mr. Watkins noted that he had not received confirmation of this and asked Ms. Harmon to follow up with Mr. Espinoza to obtain the necessary documentation for submission to the District.

Regarding the wastewater treatment plant within the District (the "**WWTP**"), Ms. Harmon stated that no changes in status or completion dates have been reported for the punch list and warranty items. Mr. Watkins then identified silt issues in the drainage channel in the northeast corner of Section 8 and construction debris in the primary channel of Unit 7.

Continuing her report, Ms. Harmon reported that DHJB is negotiating repair costs with DNT for the Hike and Bike Trail in the District. The Board told Ms. Harmon to inform Mr. Espinoza that cost sharing for the area has not been discussed with the Board. Director Short questioned who would be sharing those costs as in her opinion neither the District nor the Johnson Ranch Master Community Association (the "**HOA**") should be funding the expense.

Mr. Watkins then reaffirmed that the District has still not accepted Units 7, 8, 9, and Stargazer Road for maintenance. He added that concerning the force main modification at the manhole on Creciente, the contractor was addressing GBRA's comments as of May 28, 2025. Director Short asked if this second design was now past the timeframe allowed by GBRA and would they now have to go back and review the design again.

The Board then entered into executive session at 12:29 p.m., pursuant to V.T.C.A. Government Code, Chapter 551.071, to receive attorneys' advice on Items 7b and 7c, as listed on the agenda. Allison Miller from Cokinos Young P.C., the law firm retained by the Board to manage the lawsuit against the District, joined the executive session to advise the Board on lawsuit matters. The Board reconvened in open session at 1:15 p.m. Director Short reported that no decisions were made and no votes were taken on the items discussed during the executive session.

Next, Mr. Watkins reviewed the Engineer's Report in detail with the Board, a copy of which is included in the Board Packet. No action was taken on any of the items discussed.

The following item before the Board was the Bookkeeper's Report, prepared by Municipal Accounts & Consulting, L.P. ("**MAC**"), the District's Bookkeeper. The Board reviewed the reports, including the activity in each District account. Director Seago then

motioned, and Director Wilson seconded, to (1) approve the Cash Activity Report and (2) authorize payment of the District's bills as presented. The motion passed unanimously. A copy of the Bookkeeper's Report is included in the Board Packet.

Director Seago then motioned to authorize the sending of a letter, as discussed in the executive session. Director Wilson seconded the motion, which passed unanimously.

Next, Director Wilson reported that 7 Bar LLC will be providing maintenance and inspection of the Water Quality Pond located in the South.

Finally, the Board confirmed that their next regular meeting would be held on July 8, 2025, and the meeting was adjourned.



Peggy Braaten

Peggy Braaten (Jul 10, 2025 16:51 CDT)

Peggy Braaten
Secretary, Board of Directors
Johnson Ranch Municipal Utility District

2025_06-10 Johnson Ranch Minutes 2

Final Audit Report

2025-07-10

Created:	2025-07-09
By:	Suzanne McCalla (smccallajrmud@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABaoGR_XcDdV_gzfH62IN2jLDjNfk5FU

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-  Document created by Suzanne McCalla (smccallajrmud@gmail.com)
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-  Document e-signed by Peggy Braaten (peggy.braaten@jrmud.org)
Signature Date: 2025-07-10 - 9:57:10 PM GMT - Time Source: server
-  Agreement completed.
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