

Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 29, 2025

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Application By Johnson Ranch MUD;
TCEQ Docket No. 2025-1041-MIS

Dear Ms. Gharis:

I have enclosed for filing the Executive Director's Response to the Appeal filed By Clyde Johnson and Sons Hereford Ranch, Ltd. of a Decision of Johnson Ranch Municipal Utility District. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2025-1041-MIS

APPLICATION OF	§	BEFORE THE
JOHNSON RANCH MUNICIPAL	§	TEXAS COMMISSION ON
UTILITY DISTRICT	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR’S RESPONSE TO APPEAL FILED BY CLYDE JOHNSON AND
SONS HEREFORD RANCH, LTD. OF A DECISION OF JOHNSON RANCH
MUNICIPAL UTILITY DISTRICT**

I. Introduction and Procedural Background

Clyde Johnson and Sons Hereford Ranch, Ltd. (“Petitioner”) filed an Appeal with TCEQ on July 9, 2025, pursuant to Tex. Water Code (“TWC”) § 54.239 and Tex. Admin. Code (“TAC”) § 293.180.

TWC § 54.239 states in part, that ... “A person aggrieved by a decision of a [Municipal Utility District or “MUD”] board involving the cost, purchase, or use of facilities may appeal the decision to the commission...”. The statute sets a 30-day deadline for filing an appeal and limits the scope of review to whether the board’s action was unreasonable, arbitrary, or inconsistent with law. If timely filed, TCEQ has jurisdiction to review the matter and may affirm, modify, or reverse the board’s decision. 30 TAC § 293.180 promulgates TWC § 54.239 by setting out the procedural requirements for such appeals.

For the reasons outlined below, the Executive Director (“ED”) has determined that the TCEQ lacks authority to consider the Appeal and recommends that the Commission dismiss it.

II. Summary Of Johnson Partnership’s Appeal

The Petitioner, Johnson Partnership, appealed the Johnson Ranch Municipal Utility District’s (“District”) alleged denial of water and wastewater utility service to a 24-acre tract within the District that is owned by the Petitioner. The Petitioner plans to sell the tract to a developer for high-end multifamily housing.¹

The Petitioner claims that as a landowner within the District, it is entitled to water and wastewater services pursuant to TWC § 54.201.² The Petitioner submitted its Appeal pursuant to TWC § 54.239 and 30 TAC § 293.180, which provides that a person harmed by certain MUD board decisions may appeal that decision to the TCEQ.

The Petitioner states the District Board’s sole reason for the claimed denial of service is an alleged violation of land-use restrictions in the Development Agreement.³ This is an agreement between the City of Bulverde (“City”), the developer, and the landowner. The Petitioner asserts that the District’s Board determined that the proposed development would violate land-use rules contained in the Development Agreement.⁴

¹ Johnson Partnership’s Appeal, at page 2.

² *Id.*, at page 9.

³ *Id.*

⁴ Petitioner’s Exhibit D.

Specifically, the Petitioner argues that the Development Agreement vests the City with the authority to regulate those land-use rules, not the District.⁵ The Petitioner argues that the City has approved the multifamily use for the development.⁶ The Petitioner goes on to assert that the District has no authority to adjudicate land-use issues nor unilaterally deny utility services based on land use.⁷ Moreover, the Petitioner argues that the Board's actions potentially violated the Texas Open Meetings Act.⁸

III. Analysis

The Petitioner asserts that since the District has declined to provide utility services, this falls under the provision in TWC § 54.239 that allows for an appeal to be filed when there is a board decision regarding the “use” of facilities.⁹ However, the Petitioner also stated, “... the Board has never made an official decision on Petitioner’s request for utility services...”¹⁰

While the Petitioner included a letter from the District’s Board President referencing a Development Agreement violation, there does not appear to be a “decision of a board” which is required for action under TWC § 54.239. The plain language of the statute is clear: “A person aggrieved by a *decision* of a board involving the ... use of facilities may appeal the *decision*...”¹¹ In the case at hand, there is no board decision to be appealed.

30 TAC § 293.180,¹² titled “Appeal of a Decision of the Board of Municipal Utility District Regarding Facilities Constructed for the District,” states the following must be submitted to initiate the appeal process:

- (1) A petition signed by the present or former property owners affected by the decision of the district board of directors must be filed with the chief clerk seeking appropriate relief within 30 days after the date of the decision. The petition shall contain:
 - (A) a statement describing the nature of the dispute and how the board's decision affects the petitioner; and
 - (B) evidence that the decision involves the cost, purchase, or use of improvements constructed by a developer for the district.
- (2) an initial deposit in the amount of \$5,000 to be applied toward the commission's estimated costs to initiate the hearing on the appeal. An additional deposit in the amount of \$5,000 shall be submitted by petitioner prior to an evidentiary hearing;
- (3) for appeals involving the cost or purchase of facilities, complete documentation of such cost and justification for the facilities;
- (4) a certified copy of minutes of the board meeting(s) which include the decision being appealed;
- (5) a cost summary itemizing any monetary claims by the aggrieved person;

⁵ Johnson Partnership's Appeal, at page 4.

⁶ *Id.*, at page 4.

⁷ *Id.*

⁸ *Id.*, at page 3.

⁹ Johnson Partnership's Appeal, at pages 1 and 8.

¹⁰ *Id.*, at page 7.

¹¹ Emphasis added.

¹² 30 TAC § 293.180 was promulgated pursuant to TEX. WATER CODE § 54.239.

- (6) documentation to support items included in the cost summary;
- (7) any other information as the executive director may require;
- (8) copies of any agreements with the district or other documentation from the district authorizing the petitioner to construct the improvements or to enter into contracts for the improvements; and
- (9) copies of any reimbursements agreements executed by the district involving the improvements in question.

Of these mandatory items, the Petitioner only included the statement describing the nature of the dispute and its effect on the Petitioner, as required by subsection 1(A), and the \$5,000 deposit required by subsection 2. While not complying with all the requirements in 30 TAC § 293.180 renders the Appeal deficient, subsection 2(B), “evidence that the decision involves the cost, purchase, or use of improvements constructed by a developer for the district,” is a threshold requirement and as such, this petition would not qualify as an Appeal contemplated by 30 TAC § 293.180 and TWC § 54.239.

Additionally, TWC § 54.238(2) defines facilities as “...improvements constructed by a developer for a district.” In the matter at hand, the Petitioner does not claim any dispute over such developer-constructed improvements. Instead, the Petitioner’s dispute with the District concerns land use and zoning authority pursuant to the Development Agreement.¹³ These issues are outside the scope of a TWC § 54.239 appeal. Additionally, TCEQ does not have jurisdiction to resolve disputes over private contracts. Additionally, the Petitioner notes they have initiated litigation on this issue in Comal County District Court, and that they filed this Appeal to the TCEQ, “... out of an abundance of caution.”¹⁴

IV. ED’S RECOMMENDATION

Although the Petitioner claims their issue is a denial of use of facilities, which would be an allowable basis for an appeal pursuant to TWC § 54.239, it appears to be a dispute over land use and zoning issues covered under a Development Agreement between the City of Bulverde, the developer, and the landowner. It is well established that the TCEQ does not have jurisdiction to resolve disputes arising from private contracts. Furthermore, there has been no board decision regarding the use of facilities, and without such a decision, the Appeal does not meet the threshold requirement under the applicable statute and rules.

V. CONCLUSION

For the reasons outlined above, the Executive Director has determined that the petition is not within the scope of TWC § 54.239 and recommends that the Commissioners deny the Appeal. Should the Commissioners determine that TCEQ does have jurisdiction, the Executive Director recommends referring the matter to the State Office of Administrative Hearings for a contested case hearing.

¹³ This issue is raised throughout Johnson Partnership’s Appeal and is not limited to specific pages.

¹⁴ Johnson Partnership’s Appeal, at page 7.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division

By: 

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CERTIFICATE OF SERVICE

I certify that on October 29, 2025, the "Executive Director's Response To Appeal Filed By Clyde Johnson And Sons Hereford Ranch, Ltd. Of A Decision Of Johnson Ranch Municipal Utility District" was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

By: 

Kayla Murray, Staff Attorney
Environmental Law Division
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TCEQ Docket No. 2025-1041-MIS

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