

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



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 29, 2025

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

RE: **IN THE MATTER OF THE APPEAL BY CLYDE JOHNSON AND SONS
HEREFORD RANCH, LTD. OF THE DECISION BY THE BOARD OF
DIRECTORS OF JOHNSON RANCH MUNICIPAL UTILITY
DISTRICT
TCEQ DOCKET NO. 2025-1041-MIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Appeal of District Decision in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Senior Attorney
Assistant Public Interest Counsel

cc: Service List

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	§	COMMISSION ON
DIRECTORS OF JOHNSON RANCH	§	
MUNICIPAL UTILITY DISTRICT	§	ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO
APPEAL OF DISTRICT DECISION

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the Commission) responds to the above-captioned Appeal of District Decision as follows:

I. INTRODUCTION

On July 15, 2025, Petitioner Clyde Johnson and Sons Hereford Ranch, Ltd. (Petitioner or the Johnson Partnership), owner of a 24-acre tract within the Johnson Ranch Municipal Utility District (the District or MUD), submitted an Appeal of District Decision regarding the District’s refusal to provide water and wastewater service for a proposed high-end multifamily development (the Appeal), alleging the Board’s denial—communicated via a president’s letter after months of agenda inaction—violates the Texas Open Meetings Act, exceeds the District’s statutory authority, and misinterprets a 2008 Development Agreement (the Agreement). Petitioner contends the Agreement vests land-use enforcement exclusively with the City of Bulverde (which has

approved the project), asserts that single-family density caps do not apply to multifamily zones, and argues the District lacks any promulgated rules or engineering basis for denial, framing the Board's resistance as pretextual opposition to multifamily housing despite clear contractual compliance and financial benefits to the District.

On September 5, 2025, the Office of General Counsel of the Commission invited the District to file a response to any aspects of the validity of the specific claims raised in the Appeal and the Commission's authority to address those claims, no later than Friday, October 10, 2025. The Executive Director (ED) and OPIC were invited to file briefs in response to the Appeal and any District response no later than October 29, 2025. The Petitioner may file a reply to any responses by November 12, 2025.

On October 10, 2025, the District filed its Response to Petition, contending that TCEQ lacks jurisdiction under Tex. Water Code § 54.239 and 30 Tex. Admin. Code § 293.180 because the dispute does not involve the cost, purchase, or use of developer-constructed improvements but instead centers on a contractual disagreement over density limits in the Agreement—a multi-party contract to which TCEQ is not a party and which expressly submits disputes to Comal County courts. The District emphasizes that Petitioner appeals as a landowner, not a developer seeking reimbursement, that no infrastructure has been built, and that precedent confirms exhaustion of

administrative remedies is neither required nor available, rendering the Appeal meritless and duplicative of ongoing district court litigation.

OPIC respectfully submits this brief pursuant to the request of General Counsel to address the validity of the specific claims raised in the Appeal and the Commission's authority to adjudicate those claims. As detailed below, the Commission lacks jurisdiction over this matter under Texas Water Code § 54.239 and 30 Tex. Admin. Code § 293.180. The dispute at issue—a private contractual disagreement over land-use density limitations and the denial of utility services for a proposed future development—falls outside the narrow scope of the statutory and regulatory provisions invoked by Petitioner. Moreover, the claims raised in the Appeal lack validity insofar as they seek to expand the Commission's role beyond its statutory mandate into the realm of contract interpretation and land-use enforcement, which are properly resolved in judicial proceedings. OPIC recommends that the Commission dismiss the Appeal for lack of jurisdiction and decline to address the merits.

II. PROCEDURAL ISSUES

Texas Water Code § 54.239, entitled “Appeal to the Commission of Decision of Board Regarding Facilities,” states that “a person aggrieved by a decision of a board involving the cost, purchase, or use of facilities may appeal the decision to the Commission by filing a petition with the Commission seeking appropriate relief within 30 days after the date of the decision.”

Commission rule § 293.180(a) largely reiterates this process and the necessary elements for a petition to be considered by the Commission—but also includes language specifically indicating controversies related to developers: “A person aggrieved by a decision of a board of directors of a Municipal Utility District operating under the Water Code, Chapter 54 may appeal a decision that involves the cost, purchase, or use of improvements constructed by a developer for the district to the commission.”

Before an appeal will be considered, the petitioner must submit a petition signed by the present or former property owners affected by the decision of the district board of directors and file it with the chief clerk seeking appropriate relief within 30 days after the date of the decision. The petition must contain a statement describing the nature of the dispute and how the board's decision affects the petitioner; and evidence that the decision involves the cost, purchase, or use of improvements constructed by a developer for the district.¹

Additional elements that must be included in the petition include:

- (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;

¹ 30 Tex. Admin. Code § 293.180(a)(1).

- (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;
- (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;
- (9) copies of any reimbursements agreements executed by the district involving the improvements in question.²

The rule further prescribes that, after notice and hearing, the Commission shall render a written decision granting or denying the petition, in whole or in part. In rendering its decision, the Commission must consider:

- (A) the suitability of and necessity for the facilities;
- (B) the reasonableness of the cost of the facilities;
- (C) the economic viability of the district; and
- (D) any other relevant evidence.³

² *Id.*

³ 30 Tex. Admin. Code § 293.180(c)(2).

III. DISCUSSION

A. BACKGROUND TO LEGAL CONTROVERSY

The Johnson Partnership owns a 24-acre tract (the Homestead Lot) within the boundaries of the District. The Homestead Lot is subject to the Agreement, a multi-party contract executed in 2008 among the Johnson Partnership (as landowner), DH/JB Development, Inc. (as developer), the District's predecessor, and the City of Bulverde (City). The Agreement incorporates land-use and density restrictions, including a master plan vesting primary enforcement authority over such restrictions with the City.⁴

Petitioner seeks to sell the Homestead Lot to a third-party developer for multifamily housing (e.g., townhomes and duplexes). The City has approved this proposed use.⁵ However, the District's Board of Directors has declined to approve utility service connections for the proposed development, citing an alleged violation of density limits in the Development Agreement.⁶ Petitioner characterizes this denial as arbitrary, unsupported by engineering or capacity analyses, and outside the District's authority, which Petitioner contends is limited to utility provision without regard to land-use compliance. The District counters that the denial is a lawful exercise of its discretion under the Agreement and that any dispute over density limits must be resolved in Comal County District Court, where related litigation is pending.

⁴ See *Appeal*, Ex. E (Development Agreement).

⁵ See *Appeal*, Ex. F.

⁶ See *Appeal*, Ex. D.

Petitioner filed this Appeal pursuant to Texas Water Code § 54.239 and 30 Tex. Admin. Code § 293.180, seeking reversal of the District’s denial and an order directing utility services. The District has moved to dismiss for lack of jurisdiction. OPIC takes no position on the merits of the underlying contract dispute but addresses below the Commission’s authority to entertain the Appeal and the validity of Petitioner’s claims under the governing statutes and rules.

B. THE COMMISSION LACKS JURISDICTION OVER THIS APPEAL

The Commission’s appellate jurisdiction under Texas Water Code § 54.239 and 30 Tex. Admin. Code § 293.180 is strictly limited to “a decision of a board [of directors of a municipal utility district] involving the cost, purchase, or use of facilities constructed by a developer for the district.”⁷

This provision was enacted to provide an “administrative remedy as an alternative to litigation for resolving disputes between MUD boards and developers over the cost, purchase, or use of facilities.”⁸ It does not confer general authority to adjudicate land-use disputes, contract interpretations, or denials of service based on future development plans.

Here, the District’s decision does not involve the “cost, purchase, or use” of any existing “facilities” or “improvements constructed by a developer for the district.”⁹ Petitioner is not a developer seeking reimbursement for constructed

⁷ Tex. Water Code § 54.239; 30 Tex. Admin. Code § 293.180(a).

⁸ *House Comm. on Nat. Res., Bill Analysis*, Tex. H.B. 1937, 73rd Leg., R.S. (1993).

⁹ Tex. Water Code § 54.238(2) (defining “facilities” as such improvements).

infrastructure (e.g., water lines, sewer mains, or pump stations) built for the District's benefit. Nor does the Appeal concern the District's purchase or use of any such pre-existing improvements. Instead, Petitioner appeals in its capacity as a landowner seeking approval for utility connections to support a prospective multifamily project that has not yet commenced construction.¹⁰ The denial turns entirely on the District's interpretation of density limits in the Development Agreement—a private contract to which the Commission is not a party.¹¹

As indicated in the District's Response, Texas courts have consistently held that the Commission lacks jurisdiction over such contractual matters. In *Harris County Fresh Water Supply District No. 61 v. FWO Development, Ltd.*, 396 S.W.3d 639 (Tex. App.—Houston [14th Dist.] 2013, pet. denied), the court rejected an analogous attempt to invoke § 54.239 for a developer-district contract dispute, emphasizing that “the Commission has not been vested with exclusive jurisdiction to determine this contract dispute.”¹² The court noted the absence of any rule requiring initial Commission determination of such disputes and held that exhaustion under § 54.239 is not mandatory.¹³ Similarly, in *Harris County Water Control & Improvement District No. 89 v. 308 Furman, Ltd.*, No. 01-23-00177-CV, 2024 WL 5249161 (Tex. App.—Houston [1st Dist.]

¹⁰ See *Appeal* at 2 (describing proposed “high-end multifamily housing, such as townhomes and duplexes” under a sales contract).

¹¹ See *Response* at 1-2; *Appeal*, Ex. E, Art. XI, Section 11.02 (forum selection clause vesting exclusive jurisdiction in Comal County courts for disputes arising under the Agreement).

¹² *Id.* at 647.

¹³ *Ibid.* at 646-47.

Dec. 31, 2024, pet. denied), the court affirmed dismissal where the appeal involved interpretive disputes over developer obligations, not the cost, purchase, or use of constructed facilities. These precedents confirm that § 54.239 does not extend to resolution of alleged contractual violations predicated on potential future developments.

Petitioner’s claims fare no better under 30 Tex. Admin. Code § 293.180, which mirrors the statutory language and requires 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.” Petitioner’s arguments—e.g., that the District lacks authority to deny service for land-use reasons,¹⁴ that the Development Agreement vests enforcement with the City,¹⁵ and that density limits are not violated¹⁶—seek a *de novo* Commission ruling on contractual interpretation and land-use compliance. Such relief exceeds the rule’s scope, which is confined to reimbursement or utilization disputes over tangible, developer-funded infrastructure. As noted by the District, the State Office of Administrative Hearings has similarly observed that § 293.180 applies only to “disputes between MUD boards and developers over the cost, purchase or use of facilities,” not broader governance or planning issues.¹⁷

¹⁴ *Appeal* at 9.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 11-19.

¹⁷ *Appeal by 308 Furman, Ltd.*, SOAH Docket No. 582-18-3270, Order No. 4 at 1 (Oct. 5, 2018).

Moreover, the Development Agreement’s forum selection clause mandates resolution of “any dispute arising” thereunder in Comal County courts.¹⁸ Petitioner acknowledges a related lawsuit is already pending there.¹⁹ Exercising jurisdiction here would interfere with that judicial proceeding, contravene the parties’ contractual intent, and risk inconsistent rulings—contrary to principles of comity and efficiency.²⁰

C. PETITIONER’S SPECIFIC CLAIMS LACK VALIDITY BEFORE THE COMMISSION

Even assuming *arguendo* jurisdiction, Petitioner’s claims are invalid as a matter of law and policy, as they misconstrue the Commission’s role and the limited authority of municipal utility districts.

1. *Petitioner’s Rights as a Property Owner Do Not Confer a Right to Commission Adjudication of Land-Use Disputes.*

Petitioner asserts a freestanding right to utility services as a District landowner, unfettered by land-use considerations.²¹ However, Texas Water Code Chapter 54 authorizes districts to provide services subject to board discretion

¹⁸ *Appeal*, Ex. E, Art. XI, Section 11.02.

¹⁹ *Appeal* at 7.

²⁰ See, e.g., *In re Laike*, 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding) (enforcing forum selection clauses to avoid duplicative litigation).

²¹ *Appeal* at 8.

and compliance with applicable agreements.²² The Commission oversees districts to ensure environmental protection and public health, not to override private contracts or supplant local land-use authority vested in the City.²³ Petitioner's remedy for alleged overreach lies in the courts, not an administrative appeal under § 54.239.

2. *The District's Denial Is Not Reviewable as an Ultra Vires Act Under § 54.239.*

Petitioner claims the denial violates the Texas Open Meetings Act and constitutes an *ultra vires* action.²⁴ These procedural allegations, while potentially actionable in court, do not trigger § 54.239 jurisdiction, which is limited to facility-related decisions. Moreover, the denial aligns with the District's obligations under the Development Agreement to adhere to its density provisions.²⁵ The Commission lacks authority to police internal governance absent a tie to constructed improvements.

3. *Interpretation of the Development Agreement's Density Limits Is Beyond the Commission's Purview.*

²² See Tex. Water Code § 54.235 (board authority over connections).

²³ See Tex. Water Code § 5.013 (Commission's general duties).

²⁴ *Appeal* at 3.

²⁵ See Response at 1-2.

Petitioner’s core merits argument—that the proposed multifamily use complies with the Agreement’s land-use plan, single-family density rules, and overall limits²⁶—is a quintessential contract dispute. The Agreement expressly delegates such enforcement to the City, not the District or Commission.²⁷ Even if the Commission were to examine these claims (which it should not), doing so would usurp the judicial role, particularly given the pending Comal County litigation.²⁸

IV. CONCLUSION

The Commission lacks jurisdiction to entertain this Appeal, as it does not involve the cost, purchase, or use of developer-constructed facilities under Texas Water Code § 54.239 and 30 Tex. Admin. Code § 293.180. Petitioner’s claims, while colorable in a judicial forum, are invalid here because they seek to expand the Commission’s limited appellate role into private contract and land-use adjudication. Respectfully, OPIC recommends dismissal of the Appeal without prejudice to Petitioner’s rights in Comal County District Court.

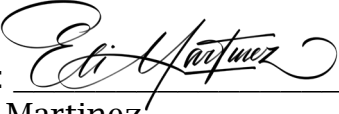
²⁶ *Appeal* at 11-19.

²⁷ *Appeal*, Ex. E, Art. V (City’s planning authority).

²⁸ See *Harris Cnty. Fresh Water Supply Dist. No. 61*, 396 S.W.3d at 647 (contract disputes not for Commission resolution).

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
Eli Martinez

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CERTIFICATE OF SERVICE

I certify that on October 29, 2025, the Office of Public Interest Counsel's Response to Appeal of District Decision was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic mail, Inter-Agency Mail or by deposit in the U.S. Mail.


Eli Martinez

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