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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Crystal Rosas, CLERK

ACCEPTED  
582-23-10368  
8/1/2023 2:56:44 pm  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Crystal Rosas, CLERK

**SOAH Docket No. 582-23-10368**

**Suffix: TCEQ**

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# **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**APPLICATION OF R040062, LP FOR TPDES PERMIT NO.  
WQ0016008001**

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## **ORDER DENYING MOTION FOR SUMMARY DISPOSITION, DENYING MOTION FOR HEARING ON SAME, AND REGARDING HYBRID HEARING PROCEDURES**

### **Motion for Summary Disposition**

Applicant filed a motion for summary disposition on July 6, 2023, and protestant Jonah Water Special Utility District (Jonah) filed a response on July 21, 2023. After reviewing the arguments presented in the motion and the response, the motion is **DENIED**. For a motion for summary disposition to be granted, there must be “no genuine issue as to any material fact,”<sup>1</sup> which is negated if “the non-moving party brings forth more than a scintilla of probative evidence to raise a genuine issue of material fact.”<sup>2</sup> More than a scintilla of evidence exists when the

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<sup>1</sup> 30 Tex. Admin. Code § 80.137(c).

evidence “rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.”<sup>3</sup> Further, the evidence must be reviewed “in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion.”<sup>4</sup> Applicant has failed to clear this high burden. Accordingly, Applicant’s motion for a hearing on the motion for summary disposition is also **DENIED.**

### **Hybrid Hearing Procedures**

The hearing on the merits is scheduled to take place starting August 15, 2023 at 9:00 am in the State Office of Administrative Hearings’ (SOAH) hybrid hearing room (Room 404). The hybrid hearing room allows for a camera to be focused on one of two witnesses or a witness and the Administrative Law Judge (ALJ) in addition to another camera for the Administrative Law Judge (ALJ) alone. It also allows for documents to be shown on screens mounted to the walls. Counsel attending in person may find it helpful to either: (1) bring hard copies of exhibits for live witnesses to use (since the screens showing the Zoom/screen share are mounted to the wall behind the witness), or (2) bring a laptop that will connect to the Zoom meeting so that live witnesses may view the exhibits being shared electronically, and (3) bring their own laptop to connect to Zoom so that they may easily view documents being shared. Laptops used in the hearing room must be muted and have the microphone turned off in the Zoom application. The sound for

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<sup>2</sup> *Kalyanaram v. Univ. of Texas Sys.*, 230 S.W.3d 921, 925 (Tex. App. 2007) (citations omitted).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

those present will be picked up by the room's portable microphones connected to the audio system. In advance of the hearing, parties should provide the Zoom access information contained in the ALJ's May 10, 2023 order to each of its witnesses appearing remotely so they can join the meeting or dial in. Alternatively, the ALJ can also dial out to the witnesses via the Zoom platform.

Applicant requested the hearing take place in person. The ALJ will attend the hearing in person and expects the court reporter to attend in person along with Applicant's counsel and witnesses. Regardless, by **August 8, 2023**, each party is **ORDERED** to file a list of witnesses and counsel participating in the hearing and indicate for each whether they will attend the hearing in person or via Zoom. The same filing shall also include any witnesses for which cross examination has been waived. The ALJ will use this information to prepare for the hearing.

Individuals appearing in person who do not have a state-issued identification badge should be prepared to register with a security guard on the first floor of the building. Having the docket number of the case and a photo identification card will expedite the registration. The ALJ recommends arriving early to secure parking and check in with security so that the hearing may begin on time.

## **Protocol for Exhibits with Court Reporter**

This hearing is scheduled to last more than one day, and a court reporter is required.<sup>5</sup> A final transcript, which will include a record copy of the admitted exhibits, shall be prepared and submitted to SOAH and will be the official record of the proceeding.<sup>6</sup> **IT IS ORDERED** that the parties shall comply with the following exhibit requirements.

### **Before the Hearing:**

1. **At least seven days before the hearing**, the party responsible for retaining the court reporter shall notify the other parties of the reporting service that has been secured.
2. **At least two business days before the hearing**, the parties shall provide to the court reporter all exhibit and witness lists in MS Word format and all exhibits in electronic form, including pre-filed testimony exhibits and workpapers.
3. The parties may share the exhibits with the court reporter by providing (1) a USB or flash drive; or (2) access to a secure, electronic files sharing site (which shall include login instructions).

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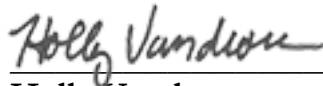
<sup>5</sup> 1 Tex. Admin. Code § 155.423(b).

<sup>6</sup> 1 Tex. Admin. Code § 155.423(b).

**After the Hearing:**

1. **No later than the second business day following conclusion of the hearing**, the parties shall submit a final, record set of exhibits in electronic format to the court reporter, which contains all exhibits that were admitted as evidence or accompanied by an offer of proof.<sup>7</sup>
2. The parties shall submit the exhibits with the court reporter by (1) providing a CD, USB, or flash drive; or (2) making a secure, electronic files sharing site available of the admitted exhibits. All exhibits should be readily identifiable by specific folder (e.g., Applicant Admitted Exhibits, Staff Admitted Exhibits, etc.).

**Signed August 1, 2023**



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Holly Vandrovec  
Administrative Law Judge

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<sup>7</sup> 1 Tex. Admin. Code § 155.101(b)(1)(G)(iii).

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Filing Code Description: Order Denying Motion for Summary Disposition

Filing Description: Order Denying Motion for Summary Disposition

Status as of 8/1/2023 2:57 PM CST

Associated Case Party: Executive Director

Name	BarNumber	Email	TimestampSubmitted	Status
Aubrey Pawelka		aubrey.pawelka@tceq.texas.gov	8/1/2023 2:52:36 PM	SENT

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John Carlton		john@carltonlawaustin.com	8/1/2023 2:52:36 PM	SENT

Associated Case Party: Public Interest Counsel

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Associated Case Party: Public Interest Counsel

Name	BarNumber	Email	TimestampSubmitted	Status
SHELDON WAYNE		sheldon.wayne@tceq.texas.gov	8/1/2023 2:52:36 PM	SENT