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Blas J. Coy, Jr., *Public Interest Counsel*

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

December 30, 2009

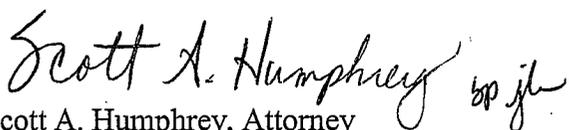
LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: COLLIN COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 3  
TCEQ DOCKET NO. 2009-1573-DIS**

Dear Ms. Castañuela:

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

Sincerely,

  
Scott A. Humphrey, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

*REPLY TO:* PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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**TCEQ DOCKET NO. 2009-1573-DIS**

**IN THE MATTER OF THE PETITION  
FOR THE CREATION OF COLLIN  
COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 3**

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**BEFORE THE TEXAS COMMISSION**

**ON**

**ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUEST FOR HEARING**

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Hearing concerning the above-referenced matter.

**I. Background**

On November 3, 2008 Lavon 593 Land Investment Partners, L.P. (Petitioner) submitted to the TCEQ a petition for the creation of the Collin County Water Control and Improvement District (WCID or District) No. 3 pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 51 of the Texas Water Code (TWC) and 30 Texas Administrative Code (TAC) Chapter 293. According to the notice the proposed district encompasses approximately 593 acres located within Collin County, part of which would be located within the extraterritorial jurisdiction (ETJ) of the City of Lucas and the Town of Saint Paul. The notice also indicates that other materials submitted state that a portion of the proposed District is located within the extraterritorial jurisdiction of the City of Wylie (City or Wylie). The petition states the following purposes for creation of the District: purchase, construct, acquire, provide, operate, maintain, repair, improve or extend land, facilities, systems, plants and enterprises necessary to: (1) provide for the control, storage, preservation, and distribution of waters and floodwaters for irrigation, power and other useful purposes; (2) reclamation and irrigation of land; (3)

reclamation, drainage, conservation and development of forests, water and hydroelectric power; (4) navigation of coastal inland water; (5) control abatement, and change of shortage or harmful excess water; (6) protection, preservation and restoration of sanitary condition of water; (7) preservation and conservation of natural resources; (8) supply water for municipal and domestic use; and (9) exercise any other power consistent with the purposes for which the District is created as more particularly described in an engineer's report filed simultaneously with the filing of the petition.

The application was declared administratively complete on November 11, 2008. The Petitioner published Notice of the District Petition on June 28 and July 5, 2009 in the *McKinney Courier-Gazette*, a newspaper generally circulated in Collin County. The Petitioner also posted notice of the petition on the bulletin board used for legal notices in Collin County on June 30, 2009 as required by 30 TAC § 293.12(b). The comment period closed on August 4, 2009.

In response to the notices, the TCEQ received two timely<sup>1</sup> requests for a contested case hearing. The first was sent on July 27, 2009 by the City of Wylie (Wylie), represented by Arturo Rodriguez, Jr. The second, filed on August 4, 2009, was submitted by the City of Lucas (also represented by Mr. Rodriguez). On September 25, 2009 the City of Lucas withdrew its hearing request, thereby leaving Wylie as the sole entity opposing the creation of the District. For the reasons set out below, OPIC recommends that the Commission refer this matter to the State Office of Administrative Hearings (SOAH) to determine if the Petition for Creation of the Collin County WCID No. 3 should be granted.

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<sup>1</sup> OPIC notes that the Chief Clerk of the TCEQ stamped the hearing request from Wylie as received on August 10, 2009, six days after the comment period closed. However, the postmark on the envelope of the hearing request is clearly stamped July 27, 2009. Since Wylie mailed the request eight days before the comment period closed, OPIC considers this hearing request to be timely.

## II. Applicable Law

This petition was declared administratively complete on November 11, 2008. As the application was declared administratively complete after September 1, 1999 it is subject to the requirements of Title 30, Chapter 55, Subchapter G, sections 55.250-55.256 of the Texas Administrative Code (TAC). Under those provisions, a hearing requestor must make his request in writing within 30 days after the publication of the notice of district petition and identify the requestor's personal justiciable interest affected by the application, specifically noting the "requestor's location and distance relative to the activity" and "how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TAC § 55.251(b) & (c); 30 TAC § 295.171.

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC § 55.256(a). Section 55.256(c) provides relevant factors that will be considered in determining whether a person is affected. These factors include, but are not limited to:

- (1) Whether the interest claimed is one protected by the law under which the application will be considered;
- (2) Distance restrictions or other limitations imposed by law on the affected interest;
- (3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) Likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) Likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.

Section 55.256(b) of 30 TAC provides that, "Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons."

### III. Discussion

In its hearing request, Wylie states that it is affected by the petition because the Petitioner seeks to create a WCID within a portion of Wylie's extraterritorial jurisdiction (ETJ), and the City does not consent to its creation. Wylie maintains a water and sewer utility and claims it has the reasonable availability to serve the property within the proposed district. Wylie further states that it does not believe an adequate investigation and evaluation of the availability of comparable services from other providers or systems, including regional utility providers, has been conducted prior to the Petitioner seeking the creation of the proposed District. The City is also concerned that the proposed District will have a negative impact on water quality.

OPIC concludes that the City has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. TCEQ's rules provide that applications for creation of a district that proposes to provide fresh water for domestic use or to provide wastewater services must either show that the municipality in whose extraterritorial jurisdiction the proposed district is located has consented to creation of the district or show that the requirements of Local Government Code § 42.042 have been followed.<sup>2</sup> In addition, TWC § 51.035 states that "[n]o city, town, or municipal corporation may be included within any district under this chapter unless the proposition for the creation of the district has been adopted by a majority of the electors in the city, town, or municipal corporation." Furthermore, in its hearing request, Wylie states that the City has not determined if there is "a complete justification for creation of the proposed district with sufficient evidence that the project is feasible, practicable, necessary, will benefit all of the land and its residents, and will further the public welfare." This concern expressed by Wylie substantially tracks the language in 30 TAC 293.11(c)(5)(J), thereby

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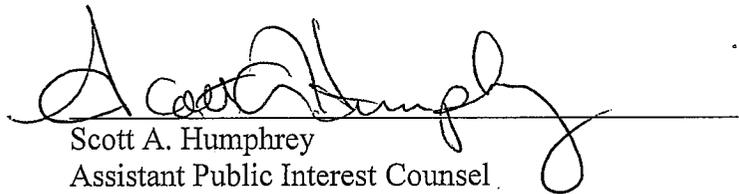
<sup>2</sup> 30 TAC § 293.11(a)(2)

providing further justification that the City has a legal right affected by the application<sup>3</sup> and an interest protected by the law under which the application will be considered.<sup>4</sup> Moreover, a reasonable relationship exists between the interest claimed and the activity regulated as the City claims that the proposed District includes part of the City's extraterritorial jurisdiction.<sup>5</sup> Based on this showing, OPIC recommends that the Commission find that the City of Wylie has demonstrated that it is an affected person entitled to a contested case hearing.

#### IV. Conclusion

For the reasons set forth above, OPIC recommends that that Commission grant the request for a contested case hearing submitted by the City of Wylie and refer this matter to SOAH for a contested case hearing.

Respectfully submitted,



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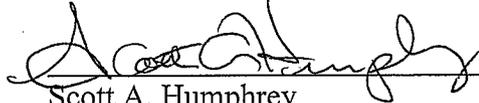
<sup>3</sup> 30 TAC § 55.256(a)

<sup>4</sup> 30 TAC § 55.256(c)(1)

<sup>5</sup> 30 TAC § 55.256(c)(3)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of December, 2009, the original and seven copies of the foregoing were served upon the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, other electronic transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
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Scott A. Humphrey

**MAILING LIST**  
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**TCEQ DOCKET NO. 2009-1573-DIS**

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