

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 29, 2011

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

**Re: LAKEHAVEN MUNICIPAL UTILITY DISTRICT OF COLLIN COUNTY
TCEQ DOCKET NO. 2011-1847-DIS**

Dear Ms. Bohac:

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

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2011-1847-DIS

**APPLICATION FOR THE
CREATION OF LAKEHAVEN
MUNICIPAL UTILITY DISTRICT
OF COLLIN COUNTY**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

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

To the Honorable 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 in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Background

Petitioner Farmersville Investors, LP (Petitioner) has filed an application for the creation of Lakehaven Municipal Utility District of Collin County (District). The proposed District is located just west of State Highway 78 and north of County Road 550, south of County Road 553 and west of County Road 551 in southeastern Collin County, on the eastern side of Lavon Lake. The proposed District is a few miles southwest of the City of Farmersville. Access will be provided via State Highway 78 and County Road 551. The application states that the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any municipality. The application asserts that the general nature of the District's work will include the provision of water, wastewater, and storm water drainage services within the District's boundaries. The proposed District would consist of 375.9 acres, located within Collin County.

B. Procedural Background

The TCEQ received this application on February 22, 2011. The Executive Director (ED) declared the application administratively complete on March 2, 2011. The Petitioner published the Notice of District Petition in the *McKinney Courier-Gazette*, a newspaper generally circulated in Collin County, on July 10 and 17, 2011. On July 14, 2011, notice of the application was posted on the bulletin board used for posting legal notice in Collin County, Texas. On July 18, 2011, TCEQ received a timely letter from Collin County Administrator Bill Bilyeu, on behalf of the Collin County Commissioner's Court (Collin County), requesting a contested case hearing. The hearing request period ended on August 16, 2011. OPIC recommends granting Collin County's hearing request.

II. Applicable Law

A. Requirements to Obtain a Contested Case Hearing

This petition was filed under Chapter 54 of the Texas Water Code and declared administratively complete March 2, 2011. Therefore, the hearing request associated with this petition is evaluated under Subchapter G of Chapter 55 of the Commission's rules.

Under 30 Texas Administrative Code (TAC) § 55.251(a), the following may request a contested case hearing:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

Section 55.251(b) states that a request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery

with the chief clerk within the time provided by subsection (d). Section 55.251(c) states that a hearing request must substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application 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;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

To determine if someone is an affected person, § 55.256(c) states that all relevant factors shall be considered, including, but not limited to, the following:

- (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.

According to § 55.255(b), a request for a contested case hearing shall be granted if the request is: made by an affected person; complies with the requirements of §55.251; timely filed with the chief clerk; and pursuant to a right to hearing authorized by law.

B. Requirements Applicable to a Petition for Creation of a MUD

The proposed Municipal Utility District (MUD), upon approval, would be created under the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code. TWC §54.012 states that a MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of of its arid, semi-arid, and other land needing irrigation;
- (3) the reclamation and draingage of its overflowed land and other land needing drainage;
- (4) the conservation and developments of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shgortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

Under TWC §54.021(a), the Commission must find that organization of the District as requested is feasible and practicable and would be a benefit to the land to be included in the district in order to grant an application.

In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, TWC §54.021(b) requires the commission to consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

- (A) land elevation;
- (B) subsidence;
- (C) groundwater level within the region;
- (D) recharge capability of a groundwater source;
- (E) natural run-off rates and drainage;
- (F) water quality; and
- (G) total tax assessments on all land located within a district.

If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly. TWC §54.021(c). If the commission finds that the petition does not conform to the requirements of TWC § 54.015, or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall deny the petition.

III. Hearing Request

Bill Bilyeu, on behalf of the Collin County Commissioner's Court (Collin County), requested a contested case hearing on July 18, 2011, stating that the application did not take into account "the effect the creation of this special utility district will have on the County's limited resources...including, but not limited to, transportation, health and safety and emergency services."

The proposed District is located entirely in Collin County. Further, the Commissioner's Court is a governmental entity with authority over health and safety, water quality, and health and safety as well as emergency services. Depletion of

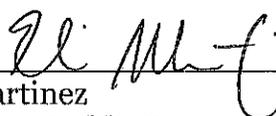
groundwater within the region or potential contamination may impact the efficacy of emergency fire service, lower water quality, or negatively impact infrastructure through subsidence. The issues raised are therefore relevant and material to approval of the application and Collin County is an affected person under applicable law and entitled to a hearing.

IV. Conclusion

OPIC recommends granting the hearing request by Collin County Commissioner's Court and referring the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

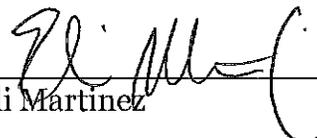
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2011 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing 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, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Eli Martinez

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TCEQ DOCKET NO. 2011-1847-DIS

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