

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 12, 2016

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

Re: Application for the Creation of Meyer Ranch Municipal Utility District;
Docket No. 2016-1129-DIS

Dear Ms. Bohac:

Attached for filing please find an original and seven copies of the Executive Director's Response to Hearing Request in the above-referenced matter. Please feel free to contact me at linda.horng@tceq.texas.gov or (512) 239-0676 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Horng", written over a horizontal line.

Linda Horng
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2016-1129-DIS

**APPLICATION FOR THE CREATION
OF MEYER RANCH
MUNICIPAL UTILITY DISTRICT**

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**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") files this Response to Hearing Request on the petition by Franklin Meyer, Deloris Meyer, Terry Meyer, and Vicky Lynn Meyer Graves ("Petitioners") for the creation of Meyer Ranch Municipal Utility District ("District").

The Executive Director respectfully recommends that the Commission deny the hearing request.

ED staff has prepared a map showing the location of the hearing requestor and the proposed district boundary. The map is attached as Attachment A.

I. BACKGROUND

The proposed District would contain approximately 691.451 acres located within Comal County. The proposed District is located approximately 27 miles north/northeast of downtown San Antonio and 12 miles west/northwest of the City of New Braunfels in central Comal County. Physically, the proposed District lies 12 miles west of I-35, just north of State Highway 46 West, and west of South Cranes Mill Road. Access to the proposed District is via State Highway 46 W and South Cranes Mill Road. The petition indicates that all of the property to be included within the proposed District is not located within the corporate limits or the extraterritorial jurisdiction (ETJ) of any municipality.

The petition states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes; (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) construct, maintain, improve and operate graveled or paved roads or turnpikes that serve or are intended to serve as an arterial or main feeder roads, or works, facilitates, or improvements in aid of those roads or turnpikes inside or outside the boundaries of the proposed District to the extent authorized by Article III, § 52 of the Texas Constitution; and (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises shall be consonant with the purposes for which the District is created.

II. PROCEDURAL HISTORY

The Petitioners filed an application for the creation of the District on April 15, 2015. The application was declared administratively complete on November 18, 2015. On May 31, 2016, proper notice of the application was posted on the bulletin board used for posting legal notices in Comal County, Texas. The Petitioners published the Notice of District Petition in the *Herald-Zeitung*, a newspaper generally circulated in Comal County, where the district is proposed to be located, on June 1, 2016 and June 8, 2016. The period to request a contested case hearing ended July 8, 2016.

The TCEQ received one timely hearing request from Corey Henderson opposing the creation of the district. Comment letters from Comal County Commissioner Donna Eccleston, Representative Doug Miller, Senator Donna Campbell, and Terrell Graham were also submitted.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing requests on August 31, 2016.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. *TEX. WATER CODE § 54.011*. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

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 its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage 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.

TEX. WATER CODE § 54.012.

The commission has jurisdiction to hear this case and create the district. *TEX. WATER CODE §§ 54.014.*

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the

Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district. *TEX. WATER CODE § 54.021(a)*; *30 TEX. ADMIN. CODE § 293.13(b)(1)*. If the commission fails to make these findings, it shall refuse to grant the petition. *TEX. WATER CODE § 54.021(d)*; *30 TEX. ADMIN. CODE § 293.13(a)*.

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, the commission shall 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.

TEX. WATER CODE § 54.021(b).

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings. *30 TEX. ADMIN. CODE § 293.13(b)(2)*; *TEX. WATER CODE § 54.021(c)*.

IV. EVALUATION OF HEARING REQUESTS

District creation applications are subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant or affected persons may request a contested case hearing on this application. *30 TEX. ADMIN. CODE § 55.251(a)*. The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings ("SOAH") for a hearing; or
- (4) refer the hearing requests to SOAH for a hearing on whether the hearing requests meet the rule requirements.

30 TEX. ADMIN. CODE § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition. *30 TEX. ADMIN. CODE § 55.251(b) and (d)*. These two requirements are mandatory. The affected person's hearing request must also 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.

30 TEX. ADMIN. CODE § 55.251(c).

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. *30 TEX. ADMIN. CODE § 55.256(a)*. The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including 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 and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

V. HEARING REQUEST

Corey Henderson submitted a timely written contested case hearing request that included contact information pursuant to 30 TEX. ADMIN CODE, Section 55.251(c) and (d). Mr. Henderson also provided the TCEQ Internal Control Number for the case as required in the notice and pursuant to section 55.251(c)(4).

Mr. Henderson is a property owner and resident adjacent to the proposed MUD. Mr. Henderson states that the Comal County Commissioners Court found that there was no need for a WCID which the petitioners in this case requested Comal County approve on the same property covered by the proposed MUD. Mr. Henderson requests that the Commission support the Commissioners Court's decision to deny creation of the district.

Mr. Henderson's hearing request should be denied because he has not established that he is an affected person. Mr. Henderson's concerns about the County Commissioners Court's decision are not factors which the Commission may consider in the district creation process. Mr. Henderson has not identified a personal justiciable interest affected by the application which is not common to the general public.

VI. RECOMMENDATION

Corey Henderson's hearing request did not sufficiently identify a personal justiciable interest affected by the application. Therefore, the ED recommends that Mr. Henderson's hearing request be denied.

Respectfully submitted,
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

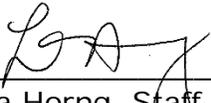
By:  _____

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 12, 2016, the original and seven copies of the "Executive Director's Response to Hearing Request" for Franklin Meyer, Deloris Meyer, Terry Meyer, and Vicky Lynn Meyer Graves' application for the creation of Meyer Ranch Municipal Utility District were filed with the TCEQ's Office of the Chief Clerk, and a complete 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 
Linda Horng, Staff Attorney
Environmental Law Division
SBN: 24078690

MAILING LIST
MEYER RANCH MUNICIPAL UTILITY DISTRICT OF COMAL COUNTY
DOCKET NO. 2016-1129-DIS;
INTERNAL CONTROL NO. D-11122015-056

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FOR THE CHIEF CLERK:
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REQUESTER(S):

Corey Henderson
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New Braunfels, Texas 78132-1649

INTERESTED PERSON(S):

Terrell Lee Graham
18645 State Highway 239 West
Kenedy, Texas 78119-4739

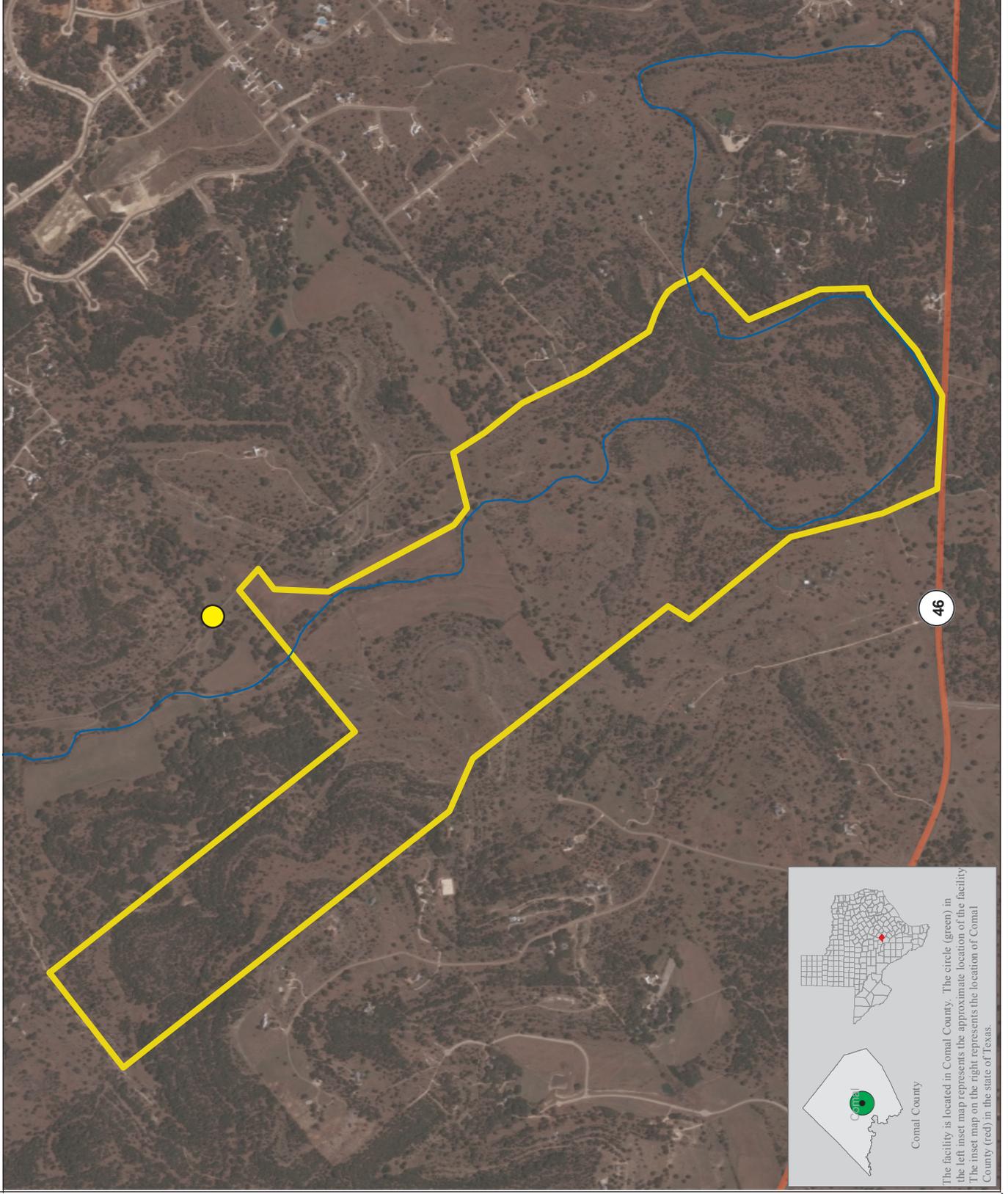
ATTACHMENT A

Docket No. 2016-1129-DIS Meyer Ranch MUD, TCEQ Internal Control No. D-11122015-056

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



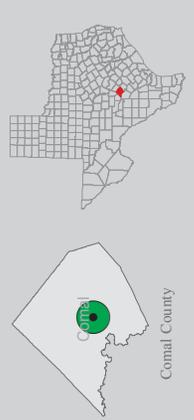
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 9/8/2016



-  Corey Henderson
-  Watercourse
-  Meyer_Ranch_MUD
-  Toll Roads
-  State Highways

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 259-0800.



The facility is located in Comal County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Comal County (red) in the state of Texas.