

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



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 12, 2016

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: MEYER RANCH MUNICIPAL UTILITY DISTRICT  
OF COMAL COUNTY  
TCEQ DOCKET NO. 2016-1129-DIS**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjali".

Pranjali M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**TCEQ DOCKET NO. 2016-1129-DIS**

<b>IN THE MATTER OF A</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>PETITION BY FRANKLIN MEYER,</b>	<b>§</b>	
<b>DELORIS MEYER, TERRY MEYER, AND</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>VICKY LYNN MEYER GRAVES</b>	<b>§</b>	
<b>FOR CREATION OF MEYER RANCH</b>	<b>§</b>	<b>ENVIRONMENTAL</b>
<b>MUNICIPAL UTILITY DISTRICT</b>	<b>§</b>	
<b>IN COMAL COUNTY</b>	<b>§</b>	<b>QUALITY</b>

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

**To the members 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") files this Response to a Hearing Request.

**I. INTRODUCTION**

On April 18, 2015, Franklin Meyer, Deloris Meyer, Terry Meyer, and Vicky Lynn Meyer Graves (Petitioners) filed a petition for creation of Meyer Ranch Municipal Utility District of Comal County (District) pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code. The application was declared administratively complete on November 18, 2015.

On June 1, 2016 and June 8, 2016, the Notice of District Petition was published in the *Herald-Zeitung*. The Petitioners also posted notice of the petition on the bulletin board used for legal notices in Comal County on May 31, 2016. According to the notice, the proposed municipal utility district shall consist of approximately 691.451 acres and would be located entirely within Comal County.

In response to the notice, the TCEQ timely received a request for a contested case hearing from Corey Henderson (Requestor) on July 7, 2016. For the reasons discussed herein, OPIC recommends that the Commission deny the hearing request.

## II. APPLICABLE LAW

A municipal utility district (MUD or district) 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. Chapters 49 and 54 of the Texas Water Code (TWC) and the Commission's administrative rules at Title 30, Chapter 293, of the Texas Administrative Code (TAC) govern petitions to create a MUD. A district shall 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, semi-arid, and other land needing irrigation;
- (3) the reclamation and drainage 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 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.

TWC § 54.012.

In order to create a MUD, a petition requesting creation shall be filed with the Commission. TWC § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. If there are more than 50 persons holding title to the land in the proposed district, as indicated by the tax rolls of the central appraisal district, the petition is sufficient if it is signed by

50 holders of title to the land. TWC § 54.014. The petition shall (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition, and (3) include a name of the district which shall be generally descriptive of the locale of the district. TWC § 54.015. *See also* 30 TAC § 293.11(a) and (d) (Information Required to Accompany Applications for Creation of Districts).

If all or part of the district is proposed to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. TWC § 54.0161(a). In the event of a review by the county, the commissioners court shall submit to the Commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners think would assist the commission in making a final determination on the petition. TWC § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. TWC § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of TWC § 54.015 and the project is feasible, practicable, and necessary and would be a benefit to the land to be included in the district. TWC § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial 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.

TWC § 54.021(b). If 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 not benefited and redefine the proposed district's boundaries accordingly. TWC § 54.021(c). If the petition does not conform to the requirements of TWC § 54.015 or the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall deny the petition. TWC § 54.021(d). The rights, powers, privileges, authority, and functions of a district shall be subject to the continuing right of supervision by the Commission. TWC § 54.024.

The applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. TWC §§ 49.011(b) and 54.018. In addition, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. 30 TAC § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director (ED), or an "affected person" under the factors in 30 TAC Chapter 55. TWC § 49.011(c). *See also* 30 TAC § 55.251(a) (applying rules on contested case hearings to applications declared administratively complete after September 1, 1999). Affected persons must file their hearing requests during the 30 days following the final notice publication date. TWC § 49.011(c). *See also* 30 TAC § 293.12 (Creation Notice Actions and Requirements).

A hearing requestor must make the request in writing within the time period specified in the notice 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)-(d).

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). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Relevant factors to be considered in determining whether a person is affected 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.

30 TAC § 55.256(c).

The Commission shall grant a request for a contested case hearing if (1) the request is made by the applicant or the ED, or (2) the request is made by an affected person, timely filed with the chief clerk, and made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b)

### III. HEARING REQUEST

From all available information, it appears the Requestor is outside the proposed district and not an affected person. The Requestor describes his property as being "adjacent" to the proposed district. Petitioners appear to own all property within the proposed district. Also, the ED's map shows the Requestor is outside the proposed district. The concern raised in the hearing request is whether the district is needed. In support of this concern, Requestor cites to a Comal County Commissioner's Court decision regarding a different application in 2014. Because the Requestor is outside the proposed district, OPIC cannot find the Requestor is an affected person based on concerns as to whether the district is needed.

### IV. CONCLUSION

For the reasons stated above, OPIC recommends denying the hearing request of the Requestor.

Respectfully submitted,

Vic McWherter  
Public Interest Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2016 the original and seven true and correct copies of the Office of the Public Interest Counsel's Response to a Hearing Request were 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 or by deposit in the U.S. Mail.

  
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Pranjal M. Mehta



**MAILING LIST**  
**MEYER RANCH MUNICIPAL UTILITY DISTRICT OF COMAL COUNTY**  
**TCEQ DOCKET NO. 2016-1129-DIS**

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FOR ALTERNATIVE DISPUTE

RESOLUTION:

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REQUESTER:

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