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Vic McWherter, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 2, 2021

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

RE: **LAKEVIEW MUNICIPAL UTILITY DISTRICT NO. 3  
OF ELLIS COUNTY  
TCEQ DOCKET NO. 2021-0573-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney  
Assistant Public Interest Counsel



**DOCKET NO. 2021-0573-DIS**

**PETITION FOR THE CREATION  
OF LAKEVIEW MUNICIPAL  
UTILITY DISTRICT NO. 3 OF  
ELLIS COUNTY**

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§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO HEARING REQUESTS**

**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 Hearing Requests in the above-entitled matter.

**I. Introduction**

**A. Summary of Position**

Preliminarily, OPIC notes that the TCEQ Chief Clerk's office received seven individual requests for a contested case hearing and three petitions and related documents containing approximately 180 signatures requesting a hearing in this matter. For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of Ellis County and the City of Waxahachie and refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. OPIC further recommends that the Commission deny all remaining hearing requests.

**B. Background**

Finch FP, Ltd. (Petitioner), filed a petition for the creation of Lakeview Municipal Utility District No. 3 of Ellis County (the District) pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The application was declared administratively

complete on November 13, 2020. On March 24, 2021 and March 31, 2021, the Notice of District Petition was published in the *Waxahachie Daily Light*. On March 17, 2021, the Ellis County Clerk posted the notice on the bulletin board used for posting legal notices in Ellis County. According to the notice, the proposed District shall consist of approximately 135.745 acres and would be located within Ellis County. The comment and contested case hearing request periods ended on April 30, 2021.

## II. Applicable Law

A municipal utility district (MUD or a 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 found 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, 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.

TWC § 54.012.

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. *Id.* Among other things, 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).

If all of the district is proposed to be located outside corporate limits of a municipality, 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). If the commissioners court votes to make a recommendation to the Commission, 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 court thinks 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 § 54.015 and the project is feasible, practicable, necessary, and further, 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 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, it 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. Additionally, 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, or an "affected person" under the factors in 30 TAC, Chapter 55. TWC § 49.011(c). *See also* 30 TAC § 55.250 (applying rules governing 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(c).

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 explaining 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.” 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. An interest common to members of the general public does not qualify as a personal justiciable interest.” 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, complies with the requirements of § 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b).

### **III. Discussion**

#### **Requests by Elected Officials**

##### *State Senator Brian Birdwell*

State Senator Brian Birdwell filed a hearing request on July 9, 2021. While there are special

statutory and regulatory provisions relating to a legislator's request for a public meeting, there are no specific requirements relating to requests for a contested case hearing filed by a legislator. Therefore, Senator Birdwell's request has been analyzed under the requirements applicable to all contested case hearing requests. Senator's Birdwell's request was received after the deadline for requesting a contested case hearing in this matter had already passed. Consequently, because the hearing request was not timely received by TCEQ, OPIC must respectfully recommend its denial.

State Representative Jake Ellzey

State Representative Jake Ellzey timely filed a hearing request on April 16, 2021. In his filing, he explained that he is the State Representative for the impacted area and expressed concern about the negative impacts the district could have on his constituents. As mentioned above, there are no specific requirements relating to hearing requests filed by legislators. Such requestors are subject to the affected person analysis applicable to all requestors. A requestor must articulate an interest that relates to a legal right, duty, privilege, power, or economic interest affected by the petition in their request. 30 TAC § 55.256(c). Without a contention that creation of the proposed District would affect his personal interests, Representative Ellzey's general statement of concern in his role as a legislator does not fulfill this requirement. Consequently, OPIC is unable to find that Representative Ellzey has demonstrated that he has a personal justiciable interest in this matter and must respectfully recommend denial of his hearing request.

**Requests by Local Governments**

Ellis County

TCEQ received a timely request for a contested case hearing in this matter from Ellis County on April 16, 2021. In its hearing request, Ellis County stated that it has authority over various functions, including transportation, emergency services, and health and safety, that may



be affected by the proposed District. The County is further concerned with contamination or depletion of groundwater, the lowering of water quality, and subsidence. The request also points out that the proposed District is to be located entirely outside the corporate limits of a city. According to the proposed District's petition for creation, it will be located within Ellis County.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Ellis County, acting through its commissioners court, is empowered by statute to provide an opinion for consideration by the Commission regarding the creation of the proposed District. *See* TWC § 54.0161. Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Here, the County has identified interests related to water quality, groundwater, and subsidence—all of which are relevant to the Commission's decision in this matter. TWC § 54.021(b)(3)(B), (C), (F). Therefore, OPIC concludes that Ellis County is an affected person and respectfully recommends that the Commission grant its hearing request.

*City of Waxahachie*

TCEQ received a timely request for hearing in this matter from the City of Waxahachie on April 16, 2021. In its hearing request, the City explains that the proposed District will be located entirely within its extraterritorial jurisdiction (ETJ). Waxahachie states that it has authority over various city functions and services, including water and sewer services and emergency services that may be affected by the proposed District. The City has authority to protect public health and safety and regulate development within its ETJ.<sup>1</sup> The City further explains that it has sewer facilities near the proposed District and, as a water and sewer provider, the City has an interest in

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<sup>1</sup> *See* Tex. Loc. Gov't Code 42.001, 212.044.

regionalization of waste systems under TWC § 26.081(a).

Based on the information provided in its request, OPIC concludes that Waxahachie qualifies as an affected person. The City has shown it has authority under state law over issues contemplated by the petition for creation. 30 TAC § 55.256(b). Additionally, it has shown it has statutory authority over or interest in issues relevant to the application. 30 TAC § 55.256(c)(6). Therefore, OPIC respectfully recommends granting the City of Waxahachie's hearing request.

### **Individual Requests**

#### **Robert and Betty Arwine**

Robert and Betty Arwine timely submitted a hearing request on April 16, 2021 raising concerns about high density housing that may be associated with the proposed District. The Arwines provided an address, which, according to the map prepared by the ED's staff, is approximately 0.1 miles from the boundary of the proposed District at its closest point. While their residence is in relatively close proximity to the proposed District, their stated concern about high density housing does not relate a legal right, duty, privilege, power, or economic interest affected by the application and is not an interest which is protected by the law under which the application will be considered. *See* 30 TAC § 55.256. Therefore, OPIC finds that Robert and Betty Arwine do not qualify as affected persons and must respectfully recommend denial of their hearing request.

#### **Rachel Ashcraft**

The Commission received a timely hearing request from Rachel Ashcraft on April 19, 2021. Ms. Ashcraft provided an address that according to the ED's map is approximately 1.6 miles from the proposed District's nearest boundary. Ms. Ashcraft stated concerns regarding the overcrowding of schools and traffic increases which will cause an increase in emergency response times. The intervening distance between Ms. Ashcraft's residence and the proposed District greatly

diminishes the likelihood that she will be affected by the proposed District in a way not common to members of the general public. Further, her stated concerns do not relate a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.256(a). Therefore, OPIC finds that Rachel Ashcraft does not qualify as affected person and must respectfully recommend denial of her hearing request.

*Christopher and Kori Dillow*

The Commission received a timely hearing request from Christopher and Kori Dillow on April 19, 2021. In their request, they raised various concerns, including concerns related to water drainage. The Dillows provided an address which is approximately 1.5 miles away from the proposed District's nearest boundary. When deciding on a petition for creation of a district, the Texas Water Code requires the Commission to consider whether a district and subsequent development within it will have an unreasonable effect on natural run-off rates and drainage. TWC § 54.021(b)(3)(E). However, the intervening distance between the Dillows' residence and the proposed District greatly diminishes the likelihood that they will be affected by the proposed District in a way not common to members of the general public. Therefore, OPIC concludes that Christopher and Kori Dillow do not qualify as affected person and must respectfully recommend denial of their hearing request.

*Kyle Dillow*

The Commission received a timely hearing request from Kyle Dillow on April 19, 2021. In his request, he states various concerns relating to the proposed District's effects on roads, schools, and infrastructure. Mr. Dillow provided an address that according to the ED's map is approximately 1.5 miles from the proposed District's nearest boundary. Mr. Dillow's stated concerns do not relate a legal right, duty, privilege, power, or economic interest affected by the

application. 30 TAC § 55.256(a). Further, the intervening distance between his residence and the proposed District greatly diminishes the likelihood that he will be affected by the proposed District in a way not common to members of the general public. Therefore, OPIC finds that Kyle Dillow does not qualify as affected person and must respectfully recommend denial of his hearing request.

Travis Dillow

The Commission received a timely hearing request from Travis Dillow on April 19, 2021. Among other concerns, Mr. Dillow stated that he is concerned with water drain-off issues related to the proposed District. Mr. Dillow provided an address that according to the ED's map is approximately two miles from the proposed District's nearest boundary. It is proper for the Commission to consider natural run-off rates and drainage when deciding on a MUD creation. TWC § 54.021(b)(3)(E). However, the intervening distance between his residence and the proposed District greatly decreases the likelihood that he will be affected by the proposed District in a way not common to members of the general public. Therefore, OPIC finds that Travis Dillow does not qualify as affected person and must respectfully recommend denial of his hearing request.

Jesse Estrada

The Commission received an untimely hearing request from Jesse Estrada on June 1, 2021. Mr. Estrada provided an address that according to the ED's map is approximately two miles from the proposed District's nearest boundary.

Commission rule provides that "a hearing request must be filed with the chief clerk within the time period specified in the notice." 30 TAC § 55.251(d). Here, the notice stated that TCEQ may grant a hearing if a request is filed within 30 days after newspaper publication of the notice. The second publication of this notice occurred on March 31, 2021, therefore, all requests must

have been received by April 30, 2021 to be considered timely. His request was not timely received by the Commission, and OPIC must respectfully recommend its denial on that basis. Additionally, OPIC notes that Mr. Estrada's stated concerns do not relate to a legal right, duty, privilege, power, or economic interest affected by the proposed District. 30 TAC § 55.256(a). Therefore, OPIC finds that Jesse Estrada does not qualify as affected person and must respectfully recommend denial of his hearing request.

*Sylvia Estrada*

The Commission received a timely hearing request from Sylvia Estrada on April 19, 2021. Her request states concerns relating to the proposed District's effects on water pressure and traffic. She also expresses displeasure over the creation of a high-density neighborhood. Ms. Estrada provided an address that according to the ED's map is approximately two miles from the proposed District's nearest boundary. Ms. Estrada's concerns do not relate a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.256(a). Further, the intervening distance between her residence and the proposed District greatly diminishes the likelihood that she will be affected by the proposed District in in a way not common to members of the general public. Therefore, OPIC finds that Sylvia Estrada does not qualify as affected person and must respectfully recommend denial of her hearing request.

*Lynn and Patricia Foster*

The Commission received a timely hearing request from Lynn and Patricia Foster on April 19, 2021. The Fosters outlined concerns regarding, among other things, water drainage. They provided an address that according to the ED's map is over four miles from the proposed District's nearest boundary. While issues regarding drainage are proper for Commission consideration when deciding on a petition for creation of a district under TWC § 54.021(b)(3)(E), the intervening

distance between the Fosters' location and the proposed District greatly decreases the chances that they will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that Lynn and Patricia Foster do not qualify as affected persons and must respectfully recommend denial of their hearing request.

William Koonce

The Commission received a timely hearing request from William Koonce on April 19, 2021. Mr. Koonce stated that he is concerned that the proposed District will be a burden on infrastructure and will stress the education and drainage systems. Mr. Koonce provided an address that according to the ED's map is approximately 1.8 miles from the proposed District's nearest boundary. The Commission's consideration of drainage is proper in this matter. TWC § 54.021(b)(3)(E). However, the intervening distance between Mr. Koonce's location and the proposed District greatly diminishes the likelihood that he will be affected by the District in a manner that differs from the general public. Therefore, OPIC concludes that William Koonce does not qualify as an affected person and must respectfully recommend denial of his hearing request.

Brandon and Paula Lee

The Commission received two identical timely hearing requests from Brandon and Paula Lee on April 19, 2021. The Lees provided an address which is approximately 1.8 miles away from the proposed District's nearest boundary. Their requests stated a number of concerns, including infrastructure and traffic, however, none of them relate to a legal right, duty, privilege, power, or economic interest affected by the application as required by 30 TAC § 55.256. A requestor must state a personal justiciable interest to be found an affected person. Additionally, the intervening distance between the Lees' location and the proposed District greatly decreases the chances that they will be affected by the District in a manner that differs from the general public. Therefore,

OPIC finds that Brandon and Paula Lee do not qualify as affected persons and must respectfully recommend denial of their hearing requests.

*Tim Mentzel*

The Commission received a timely hearing request from Tim Mentzel on April 19, 2021. His request states concerns relating to the proposed District's effects on water usage, traffic, and property values. He also states that a high-density neighborhood would negatively impact him. Mr. Mentzel provided an address that according to the ED's map is approximately 1.8 miles from the proposed District's nearest boundary. Mr. Mentzel's stated concerns do not relate a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC § 55.256(a). Additionally, the intervening distance between Mr. Mentzel and the proposed District greatly diminishes the chances that he will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that Tim Mentzel does not qualify as affected person and must respectfully recommend denial of his hearing request.

*David and Joy Noack*

The Commission received a timely hearing request from David and Joy Noack on April 19, 2021. Among other things, the Noacks stated that they are concerned with the proposed District's impact on water drainage. The Noacks provided an address that according to the ED's map is over four miles from the proposed District's nearest boundary. While issues regarding drainage are proper for Commission consideration under TWC § 54.021(b)(3)(E), the substantial intervening distance between the requestors and the proposed District greatly diminishes the likelihood that they will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that David and Joy Noack do not qualify as affected persons and must respectfully recommend denial of their hearing request.

Christi Piekos

The Commission received a timely hearing request from Christi Piekos on April 19, 2021. Ms. Piekos' stated concerns include concerns regarding the proposed District's effects on water quality. She provided an address that according to the ED's map is approximately two miles from the proposed District's nearest boundary. While the Commission must consider whether the proposed District will have an unreasonable effect on water quality, the substantial intervening distance between Ms. Piekos and the proposed District greatly decreases the chances that she will be affected in a manner that differs from the general public. Therefore, OPIC finds that Christi Piekos does not qualify as an affected person and must respectfully recommend denial of her hearing request.

Kenneth and Sharon Plunkett

The Commission received a timely hearing request from Kenneth and Sharon Plunkett on April 19, 2021. The Plunketts provided an address which is approximately 1.8 miles away from the proposed District's nearest boundary. Their request states that they are concerned with overcrowding of schools, crime, and property taxes. These concerns do not relate a legal right, duty, privilege, power, or economic interest affected by the application as required by 30 TAC § 55.256. A requestor must state a personal justiciable interest to be found an affected person. Additionally, the intervening distance between the Plunketts and the proposed District greatly decreases the likelihood that they will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that Kenneth and Sharon Plunkett do not qualify as affected persons and must respectfully recommend denial of their hearing requests.

Robert and S. Lois Stone

The Commission received two timely hearing requests from Robert and S. Lois Stone on



April 19, 2021. The Stones provided an address which is approximately 1.1 miles away from the proposed District's nearest boundary. Their requests outline a number of concerns, including infrastructure, road congestion, and property values. However, none of those concerns relate a legal right, duty, privilege, power, or economic interest affected by the application as required by 30 TAC § 55.256. Therefore, OPIC finds that Robert and S. Lois Stone do not qualify as affected persons and must respectfully recommend denial of their hearing requests.

Tabitha Tricomi-Rogers

The Commission received a timely hearing request from Tabitha Tricomi-Rogers on April 19, 2021. Ms. Tricomi-Rogers stated that the proposed District will be a burden on infrastructure and will stress the education and drainage systems. Ms. Tricomi-Rogers provided an address that according to the ED's map is approximately 1.8 miles from the proposed District's nearest boundary. The Commission's consideration of drainage is proper in this matter. TWC § 54.021(b)(3)(E). However, the intervening distance between Ms. Tricomi-Rogers' location and the proposed District greatly decreases the probability that she will be affected by the District in a manner that differs from the general public. Therefore, OPIC concludes that Tabitha Tricomi-Rogers does not qualify as an affected person and must respectfully recommend denial of her hearing request.

Judy Patenaude

The Commission received a timely hearing request from Judy Patenaude on April 16, 2021. Among other concerns, Ms. Patenaude stated that she is concerned with water run-off from the proposed District. Ms. Patenaude provided an address that according to the ED's map is approximately two miles from the proposed District's nearest boundary. While issues regarding drainage are proper for Commission consideration under TWC § 54.021(b)(3)(E), the considerable

intervening distance between the requestor and the proposed District greatly decreases the chances that she will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that Judy Patenaude does not qualify as an affected person and must respectfully recommend denial of her hearing request.

*Daniel and Heather Peavy*

The Commission received timely hearing requests from Daniel and Heather Peavy on April 16, 2021. The Peavys provided an address which is approximately 1.8 miles away from the proposed District's nearest boundary. While their requests stated a number of concerns, none of them relate a legal right, duty, privilege, power, or economic interest affected by the application as required by 30 TAC § 55.256. Additionally, the intervening distance between the Peavys and the proposed District greatly diminishes the chances that they will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that Daniel and Heather Peavy do not qualify as affected persons and must respectfully recommend denial of their hearing requests.

**Petition Requests**

*First Petition*

The Commission received a timely petition requesting a contested case hearing on April 19, 2021. The petition contained a cover letter signed by Vickie Dillow.<sup>2</sup> Ms. Dillow's residence is located approximately 1.5 miles from the proposed Facility. The signature pages attached to the petition were signed by the following individuals: Tabitha Faulkner (1.8 miles),<sup>3</sup> Kathy Lowery

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<sup>2</sup> OPIC notes that on April 19, 2021, TCEQ received a second, individual request for hearing in this matter from Vickie Dillow. However, her second request does not raise issues that are within TCEQ's jurisdiction to consider when deciding on a District creation and OPIC respectfully recommends its denial.

<sup>3</sup> Note: After each requestor's name, OPIC has included the approximate distance from that requestor's address to the proposed District's boundary.

(3.7 miles), Tracy Evatt (1.5 miles), Sarita Heitman (3.7 miles), Gary Reed (2 miles), Stacy Reed (2 miles), William Rogers (1.8 miles), Tabitha Tricomi-Rogers (1.8 miles), Kenneth Hall (1.6 miles), Kenneth Hall Sr. (1.6 miles), Anne Hall (1.6 miles), Megan Dillow (1.5 miles), Sharon Plunkett (1.3 miles), Mike Foran (1.8 miles), Daniel Frisse (1.6 miles), Stephanie Frisse (1.6 miles), Randy Rogers (2 miles), Casey Rogers (2 miles), Paula Lee (1.8 miles), Kyle Dillow (1.5 miles), John Boswell (1.5 miles), Marvin Wilkins (2 miles), Cathy Wilkins (2 miles), Monica Hall (1.6 miles), Betty Thomas (2 miles), Jim Thomas (2 miles), and Kenneth Plunkett (1.3 miles). OPIC notes that two additional signatures on the petition were illegible.

The cover letter attached to the petition and each individual signature page request a hearing and state concerns regarding the proposed District's effects on infrastructure, the education system, and stormwater drainage. While issues regarding drainage are proper for Commission consideration under TWC § 54.021(b)(3)(E), the considerable intervening distances between all requestors and the proposed District greatly diminishes the likelihood that any of them will be affected by the District in a manner that differs from the general public. Therefore, OPIC finds that these requestors have not demonstrated that they qualify as affected persons and must respectfully recommend denial of their hearing requests.

### Second Petition

The Commission received a timely petition requesting a contested case hearing on April 16, 2021. The cover letter attached to the petition explained that it was submitted by "The Attached Residents of Ellis County".

The petition was signed by the following individuals: Richard Lucas, Linda Doyner, Keith Finch, Ron Bizzelli, Tiffiney Hearn, John Granatino, Trudy Fedako, Inocente Mendoza, Lanette and Terry Skipper, Marcey and Cody West, Ryan and Amanda Davila, Dana Stanton, Kelly Green,

William Roberts, Elizabeth and Curtis Green, Brian Carpenter, Phil Luna, Julie Malatra, Curtis Bowen, Joshua Gifford, Gregory and Jennifer Kroeger, Scott Stewart, Joe and Pamela Fields, Ricky Butler, JD Green, Ashley Luna, A. and Drew Myers, Dennis Little, David Eubank, Erika and Dylan Allen, Vicki Carter, Lorette Phillips, Jodi Spillers, Don Spillers, Codi Spillers, Sherri and Jeff Durrett, Angela Turner, Ted and Sheree Ulmer, Dawn Taylor, Hector Calderon, Cyrus Myers, Jordan and Melissa Rybak, Janiece Okpuzor, Nicholas Horvatic, Sheela Ogletree, Elizabeth Ortiz, Kristie and Thomas Carr, Alejandra and Alberto Miranda, Rebecca Williams, Carole Wells, Gary Weber, Bev Carrick, Tonya and Alfredo Martinez, Stephen Simmons, Misty Simmons, Sage Simmons, Stephen Simmons Sr., Angelina Montoya, Kermit Rodriguez, Rosa Ufret, David and Erin Lopez, Carlos Lewis, Jon and Sarah Jensen, Josh and Carrie Bunting, Richard Olmos, Lucy Schultz, Ronnett Beasley, Katy and Paul Warsing, Steven Wright, Diane Dunis, Marsha and John Rowan, Nereyda Martinez, John Ross, Edgar Morales, William McAllister, Evelene Gage, Jarrett Wilson, Craig and Kelly Harper, Andrew Gamm, and Bill Eubanks.<sup>4</sup> OPIC notes that the signature pages also contain approximately six illegible names.

The signature pages include names, addresses, and signatures. Most, but not all, of the signature pages also expressly request a “formal case hearing”. However, beyond a general statement of opposition, neither the cover letter nor the signature pages state any concerns about the proposed District. A request, including those submitted through a petition, must explain how and why a requestor believes they will be affected by the proposed District in a manner not common to members of the general public. 30 TAC § 55.251(c)(2). The requests contained within the petition do not contain any statements explaining how the requestors would be affected by the proposed District, therefore, OPIC must respectfully recommend their denial.

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<sup>4</sup> OPIC notes that Richard and Darlene Murphy’s signatures also appeared on the petition. However, they contested the validity of their hearing requests and withdrew their requests on May 13, 2021.

Additionally, included with this petition are a number of letters and statements authored by following individuals: Greg and Tammy Wimbish, Richard and Robin Carroll, Carlton and Jackie Milam, Caroline and Chase Taylor, Robert and Betty Arwine, Richie (Richard) Carroll, Melinda and James (Jim) Kocian, Mary and Cameron Kocian, Lindsey and Douglas Anderson, Trudy and Todd Harlow, Sherry Radonovic, Gregg and Julie Hardin, Stephanie, Justin, and Reggie Baird, Brad and Jennifer Wolfe, Hollis Wolfe, Alan Roque, Melissa Neal, Matthew Palmer, Clay Allison, John Tryon, and Sharon Tryon. With one exception, these submittals do not actually request hearings.<sup>5</sup> A request must, among other things, request a contested case hearing. 30 TAC § 55.251(c)(3). Also, many of these submittals do not raise concerns that are within the Commission's jurisdiction to consider when deciding on a district creation. Accordingly, OPIC cannot find that these requestors qualify as affected persons and must recommend that their hearing requests be denied.

### *Third Petition*

The Commission received a timely petition requesting a contested case hearing on April 19, 2021. The petition was submitted by Michelle Hillery and was signed by the following individuals: Michelle Hillery, Brian Cupp, Rick Cate, Lisa Henson, Brian Henson, Gayle Tuma, Judy Geeslin, Barbie Bravenec, and Lauren Biscamp. The cover letter attached to the petition states that the proposed District would affect the rural areas of Ellis County and, because of the area's limited infrastructure, have a negative impact on existing properties and agriculture. The cover letter expressly requests a contested case hearing, and all signature pages attached to it reference

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<sup>5</sup> OPIC notes that Sharon Tryon did expressly request a hearing, writing "Land value will depreciate - we want a cash hearing." Based on this statement, it is unclear to OPIC whether Ms. Tryon is requesting a TCEQ contested case hearing or some other type of proceeding. To the extent that Ms. Tryon is requesting a contested case hearing, her request does not identify any interest related to a legal right, duty, privilege, power, or economic interest affected by the application, and therefore, OPIC must respectfully recommend its denial.

“contested case hearing request”.

The requestors’ concerns do not appear to relate to a legal right, duty, privilege, power, or economic interest affected by the proposed District and are too generally stated to differentiate them from concerns that are shared with the general public. 30 TAC 55.256(a). Therefore, OPIC finds that these requestors have not demonstrated that they qualify as affected persons and must respectfully recommend denial of their hearing requests.

#### **IV. Conclusion**

For the reasons set forth above, OPIC respectfully recommends the Commission find that Ellis County and the City of Waxahachie qualify as “affected persons”, grant their hearing requests, and refer the matter to SOAH for a contested case hearing. OPIC further recommends the Commission deny all other hearing requests.

Respectfully submitted,

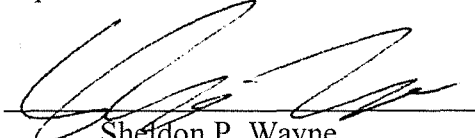
Vic McWherter  
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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2021, the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne





**MAILING LIST**  
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**TCEQ DOCKET NO. 2021-0573-DIS**

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**REQUESTERS:**

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State Representative  
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145 Denali Way  
Waxahachie, Texas 75167

Concerned Citizen  
192 Denali Way  
Waxahachie, Texas 75167

Concerned Citizen  
145 Vail Ln  
Waxahachie, Texas 75167

Concerned Citizen  
212 Denali Way  
Waxahachie, Texas 75167

Concerned Citizen  
The Residents of Ellis County  
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Concerned Citizen  
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