

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



*Vic McWherter, Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 30, 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: ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984  
TCEQ DOCKET NO. 2021-1560-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 that reads "Vic McWherter".

Vic McWherter  
Public Interest Counsel

cc: Mailing List



**DOCKET NO. 2021-1560-DIS**

**PETITION FOR THE CREATION  
OF ELLIS COUNTY MUNICIPAL  
UTILITY DISTRICT FM 984**

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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-captioned matter.

**I. Summary of Position**

OPIC respectfully recommends that the Commission grant the hearing requests of Ellis County and the City of Ennis and refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

**II. Background**

On February 2, 2021, Waxahachie Creek Ranch, LLC (Petitioner or Applicant) filed the pending petition with TCEQ requesting the creation of Ellis County Municipal Utility District FM 984 (the District). The District would contain approximately 530.5733 acres located within Ellis County and wholly within the extraterritorial jurisdiction (ETJ) of the City of Ennis. The application was declared administratively complete on February 10, 2021. On July 25, 2021 and August 1, 2021, the Notice of District Petition was published in *The Ennis News*, a newspaper generally circulated in Ellis County. On July 23, 2021, the notice was also posted in the Ellis County Courthouse on the bulletin board used for posting legal notices. The period to request a contested case hearing ended on August 31, 2021. Ellis County and the City of Ennis each filed

timely hearing requests on August 13, 2021.

### **III. Applicable Law**

Petitioner requests creation of the District pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code (TWC), 30 Texas Administrative Code (TAC) Chapter 293, and the procedural rules of the TCEQ. A district 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.

TWC § 54.012.

If a proposed district is within the ETJ of a municipality, procedures set forth in TWC § 54.016 and Local Government Code § 42.042 require the municipality's consent to creation of the district. If efforts to obtain that consent fail, § 42.042 further requires steps to seek service for the land in question from the municipality. If efforts to obtain consent or service from the municipality are unsuccessful, § 42.042 (f) states that a petition for creation of the district can then be filed with TCEQ.

If the district is proposed to be located outside the corporate limits of a municipality, the commissioners court of the county in which the district is to be located has a right to evaluate the petition and related information. TWC § 54.0161(a). The county commissioners court has authority to submit a written recommendation to TCEQ as to whether the district should be created.

This recommendation may be supported by proposed findings and conclusions offered by the county. TWC § 54.0161(b). By statute, TCEQ is required to consider the written opinion submitted by the county before making a final determination on the petition. TWC § 54.0161(c).

The petitioner 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. 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). Hearing requests must be filed during the 30 days following the final notice publication date. TWC § 49.011(c).

The Commission shall hold a public hearing if requested by an “affected person.” 30 TAC § 55.255(b). 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). Requestors must identify their personal justiciable interest by explaining how and why they would be affected by the proposed activity in a manner not common to members of the general public. 30 TAC § 55.251(b)–(d). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). In determining whether governmental entities are affected persons, the Commission considers their statutory authority over or interest in issues relevant to the application. 30 TAC § 55.256(c).

#### **IV. Discussion**

##### *Ellis County*

Ellis County (the County) timely filed a hearing request on August 13, 2021. The District would be located wholly 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). The requestor cites to its statutory authority relating to County functions that may be affected by the proposed District, including oversight of transportation, emergency services, and protection of residents' health and safety. The County is also concerned about groundwater and water quality, issues that are relevant to the Commission's decision in this matter under TWC § 54.021(b)(3)(C) and (F). Furthermore, Ellis County is authorized by TWC § 54.0161 to provide an opinion for consideration by the Commission regarding the creation of the proposed District. Therefore, OPIC concludes that Ellis County is an affected person and respectfully recommends that the Commission grant its hearing request.

City of Ennis

The City of Ennis (the City) filed a timely hearing request on August 13, 2021. The proposed District would be located entirely within the City's ETJ. The City cites to its statutory authority over various city functions and services that may be affected by the proposed District, including water and sewer services and emergency services. The City has authority to protect public health and safety and to 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 regionalization of waste systems under TWC § 26.081(a). In addition, the City has a unique statutory interest in this matter because of TWC § 54.016(a) and Local Government Code § 42.042. These statutes detail requirements relating to obtaining a municipality's consent to create a district within that municipality's ETJ. For these reasons, the City has shown it has authority under state law over issues contemplated by the petition. 30 TAC § 55.256(b). Therefore, OPIC respectfully recommends the Commission find that the City is an affected person and grant its hearing request.

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

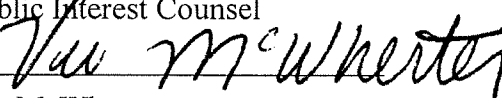
#### IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission find that Ellis County and the City of Ennis are affected persons, grant their hearing requests, and refer this matter to SOAH for a contested case hearing.

Respectfully submitted,

Vic McWherter  
Public Interest Counsel

By



Vic McWherter

State Bar No. 0078565

P.O. Box 13087, MC 103

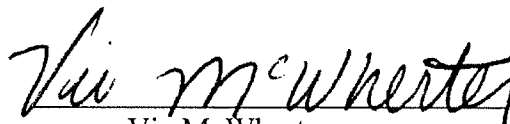
Austin, Texas 78711-3087

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#### CERTIFICATE OF SERVICE

I hereby certify that on December 30, 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.

  
Vic McWherter





**MAILING LIST**  
**ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984**  
**TCEQ DOCKET NO. 2021-1560-DIS**

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**FOR ALTERNATIVE DISPUTE**

**RESOLUTION:**

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