

TCEQ DOCKET NO. 2021-1560-DIS

APPLICATION	§	BEFORE THE
	§	
FOR THE CREATION OF ELLIS	§	
	§	TEXAS COMMISSION ON
COUNTY MUNICIPAL UTILITY	§	
	§	
DISTRICT FM 984	§	ENVIRONMENTAL QUALITY

**CITY OF ENNIS' AND ELLIS COUNTY'S
REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING
ON APPLICATION FOR THE CREATION OF ELLIS COUNTY MUNICIPAL
UTILITY DISTRICT FM 984**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”):

The City of Ennis, Texas (the “City”) and Ellis County, Texas (the “County”) file this Reply to Responses of the Executive Director (“ED”), the Office of Public Interest Counsel (“OPIC”), and Stephen Selinger (“Selinger”) to the City’s and County’s Request for Contested Case Hearing on the Application of Waxahachie Creek Ranch LLC (“Applicant”) for the creation of Ellis County Municipal Utility District FM 984.

I.

**INTRODUCTION AND REPLY TO THE ED’S AND OPIC’S RESPONSES TO THE
CITY’S AND COUNTY’S HEARING REQUESTS**

Waxahachie Creek Ranch LLC is applying to the TCEQ for creation of a new municipal utility district, Ellis County Municipal Utility District FM 984, TCEQ CN605858745. The City of Ennis and Ellis County oppose the creation of the District. By letter dated December 8, 2021, the TCEQ set a deadline of January 14, 2022 for the City and County to file a formal written reply to any response to hearing requests filed by the Applicant, the ED, or OPIC. This reply is therefore timely filed.

As both the ED and OPIC note in their respective Responses to Hearing Request, the City and County have timely requested a contested case hearing regarding the issues raised in their public comments filed at TCEQ. The City and County concur with both the ED and OPIC in their conclusion that the City and County are “affected persons” entitled to a contested case hearing on issues raised in their hearing requests because the City and County have interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public. The proposed municipal utility district will be located within the extraterritorial jurisdiction (“ETJ”) of the City of Ennis and in Ellis County. Ennis and Ellis County has specific statutory authority to protect the public health and safety of those who reside within their respective jurisdictions, but moreover, the City has the authority to regulate orderly development within its ETJ. TEX. LOC. GOV’T CODE §§ 42.001, 212.044.

Further, Ennis has sewer facilities near the proposed district. As a regional water and sewer service provider, Ennis has an interest to ensure that new development regionalizes with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* TEX. WATER CODE § 26.081(a). Moreover, the proposed discharge point associated with the MUD application is upstream of a source of the City’s sole drinking water supply source, Lake Bardwell. This discharge could negatively affect the water quality of Lake Bardwell. The City and County therefore have an interest in protecting the water quality of its drinking water supply.

The ED states that “[t]he City has not indicated whether or not it has the ability to serve the area. However, the TCEQ Technical Memorandum states on page 3 that there are no other sources which have the facilities or capacity to serve the proposed district.” ED Response at 10.

The ED also states that it is “without evidence” as to whether the City has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service to the proposed development at a reasonable cost. The City agrees with the ED’s statement that these are fact questions which should be resolved in a contested case hearing.

For these reasons, the City and County agree with the ED’s and OPIC’s conclusions that the City and County are affected persons because they have interests in this Application that are not common to the general public, and are entitled to a contested case hearing on the application in order to properly adjudicate these issues based on record evidence.

II.

REPLY TO STEPHEN SELINGER’S RESPONSE TO THE CITY’S REQUEST FOR CONTESTED CASE HEARING

Stephen Selinger submitted a document entitled “Applicant’s Response to Requested Case Hearing by City of Ennis.” As a principal matter, Selinger represents himself in this submission as the Applicant, but as noted by the ED, the Applicant in this proceeding is the entity Waxahachie Creek Ranch, LLC. By its letter dated December 8, 2021, the TCEQ requested responses to the City’s and County’s requests for a contested case hearing only from the ED, OPIC, and the Applicant. As such, the Commission may disregard Selinger’s response to the City’s request for a hearing.

However, to the extent the Commission does consider Selinger’s comments, they merely demonstrate a material disputed issue of fact that is appropriately resolved through a contested case hearing. Selinger contends that “it is undisputed fact that Ennis was presented with a petition for water and sewer service and failed to present a contract for such service.” However, Selinger both assumes facts not in evidence and misstates the requirements of Texas Water Code § 42.042(c). The failure of the City and Applicant to execute a “mutually agreeable contract” for

the provision of water or sewer service within 120 days does not mean, as Selinger implies, that the City is estopped from “objecting to the creation of [Ellis County Municipal Utility District FM 984] and asking for a contested case hearing.”¹ Other provisions of the Texas Water Code containing requirements for the creation of a district still apply, and Applicant still must demonstrate compliance with them. As the ED explains, in order to grant an application for the creation of a MUD, the Commission must find that the organization of the district as requested is feasible and practicable, 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). The Applicant must prove these factors based on the criteria set out in TEX. WATER CODE § 54.021(b), which include the availability of service from other systems such as the City’s, the reasonableness of construction costs, tax rates, and water and sewer rates, and whether the district will have an unreasonable effect on water quality and other factors.

As discussed above, a number of these factors – particularly including the availability of service from the City and the effect of the Application on water quality in Lake Bardwell – are in material factual dispute. These are the disputed factual matters that the Applicant must prove in order to receive approval from TCEQ. As the ED notes, the lack of a “mutually agreeable contract” does not result in creation of the MUD or estop the City from requesting a hearing; it results in authorization of the Applicant to “initiate proceedings to include the land within the district as otherwise provided by this Act.” TEX. WATER CODE § 54.016(c). So, the Applicant may file its application, but affected persons may request a hearing on disputed, relevant issues pertaining to that application. The City has both authority and interests it must protect that are potentially adversely impacted by the Application, and therefore is an affected person with

¹ The City also contends that the Applicant did not negotiate with the City in good faith to reach a mutually agreeable contract for the provision of water and sewer service, and thus the Applicant should be barred from creating any district unless and until it actually engages in the statutorily-outlined process in good faith.

procedural rights to present evidence and argument in a contested case hearing on the criteria that Applicant must prove.

Further, even if the City does not grant permission for creation of the MUD and the parties are unable to execute a mutually agreeable contract for the provision of water or sewer service, the Water Code allows the Applicant to petition the Commission for creation of the MUD; this does not preclude the City from participation in this process. The issues raised by the City in its request for a hearing are relevant and determinative: “The commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner.” TEX. WATER CODE § 54.016(d). These are disputed issues that should properly be resolved in a contested case hearing.

IV.

CONCLUSION

The City and County respectfully urge the TCEQ to find that they are affected persons and grant their request for a contested case hearing on this Application and refer the issues as set out by the City and County in their requests for hearing.

Respectfully submitted,

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

Joshua D. Katz
State Bar No. 24044985
jkatz@bickerstaff.com

Kimberly Kelley
State Bar No. 24086651
kkelley@bickerstaff.com

BICKERSTAFF HEATH DELGADO ACOSTA LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

BY: 
Emily W. Rogers

*Attorneys for City of Ennis, Texas and Ellis
County, Texas*

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on January 14, 2022 a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.



Emily W. Rogers

MAILING LIST
ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984
DOCKET NO. 2021-1560-DIS; INTERNAL CONTROL NO. D-02052021-015

FOR THE APPLICANT

via electronic mail:

Mindy Koehne Coats Rose PC
14755 Preston Road, Suite 600
Dallas, Texas 75254
Tel: (972) 982-8461
Fax: (972) 982-9451
mkoehne@coatsrose.com

Eugene Middleton, P.E., President
Middleton & Associates, Inc.
2785 Rockbrook Drive, Suite 105
Lewisville, Texas 75067
972-393-9800, Ext. 1#
eugene@middleton-associates.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Hollis Henley, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-0600
Fax: (512) 239-0606
hollis.henley@tceq.texas.gov

Bijaya Chalise, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division, MC-152
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-4545
Fax: (512) 239-6972
bijaya.chalise@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division, MC-108
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311
<https://www14.tceq.texas.gov/epic/eFiling>

REQUESTER(S):

Emily W. Rogers
Bickerstaff Heath Delgado Acosta LLP
3711 South Mopac Expressway
Building 1, Suite 300
Austin, Texas 78746