

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

January 14, 2022

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: CHAMBERS COUNTY MUNICIPAL UTILITY DISTRICT NO. 4
TCEQ DOCKET NO. 2021-1620-DIS**

Dear Ms. Gharis:

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

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2021-1620-DIS

**PETITION FOR THE CREATION
OF CHAMBERS COUNTY
MUNICIPAL UTILITY
DISTRICT NO. 4**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO 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 Hearing Request in the above-entitled matter.

I. Introduction

A. Summary of Position

For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing request of Chambers County and refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

B. Background

Montgomery Estates, LLC (Petitioner), a Texas limited liability company, submitted a revised petition for creation of Chambers County Municipal Utility District No. 4 (District) with the TCEQ. The revised petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The revised petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District and is owner of a majority in value of the Land; (2) there are two lienholders, Wynona Marie Montgomery and Donna Lynn Montgomery Britt, and Allegiance

Bank, a Texas banking corporation, on the property to be included in the proposed District and the aforementioned entities have consented to the petition; (3) the proposed District will contain approximately 146.15 acres located within Chambers County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Cove, Texas.

The revised petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$14,355,423 (\$9,988,923 for water, wastewater, and drainage facilities and \$4,366,500 for roads.

The application was declared administratively complete on April 27, 2021. On October 26, 2021, and November 2, 2021, the Notice of District Petition was published in the *Houston Chronicle*. On November 22, 2021, the Chambers County Clerk posted the notice on the bulletin board used for posting legal notices in Chambers County. The comment and contested case hearing request periods ended on December 2, 2021. Chambers County timely filed a hearing request on

November 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

According to the proposed District’s petition for creation and the map prepared by the ED in this matter, the entire District will be located within Chambers County, and entirely outside the corporate limits of the City of Cove. Therefore, the creation of the District is subject to the procedures for County review and input authorized under TWC § 54.0161.

The County has an interest in protecting its citizens and the land within its jurisdiction. The County has expressed concern regarding potentially burdensome and unnecessary taxation of County citizens, as well as concern about drainage of County property. The hearing request recommends that the proposed District not be created. By statute, the County has authority and an

interest in making this recommendation and providing evidence and information that the County Commissioners think would assist the Commission in making a final determination on the petition. TWC § 54.0161(b). Also, by statute, the Commission must consider whether the proposed District and its system and subsequent development within the District will have an unreasonable effect on natural run-off rates and drainage, as well as total tax assessments on all land located within the District. TWC § 54.021(b)(2) and (b)(3)(E). The Chambers County Commissioners' concerns are relevant to the Commission's final determination on the petition. Based on the County's statutory authority over or interest in these issues that are relevant to the petition, OPIC finds that Chambers County is an affected person and respectfully recommends that the Commission grant its hearing request.

IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission find that Chambers County is an "affected person," grant its hearing request, and refer the matter to SOAH for a contested case hearing.

Respectfully submitted,

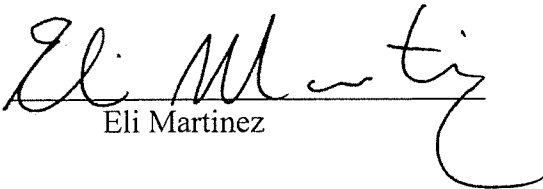
Vic McWherter
Public Interest Counsel

By: 

Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2022, the Office of Public Interest Counsel's Response to Hearing Request 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.


Eli Martinez

MAILING LIST
CHAMBERS COUNTY MUNICIPAL UTILITY DISTRICT NO. 4
TCEQ DOCKET NO. 2021-1620-DIS

FOR THE APPLICANT:

Bryan Yeates
Schwartz Page & Harding, LLP
1300 Post Oak Boulevard, Suite 1400
Houston, Texas 77056

Steven Ward
Ward Getz & Associates, LLP
2500 Tanglewilde Street, Suite 120
Houston, Texas 77063

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

Jaime Ealey, Technical Staff
TCEQ Water Supply Division MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4739 Fax: 512/239-6972

Ryan Vise, Director
TCEQ External Relations Division
Public Education Program, MC 108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Kyle Lucas
TCEQ Alternative Dispute
Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4010 Fax: 512/239-4015

FOR THE CHIEF CLERK:

Laurie Gharis
TCEQ Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTERS:

Ashley Cain Land
Attorney, Chambers County
P.O. Box 939
Anahuac, Texas 77514

