

**TCEQ DOCKET NO. 2022-0532-DIS**

**APPLICATION FOR THE CREATION  
OF HIGHLAND LAKES MUNICIPAL  
UTILITY DISTRICT NO. 1**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**ELLIS COUNTY'S  
REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING  
ON APPLICATION FOR CREATION OF  
HIGHLAND LAKES MUNICIPAL UTILITY DISTRICT NO. 1**

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

Ellis County, Texas (the “County”) files this Reply to Responses of Applicant Highland Lakes Midlothian I, LLC (“Applicant”), the Executive Director (“ED”), and the Office of Public Interest Counsel (“OPIC”) to the City’s Request for Contested Case Hearing on the Application for the Creation of Highland Lakes Municipal Utility District No. 1 (the “Application”).

**I.  
INTRODUCTION**

The County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public, and therefore the County is an “affected person” and entitled to a contested case hearing on issues raised in its hearing request under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application to create a municipal utility district, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of the district and that the Application may adversely affect. Potential contamination of surface and/or groundwater

within the region may impact the County's ability to effectively provide emergency services, and may impact health and safety by lowering water quality in receiving water bodies. Further, the County's authority over roads, health and safety, and emergency services are potentially impacted by the Application. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person for the purposes of requesting a contested case hearing. 30 TEX. ADMIN. CODE § 55.256(b).

**II.**  
**REPLY TO APPLICANT'S RESPONSE TO THE COUNTY'S HEARING REQUEST**

The Applicant argues that the request of each local governmental entity for a contested case hearing on its application should be denied. While this would no doubt smooth the sailing for approval of the Application, state law and TCEQ administrative procedure protect the rights of affected persons to an evidentiary hearing as to whether the Application meets all relevant requirements and affects any potential party's interests.

Applicant believes that the County is not an affected person, and its request for a hearing should be denied, because, while Applicant acknowledges that the County has authority over transportation, emergency services, and health and safety, these items are "irrelevant" to TCEQ's consideration of the Application. The County respectfully suggests that its authority in these areas, and interests therein that are affected by the Application, entitle it to affected person status. In fact, numerous statutory powers of a county that are potentially affected by the Application include (but are not limited to) various provisions regarding road construction and maintenance, emergency services, and water:

- Texas Local Government Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations);

- Texas Transportation Code § 251.016 (general control over roads, highways and bridges); § 251.003 (county order and rulemaking authority for roads);
- Texas Local Government Code § 552.101 (regulation of water lines in county right of way);
- Texas Health and Safety Code § 121.003 (enforcement of laws to promote public health);
- Texas Health and Safety Code Chapter 366 (license procedures for private sewage facilities);
- Texas Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Texas Local Government Code § 352.001 et seq. (emergency fire protection service);
- Texas Government Code Chapter 418 (emergency management);
- Texas Health and Safety Code Chapter 343 (abatement of public nuisances);
- Texas Local Government Code § 561.003 (flood control);
- Texas Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities).

The Applicant intends to provide retail water and sewer utility service, construct facilities, manage stormwater, and construct or operate roadways within the proposed municipal utility district, which is located entirely within the County. As such, operations of the MUD may impact the County's interests and regulatory authority, as stated above, regarding public health and safety, roads, flood control, wastewater, and emergency management pursuant to these and other statutes, including the County's responsibility to provide emergency services that may be affected by the proposed district.

The County has concerns regarding the impact of the Application on groundwater and surface water quality. The Application poses the potential impact of treated effluent from

Applicant's project on tributary creeks, rivers, lakes, and aquifers within Ellis County. The County is authorized to provide an opinion to TCEQ regarding the potential creation of a MUD within the County,<sup>1</sup> but moreover, a relevant factor in determining whether the County qualifies as an affected person is the County's statutory authority over or interest in issues relevant to the application. 30 TEX. ADMIN. CODE § 55.256(c)(6). In addition to the statutory authority and public health and safety interests of a county listed above, water quality, for example, is a factor relevant to TCEQ's determination of this Application. Texas Water Code § 54.021(b)(3)(F). The County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person and request a hearing; it simply must show a potential harm or justiciable interest that will be affected by the application.<sup>2</sup>

Because the Application affects numerous interests and statutory authority of the County, the County should be considered an affected person and the TCEQ should grant the County's request for a contested case hearing on the Application.

**III.**  
**REPLY TO ED'S RESPONSE TO THE COUNTY'S HEARING REQUEST**

The County agrees with OPIC's recommendation related to the County's status as an affected person based upon the County's interest in issues relevant to the Application.

**IV.**  
**REPLY TO OPIC'S RESPONSE TO THE COUNTY'S HEARING REQUEST**

The County agrees with OPIC's recommendation related to the County's status as an affected person based upon the County's interest in issues relevant to the Application.

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<sup>1</sup> Texas Water Code § 54.0161.

<sup>2</sup> *United Copper v. TNRCC*, 17 S.W.3d 797, 903 (Tex. App.—Austin 2000, pet. dism'd).

V.  
**CONCLUSION**

The County urges the TCEQ to find that the County is an affected person so that it may participate in a SOAH proceeding to protect its sole drinking water supply.

Respectfully submitted,

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BY:   
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**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on June 6, 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*  
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**DOCKET NO. 2022-0532-DIS; INTERNAL CONTROL NO. D-11302021-043**

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