

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**

**CITY OF WAXAHACHIE’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”):

The City of Waxahachie, Texas (the “City”) 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 City has timely requested a contested case hearing regarding the issues raised in its public comments filed with TCEQ. The City is an “affected person” entitled to a contested case hearing on issues raised in its hearing request because the City has 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 partially located within the extraterritorial jurisdiction (“ETJ”) of the City. The City has specific statutory authority to protect the public health and safety of those who reside within its ETJ, but moreover, to regulate orderly

development within its ETJ. TEX. LOC. GOV'T CODE §§ 42.001, 212.044. The City does not consent to creation of the MUD.

Further, as a regional water and sewer service provider, the City has an interest to ensure that new development in its ETJ regionalize with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* Texas Water Code § 26.081(a). For these reasons, the City has authority under state law over the issues contemplated by this Application, which is an interest not common to the general public, and it is entitled to a contested case hearing on the application in order to properly adjudicate these issues based on record evidence.

II.
REPLY TO APPLICANT'S RESPONSE TO THE CITY'S HEARING REQUEST

The Applicant states that the City is not an affected person largely because the proposed MUD is located partially within the City's ETJ and Applicant states that a City's regulatory authority regarding development, water, sewer, and drainage within its ETJ is limited in several respects by state law. However, a 1997 Attorney General's opinion concluded that a city can exercise its powers within its ETJ if such powers are "expressly or impliedly extended by the Texas Constitution or by statute to apply outside the limits. Extraterritorial power will be implied only when such power is reasonably incident to those powers expressly granted or is essential to the object or purposes of the city." Tex. Att'y Gen. Op. LO-97-055 (1997). State laws that authorize cities to regulate in their ETJ that are potentially impacted by the application include, but are not limited to:

- Texas Local Government Code Chapter 43 (Annexation);
- Texas Local Government Code § 212.003(a) (Subdivision and Platting Regulations);
- Texas Local Government Code § 217.042 (Nuisances within 5,000 feet);

- Texas Local Government Code § 552.001 (Utility System);
- Texas Water Code § 26.177 (Pollution Control and Abatement)

In particular, § 552.001 of the Texas Local Government Code gives a city authority to own land within its ETJ for the purpose of a utility system, to extend its lines outside of city boundaries, and to contract with persons within its ETJ to sell utility services. A city may also prescribe the kind of water or gas mains or sewer pipes that may be used within its ETJ and inspect those facilities, require that they be kept in good condition at all times, and “prescribe the necessary rules, which may include penalties, concerning them.” 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, including the portion within the City’s ETJ. As such, operations of the MUD may impact the City’s interests and regulatory authority pursuant to these and other statutes, including the City’s responsibility to provide emergency services that may be affected by the proposed district.

The City is an affected person because the City’s consent to creation of a municipal utility district within its ETJ is an interest that is protected by the law under which the Application will be considered, and the City’s (lack of) consent bears a “reasonable relationship” between the City’s interests and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(c)(1), (3), and (4). The ED and OPIC concluded that the City is an affected person and timely requested a hearing on this matter based on the City’s functions and services, including water and sewer, subsidence, regionalization, and emergency services, which may be affected by the proposed district. Further, the City has authority to protect public health and safety and regulate development within its ETJ. TEX. LOC. GOV’T CODE §§ 42.001, 212.044. The City agrees with the ED and OPIC’s conclusion that it is an affected person and that its request for hearing should be granted.

Further, Applicant's Response to the City's request for a contested case hearing disregards the City's interest as a regional sewer service provider pursuant to Texas Water Code § 26.081(a). In this statute, the Texas Legislature directs the TCEQ to observe its regionalization policy by encouraging interested and affected persons to cooperate in using regional systems. The purpose of regionalization is to protect the health, safety, and public welfare of the citizens of this state which, as discussed above, is a responsibility of the City. Providing wastewater service through a regional facility in a watershed helps protect the water quality of that watershed by limiting the number of potential sources of pollution. These larger facilities are able to use their economies of scale to provide economical service to customers in the area and are generally more financially capable. Regional providers like the City also tend to have greater expertise in safely operating and maintaining wastewater systems and treatment facilities. The City is an affected person for the additional reason that it operates a regional wastewater system and treatment facility and has an interest in the proper enforcement of the state's regionalization policy in order to protect the water quality within this watershed.

III.
REPLY TO ED'S RESPONSE TO THE CITY'S HEARING REQUEST

The City agrees with the ED's recommendation related to the City's status as an affected person based upon the City's interest in issues relevant to the application.

IV.
REPLY TO OPIC'S RESPONSE TO THE DISTRICT'S HEARING REQUEST

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

V.
CONCLUSION

The City urges the TCEQ to find that the City is an affected person so that it may participate in a SOAH proceeding to protect its interests and authority.

Respectfully submitted,

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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

Emily W. Rogers

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DOCKET NO. 2022-0532-DIS; INTERNAL CONTROL NO. D-11302021-043

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