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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 28, 2025

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: **IN THE MATTER OF THE PETITION FOR CREATION OF COLLIN
COUNTY MUNICIPAL UTILITY DISTRICT NO. 7
TCEQ DOCKET NO. 2022-0533-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2022-0533-DIS

**PETITION FOR THE
CREATION OF COLLIN
COUNTY MUNICIPAL UTILITY
DISTRICT NO. 7**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S
SECOND 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 Second Response to Hearing Requests in the above-entitled matter.

I. Introduction

A. Summary of Position

Preliminarily, OPIC notes that the TCEQ Chief Clerk's office received many new requests for a contested case hearing after the remand from the State Office of Administrative Hearings (SOAH), requiring additional notice. As outlined in the Administrative Law Judge's Order, parties previously admitted will remain parties for the duration of this proceeding, and as such, any re-submitted hearing requests by such persons have not been evaluated in detail. For the reasons discussed below, OPIC respectfully recommends that the Commission grant the hearing requests of the following individuals: Ashraf Aboulmaga, Lynnette Ammar, Calvin Arnold, Billy Barron, Robert Drese Bereuter, Bill Braswell, Linda Braswell, Hal E. Camp, Lance Caughfield, Susan Chen, Theresa Chen, Debbie Chisholm, John B Chisholm, Elizabeth Ann Cross, Jeffrey Neal Cross, Cynthia Daugherty, Timothy Daugherty, David Alberto de la Pena, Andrea L. Dennis, Keith

and Carmen Dulaney, Obinna Emechebe, Linda Marie Fletcher, Michele Floyd, Bhasker Garlapati, Katherine Calabria Harvey, Alesha R. Haynes, Michael Shaun Haynes, Anthony R. Hernandez, Jani Jasadiredja, Miriam Jasadiredja, Chip Justice, Cyndy Lane, Brad Levy, Candy Levy, Linda G. Loop, Steve Loop, John M. Lund, Dianne Elizabeth Lundberg, Edwin D. Lundberg, Tom Marshall, Ann Stormer McCook, Zachary McCook, Michael G. McGraw, Pamela McGraw, Lay Wah Ooi, Lynne Anne Orozco, Kannan Palaniappan, Lee Pettie, Vicki B. Pilgrim, Heather Mae Powell, Lucy Jane Powell, Nettie Louise Powell, Bonnie C. Shea, Nathan Shea, Dan Shoop and Jeffrey Dwight, Joseph A. Stack, Tracy Stack, James Stanford, and Gabriela Tourne.

B. Background

Restore the Grasslands LLC, a Texas Limited Liability Company (RTG), submitted a joinder petition to the revised petition filed by Harrington/Turner Enterprises L.P, a Texas Limited Partnership (HTE), for creation of Collin County Municipal Utility District No. 7 (District) with the TCEQ 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. The deadline for a hearing request on the revised petitions was July 18, 2024.

The petitions state that: (1) RTG is the holder of title to the Property as shown by the Collin County Tax Rolls and conveyances of record in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District would contain approximately

101.829 acres located within Collin County; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Parker.

The petitions further state that the general nature of the work proposed to be done by the District is to: (1) construct a water supply and distribution system for domestic purposes; (2) construct a sanitary sewer conveyance and treatment system; (3) control, abate, and amend the harmful excess of waters and the reclamation and drainage of overflowed lands within the proposed District; (4) construct and finance macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) construct, install, maintain, purchase, and operate such other facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is organized.

Finally, to the revised petitions, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, that the cost of said project will be approximately \$44,210,000 (\$27,560,000 for water, wastewater, and drainage facilities and \$16,650,000 for roads).

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. TWC § 54.011. Chapters 49 and 54 of the Texas Water Code and the Commission's administrative rules found at Title 30, Chapter 293, of the Texas Administrative Code 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

A. Local Governments and Individuals Who Have Already Been Granted Party Status at SOAH

OPIC notes that two local governments and multiple individuals were granted party status in this matter at the preliminary hearing that took place on November 30, 2022. These parties will maintain their status once this matter returns to SOAH. The following local governments and individuals were granted party status at the preliminary hearing: City of Murphy, City of Parker, Don Wade Cloud, Jr., Katherine Harvey, Ray Hemmig, Laura Hernandez, Theodore Lane, Angelique Loncar, Andrew Malczewski, Carolyn Moebius, Lindy M. “Buddy” Pilgrim, Emily Plummer, and Stephanie Samuels.

B. Requestors Located in Close Proximity to the District’s Boundaries

The requestors in this section are located approximately one mile or less from the proposed District’s boundaries, which increases the likelihood that they will be affected in a way not common to members of the general public. Many of these requestors articulated concerns about the reasonableness of the tax rates and water rates, in accordance with TWC § 54.021(b)(2). Likewise, numerous

requestors took issue with the proposed District's potential adverse effects on water availability and recharge, run-off rates and drainage, and water quality. *See* TWC § 54.021(b)(3)(C)-(F). These articulated concerns are interests protected by the law under which this application is considered. *See* 30 TAC § 55.256(c)(1). Additionally, their locations, taken in combination with their stated concerns, demonstrate that these requestors possess a personal justiciable interest in this matter. *See* 30 TAC § 55.256(c)(2). Further, in accordance with 30 TAC § 55.256(c)(4), these requestors should be considered affected persons because the proposed District's potential effects on water recharge and quality, as well as run-off, could alter the requestors' health, safety, and use of property. Accordingly, OPIC respectfully recommends that the following requestors be found as affected persons by the Commission: Ashraf Aboulnaga, Lynnette Ammar, Calvin Arnold, Billy Barron, Robert Drese Bereuter, Bill Braswell, Linda Braswell, Hal E. Camp, Lance Caughfield, Susan Chen, Theresa Chen, Debbie Chisholm, John B Chisholm, Elizabeth Ann Cross, Jeffrey Neal Cross, Cynthia Daugherty, Timothy Daugherty, David Alberto de la Pena, Andrea L. Dennis, Keith and Carmen Dulaney, Obinna Emechebe, Linda Marie Fletcher, Michele Floyd, Bhasker Garlapati, Katherine Calabria Harvey, Alesha R. Haynes, Michael Shaun Haynes, Anthony R. Hernandez, Jani Jasadiredja, Miriam Jasadiredja, Chip Justice, Cyndy Lane, Brad Levy, Candy Levy, Linda G. Loop, Steve Loop, John M. Lund, Dianne Elizabeth Lundberg, Edwin D. Lundberg, Tom Marshall, Ann Stormer McCook, Zachary McCook, Michael G. McGraw, Pamela McGraw, Lay Wah Ooi, Lynne Anne Orozco, Kannan Palaniappan, Lee Pettie, Vicki B. Pilgrim,

Heather Mae Powell, Lucy Jane Powell, Nettie Louise Powell, Bonnie C. Shea, Nathan Shea, Dan Shoop and Jeffrey Dwight, Joseph A. Stack, Tracy Stack, James Stanford, and Gabriela Tourne.

C. Requestors Located Further Outside District's Boundaries

Many of these requestors articulated concerns that are within the Commission's jurisdiction to consider in this district creation matter, however they all provided addresses that are located at distances from the proposed District's boundaries which diminish the likelihood that they will be directly impacted. The addresses provided by these requestors range from 1.10 miles to 4.13 miles from the boundaries of the proposed District. While their concerns may include interests which are protected by the law under which this application will be considered, because of the intervening distance between these requestors and the proposed District, OPIC cannot conclude that they would be impacted by the District creation in a manner which is not common to the general public. Further, though the law imposes no distance restriction on these requestors, they reside at distances where a reasonable relationship does not exist between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(2)-(3). Therefore, OPIC finds that they have failed to demonstrate that they possess a personal justiciable interest in the matter as required by 30 TAC § 55.256(a). Consequently, OPIC finds that the following requestors do not qualify as affected persons: Joseph Patrick Corbett, Mohannad Hashem, Brian Hollon, Javid Jabbarnezhad, David Thomas Johns, Randy S. Kercho, Sonja Louis, Stephen Louis, Laura Mawhinney, Daniel Maynes, Kathy Pressley, William Michael

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OPIC's Second Response to Hearing Requests

Pressley, James C. Reed, Jackie Rivas, Laura E. Stanford, Jennifer Vanderhorn, Loretta Walter, and Kevin Walsh.¹

D. Requestors Whose Requests Were Untimely

The Commission received untimely hearing requests from Loc Chu and Shorouq Husein. Commission rules provide that “a hearing request must be filed with the chief clerk within the time period specified in the notice.” 30 TAC § 55.251(d). Here, all requests must have been received by July 18, 2024 to be considered timely. Because these requests were received after the deadline for requesting a contested case hearing, OPIC finds that these requestors do not qualify as affected persons.


IV. Conclusion

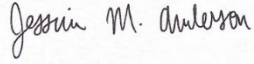
For the reasons set forth above, OPIC respectfully recommends the Commission find that the local governments and individuals identified in Sections III.A and III.B qualify as affected persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing.

¹ OPIC notes that under 30 TAC § 55.255(d), a decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under 30 TAC § 80.109, relating to designation of parties. A person whose hearing request is denied may still seek to be admitted as a party under § 80.109 if any hearing request is granted. Failure to seek party status is deemed a withdrawal of a person's hearing request.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2025, 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 electronic mail, and/or by deposit in the U.S. Mail.



Jessica M. Anderson

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TCEQ DOCKET NO. 2022-0533-DIS

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REQUESTER(S):

See attached list.

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