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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 27, 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: **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 Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, 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
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 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 approximately 128 requests for a contested case hearing in this matter. For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of the City of Murphy, the City of Parker, and the following individuals: Mir Abbas Abidi, Elizabeth Abraham, Lance Caughfield, Don Wade Cloud, Jr., Scheri Cloud, Jeffry Dwight, Linda Fletcher, Katherine Harvey, Michael Haynes, John Holton, Jena Holton, Jani Jasadiredja, Miriam Jasadiredja, Lisa Kester, Ammy Le, Valeda Logan, Angelique Loncar, John Loncar, Dianne Elizabeth Lundberg, Edwin Lundberg, Andrew Malczewski, Tom Marshall, Carrolyn Moebius, Ashesh Patel, Soumit Roy, Sylvia June Roy, Kimberly Ryan, Ashley Sekimoto, Ryan Sekimoto, Dan Shoop, Charles Spence, Gabriela Tourne, Sunil Unnikrishnan, Sreelaxmi Unnikrishnan, Tom Weis, and Linda Weis. OPIC further recommends that the Commission refer this matter to the State Office of Administrative

Hearings (SOAH) for a contested case hearing and deny all remaining hearing requests.¹

B. Background

Harrington/Turner Enterprises LP (Petitioner), filed a petition for the creation of Collin County Municipal Utility District No. 7 (the District) pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The application was declared administratively complete on April 27, 2021. On January 19, 2022 and January 26, 2022, the Notice of District Petition was published in *The Wylie News*. On January 18, 2022, the Collin County Clerk posted the notice on the bulletin board used for posting legal notices in Collin County. According to the notice, the proposed District shall consist of approximately 101.829 acres and would be located within Collin County. The comment and contested case hearing request periods ended on February 25, 2022.

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;

¹ OPIC notes that several requests for reconsideration were received by the Commission, however, 30 TAC, Chapter 55, Subchapter G does not allow for requests for reconsideration to be filed in connection with a Petition for District Creation. Therefore, OPIC did not include analysis of these requests in this response.

- (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).

To confer standing on a group or association, § 55.252 states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

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

Requests by Elected Officials

State Representative Candy Noble

State Representative Candy Noble filed a hearing request on February 25, 2022. While there are special statutory and regulatory provisions relating to a legislator's request for a public meeting, there are no specific requirements relating to requests for a contested case hearing filed by a legislator. Therefore, Representative Noble's request has been analyzed under the requirements applicable to all contested case hearing requests. In her filing, she explained that she is the state representative for the impacted area and expressed concern about the negative impacts the district will have on area communities and their property values. A requestor must articulate an interest that relates to a legal right, duty, privilege, power, or economic interest affected by the petition in their request. 30 TAC § 55.256(c). Without a contention that creation of the proposed

District would affect her personal interests, Representative Noble's general statement of concern in her role as a legislator does not fulfill this requirement. Consequently, OPIC is unable to find that Representative Noble has demonstrated that she possesses a personal justiciable interest in this matter and must respectfully recommend denial of her hearing request.

Requests by Local Governments

City of Murphy

The City of Murphy timely requested a hearing in this matter. In its request, the City states that the proposed District will border its city limits and has expressed concerns, including those regarding natural run-off rates and drainage, water quality, and groundwater. 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, water quality, and levels and recharge capability of groundwater. TWC § 54.021(b)(3)(c), (d), (e), and (f). The City's concerns are relevant to the Commission's final determination on the petition. Based on the City's statutory authority over or interest in these issues that are relevant to the District creation, OPIC finds that the City of Murphy is an affected person and respectfully recommends that the Commission grant its hearing request.

City of Parker

The City of Parker also timely requested a hearing in this matter. The City states that the proposed District is inside its extra-territorial jurisdiction and expressed concerns regarding regionalization and water quality. The Commission has jurisdiction to consider the availability of comparable systems and water quality when considering the creation of this District. TWC § 54.021(b)(1), (b)(3)(f). Therefore, based on the City's statutory authority over or interest in these issues that are relevant to the District creation, OPIC finds that the City of Parker is an affected

person and respectfully recommends that the Commission grant its hearing request.

Requests by Groups/Associations

Rolling Ridge Estates HOA

The Commission received a timely request for contested case hearing from Arvind Chokhani on behalf of the Rolling Ridge Estates Homeowner's Association. The HOA states several concerns, however, none of its stated concerns are within the jurisdiction of TCEQ to address in when considering this application. Additionally, while the request states that the HOA is adjacent to the proposed District, the only address provided by requestor is in Plano, a substantial distance from the District. Given this intervening distance and the failure of the HOA to articulate concerns that are within the Commission's jurisdiction, OPIC is unable to find that the HOA has shown that it has a personal justiciable interest in this matter and must recommend denial of its hearing request.

Individual Requests

1. Requests That Have Articulated an Interest Related to a Legal Right, Duty, Privilege, Power, or Economic Interest Affected by the Application or an Interest Protected by the Law Under Which This Application is Considered

All of the requestors in the below two groups have articulated interests that are within the Commission's jurisdiction to consider in the context of a district's creation. Their stated concerns include subsidence, natural run-off rates and drainage, availability of comparable systems, and water quality concerns.

A. Requestors Located Within One Mile of District's Boundaries

The requestors in this section are located approximately one mile or less from the proposed District's boundaries, which greatly increases the likelihood that they will be affected in a way not common to members of the general public. Their locations, taken in combination with their stated

concerns, demonstrate that these requestors possess a personal justiciable interest in this matter. Accordingly, OPIC respectfully recommends that the following requestors be found as affected persons by the Commission: Mir Abbas Abidi, Elizabeth Abraham, Lance Caughfield, Don Wade Cloud, Jr., Scheri Cloud, Jeffry Dwight, Linda Fletcher, Katherine Harvey, Michael Haynes, John Holton, Jena Holton, Jani Jasadiredja, Miriam Jasadiredja, Lisa Kester, Ammy Le, Valeda Logan, Angelique Loncar, John Loncar, Dianne Elizabeth Lundberg, Edwin Lundberg, Andrew Malczewski, Tom Marshall, Carrolyn Moebius, Ashesh Patel, Soumit Roy, Sylvia June Roy, Kimberly Ryan, Ashley Sekimoto, Ryan Sekimoto, Dan Shoop, Charles Spence, Gabriela Tourne, Sunil Unnikrishnan, Sreelaxmi Unnikrishnan, Tom Weis, and Linda Weis.

B. Requestors Located Beyond 1 Mile of District's Boundaries

This group of requestors articulated interests that are within the Commission's jurisdiction to consider in this district creation matter, however they all provided addresses that are located at distances greater than one mile from the proposed District's boundaries. While their concerns 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 will be impacted by the Facility in a manner which is not common to the general public. 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 respectfully recommends that the Commission deny the requests of Bryan Galen, Mary Henshaw, Thomas Powell, Jr., and Chad Spence.

2. Requests That Fail to Articulate Issues That Are Relevant and Material to the Application

The Commission received requests from the following individuals that did not demonstrate the requestors possess a personal justiciable interest in the creation of the District: Reny Abraham,

Kate Anderson, Ricardo Azcarate, Ain Ul Badar, Billy Barron, Robert Bucci, Jene Butler, Linda Carlson, Wendy Clark, Meerna Dalal, Michael Dalal, James Daniel, Lacy Dodd, Jan Durham, Rebecca Fernandez, Robert Fernandez, Andrea Gillum, Hope Gladney, Kelly Hamilton, Surendra Hanumanthanna, Katherine Hendrix, Ryan Hendrix, William Henshaw, Amy Ichiba, John Isenhower, Deborah Ison, Mary Nell Jackson, Brian Jones, Carolyn King, Olan Knight, Allison Laramore, Baylis Laramore, Jr., Emily Laramore, Kimberly Laramore, Jolene Leask, Dana Marie Lester, Glenn Lively, Linda Loop, Amy Lopez, Teral McDowell, Trent Mendenhall, Miki Mizuno, James Morris, Amit Nangia, Jamie Nicholson, Kannan Palaniappan, Heather Powell, Lucy Jane Powell, Alif Rahman, Ron Raybarman, Brent Ryan, Jimmy Samuel, Neetu Deshpande Samuel, Sally Savino, LaDonna Schneller, Tracy Stack, Dorothy Taylor, Barbara Thompson, Alan Trumbly, Ranjani Venkataraman, Paul Walter, Lynne Watson, Katherine Wunderlich, and Robert Wunderlich.

These requests failed to articulate how and why the requestors believe they will be affected by the activity in a manner not common to members of the general public or otherwise fail to state an interest related to a state legal right, duty, privilege, power, or economic interest affected by the application. *See* 30 TAC §§ 55.251, 55.256. This group of requestors either did not explain how they believe they will be affected by the proposed District's creation or otherwise did not state concerns that are within the jurisdiction of TCEQ to address in the context of a district's creation. Therefore, OPIC respectfully recommends denial of this group of requestors.

Additionally, many of the hearing requests state concerns about anticipated adverse impacts from the wastewater treatment facility proposed by the application of Restore the Grasslands LLC and Harrington/Turner Enterprises, LP for TPDES Permit No. WQ0016003001. That application is the subject of separate, ongoing proceedings in TCEQ Docket No. 2022-0326-

MWD. Hearing requests on the TPDES permit application for the wastewater treatment facility were considered at the May 18, 2022 Commission Agenda meeting. Several hearing requests were granted, multiple issues were referred for a contested case hearing, and parties await the scheduling of that hearing at the State Office of Administrative Hearings. Issues regarding the impact of the wastewater treatment facility's operations will be adjudicated in that proceeding.

From OPIC's perspective, and in the interests of adjudicative efficiency, duplicative concerns about the wastewater treatment facility proposed under TPDES Permit No. WQ0016003001 should not provide a basis for party status in the district application matter now before the Commission. Requestors expressing concern about the impacts of the wastewater treatment plant may seek party status in the contested case hearing on the TPDES application, if, and when, a preliminary hearing is convened in that matter at SOAH.²

3. Untimely Requests

The Commission received an untimely request from Kristin Bewley. Commission rule provides 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, the notice stated that TCEQ may grant a hearing if a request is filed within 30 days after newspaper publication of the notice. The second publication of this notice occurred on January 26, 2022, therefore, all requests must have been received by February 25, 2022 to be considered timely. Because this request was received after the deadline for requesting a contested case hearing, OPIC must respectfully recommend its denial.

² The contested case hearing on the TPDES application will proceed in coming weeks, unless all persons who were granted a hearing by the Commission withdraw their requests prior to the convening of the hearing. 30 TAC § 80.101. At any such hearing, attendees may request party status. The presiding administrative law judge will rule on such requests and name parties. 30 TAC § 80.103.

IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission find that the City of Murphy, the City of Parker, and the individuals identified in Section III.1.A qualify as affected persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing. OPIC further recommends the Commission deny all other the hearing requests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, 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.



Sheldon P. Wayne

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DOCKET NO. 2022-0533-DIS; INTERNAL CONTROL NO. D-04122021-017

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