

Lori Rowe

From: PUBCOMMENT-OCC
Sent: Thursday, March 31, 2022 8:40 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis
Subject: FW: Public comment on Permit Number D-11302021-042
Attachments: County of Ellis Request for CCH FM 875 Municipal Utility District of Ellis County.PDF

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From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
Sent: Wednesday, March 30, 2022 2:47 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number D-11302021-042

REGULATED ENTY NAME FM 875 MUD OF ELLIS COUNTY

RN NUMBER: RN111380531

PERMIT NUMBER: D-11302021-042

DOCKET NUMBER:

COUNTY: USA

PRINCIPAL NAME: FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY

CN NUMBER: CN605959840

FROM

NAME: Emily Rogers

E-MAIL: rfburk@bickerstaff.com

COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
AUSTIN TX 78746-8013

PHONE: 5124728021

FAX:

COMMENTS: Please see attached letter.



March 30, 2022

Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
MC-105
P.O. Box 13087
Austin, TX 78711-3087

Re: Application by Highland Lakes Midlothian I, LLC, to the Texas Commission on Environmental Quality for creation of FM 875 Municipal Utility District of Ellis County, TCEQ Internal Control No. D-11302021-042

Dear Chief Clerk Gharis:

The County of Ellis, Texas (the “County”) formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the County, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Highland Lakes Midlothian I, LLC is applying to the Texas Commission on Environmental Quality (the “TCEQ”) for creation of a new municipal utility district entirely within Ellis County, and partially within the extraterritorial jurisdiction of the City of Midlothian, Texas. The County opposes the creation of the district.

The County is an “affected person” entitled to a contested case hearing on issues raised in this hearing request because 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 is an affected person under 30 TEX. ADMIN. CODE § 55.256. Local governments, such as the County, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). First, the Texas Water Code authorizes the County to provide TCEQ with its “findings, conclusions, and other information that the commissioners court thinks would assist the commission in making a final determination on the petition.” Tex. Water Code § 54.0161(b)(2). The TCEQ is then required to consider this information and opinion provided by the County. *Id.* at (c). The County requests a contested case hearing in order to provide all evidence and information to TCEQ that may assist in the Commission’s consideration of the application.

Additionally, the County has statutory and/or constitutional 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 fails to take into

account. *See, e.g.*, TEXAS LOCAL GOVERNMENT CODE §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations); LOCAL GOV'T CODE § 251.003 (county order and rulemaking authority for roads); LOCAL GOV'T CODE Subchapter C (fire code in unincorporated areas); LOCAL GOV'T CODE Subchapter E (infrastructure planning provisions in certain urban counties); LOCAL GOV'T CODE Chapter 233, Subchapter B (building and set back lines); LOCAL GOV'T CODE Chapter 233, Subchapter E (fire code in unincorporated area); TEXAS GOVERNMENT CODE Chapter 418 (emergency management); TEXAS TRANSPORTATION CODE § 251.016 (general control over roads, highways and bridges); TRANSPORTATION CODE Chapter 254 (drainage on public roads). Additionally, potential contamination or depletion of groundwater, if groundwater is to be the source of supply, within the region may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and may negatively impact the County's infrastructure through subsidence. Moreover, the County has an interest in protecting the water quality in the County, which may be impacted by discharges of treated effluent by Applicant's project. *See, e.g.*, HEALTH AND SAFETY CODE § 121.003 (enforcement of laws to promote public health); 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).

Thus, the County has statutory authority under state law over numerous issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b). Further, the proposed municipal utility district will be located entirely outside the corporate limits of a city. Pursuant to TEX. WATER CODE § 54.0161, the County therefore has express authority to review the petition for creation and other evidence and information relating to the proposed district that its commissioners court considers necessary. TEX. WATER CODE § 54.0161(a-2).

For these reasons, the County requests that the Commission find that the County is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers
Attorney for Ellis County

EWR/rfb

Lori Rowe

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From: rfburk@bickerstaff.com <rfburk@bickerstaff.com>
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Subject: Public comment on Permit Number D-11302021-042

REGULATED ENTY NAME FM 875 MUD OF ELLIS COUNTY

RN NUMBER: RN111380531

PERMIT NUMBER: D-11302021-042

DOCKET NUMBER:

COUNTY: ELLIS

PRINCIPAL NAME: FM 875 MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY

CN NUMBER: CN605959840

FROM

NAME: Emily Rogers

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COMPANY: Bickerstaff Heath Delgado Acosta LLP

ADDRESS: 3711 S MOPAC EXPY STE 300
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Re: Application by Highland Lakes Midlothian I, LLC, to the Texas Commission on Environmental Quality for creation of FM 875 Municipal Utility District of Ellis County, TCEQ Internal Control No. D-11302021-042

Dear Chief Clerk Gharis:

The City of Midlothian, Texas (the "City") formally requests a contested case hearing on the above-referenced application. Please direct all future correspondence on this application to me, Emily Rogers, attorney for the City, at 3711 S. MoPac Expressway, Building One, Suite 300, Austin, TX 78746. My daytime phone number is (512) 472-8021 and fax number is (512) 320-5638.

Highland Lakes Midlothian I, LLC is applying to the Texas Commission on Environmental Quality (the "TCEQ") for creation of a new municipal utility district entirely within Ellis County, and partially within the extraterritorial jurisdiction of the City of Midlothian. The City opposes the creation of the District.

The City is an "affected person" entitled to a contested case hearing on issues raised in this 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 and is an affected person under 30 TEX. ADMIN. CODE § 55.256. The proposed municipal utility district will be located partially within the extraterritorial jurisdiction of the City. The City does not consent to its creation. Pursuant to Texas Water Code § 54.016(a), land within the City's extraterritorial jurisdiction cannot be included within the boundaries of a municipal utility district without the City's consent. For this and additional reasons, local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction. TEX. LOC. GOV'T CODE §§ 42.001, 212.044. Various city functions and services – including water and sewer services, emergency services, and health and safety concerns – may be affected by the creation of the district and are not taken into account by the application.

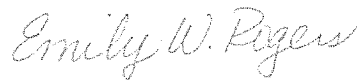
March 30, 2022

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The City has a nearby wastewater treatment plant that is currently being expanded, and the existing infrastructure to transport the wastewater could be upgraded to serve the proposed development. As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalizes with existing system to the greatest extent possible in order to protect the public health, safety, and welfare of its cities. *See* Texas Water Code § 26.081(a). The City therefore has an interest in ensuring the creation and operation of the proposed municipal utility district is protective of the public health and safety within its extraterritorial jurisdiction. Thus, the City has authority under state law over the issues contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

Sincerely,



Emily W. Rogers
Attorney for City of Midlothian

EWR/rfb