

TCEQ INTERNAL CONTROL NO. D-03212022-036

**PETITION BY GRBK EDGEWOOD
LLC, FOR TCEQ CONSENT FOR
CREATION OF ELLIS RANCH
MUNICIPAL UTILITY DISTRICT NO. 1**

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**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

**GRBK EDGEWOOD LLC'S RESPONSE TO
REQUEST FOR CONTESTED CASE HEARING**

I. Introduction

GRBK Edgewood LLC, (“Petitioner”) files this Response to the Request for Contested Case Hearing filed by Emily W. Rogers and Joshua D. Katz, Attorneys for Ellis County, Texas.

II. Background

Petitioner filed a petition with the Texas Commission on Environmental Quality (the “TCEQ” or “Commission”) for consent for the creation of Ellis Ranch Municipal Utility District (“Ellis Ranch MUD, ER MUD1 or the District”), in lieu of the City of Waxahachie (“City”) consent, pursuant to Texas Local Government Code (“LGC”), Section 42.042(f). Petitioner is a landowner of approximately 571.147 acres in Ellis County, Texas. The Petitioner’s land is partially within the extraterritorial jurisdiction of the City of Waxahachie and partially within the unincorporated area of Ellis County outside the extraterritorial jurisdiction of any other city of town.

Petitioner submitted its petition to the City for consent to creation of a political subdivision on June 2, 2021. The City failed to provide its consent to the creation of a political subdivision and did not contact the Petitioner regarding the consent. On September 30, 2021, Petitioner filed its petition for water and sanitary sewer services with the City. The City did not offer to provide

water or sanitary sewer services or attempt to discuss such services in any way with Petitioner, and did not execute a contract providing for water and sanitary sewer service to the proposed development. Pursuant to Section 42.042(c) LGC, after 120 days from the filing of such petition for water and sanitary sewer services, consent was deemed given by the City and subsequently Petitioner filed the petition for creation of Ellis Ranch Municipal Utility District No. 1 (“ER MUD 1” or the “District”) with the TCEQ on March 16, 2022. At the time of the petition, ER MUD 1 was one of three districts proposed for creation on the land included in the petitions for consent and services from the City.

III. Applicable Law

In the event that a municipality fails or refuses to give its consent to the creation of a political subdivision or fails or refuses to execute a contract providing for the water or sanitary sewer services requested within the time limits prescribed in LGC Sections 42.042(b) and (c), LGC Section 42.042(f) authorizes an applicant to petition the Commission to allow creation of the political subdivision. The Commission shall allow creation of the proposed political subdivision on the finding that the municipality either does not have reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to service the proposed development at a reasonable cost to landowner.¹ The commitment must provide that construction of the facilities necessary to serve the land will begin within two years and will be substantially completed within 4-1/2 years after the date the petition is filed with the municipality.

If the City fails or refuses to give its consent to the creation of a political subdivision within 90 days after the City receives a written request for consent, a majority of the qualified voters of

¹ LGC Section 42.042(f)

the area of the proposed political subdivision and the owner of at least 50 percent of the land in the proposed political subdivision may petition the City to make available to the area the water, sanitary sewer services, or both that would be provided by the proposed political subdivision.²

If the City fails to make a contract with a majority of the qualified voters and the owner of at least 50 percent of the land to be included in the proposed political subdivision within 120 days after the date the City receives the petition, the failure constitutes the City's consent for the owner of the land to petition the Commission for the creation of the political subdivision.³

IV. Analysis of the Petition

In order for Petitioner to meet the applicable prerequisite items for submittal of a petition to the Commission, the City must have failed or refused to give its consent to the creation of the political subdivision.⁴ Petitioner filed its petition for water and sanitary sewer services on June 2, 2021, more than 90 days after the Petitioner's request for City consent on September 30, 2021, as required by LGC Section 42.042(b).

The City failed to make a contract with Petitioner within 120 days of receipt of Petitioner's petition for services, and that failure constituted the City's consent for Petitioner to submit a petition to the Commission for the creation of the political subdivision. The City does not have the ability to serve or the funds available to provide water and wastewater service adequate to service the proposed development at a reasonable cost to the landowner and did not provide a contract or any evidence that it could provide service during the statutorily required period.⁵

² LGC Section 42.042(b)

³ LGC Section 42.042(c)

⁴ LGC Section 42.042(f)

⁵ LGC Section 42.042(f)

Rockett Special Utility District (“RSUD”) is the certificate of convenience and necessity (“CCN”) holder and provider of water service for the proposed development. ER MUD 1 will receive retail water service from RSUD. ER MUD 1 will construct a 12-inch waterline in the FM 878 right-of-way and an 18-inch waterline to connect to existing RSUD waterlines. The proposed water distribution system will consist of a network of arterial and interconnecting loop mains. The design of the water supply and distribution system will be based on a projection of the water demand conditions based on service connections, and the pressure at which it must be supplied. The proposed system design will meet or exceed the minimum standards established by the TCEQ.

The District is not located within the wastewater CCN of any entity. A wastewater collection system and wastewater treatment plant will be constructed and operated by ER MUD 1 to serve the property within the District. The District will provide retail wastewater service within the District. The proposed wastewater collection system will consist of a network of wastewater lines that flow into collector mains with lift stations to transport the flow to the wastewater treatment plant. The wastewater system will be designed to meet or exceed the minimum state requirements for land uses, development plans and minimum standards established by the TCEQ.

V. Hearing Request Requirements

In order for the Commission to grant a request for a contested case hearing, the Commission must determine that the issue: (1) involves a disputed question of fact or a mixed question of law and fact; (2) was raised during the public comment period by an affected person; and (3) is relevant and material to the decision on the application.⁶ While the recent comments were timely, the other elements for a hearing request have not been met by Ellis County.

⁶ 30 TAC § 50.115(c)

Ellis County has failed to demonstrate how it has an interest that rises to the level of an affected person for this Petition. 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 the general public does not qualify as personal justiciable interest.⁷ Governmental entities may be considered affected persons only if they can demonstrate authority under state law over issues contemplated by the application.⁸ In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (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 and safety of the person, and on the 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.⁹

Ellis County states that it has authority over various functions – including but not limited to transportation, emergency services, and health and safety that may be affected the by the creation of ER MUD 1 and which the application for creation of the District fails to consider. Specifically, Ellis County argues that is has authority under state laws over issues contemplated by the application noting that 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

⁷ 30 TAC § 55.203

⁸ 30 TAC § 55.256

⁹ *Id.*

provide emergency services, and may impact health and safety by lowering water quality, and otherwise negatively impact the county's infrastructure through subsidence.

ER MUD 1 will receive its water from RSUD, which supplies surface water and is the CCN holder. Because groundwater will not be utilized, the proposed development will have no effect on subsidence and little to no effect on overall ground water levels in the region. As described above, the District has designed and planned for a water distribution system which will connect to RSUD's system and meet or exceed the minimum standards from the TCEQ.

Ellis County's argument that transportation, emergency services, and health and safety are impacted by the District relies entirely on the assumption that groundwater will be used as a source of supply. In its response to the hearing request, the Office of Public Interest Counsel ("OPIC") relies on this same assumption to conclude that Ellis County is an affected person. Since this is not the case, there is no impact to Ellis County and its ability to regulate activities over which it has statutory authority. RSUD is the CCN holder for the land in the District and therefore RSUD is the only entity that can legally provide water service to the ER MUD 1. There is no CCN for sewer in the district and ER MUD 1 has developed plans for a wastewater collection and treatment system after the City has failed to provide service as an alternative provider even after request by the Petitioner.

Ellis County is not an affected person and it has not demonstrated how it has authority over the issues relevant to the District's Petition. Although the Ellis County Commissioners' Court is entitled to review the Petition, we are not aware of any actions taken to date to contact the Petitioner and have not received requests to provide any further information from the County either before or since the County's filing for a contested case hearing. The right of the Ellis County Commissioners' Court to review the Petition is totally separate and unrelated to Ellis County's

status as an affected person per 30 TAC § 55.256. Ellis County cannot statutorily provide water or sewer service to the property and there is no overlapping authority that exists for the ability of the District to provide water and sewer services to those inhabiting its boundaries and the powers of Ellis County related to health, safety and the environment. For the above stated reasons, Ellis County cannot be considered an interested person under 30 TAC § 55.203.

VI. Conclusion and Prayer

Given that the District will not utilize a groundwater source, there will not be potential contamination, depletion or supply impacts to the area and the County's infrastructure is not at risk through subsidence since the District will utilize surface water from RSUD. ER MUD 1 has proposed to create a well-funded district with sustainable maintenance and operations provisions, that will not impact the ability of Ellis County to exercise its statutory authority over the interests identified in its requests for a contested case hearing. Ellis County's claims are baseless, contrary to the facts and only serve to delay the creation of the District, which is necessary to provide utility service to the property. In its response to the hearing request, OPIC concluded that Ellis County is an affected person while also relying on the faulty assumption that the District would utilize a groundwater source and arguments made by Ellis County which are not supported by the facts. Petitioner respectfully requests the Commission find that there are no disputed questions of fact or a mixed question of law and fact regarding the petition. Petitioner further requests that the Commission find that Ellis County does not meet the requirements of an affected person that has a personable justiciable interest in the petition and deny the Contested Case Hearing Request.

Respectfully submitted,

WINSTEAD PC

By: 

Ross S. Martin

State Bar No. 24037035

rmartin@winstead.com

2728 N. Harwood Street

Suite 500

Dallas Texas 75201

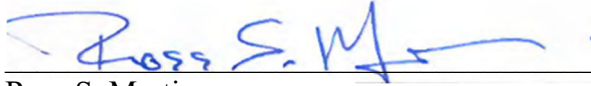
Telephone: (214) 745-5353

Facsimile: (214) 745-5390

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on October 7, 2022, the original and sworn true and correct copies of GRBK Edgewood LLC's Response to Request for Contested Case Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



Ross S. Martin

MAILING LIST

MAILING LIST

**ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1
DOCKET NO. 2022-1157-DIS; INTERNAL CONTROL NO. D-03212022-036**

FOR THE APPLICANT

via electronic mail:

Ross Martin
Winstead PC
2728 North Harwood Street
Dallas, Texas 75201
Tel: (214) 745-5353
Fax: (214) 745-5390
rmartin@winstead.com

Ken Heroy, P.E., President
Jones-Heroy & Associates, Inc.
13915 North Mopac Expressway, Suite 408
Austin, Texas 78728
Tel: (512) 989-2200
kenh@jones-heroy.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Kayla Murray, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0600
Fax: (512) 239-0606
kayla.murray@tceq.texas.gov

Andrew Paynter, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4709
Fax: (512) 239-2214
andrew.paynter@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
garrett.arthur@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311
<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/INTERESTED PERSON(S):

Emily W. Rogers
Bickerstaff Heath Delgado Acosta LLP
3711 South Mopac Expressway
Building 1, Suite 300
Austin, Texas 78746