

TCEQ DOCKET NO. 2022-1157-DIS

APPLICATION FOR THE	§	BEFORE THE
	§	
CREATION OF ELLIS RANCH	§	
	§	TEXAS COMMISSION ON
MUNICIPAL UTILITY DISTRICT NO. 1	§	
	§	
COUNTY	§	ENVIRONMENTAL QUALITY

**ELLIS COUNTY’S REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING ON APPLICATION FOR CREATION OF ELLIS RANCH MUNICIPAL UTILITY DISTRICT NO. 1**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”):

Ellis County, Texas (the “County”) files this Reply to Responses of Applicant GRBK Edgewood LLC (“Applicant”), the Executive Director (“ED”), and the Office of Public Interest Counsel (“OPIC”) to the County’s Request for Contested Case Hearing on the Application for the Creation of Ellis Ranch Municipal Utility District No. 1 (the “District”).

**I.**  
**INTRODUCTION**

The County is an “affected person” entitled to a contested case hearing on issues raised in its 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 therefore the County 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). The County has 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. Potential contamination of water within the region may impact the County's ability to effectively provide emergency services, and may impact health and safety by lowering water quality. Moreover, the County's authority over roads, health and safety, and emergency services are potentially impacted by the application. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

## II.

### **REPLY TO APPLICANT'S RESPONSE TO THE COUNTY'S HEARING REQUEST**

Applicant believes that the County is not an affected person, and its request for a hearing should be denied, because, while it acknowledges that the County has authority over transportation, emergency services, and health and safety, it mistakenly asserts that the County's argument is entirely based on the assumption that the Applicant will utilize groundwater. Applicant's Response at 6. The County respectfully suggests that its authority in these areas, and interests therein that are affected by the application, entitle it to affected person status regardless of whether the District's proposed water source is surface or groundwater. Numerous statutory powers of a county that are potentially affected by the application include (but are not limited to) various provisions regarding road construction and maintenance, emergency services, and water:

- Local Government Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations);
- Transportation Code § 251.016 (general control over roads, highways and bridges);
- Transportation Code § 251.003 (county order and rulemaking authority for roads);
- Local Government Code § 552.101 (regulation of water lines in county right of way);
- 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);
- Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Local Government Code § 352.001 et seq. (emergency fire protection service);
- Government Code Chapter 418 (emergency management);
- Health and Safety Code Chapter 343 (abatement of public nuisances);
- Local Government Code § 561.003 (flood control);
- Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities);
- Local Gov't Code Sect. 233.031-.036 (Building set-back lines)
- Local Gov't Code Subchapter C (fire code in unincorporated areas)
- Local Gov't Code Sect. 232.102-104 (Thoroughfare Plan, lot frontage, set-backs)
- Local Gov't Code Sect. 232.110 (Apportionment of County Infrastructure Costs)

The application states Applicant's intent to construct, maintain, and operate a waterworks system, including purchasing and selling water and operating a sewer utility service, and to construct or operate drainage, storm sewer, roadway, and other facilities within the proposed municipal utility district. As such, operations of the MUD may impact the County's interests and regulatory authority, as stated above, regarding public health and safety, roads, flood control, water quality, and emergency management pursuant to these and other statutes, including the County's responsibility to provide emergency services that may be affected by the proposed district. The creation of a MUD whose governmental powers overlap in many respects to those of the County affects the County in a way that is different from the general public.

While Applicant's response contends its project will not rely on groundwater, the County's water quality concerns extend to surface water as well, based upon the potential effect of treated effluent from Applicant's project on tributary creeks, rivers, and lakes within Ellis County. The County is concerned that the application threatens water quality for the citizens of Ellis County.

Further, not only is the County authorized to provide an opinion to TCEQ regarding the potential creation of a MUD within the County,<sup>1</sup> but moreover, a relevant factor in determining whether the County qualifies as an affected person is the County's statutory authority over or interest in issues relevant to the application. 30 TEX. ADMIN. CODE § 55.256(c)(6). In addition to the statutory authority and public health and safety interests of a county listed above, water quality, for example, is a factor relevant to TCEQ's determination of this application. Texas Water Code § 54.021(b)(3)(F). The County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person and request a hearing; it simply must show a potential harm or justiciable interest that will be affected by the application.<sup>2</sup>

Because the application affects numerous interests and statutory authority of the County, the County should be considered an affected person and the TCEQ should grant the County's request for a contested case hearing on the Application.

### III.

#### **REPLY TO ED'S RESPONSE TO THE COUNTY'S HEARING REQUEST**

The County agrees with the ED's recommendation related to the County'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 COUNTY'S HEARING REQUEST**

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<sup>1</sup> Texas Water Code § 54.0161.

<sup>2</sup> *United Copper v. TNRCC*, 17 S.W.3d 797, 903 (Tex. App.—Austin 2000, pet. dism'd).

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

**IV.**  
**CONCLUSION**

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

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on October 24, 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*

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**DOCKET NO. 2022-1157-DIS; INTERNAL CONTROL NO. D-03212022-036**

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