

TCEQ INTERNAL CONTROL NO. D-06142022-031

PETITION BY EARTH LAND FARMS, LLC, FOR TCEQ CONSENT FOR CREATION OF DUCK CREEK MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**EARTH LAND FARMS, LLC'S RESPONSE TO
REQUEST FOR CONTESTED CASE HEARING**

I. Introduction

Earthland Farms, LLC, ("Petitioner") files this Response to the Request for Contested Case Hearing filed by Lisa and Scott Cody, Janis Massie, Cathy and Glenn Mcdaniel, Marion Odom, Brian and Stacy Rushing, Gray and Janell Shelton, Bryan and Kristina Sipp, Jennifer Sutton, Colleen and Shaun Wilson and Joshua Lee Prator (collectively the "Requestors").

II. Background

Petitioner is a landowner of approximately 320.41 acres in Denton County, Texas. The Petitioner's land is not within the extraterritorial jurisdiction of any incorporated city, town or village. Petitioner filed a petition with the Texas Commission on Environmental Quality (the "TCEQ" or "Commission") for the creation of the Duck Creek Municipal Utility District of Denton County ("Duck Creek MUD" or the "District") on June 6, 2022. The application was received by the TCEQ and after an administrative review of the application it was declared administratively completed on June 20, 2022.

Bolivar Water Supply Corporation ("Bolivar") is the certificate of convenience and necessity ("CCN") holder (Permit No. 11257) and provider of water service for the proposed development. The District will receive retail water service from Bolivar and construct

approximately 8,800 linear feet of on-site transmission 8-12-inch waterline in to connect to onsite ground water wells and an onsite water plant. 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 system will be looped where feasible to provide alternative routes during emergencies or maintenance periods. The proposed system design will meet or exceed the minimum standards established by the TCEQ.

The City of Sanger Texas (“City of Sanger”) is the certificate of convenience and necessity (“CCN”) holder and provider of wastewater service for the proposed development. A wastewater collection system and wastewater treatment plant will be constructed and operated by Duck Creek MUD 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.

III. Hearing Request Requirements

In order for the Commission to grant a request for a contested case hearing, the Commission must determine that a hearing requestor is an affected person who has made a request for a contested case hearing in writing, and identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and

determine that the same was submitted the same within the time period specified in the notice.¹ An interest common to the general public does not qualify as personal justiciable interest.² 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.³

The Requestors collectively bring up concerns regarding the development of the District and its impact on the availability and quality of natural resources. While each of the Requestors possess different characteristics, it is our opinion that none reach the status of an affected person under the factors listed above. A summary of the concerns is discussed below.

Sewer System Impact on Well Water. Requestors have expressed concern about the potential contamination of well water in the area. Chapter 309, subchapter B of the TCEQ rules contain location standards for domestic wastewater facilities and Section 309.12 specifically requires a treatment facility to be at a location that minimizes the possible contamination of water in the state, considering factors such as groundwater conditions. The information provided in the

¹ 30 TAC § 55.251(c)

² 30 TAC § 55.256

³ *Id.*

District's application to the TCEQ for the creation of the District demonstrates compliance with all location requirements. None of the Requestors are located within the immediate proximity of the treatment facility and the TCEQ has made a prior determination that no adverse effect of the water quality of ground or surface water is anticipated as a result of such development in the District. Joshua Prator's property which borders the proposed District on the southeast is located upstream from the District and the likelihood that the water and sewer facilities will have an impact on the health and safety or natural resources to his property are extremely low.

Mr. Prator also claimed that the drainage and flow charts for the septic system for the community is unclear. We disagree with this claim as detailed plans have been submitted to the TCEQ with the District's application for creation. The proposed design of the District will utilize groundwater tanks in addition to transmission waterlines all of which were identified on the application submitted for review and approval from the TCEQ. Wastewater from the proposed District will be captured through onsite collection and treated at an onsite wastewater treatment plant at the central portion of the proposed District. The treatment and disposal of wastewater from the proposed District will be provided by the City of Sanger in compliance with the terms of the waste discharge permit obtained from the TCEQ. All facilities related to the storage and transfer of wastewater will be further evaluated by the TCEQ prior to the construction and implementation of the same.

Water Supply. Requestors are concerned with the impact on the water supply if a community well is utilized for the District. Wells in this area are typically drilled to a depth of 1,000 feet and produce approximately 150 gallons per minute and have historically maintained groundwater levels. The district will be able to drill deeper to extract water at a higher flow rate than the existing wells currently being operated by Bolivar and will contain 775 equivalent single-

family connections at ultimate development. The ultimate average daily demand is estimated to be 0.50 million gallons per day (MGD) with a max day and peak hour demand of 1.08 MGD and 1.83 MGD, respectively. Onsite groundwater wells will deliver the necessary supply of water to the proposed District distribution system and will not deplete the available supply as claimed by the Requestors. Recharge to the unconfined portion of aquifers beneath the surface of the District area is primarily from infiltration of precipitation and seepage of surface water bodies. Approximately 60% of the District's area will be made impervious as a result of development, leaving ample area previous to allow for adequate recharge of the ground water. In addition to this information being included in the application to for creation of the District, all water supply and distribution system improvements to serve the proposed District will be designed in accordance with criteria established by the TCEQ.

Injury to Farms and Livestock. Requestors have raised concerns regarding the impact of the District on wildlife in the area and on crops and livestock. In addition to the water quality requirements listed above, Section 307.6(b)4 of the TCEQ rules states that water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.⁴ The District will comply with such rules, but the TCEQ does not have the ability to otherwise restrict the development of the District or to require the proposed District to make wildlife available for hunting and fishing.

Additionally, the District is located on moderately sloped pasture land. Most of the existing drainage is through runoff which collects and is conveyed to creek tributaries onsite. Some of this existing drainage contributing to the site of the District will be coming from a neighboring

⁴ 30 TAC § 307.6(b)(4).

landowner to the north. All storm drainage improvements will be designed in accordance with the applicable design criteria established by Denton County and will be sufficient to not cause damage to neighboring landowners or livestock.

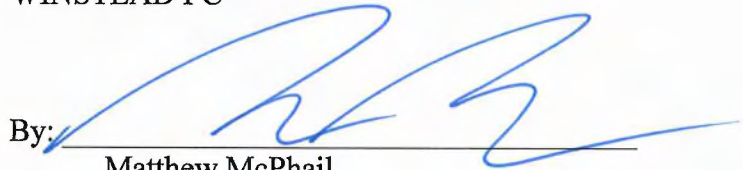
IV. Conclusion and Prayer

The Requestor'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. Creation of the District does not otherwise limit ability of an individual to seek legal remedies against the Petitioner or the District regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of their property. The Requestor bordering the District lives upstream from the development of the District will not have an impact on the water supply or pose a risk of contamination to his land. 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 Requestor's do 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:



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CERTIFICATE OF SERVICE

I certify that on December 19, 2022 the original and sworn true and correct copies of Earthland Farms, 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.



Matthew McPhail

MAILING LIST

MAILING LIST DUCK CREEK MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY DOCKET NO. 2022-1631-DIS; INTERNAL CONTROL NO. D-06142022-031

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