

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
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Erin E. Chancellor, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 19, 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 LAMPASAS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 1
TCEQ DOCKET NO. 2022-1653-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2022-1653-DIS

**PETITION FOR THE CREATION
OF LAMPASAS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 1**

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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

Before the Commission is an application by Pitt Creek Ranch LLC, a Texas limited liability company (Petitioner) for creation of Lampasas County Municipal Utility District #1 (District) (TCEQ Internal Control No. D-07062022-010). The Commission received comments and requests for a contested case hearing from landowners Randel C. Taylor, Mary Joyce Taylor, Thomas M. Watson III, Jane Tull Watson, Tasha Bates, Billy Bates, Virginia Hodges, Craig A. Meengs, Stacey L. Meengs, Richard Andrews, Janet Machen, Sharon Smith, Ronnie Smith, John R. Bean, Shelia Bean, Thomas F. Virr, and Granvil D. Treece,. In addition, the Commission received requests from WCM Ranch and its representatives; Burton William Rawson Goen, Morgan Goen Kaldis, Suzanne Smith Rush, Karley Anne Goen, and Lampasas County Water Control and Improvement District #1 (LCWCID #1) through its representative Paul Wilborn. For the reasons discussed herein, OPIC respectfully recommends that the Commission grant all pending hearing requests. OPIC further recommends that the Commission refer this matter to the State Office of

Administrative Hearings (SOAH) for a contested case hearing.

B. Background

Pitt Creek Ranch LLC filed a petition for the creation of Lampasas County Municipal Utility District No. 1 pursuant to Article XVI, Section 59 of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code (TWC), 30 Texas Administrative Code (TAC) Chapter 293, and the procedural rules of the TCEQ. The application was declared administratively complete on July 12, 2022. On September 16, 2022, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 2,931.97 acres located within Lampasas County and none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that, if approved, the proposed District will: (1) design, construct, acquire, maintain, and own a waterworks system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; (4) acquire, own, develop, construct, improve, manage, maintain, and operate roads; and (5) design, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises. The comment and contested case hearing request periods ended on October 17, 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, TWC § 54.011. Chapters 49 and 54 of the TWC and the Commission's administrative rules found at Title 30, Chapter 293, of the 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;
- (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).

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

Joint Requests by Landowners

The Commission received timely comments and a joint hearing request from landowners Randel and Mary Joyce Taylor, Janet Machen, Richard Andrews, Sharon and Ronnie Smith, John and Sheila Bean, Thomas Virr, Granvil and Judith Treece, Craig and Stacey Meengs, Virginia Hodges, Tasha and Billy Bates, and Thomas M. Watson III and Jane Tull Watson¹ (hereinafter “Joint Requestors”) on October 13, 2022. In their filing, the Joint Requestors articulated several interests that are within the Commission’s jurisdiction to consider in the context of a district’s creation. The Joint Requestors’ stated concerns include subsidence, natural run-off rates and drainage, availability of comparable systems, and water quality. In addition, the map prepared by the Executive Director (ED) confirms that all Joint Requestors’ locations are approximately one mile or less outside the proposed District’s boundaries, which increases any likelihood that they

¹ OPIC notes that a separate hearing request was submitted by Thomas and Jane Watson, but the merits of that request were not analyzed because a contested case hearing is recommended based on the Joint Request.
OPIC’s Response to Hearing Requests

will be affected in a way not common to members of the general public. The Joint Requestors' locations, taken in combination with their stated concerns, demonstrate that these Requestors possess a personal justiciable interest in this matter. Accordingly, OPIC recommends the Commission grant the pending hearing requests of all Requestors named in the Joint Requests by Landowners letter.

WCM Ranch

On October 17, 2022, the Commission received timely comments and a hearing request on behalf of WCM Ranch signed by Karley Anne Goen, Burton William Rawson Goen, Morgan Goen Kaldis, and Suzanne Smith Rush. The address provided for all Requestors is 715 County Road 1139 Lampasas which the ED's map confirms is within one mile of the proposed District's boundaries. WCM Ranch's letter raises many relevant concerns including those about water quality and effects on wildlife, and water conservation measures. Given the location of WCM Ranch and the above-named Requestors, in addition to Requestors' stated concerns, OPIC finds that WCM Ranch and all persons listed on the request letter have a personal justiciable interest in this matter. As such, OPIC recommends granting the pending hearing requests of WCM Ranch and all Requestors named in the WCM Ranch letter.

Lampasas County Water Control and Improvement District #1

The Commission received timely comments and a hearing request from Paul Wilborn on behalf of LCWCID # 1 on September 28, 2022. The request states that the metes and bounds description of the land provided in the Petition includes within its borders an easement given to LCWCID #1. The location of the easement satisfies the requirements of 30 TAC § 55.256(b), which states that governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. The request further articulates concerns about

natural run-off rates and drainage as well as groundwater levels within the region. Each of these concerns is within the Commission's jurisdiction in the context of this application. Given that LCWCID #1 has authority over issues contemplated within the application, and the fact that the Commission has jurisdiction over concerns raised by LCWCID #1, OPIC recommends granting LCWCID #1's pending hearing request.

IV. Conclusion

For the reasons set forth above, OPIC respectfully recommends the Commission find that the individuals listed on the Joint Requests by Landowners letter, WCM Ranch and all individuals listed on its request, and Lampasas County Water Control and Improvement District #1 all qualify as affected persons in this matter. OPIC recommends the Commission grant their hearing requests and refer the matter to SOAH for a contested case hearing.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 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.



Jennifer Jamison

MAILING LIST
LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1
DOCKET NO. 2022-1653-DIS; INTERNAL CONTROL NO. D-07062022-010

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REQUESTER(S)/INTERESTED PERSON(S):

See attached list.

REQUESTER(S)

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Lampasas, TX 76550-3120

Billy & Tasha Bates
Po Box 605
Lampasas, TX 76550-0005

John R & Sheila Bean
1322 Fm 1494
Lampasas, TX 76550-3157

Concerned Citizen
Po Box 1866
Lampasas, TX 76550-0015

Morgan Goen Kaldis
715 County Road 1139
Lampasas, TX 76550-3034

Dr. Karley Anne Goen
Wcm Ranch
715 County Road 1139
Lampasas, TX 76550-3034

Virginia Hodges
6368 W Fm 580
Lampasas, TX 76550-3661

Janet Machen
698 Private Road 1296
Lampasas, TX 76550-3090

Craig A & Stacey L Meengs
7570 County Road 1255
Lampasas, TX 76550-3272

Suzanne Smith Rush
715 County Road 1139
Lampasas, TX 76550-3034

Ronnie & Sharon Smith
715 County Road 1139
Lampasas, TX 76550-3034

Mary Joyce & Randel C Taylor
5893 County Road 1255
Lampasas, TX 76550-3294

Granvil D & Judith Gail Treece
927 Private Road 1236
Lampasas, TX 76550-2109

Thomas F Virr
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Cedar Park, TX 78613-4156

Jane Tull & Thomas M Watson Iii
Po Box 1866
Lampasas, TX 76550-0015

Thomas M Watson Iii
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Paul Wilborn
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Burton William Rawson Goen
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