

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

REVIEWED
DEC 13 2022
By GCW H

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2022 DEC -8 PM 2:41
CHIEF CLERKS OFFICE

December 6, 2022

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

VIA HAND-DELIVERY, FAX
AND TCEQ E-FILING

Re: Petition by Denton 1000 Land, LP to the Texas Commission on Environmental Quality for the creation of Denton County Municipal Utility District No. 12; TCEQ Internal Control No. D-06242022-058

Dear Chief Clerk Gharis:

The City of Sanger (the "**City**") submits the following public comments and request for a contested case hearing on the petition of Denton 1000 Land, LP to create of Denton County Municipal Utility District No. 12 (the "**Petition**"). Please direct all future correspondence on this Petition to the following representative of the City:

City of Sanger:
David Klein, Attorney for the City
816 Congress Avenue, Suite 1900
Austin, Texas 78701
dklein@lglawfirm.com
Daytime Phone: (512) 322-5800
Fax: (512) 472-0532

I. PROCEDURAL HISTORY CONCERNING THE PETITION

On June 3, 2022, Denton 1000 Land, LP (the "**Petitioner**") filed its Petition for the creation of Denton County Municipal Utility District No. 12 (the "**District**") with the Texas Commission on Environmental Quality (the "**TCEQ**"). The TCEQ found the petition administratively complete on June 29, 2022. On October 12, 2022, the Chief Clerk of the TCEQ sent a letter to Matt McPhail, attorney for the Petitioner, with a copy of the draft Notice of District Creation (the "**Notice**"). The Notice specified that the deadline to request a hearing is 30 days after newspaper publication of the Notice. The Petitioner filed an Affidavit of Publication of the Notice of District Creation indicating that notice was published on October 30, 2022 and November 6, 2022, and a Certificate of Posting Notice from Michelle Boutuell that Notice was posted on the bulletin board used for

posting legal notices at the Denton County Clerk's Office on October 20, 2022. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is December 6, 2022. Thus, these public comments and request for a contested case hearing are timely filed.

II. PUBLIC COMMENT

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 1,018.429 acres of land, are located entirely within the City's sewer Certificate of Convenience and Necessity ("CCN") No. 20073. Second, the City asks the TCEQ to explain how the District can provide retail wastewater service or build wastewater infrastructure within the proposed District's boundaries if the City has the exclusive right to provide retail wastewater service over the land. Next, the City questions whether the TCEQ performed an analysis on the ability of the Petitioner to develop the land when it conducted its review of the Petition. Specifically, did the TCEQ verify whether there are any conservation easements within the proposed jurisdictional boundaries of the District that would inhibit the development of such land?

III. REQUEST FOR A CONTESTED CASE HEARING

The Petition requesting the creation of the District under Texas Water Code ("*TWC*") § 54.021 should be denied as since the City is the holder of sewer CCN No. 20073, such District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021(a) and (b) state:

(a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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...¹

Here, the City possesses a sewer CCN over the entire proposed jurisdictional boundaries of the District, and Bolivar Water Supply Corporation ("*BWSC*") possesses a water CCN over the entire proposed jurisdictional boundaries of the District. Maps of the City's sewer CCN boundaries and BWSC's water CCN boundaries are attached hereto as **Attachment A** and incorporated herein for all purposes. Thus, given that those entities are the only entities that can provide water and sewer service within the proposed District's jurisdictional boundaries, the District would not be able to provide such services. Said another way, availability of water and sewer (comparable) services from the City and Bolivar are not just available, but they are necessarily the provider of such

¹ Tex. Water Code § 54.021(a) and (b).

services. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1).

The City requests a contested case hearing regarding the Petition under 30 TAC § 55.251. As the holder of sewer CCN No. 20073 with a sewer service area over the entire jurisdictional boundaries of the proposed District, the City is an “affected person” under 30 Texas Administrative Code (“*TAC*”) § 55.256 and has the right to submit this protest. In accordance with 30 TAC § 55.251(b), the contact information of the person filing this request is provided in the initial paragraph of this letter. For an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an “affected person” under the standards set forth in 30 TAC § 55.256.² Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.³ Governmental entities, such as the City, with authority under state law over issues contemplated by the petition may be considered affected persons.⁴ All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.

Here, the jurisdictional boundaries of the proposed District are entirely within the City’s sewer CCN No. 20073 service area, and the overlapping boundaries resulting from the Petition is a personal justiciable interest of the City that is negatively affected by the Petition. A map of the City’s sewer CCN boundaries is attached hereto as **Attachment A** and incorporated herein for all purposes. Under Texas law, a sewer CCN provides its holder with the exclusive right to provide retail sewer service to the service area designated in such certificate.⁵ Here, however, the Petition contemplates creating a municipal utility district within the City’s sewer CCN service area. Thus, as the sole sewer CCN holder over the proposed District’s jurisdictional boundaries, the creation of the District within the City’s sewer CCN boundaries is certainly a fact that is unique to the City. Further, such unique fact negatively affects the City as it impairs the City’s legal right, duty, privilege, power, and economic interest under its sewer CCN in providing retail sewer service within its sewer CCN service area. To that end, the City’s right, duty, privilege, power, and economic interest under its sewer CCN is statutorily protected.⁶ As to the City’s right, privilege, and power under its sewer CCN, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any

² 30 TAC § 55.251(b).

³ 30 TAC § 55.256(a).

⁴ 30 TAC § 55.256(b).

⁵ Tex. Water Code § 13.002(20).

⁶ Tex. Water Code § 13.242(a).

area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.⁷

Additionally, the City's obligation as a CCN holder to provide retail sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.⁸

Plus, the Petition proposes the construction of sanitary sewer infrastructure, which with the water, drainage, and roadway infrastructure improvements is estimated to cost \$191,620,000. The sanitary sewer infrastructure portion of such sum contemplates the installation of such infrastructure within the City's sewer CCN service area which also negatively affects the City's ability to provide retail sewer service and economic interest in developing its sewer system.

For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and its legal right, duty, privilege, power, and economic interest in providing retail sewer service to that area. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

Additionally, the City is an affected person in this matter when evaluating its personal justiciable interests under the pertinent portions of the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As already noted in the portions of this Section III, above, the City's interest in being the exclusive retail sewer service provider in its sewer CCN service area is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its sewer CCN, the City is not just a comparable service provider, but rather is the mandatory sewer service provider within the jurisdictional boundaries of the proposed District.

As to the second TCEQ factor under 30 TAC § 55.256(c), there are no express distance restrictions or other limitations imposed by law on the City's affected interest of providing retail sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside or outside the sewer CCN area. Here, such District boundaries would be entirely within the City's sewer CCN service area.

⁷ *Id.*

⁸ Tex. Water Code § 13.250(a).

Next, a reasonable relationship exists between the City's interest as the sewer CCN holder and the creation of the District. Specifically, in the event that the District is created, it cannot provide sewer service within its boundaries. Otherwise, the District would be infringing on the City's exclusive right to provide retail sewer service. Again, the City has the exclusive right to provide retail sewer service with its sewer CCN service area- including the proposed District - and it must also provide continuous and adequate service to consumers within such area.⁹ Further, the addition of another retail water and sewer service provider would have a negative impact on the City's investment in its sewer infrastructure.

In addition to being wholly within the boundaries of the City's sewer CCN, the proposed District is also entirely within Bolivar Water Supply Corporation's water CCN No. 11257, also depicted in the maps attached hereto as **Attachment A**. As such, BWSC has an interest in and the authority to provide retail water services within the proposed District's project. Without a CCN, the Petitioner would not be authorized to provide retail water or sewer service with the proposed District and it would need to obtain such services from the City and Bolivar Water Supply Corporation. However, the Petitioner states in its petition that it has no such plans to contract for such services. Further, since the proposed District is within one water CCN and one sewer CCN, its creation would not promote regionalization and would adversely impact the City's obligation to provide continuous and adequate service to such land. So, it is in the public interest to deny the Petition.¹⁰

Alternatively, the City protests the Petition under TWC § 54.021(c) on the basis that it is not beneficial to at least a portion of the land located in and adjacent to the proposed Districts boundaries. Accordingly, in light of its affected person status, the City should be entitled to a contested case hearing to address this issue as well. To this end, TWC § 54.021(c) states:

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, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.¹¹

Here, it is the City's understanding that a perpetual conservation easement runs through the boundaries of the proposed District and that the proposed District's project would require the removal of such an easement, the likelihood of which is uncertain. Thus, the City requests a contested case hearing to address this issue as well to determine whether the proposed District's boundaries should exclude the portion subject to the conservation easement.

Therefore, for the reasons stated above, the City is an affected person that is impacted by the Petition in a manner unique from the rest of the general public, and the TCEQ should grant its

⁹ See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

¹⁰ See Tex. Water Code § 13.241(d) and § 26.081(a) reflecting state policy to promote regional water, sewer, and waste disposal services.

¹¹ Tex. Water Code § 54.021(c).

Texas Commission on Environmental Quality
December 6, 2022
Page 6

contested case hearing request. Additionally, the City requests that the Executive Director respond to the City's public comments.

Sincerely,

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David Klein
Attorney for the City of Sanger

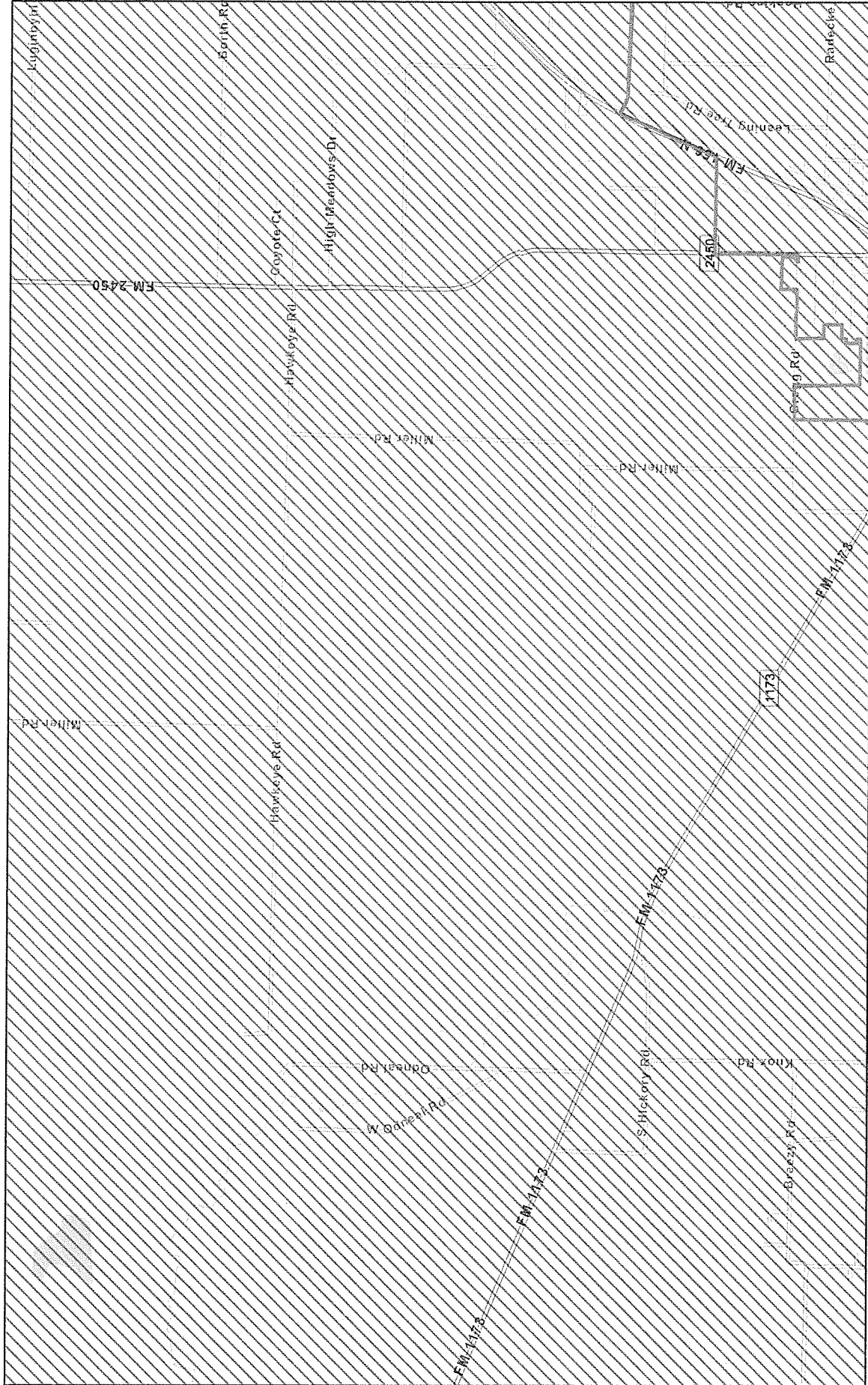
Enclosures

cc: Todd Galiga, Environmental Law Division
Justin Taack, Districts Section Manager
John Noblitt, City Manager, City of Sanger
Hugh Coleman, City Attorney City of Sanger
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Attachment A

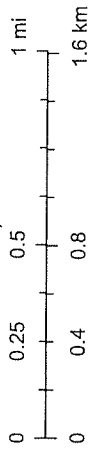
City of Sanger Sewer CCN No. 20073
Bolivar Water Supply Corporation Water CCN No. 11257

Bolivar WSC Water CCN No. 11257



December 2, 2022

1:36,112



Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA



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Dear Chief Clerk Gharis:

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City of Sanger:

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I. PROCEDURAL HISTORY CONCERNING THE PETITION

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II. PUBLIC COMMENT

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III. REQUEST FOR A CONTESTED CASE HEARING

The Petition requesting the creation of the District under Texas Water Code ("*TWC*") § 54.021 should be denied as since the City is the holder of sewer CCN No. 20073, such District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021(a) and (b) state:

(a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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...¹

Here, the City possesses a sewer CCN over the entire proposed jurisdictional boundaries of the District, and Bolivar Water Supply Corporation ("*BWSC*") possesses a water CCN over the entire proposed jurisdictional boundaries of the District. Maps of the City's sewer CCN boundaries and BWSC's water CCN boundaries are attached hereto as **Attachment A** and incorporated herein for all purposes. Thus, given that those entities are the only entities that can provide water and sewer service within the proposed District's jurisdictional boundaries, the District would not be able to provide such services. Said another way, availability of water and sewer (comparable) services from the City and Bolivar are not just available, but they are necessarily the provider of such

¹ Tex. Water Code § 54.021(a) and (b).

services. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1).

The City requests a contested case hearing regarding the Petition under 30 TAC § 55.251. As the holder of sewer CCN No. 20073 with a sewer service area over the entire jurisdictional boundaries of the proposed District, the City is an “affected person” under 30 Texas Administrative Code (“*TAC*”) § 55.256 and has the right to submit this protest. In accordance with 30 TAC § 55.251(b), the contact information of the person filing this request is provided in the initial paragraph of this letter. For an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an “affected person” under the standards set forth in 30 TAC § 55.256.² Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.³ Governmental entities, such as the City, with authority under state law over issues contemplated by the petition may be considered affected persons.⁴ All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.

Here, the jurisdictional boundaries of the proposed District are entirely within the City’s sewer CCN No. 20073 service area, and the overlapping boundaries resulting from the Petition is a personal justiciable interest of the City that is negatively affected by the Petition. A map of the City’s sewer CCN boundaries is attached hereto as **Attachment A** and incorporated herein for all purposes. Under Texas law, a sewer CCN provides its holder with the exclusive right to provide retail sewer service to the service area designated in such certificate.⁵ Here, however, the Petition contemplates creating a municipal utility district within the City’s sewer CCN service area. Thus, as the sole sewer CCN holder over the proposed District’s jurisdictional boundaries, the creation of the District within the City’s sewer CCN boundaries is certainly a fact that is unique to the City. Further, such unique fact negatively affects the City as it impairs the City’s legal right, duty, privilege, power, and economic interest under its sewer CCN in providing retail sewer service within its sewer CCN service area. To that end, the City’s right, duty, privilege, power, and economic interest under its sewer CCN is statutorily protected.⁶ As to the City’s right, privilege, and power under its sewer CCN, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any

² 30 TAC § 55.251(b).

³ 30 TAC § 55.256(a).

⁴ 30 TAC § 55.256(b).

⁵ Tex. Water Code § 13.002(20).

⁶ Tex. Water Code § 13.242(a).

area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.⁷

Additionally, the City's obligation as a CCN holder to provide retail sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.⁸

Plus, the Petition proposes the construction of sanitary sewer infrastructure, which with the water, drainage, and roadway infrastructure improvements is estimated to cost \$191,620,000. The sanitary sewer infrastructure portion of such sum contemplates the installation of such infrastructure within the City's sewer CCN service area which also negatively affects the City's ability to provide retail sewer service and economic interest in developing its sewer system.

For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and its legal right, duty, privilege, power, and economic interest in providing retail sewer service to that area. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

Additionally, the City is an affected person in this matter when evaluating its personal justiciable interests under the pertinent portions of the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As already noted in the portions of this Section III, above, the City's interest in being the exclusive retail sewer service provider in its sewer CCN service area is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its sewer CCN, the City is not just a comparable service provider, but rather is the mandatory sewer service provider within the jurisdictional boundaries of the proposed District.

As to the second TCEQ factor under 30 TAC § 55.256(c), there are no express distance restrictions or other limitations imposed by law on the City's affected interest of providing retail sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside or outside the sewer CCN area. Here, such District boundaries would be entirely within the City's sewer CCN service area.

⁷ *Id.*

⁸ Tex. Water Code § 13.250(a).

Next, a reasonable relationship exists between the City's interest as the sewer CCN holder and the creation of the District. Specifically, in the event that the District is created, it cannot provide sewer service within its boundaries. Otherwise, the District would be infringing on the City's exclusive right to provide retail sewer service. Again, the City has the exclusive right to provide retail sewer service with its sewer CCN service area- including the proposed District - and it must also provide continuous and adequate service to consumers within such area.⁹ Further, the addition of another retail water and sewer service provider would have a negative impact on the City's investment in its sewer infrastructure.

In addition to being wholly within the boundaries of the City's sewer CCN, the proposed District is also entirely within Bolivar Water Supply Corporation's water CCN No. 11257, also depicted in the maps attached hereto as **Attachment A**. As such, BWSC has an interest in and the authority to provide retail water services within the proposed District's project. Without a CCN, the Petitioner would not be authorized to provide retail water or sewer service with the proposed District and it would need to obtain such services from the City and Bolivar Water Supply Corporation. However, the Petitioner states in its petition that it has no such plans to contract for such services. Further, since the proposed District is within one water CCN and one sewer CCN, its creation would not promote regionalization and would adversely impact the City's obligation to provide continuous and adequate service to such land. So, it is in the public interest to deny the Petition.¹⁰

Alternatively, the City protests the Petition under TWC § 54.021(c) on the basis that it is not beneficial to at least a portion of the land located in and adjacent to the proposed Districts boundaries. Accordingly, in light of its affected person status, the City should be entitled to a contested case hearing to address this issue as well. To this end, TWC § 54.021(c) states:

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, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.¹¹

Here, it is the City's understanding that a perpetual conservation easement runs through the boundaries of the proposed District and that the proposed District's project would require the removal of such an easement, the likelihood of which is uncertain. Thus, the City requests a contested case hearing to address this issue as well to determine whether the proposed District's boundaries should exclude the portion subject to the conservation easement.

Therefore, for the reasons stated above, the City is an affected person that is impacted by the Petition in a manner unique from the rest of the general public, and the TCEQ should grant its

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¹¹ Tex. Water Code § 54.021(c).

Texas Commission on Environmental Quality

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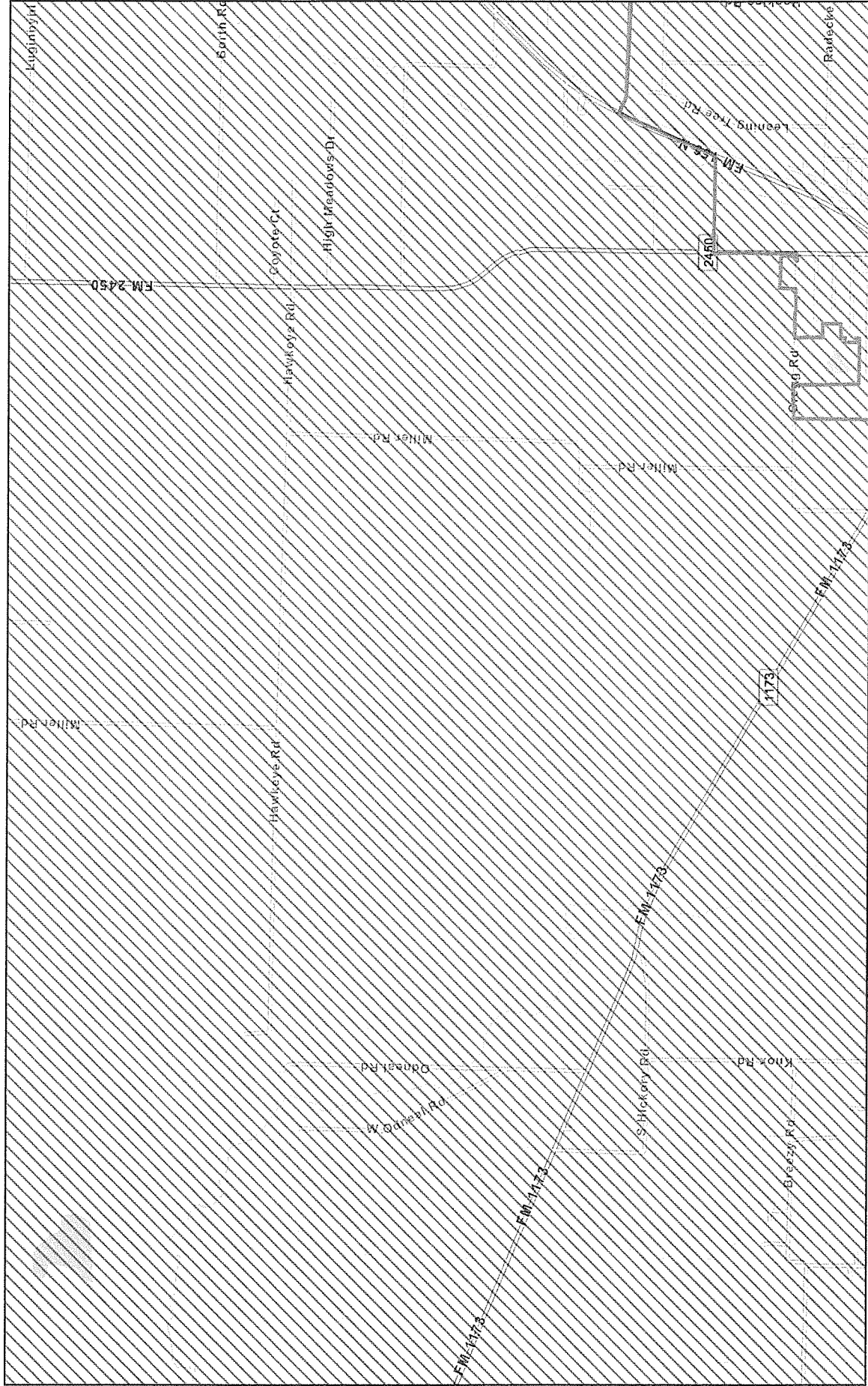
Enclosures

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Attachment A

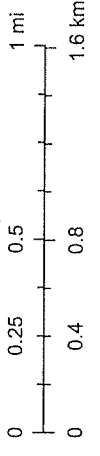
City of Sanger Sewer CCN No. 20073
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December 2, 2022

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Texas Parks & Wildlife, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METINASA, USGS, EPA, NPS, US Census Bureau, USDA



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REVIEWED

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By GCW H

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December 6, 2022
Page 2

posting legal notices at the Denton County Clerk's Office on October 20, 2022. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is December 6, 2022. Thus, these public comments and request for a contested case hearing are timely filed.

II. PUBLIC COMMENT

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 1,018.429 acres of land, are located entirely within the City's sewer Certificate of Convenience and Necessity ("CCN") No. 20073. Second, the City asks the TCEQ to explain how the District can provide retail wastewater service or build wastewater infrastructure within the proposed District's boundaries if the City has the exclusive right to provide retail wastewater service over the land. Next, the City questions whether the TCEQ performed an analysis on the ability of the Petitioner to develop the land when it conducted its review of the Petition. Specifically, did the TCEQ verify whether there are any conservation easements within the proposed jurisdictional boundaries of the District that would inhibit the development of such land?

III. REQUEST FOR A CONTESTED CASE HEARING

The Petition requesting the creation of the District under Texas Water Code ("TWC") § 54.021 should be denied as since the City is the holder of sewer CCN No. 20073, such District is not feasible or practicable, not necessary, and would not be a benefit to the land to be included in the District. In relevant part, TWC § 54.021(a) and (b) state:

(a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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...¹

Here, the City possesses a sewer CCN over the entire proposed jurisdictional boundaries of the District, and Bolivar Water Supply Corporation ("BWSC") possesses a water CCN over the entire proposed jurisdictional boundaries of the District. Maps of the City's sewer CCN boundaries and BWSC's water CCN boundaries are attached hereto as **Attachment A** and incorporated herein for all purposes. Thus, given that those entities are the only entities that can provide water and sewer service within the proposed District's jurisdictional boundaries, the District would not be able to provide such services. Said another way, availability of water and sewer (comparable) services from the City and Bolivar are not just available, but they are necessarily the provider of such

¹ Tex. Water Code § 54.021(a) and (b).

Texas Commission on Environmental Quality
December 6, 2022
Page 3

services. The TCEQ must consider these facts in determining whether the Petition is feasible and practicable under TWC § 54.021(b)(1).

The City requests a contested case hearing regarding the Petition under 30 TAC § 55.251. As the holder of sewer CCN No. 20073 with a sewer service area over the entire jurisdictional boundaries of the proposed District, the City is an "affected person" under 30 Texas Administrative Code ("TAC") § 55.256 and has the right to submit this protest. In accordance with 30 TAC § 55.251(b), the contact information of the person filing this request is provided in the initial paragraph of this letter. For an entity other than the Commissioners, Executive Director, or Petitioner to have standing to request a contested case hearing, it must demonstrate that it is an "affected person" under the standards set forth in 30 TAC § 55.256.² Under such rule, an affected person is one who has a personal justiciable interest not common to members of the general public that is related to a legal right, duty, privilege, power, or economic interest affected by the petition.³ Governmental entities, such as the City, with authority under state law over issues contemplated by the petition may be considered affected persons.⁴ All relevant factors must be considered by the TCEQ in determining affected person status, including: (1) whether the interest claimed is one protected by the law under which the petition 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 activity regulated; (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; (5) the likely impact of the regulated activity on the 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.

Here, the jurisdictional boundaries of the proposed District are entirely within the City's sewer CCN No. 20073 service area, and the overlapping boundaries resulting from the Petition is a personal justiciable interest of the City that is negatively affected by the Petition. A map of the City's sewer CCN boundaries is attached hereto as Attachment A and incorporated herein for all purposes. Under Texas law, a sewer CCN provides its holder with the exclusive right to provide retail sewer service to the service area designated in such certificate.⁵ Here, however, the Petition contemplates creating a municipal utility district within the City's sewer CCN service area. Thus, as the sole sewer CCN holder over the proposed District's jurisdictional boundaries, the creation of the District within the City's sewer CCN boundaries is certainly a fact that is unique to the City. Further, such unique fact negatively affects the City as it impairs the City's legal right, duty, privilege, power, and economic interest under its sewer CCN in providing retail sewer service within its sewer CCN service area. To that end, the City's right, duty, privilege, power, and economic interest under its sewer CCN is statutorily protected.⁶ As to the City's right, privilege, and power under its sewer CCN, TWC § 13.242(a) states that:

...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any

² 30 TAC § 55.251(b).

³ 30 TAC § 55.256(a).

⁴ 30 TAC § 55.256(b).

⁵ Tex. Water Code § 13.002(20).

⁶ Tex. Water Code § 13.242(a).

Laurie Gharis

From: Fax3311
Sent: Tuesday, December 6, 2022 4:43 PM
To: Laurie Gharis
Subject: FW: Corporate eFax message from "5123225800" - 5 page(s)
Attachments: FAX_20221206_1670363097_702.pdf

Laurie Gharis
Office of the Chief Clerk
Texas Commission on Environmental Quality
Office Phone: 512-239-1835
Cell Phone: 512-739-4582

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Texas Commission on Environmental Quality
December 6, 2022
Page 4

area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.⁷

Additionally, the City's obligation as a CCN holder to provide retail sewer service is established under TWC § 13.250(a), which provides that:

Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.⁸

Plus, the Petition proposes the construction of sanitary sewer infrastructure, which with the water, drainage, and roadway infrastructure improvements is estimated to cost \$191,620,000. The sanitary sewer infrastructure portion of such sum contemplates the installation of such infrastructure within the City's sewer CCN service area which also negatively affects the City's ability to provide retail sewer service and economic interest in developing its sewer system.

For these reasons, creating the proposed District with jurisdictional boundaries within the City's sewer CCN service area uniquely impacts the City and its legal right, duty, privilege, power, and economic interest in providing retail sewer service to that area. Thus, the City is an affected person with the right to a contested case hearing on the Petition.

Additionally, the City is an affected person in this matter when evaluating its personal justiciable interests under the pertinent portions of the TCEQ's "other relevant factors" in 30 TAC § 55.256(c). As already noted in the portions of this Section III, above, the City's interest in being the exclusive retail sewer service provider in its sewer CCN service area is protected by law under TWC §§ 13.242 and 13.250. Such statutory protections are directly related to the analysis of whether to approve or deny the Petition under TWC § 54.021(a) and (b). As noted in TWC § 54.021(b)(1), when the TCEQ considers the feasibility and practicality of a petition to create a district, it must look to whether there are comparable services from other systems, such as municipalities. Clearly, with its sewer CCN, the City is not just a comparable service provider, but rather is the mandatory sewer service provider within the jurisdictional boundaries of the proposed District.

As to the second TCEQ factor under 30 TAC § 55.256(c), there are no express distance restrictions or other limitations imposed by law on the City's affected interest of providing retail sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside or outside the sewer CCN area. Here, such District boundaries would be entirely within the City's sewer CCN service area.

⁷ *Id.*

⁸ Tex. Water Code § 13.250(a).

Texas Commission on Environmental Quality
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Page 5

Next, a reasonable relationship exists between the City's interest as the sewer CCN holder and the creation of the District. Specifically, in the event that the District is created, it cannot provide sewer service within its boundaries. Otherwise, the District would be infringing on the City's exclusive right to provide retail sewer service. Again, the City has the exclusive right to provide retail sewer service with its sewer CCN service area- including the proposed District - and it must also provide continuous and adequate service to consumers within such area.⁹ Further, the addition of another retail water and sewer service provider would have a negative impact on the City's investment in its sewer infrastructure.

In addition to being wholly within the boundaries of the City's sewer CCN, the proposed District is also entirely within Bolivar Water Supply Corporation's water CCN No. 11257, also depicted in the maps attached hereto as Attachment A. As such, BWSC has an interest in and the authority to provide retail water services within the proposed District's project. Without a CCN, the Petitioner would not be authorized to provide retail water or sewer service with the proposed District and it would need to obtain such services from the City and Bolivar Water Supply Corporation. However, the Petitioner states in its petition that it has no such plans to contract for such services. Further, since the proposed District is within one water CCN and one sewer CCN, its creation would not promote regionalization and would adversely impact the City's obligation to provide continuous and adequate service to such land. So, it is in the public interest to deny the Petition.¹⁰

Alternatively, the City protests the Petition under TWC § 54.021(c) on the basis that it is not beneficial to at least a portion of the land located in and adjacent to the proposed Districts boundaries. Accordingly, in light of its affected person status, the City should be entitled to a contested case hearing to address this issue as well. To this end, TWC § 54.021(c) states:

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, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.¹¹

Here, it is the City's understanding that a perpetual conservation easement runs through the boundaries of the proposed District and that the proposed District's project would require the removal of such an easement, the likelihood of which is uncertain. Thus, the City requests a contested case hearing to address this issue as well to determine whether the proposed District's boundaries should exclude the portion subject to the conservation easement.

Therefore, for the reasons stated above, the City is an affected person that is impacted by the Petition in a manner unique from the rest of the general public, and the TCEQ should grant its

⁹ See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

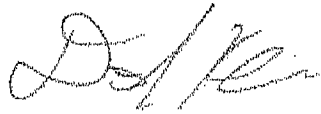
¹⁰ See Tex. Water Code § 13.241(d) and § 26.081(a) reflecting state policy to promote regional water, sewer, and waste disposal services.

¹¹ Tex. Water Code § 54.021(c).

Texas Commission on Environmental Quality
December 6, 2022
Page 6

contested case hearing request. Additionally, the City requests that the Executive Director respond to the City's public comments.

Sincerely,



David Klein
Attorney for the City of Sanger

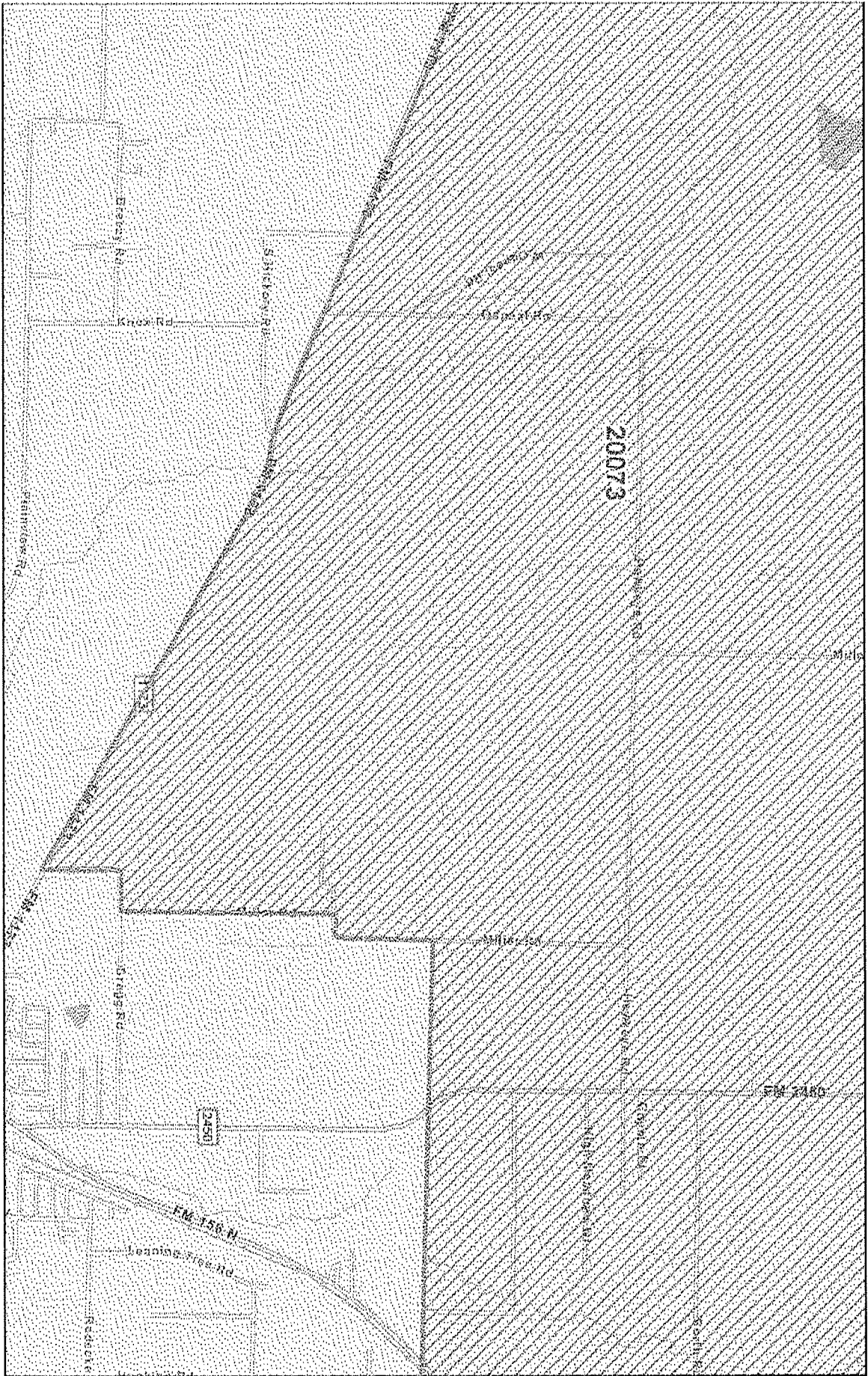
Enclosures

cc: Todd Galiga, Environmental Law Division
Justin Taack, Districts Section Manager
John Noblitt, City Manager, City of Sanger
Hugh Coleman, City Attorney City of Sanger
Chloe Daniels, Lloyd Gosselink Rochelle & Townsend

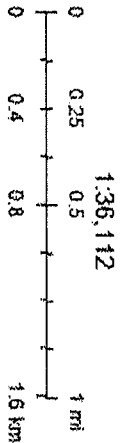
Attachment A

City of Sanger Sewer CCN No. 20073
Bolivar Water Supply Corporation Water CCN No. 11257

City of Sanger Sewer CCN No. 20073



December 2, 2022



Texas Parks & Wildlife, East, HERE, Garmin, SafeSwraps, GeoTechnology, Inc. METIUNSA, USGS, EPA, NPS, US Census Bureau, USDA

Laurie Gharis

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Sent: Tuesday, December 6, 2022 4:42 PM
To: Laurie Gharis
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Laurie Gharis
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Texas Commission on Environmental Quality
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Re: Denton County MUD 12

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RICOH
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Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
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Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue Suite 1900 Austin, Texas 78701

To:

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

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Marielle Bascon

From: PUBCOMMENT-OCC
Sent: Thursday, December 8, 2022 1:15 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis
Subject: FW: Public comment on Permit Number D-06242022-058
Attachments: 2022.12.06 Letter to TCEQ re Denton County MUD 12 Public Comment and Hearing Request1.pdf

H

From: sbilliot@lglawfirm.com <sbilliot@lglawfirm.com>
Sent: Tuesday, December 6, 2022 4:23 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number D-06242022-058

REGULATED ENTY NAME DENTON COUNTY MUD 12

RN NUMBER: RN111525630

PERMIT NUMBER: D-06242022-058

DOCKET NUMBER:

COUNTY: DENTON

PRINCIPAL NAME: DENTON COUNTY MUNICIPAL UTILITY DISTRICT 12

CN NUMBER: CN606033330

FROM

NAME: MR David Klein

EMAIL: sbilliot@lglawfirm.com

COMPANY: Lloyd Gosselink Rochelle & Townsend, P.C.

ADDRESS: 816 CONGRESS AVE 1900
AUSTIN TX 78701-2442

PHONE: 5123225800

FAX:

COMMENTS: Please see the attached public comment and request for a contested case hearing on behalf of the City of Sanger.

Mr. Klein's Direct Line: (512) 322-5818
Email: dklein@lglawfirm.com

December 6, 2022

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

**VIA HAND-DELIVERY, FAX
AND TCEQ E-FILING**

Re: Petition by Denton 1000 Land, LP to the Texas Commission on Environmental Quality for the creation of Denton County Municipal Utility District No. 12;
TCEQ Internal Control No. D-06242022-058

Dear Chief Clerk Gharis:

The City of Sanger (the "**City**") submits the following public comments and request for a contested case hearing on the petition of Denton 1000 Land, LP to create of Denton County Municipal Utility District No. 12 (the "**Petition**"). Please direct all future correspondence on this Petition to the following representative of the City:

City of Sanger:

David Klein, Attorney for the City
816 Congress Avenue, Suite 1900
Austin, Texas 78701
dklein@lglawfirm.com
Daytime Phone: (512) 322-5800
Fax: (512) 472-0532

I. PROCEDURAL HISTORY CONCERNING THE PETITION

On June 3, 2022, Denton 1000 Land, LP (the "**Petitioner**") filed its Petition for the creation of Denton County Municipal Utility District No. 12 (the "**District**") with the Texas Commission on Environmental Quality (the "**TCEQ**"). The TCEQ found the petition administratively complete on June 29, 2022. On October 12, 2022, the Chief Clerk of the TCEQ sent a letter to Matt McPhail, attorney for the Petitioner, with a copy of the draft Notice of District Creation (the "**Notice**"). The Notice specified that the deadline to request a hearing is 30 days after newspaper publication of the Notice. The Petitioner filed an Affidavit of Publication of the Notice of District Creation indicating that notice was published on October 30, 2022 and November 6, 2022, and a Certificate of Posting Notice from Michelle Boutuell that Notice was posted on the bulletin board used for

posting legal notices at the Denton County Clerk's Office on October 20, 2022. Therefore, based on these dates of posting and publication notice, the deadline to submit public comments and/or request a hearing regarding the Petition is December 6, 2022. Thus, these public comments and request for a contested case hearing are timely filed.

II. PUBLIC COMMENT

With this filing, the City submits the following comments regarding the Petition. First, the jurisdictional boundaries of the proposed District, consisting of approximately 1,018.429 acres of land, are located entirely within the City's sewer Certificate of Convenience and Necessity ("CCN") No. 20073. Second, the City asks the TCEQ to explain how the District can provide retail wastewater service or build wastewater infrastructure within the proposed District's boundaries if the City has the exclusive right to provide retail wastewater service over the land. Next, the City questions whether the TCEQ performed an analysis on the ability of the Petitioner to develop the land when it conducted its review of the Petition. Specifically, did the TCEQ verify whether there are any conservation easements within the proposed jurisdictional boundaries of the District that would inhibit the development of such land?

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(a) If the commission finds...that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

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¹ Tex. Water Code § 54.021(a) and (b).

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...except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any

² 30 TAC § 55.251(b).

³ 30 TAC § 55.256(a).

⁴ 30 TAC § 55.256(b).

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⁶ Tex. Water Code § 13.242(a).

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As to the second TCEQ factor under 30 TAC § 55.256(c), there are no express distance restrictions or other limitations imposed by law on the City's affected interest of providing retail sewer service within the proposed District's boundaries. That being said, it is reasonable to assume that the applicable distance requirement should be based upon whether the proposed District's boundaries are inside or outside the sewer CCN area. Here, such District boundaries would be entirely within the City's sewer CCN service area.

⁷ *Id.*

⁸ Tex. Water Code § 13.250(a).

Next, a reasonable relationship exists between the City's interest as the sewer CCN holder and the creation of the District. Specifically, in the event that the District is created, it cannot provide sewer service within its boundaries. Otherwise, the District would be infringing on the City's exclusive right to provide retail sewer service. Again, the City has the exclusive right to provide retail sewer service with its sewer CCN service area- including the proposed District - and it must also provide continuous and adequate service to consumers within such area.⁹ Further, the addition of another retail water and sewer service provider would have a negative impact on the City's investment in its sewer infrastructure.

In addition to being wholly within the boundaries of the City's sewer CCN, the proposed District is also entirely within Bolivar Water Supply Corporation's water CCN No. 11257, also depicted in the maps attached hereto as **Attachment A**. As such, BWSC has an interest in and the authority to provide retail water services within the proposed District's project. Without a CCN, the Petitioner would not be authorized to provide retail water or sewer service with the proposed District and it would need to obtain such services from the City and Bolivar Water Supply Corporation. However, the Petitioner states in its petition that it has no such plans to contract for such services. Further, since the proposed District is within one water CCN and one sewer CCN, its creation would not promote regionalization and would adversely impact the City's obligation to provide continuous and adequate service to such land. So, it is in the public interest to deny the Petition.¹⁰

Alternatively, the City protests the Petition under TWC § 54.021(c) on the basis that it is not beneficial to at least a portion of the land located in and adjacent to the proposed Districts boundaries. Accordingly, in light of its affected person status, the City should be entitled to a contested case hearing to address this issue as well. To this end, TWC § 54.021(c) states:

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, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.¹¹

Here, it is the City's understanding that a perpetual conservation easement runs through the boundaries of the proposed District and that the proposed District's project would require the removal of such an easement, the likelihood of which is uncertain. Thus, the City requests a contested case hearing to address this issue as well to determine whether the proposed District's boundaries should exclude the portion subject to the conservation easement.

Therefore, for the reasons stated above, the City is an affected person that is impacted by the Petition in a manner unique from the rest of the general public, and the TCEQ should grant its

⁹ See Tex. Water Code § 13.250 (setting forth a CCN holder's obligation to serve).

¹⁰ See Tex. Water Code § 13.241(d) and § 26.081(a) reflecting state policy to promote regional water, sewer, and waste disposal services.

¹¹ Tex. Water Code § 54.021(c).

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contested case hearing request. Additionally, the City requests that the Executive Director respond to the City's public comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Klein".

David Klein
Attorney for the City of Sanger

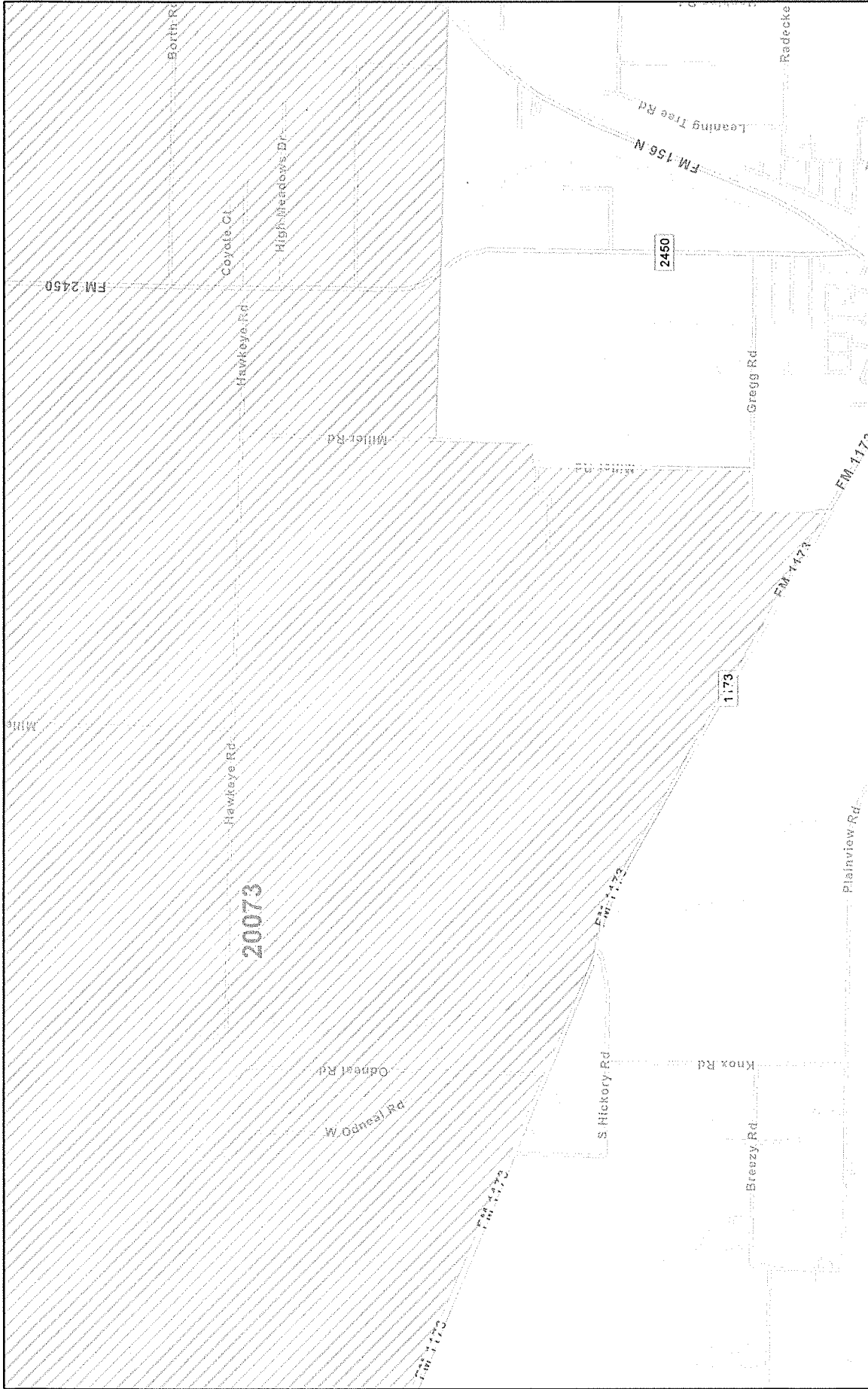
Enclosures

cc: Todd Galiga, Environmental Law Division
Justin Taack, Districts Section Manager
John Noblitt, City Manager, City of Sanger
Hugh Coleman, City Attorney City of Sanger
Chloe Daniels, Lloyd Gosselink Rochelle & Townsend

Attachment A

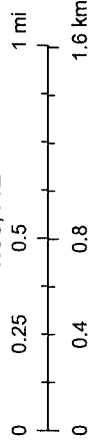
City of Sanger Sewer CCN No. 20073
Bolivar Water Supply Corporation Water CCN No. 11257

City of Sanger Sewer CCN No. 20073



December 2, 2022

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