

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 26, 2023

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: **IN THE MATTER OF THE PETITION FOR CREATION OF
DENTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 12
TCEQ DOCKET NO. 2022-1733-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2022-1733-DIS

**PETITION FOR THE CREATION
OF DENTON COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 12**

**§
§
§
§**

**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing request in the above-captioned matter.

I. Introduction

A. Summary of Position

The TCEQ Chief Clerk’s office received one timely hearing request from the City of Sanger (the City). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing request.

B. Background

Denton 1000 Land, LP (Petitioner) filed a petition for creation of Denton County Municipal Utility District No. 12 (District) 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 June 29, 2022. On November 6, 2022, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 1,018.429 acres located within Denton County and all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Denton. The petition states that the Petitioner holds title to a majority in value of the land to be included in the proposed District and there are no lienholders on the property to be included in the proposed District. The petition further states that, if approved, the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer, treatment, and disposal system for domestic and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with all of the purposes for which the proposed District is created. The comment and contested case hearing request periods ended on December 6, 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 must be filed with the Commission. TWC § 54.014. The petition must 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 must: (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 the 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 must 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 must consider the written opinion submitted by the county commissioners. TWC § 54.0161(c).

The Commission must 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 must 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 must deny the petition. TWC § 54.021(d). The rights, powers, privileges, authority, and functions of a district are 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 must 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:

- (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 must grant a request for a contested case hearing if: (1) the request is made by the applicant or the Executive Director (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

The Commission received timely comments and a hearing request from the City. According to the City, the proposed District falls entirely within the jurisdictional boundaries of the City's sewer Certificate of Convenience and Necessity (CCN) No. 20073 service area.¹ As the holder of this sewer CCN, the City asserts its exclusive right to provide retail wastewater service within its sewer CCN service area, including the proposed District. The City has concerns that establishing the proposed District and constructing sanitary sewer infrastructure within the City's sewer CCN service area would potentially impact its ability to provide retail sewer service and its economic interest in developing the City's sewer system. The City further states that the proposed District is wholly within Bolivar Water Supply Corporation's water CCN No. 11257 and since the proposed District falls within both a water CCN and a sewer CCN, its creation would not promote regionalization and would adversely impact the City's obligation to provide continuous and adequate service over the land encompassed by the proposed District. In addition, the City raises another concern regarding a perpetual conservation easement that runs through the

¹ The City's hearing request includes Attachment A which consists of maps illustrating the City's sewer CCN boundaries and Bolivar Water Supply Corporation's water CCN boundaries.

boundaries of the proposed District. The City points out that the implementation of the District's project would necessitate the removal of this easement. The City raises the issue whether the proposed District's boundaries should exclude the portion subject to the conservation easement.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Here, the City stated that its interest in serving as the exclusive retail wastewater service provider in its sewer CCN service area is protected under TWC §§ 13.242 and 13.250. While OPIC acknowledges that the City's CCN was granted by the Public Utility Commission of Texas under statutory provisions that do not necessarily confer authority over the issues contemplated by this application, OPIC agrees that such statutory protections are relevant when the Commission considers the feasibility and practicality of a petition to create a district while assessing whether to approve or deny the petition under TWC § 54.021(a) and (b). Also, the City has identified other interests that are relevant to the proposed District, such as the availability of its own sewer service and regionalization, which are relevant to the Commission's decision in this matter. *See* TWC § 54.021(b)(1).

Based on the City's identified interests and the District's location within its sewer CCN service area, OPIC finds that the City has demonstrated it qualifies as

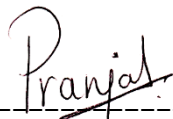
an affected person in this matter. Therefore, OPIC respectfully recommends that the Commission grant the City's hearing request.

IV. CONCLUSION

For the reasons set forth above, OPIC respectfully recommends the Commission find that the City of Sanger qualifies as an affected person and refer the matter to the State Office of Administrative Hearings for a contested case hearing.

Respectfully submitted,

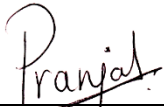
Garrett T. Arthur
Public Interest Counsel

By:  _____

Pranjal M. Mehta
Assistant Public Interest Counsel
State Bar No. 24080488
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-0574 Phone

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Pranjal M. Mehta

MAILING LIST
DENTON COUNTY MUD NO. 12
TCEQ DOCKET NO. 2022-1733-DIS

FOR THE APPLICANT

via electronic mail:

Matt McPhail
Winstead PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701
matt.mcphail@winstead.com

Stephanie Daniels White
Kimley Horn and Associates, Inc.
11700 Katy Freeway, Suite 800
Houston, Texas 77079
stephanie.white@kimley-horn.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Bobby Salehi, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
bobby.salehi@tceq.texas.gov

James Walker, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-2532 Fax: 512/239-2214
james.walker@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

David J. Klein
Lloyd Gosselink Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701