

TCEQ DOCKET NO. 2023-0528-DIS

APPLICATION FOR ROCKWOOD MUNICIPAL UTILITY DISTRICT NO. 1 OF DENTON COUNTY	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Request (Response) on the Petition by JLMCG Properties, LLC, a Nevada limited liability company, and Cendei Sherwood, (Petitioners) for the creation of Rockwood Municipal Utility District No. 1 of Denton County (District). The Office of the Chief Clerk received a hearing request from the town of Ponder.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

The Executive Director recommends that the Commission find the Town of Ponder an Affected Person and grant their Hearing Request.

I. DESCRIPTION OF DISTRICT

JLMCG Properties, LLC, a Nevada limited liability company, and Cendei Sherwood, (Petitioners) filed a petition for creation of Rockwood Municipal Utility District No. 1 of Denton County. The petition states that: the Petitioners hold title to a majority in value of the land to be included in the proposed District; there are no lienholders on the property to be included in the proposed District; the proposed District will contain approximately 359 acres located within Denton County, Texas; and all of the land within the proposed District is within the extraterritorial jurisdiction of the Town of Ponder.

The petition further states that the proposed District will: construct a water distribution system for domestic purposes; construct a wastewater system; control, abate, and amend harmful excesses of water and the reclamation and drainage of overflowed lands within the proposed District; construct and finance macadamized, graveled, or paved roads, or improvements in aid of those roads; and construct, install, maintain, purchase and operate such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District will be granted the authority to design, acquire, construct, finance, issue bonds, operate, maintain, and convey to the State of Texas, a county, or a municipality for operation and maintenance, a road, or any improvement in aid of the road.

II. PROCEDURAL HISTORY

The TCEQ received the petition on July 21, 2022. The Application was declared administratively complete on July 22, 2022. On November 15, 2022, notice of the petition was posted on the bulletin board used for posting legal notices in Ellis County.

Proper notice of the application was published on November 19 and November 26, 2022, in the *Denton Record-Chronicle*, a newspaper regularly published or circulated in Denton County, the county in which the district is proposed to be located. The period to request a contested case hearing ended on December 27, 2022.

The TCEQ received one timely hearing request on this Petition from the Town of Ponder.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition for consent to the Town of Ponder. After 90 days passed without receiving consent, the Petitioner submitted a petition to the Town to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by Texas Water Code § 54.016(c) expired without a contract for service being agreed to. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD may 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. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the

¹ Tex. Water Code § 54.014.

district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

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;
- (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.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

² Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

³ Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

⁴ Tex. Water Code § 54.021(b).

⁵ 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

⁶ 30 Tex. Admin. Code § 55.251(a).

⁷ 30 Tex. Admin. Code § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) 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 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;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including 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.¹¹

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

⁸ 30 Tex. Admin. Code § 55.251(b) and (d).

⁹ 30 Tex. Admin. Code § 55.251(c).

¹⁰ 30 Tex. Admin. Code § 55.256(a).

¹¹ 30 Tex. Admin. Code § 55.256(c).

¹² 30 Tex. Admin. Code § 55.256(b).

V. THE HEARING REQUESTS

A. Analysis of the Town of Ponder's (Town) Hearing Request

1. Whether the Town Complied with 30 TEX. ADMIN. CODE § 55.251(c)

The Town of Ponder submitted a timely hearing request which contained all required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1). The Town requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3) and provided the TCEQ Internal Control Number for the case as required in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the Town of Ponder complies with the requirements of 30 TAC § 55.251.

2. Whether the City is an Affected Person

It is undisputed that the proposed district is wholly located in the extraterritorial jurisdiction of the Town of Ponder. The Executive Director therefore recommends finding that the Town of Ponder is an affected person. The issue of city consent is an interest that is protected by the law under which the application will be considered, and the issue of city consent contains a reasonable relationship between the interest claimed and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(a)(1) and (3). Furthermore, the Town identified its statutory authority and interest in the issues relevant to the application pursuant to 30 TEX. ADMIN. CODE § 55.256(c)(6) in its request. Specifically, the Town cited TWC §§ 13.242(a) and 13.250 which outlines its powers and privileges as the holder of a Certificate of Convenience and Necessity. Although the TCEQ does not have jurisdiction over CCN matters, the Town contends that the creation of the District would interfere with the services it currently provides within the ETJ and CCN. These services include water, sewer, waste disposal, and emergency/firefighting.

Without city consent, landowners can pursue creation under the provisions of TEX. WATER CODE § 54.016(b) - (d). Under the Texas Water Code, if the city fails or refuses to grant consent within 90 days after receipt of a written request, the landowners in the area may petition the city to provide the land with the water and sewer services contemplated to be provided by the district. TEX. WATER CODE § 54.016(b); LOC. GOVT. CODE § 42.042(b).

The Petitioner indicated that it did not receive any response from the Town related to the Petition for Service.

Under the Texas Water Code, if the landowners and the city fail to execute a "mutually agreeable contract" for the provisions of the requested services within 120 days after receipt of the petition, "the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section." TEX. WATER CODE § 54.016(c); LOC. GOVT. CODE § 42.042(c). According to the Petitioner, the petition was filed with the Town on January 18, 2022. The 120-day period in which to execute a mutually agreeable contract would have ended on February 18, 2022.

The petitioner indicated in the materials they provided to Executive Director staff that no mutually agreeable contract between themselves and the Town exists. If, as it appears, the Town failed to enter a mutually agreeable contract during the 120-day time period, then the landowners would have authorization "to initiate

proceedings to include the land within the district as otherwise provided by this Act.” TEX. WATER CODE § 54.016(c). This issue is both material and relevant to the creation of the proposed District.

Therefore, the Executive Director recommends that the Commission find the Town of Ponder an Affected Person.

VI. RECOMMENDATION

The Executive Director recommends that the Commission grant the hearing requests of the Town of Ponder.

If the Commission chooses to deny the above hearing request, then the Executive Director recommends that the creation petition be granted.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor, Interim Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



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CERTIFICATE OF SERVICE

I certify that on May 8th, the “Executive Director’s Response to Hearing Requests” for the creation of FM 875 Municipal Utility District of Ellis County for Highland Lakes Midlothian I, LLC was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley Staff Attorney
Environmental Law Division

MAILING LIST
Rockwood Municipal Utility District No. 1 of Denton County
Docket No. 2023-0528-DIS; Internal Control No. D-07212022-032

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REQUESTER(S)/INTERESTED PERSON(S):

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Attachment A

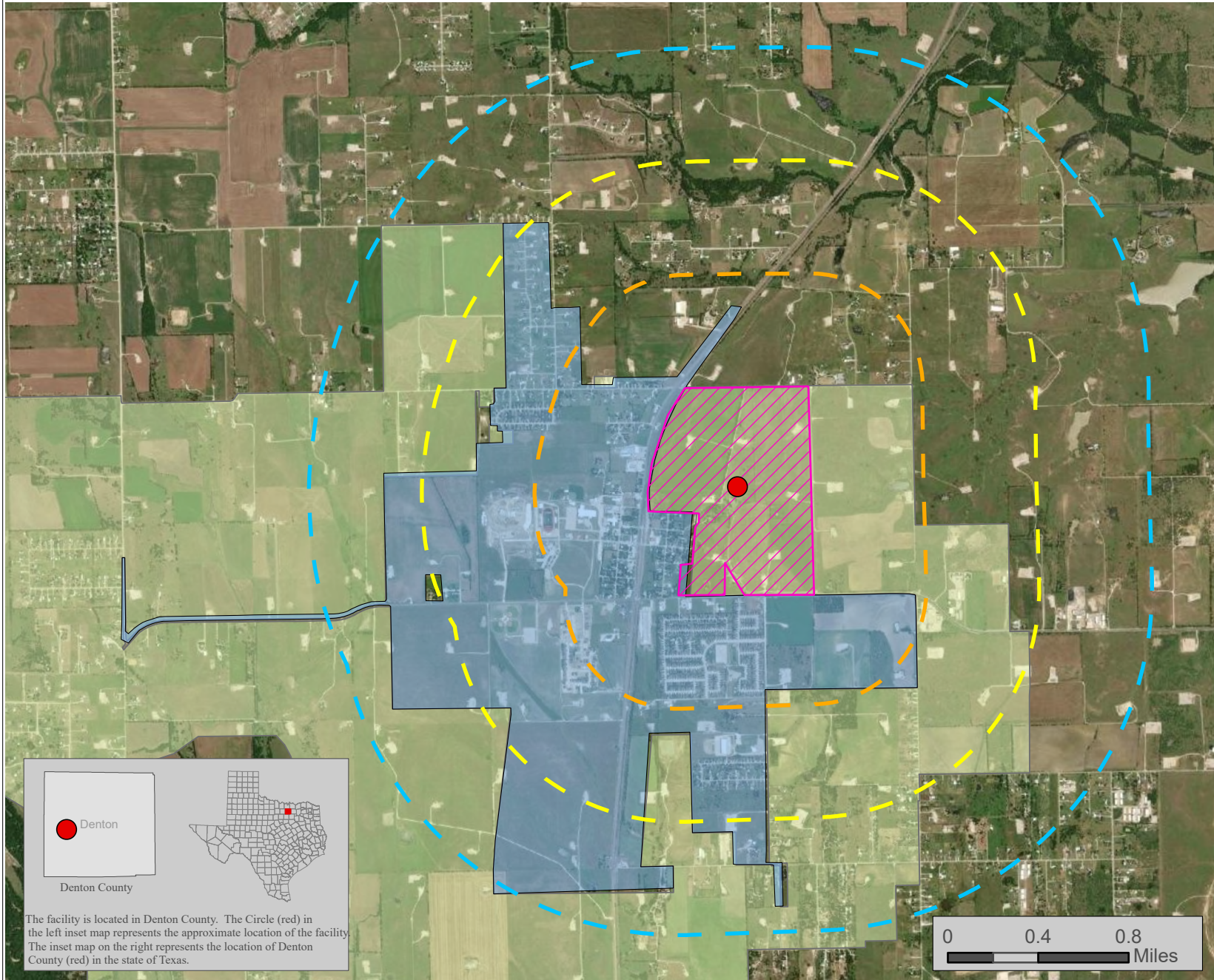
Petition for Creation of Rockwood Municipal Utility District No. 1 of Denton County

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda

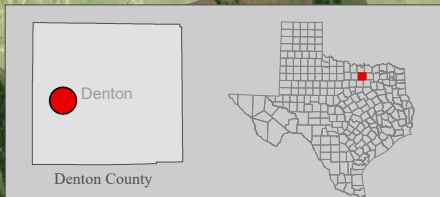


*Protecting Texas by
Reducing and
Preventing Pollution*

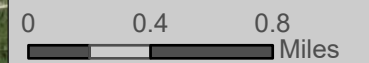
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 4/26/2023
CRF 0087636
Cartographer: AlOrtiz



- Proposed Utility District No.1
- 0.5 Mile from Proposed Utility District No.1
- 1 Mile from Proposed Utility District No.1
- 1.5 Miles from Proposed Utility District No.1
- Proposed Utility District No.1 Boundary
- Ponder Town Boundary
- Ponder ETJ
- County Boundary



The facility is located in Denton County. The Circle (red) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Denton County (red) in the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.