

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
SHANKLE ROAD MUNICIPAL UTILITY DISTRICT OF
ELLIS COUNTY
TCEQ DOCKET NO. 2023-0566-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. 2023-0566-DIS

**PETITION FOR THE
CREATION OF SHANKLE
ROAD MUNICIPAL UTILITY
DISTRICT OF ELLIS COUNTY**

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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 Steve Selinger (Petitioner) for the creation of Shankle Road Municipal Utility District of Ellis County (District) (TCEQ Internal Control No. D-08222022-044). The Commission received comments and requests for a contested case hearing from 266 individuals. For the reasons discussed herein, OPIC respectfully recommends the Commission grant the pending hearing requests of the following persons: David and Renae Stiff, Jacob Zhanel, Alan F. and Deborah Prachyl, Lecia and Paul Brewer, Bill Greenlee, Jack and Vicki Chmelar, Carol Pouzar Alston and Robert Alston, Kathleen Bronstad, Adell and Charlie J. Pouzar, Danny Blayne Laws, Emil and Judy Langer, Jennifer and Todd Krueger, Amy and Bill Gurley, Evan, Jennifer, Leah, and Ragen Martinek, Mark and Melissa Zmolik, Randy Lynn and Kathy Ray, Doug, Stephanie, Garrett, and Peyton New, Jennifer and Michael New, Cheryl L

and Randall T. Zink, Wesley Turner, Leslie and Nancy March, Don Huskins, David and Elizabeth Adams, Carol Alston, Renate Kriska, Gary D. Witherspoon, Jeff Pouzar, Adell Rejcek, Sheryl and Stuart Maddox, Andrew Kubin, Anne Marie and Kevin Malone, Andrew, Janet, and Daniel Nicolaysen, William D. Sims, Josh and Mary Warner, Chris Valek, Jamie and Keith Rosson, Kasie Spence, Susie Rosson, Justin Schiffner, Tucker and Walker Rosson, Danny Dvorak, Brenda and James Martinek, Mary Ann Allred, Dana Langer, Becky Hubert and John Hubert, Joe Weatherford, Earnest Martinek, Brandon, Jacky, and Larry Brittain, Clayton and Julie Houston, Lorene Bakluda, Emil K. and Margaret Martinek, Christopher and Julie Caldwell, Deanna and Thomas Betik, James Novy, Joann Needham Jones, and John Jones. OPIC respectfully recommends denial of all remaining requests for a contested case hearing.

B. Background

Steve Selinger filed a petition for the creation of Shankle Road Municipal Utility District of Ellis County 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 August 23, 2022. On December 11, 2022, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 181.5664 acres located within Ellis 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) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, if approved, the proposed District would be granted road powers. The comment and contested case hearing request periods ended on January 10, 2023.

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

A. Affected Persons

The Commission received timely comments and hearing requests from 266 individuals. OPIC has analyzed each request and determined that the following persons have substantially complied with the factors set forth in 30 TAC § 55.251(b)–(d): David and Renae Stiff, Jacob Zhanel, Alan F. and Deborah Prachyl, Lecia and Paul Brewer, Bill Greenlee, Jack and Vicki Chmelar, Carol Pouzar Alston and Robert Alston, Kathleen Bronstad, Adell and Charlie J. Pouzar, Danny Blayne Laws, Emil and Judy Langer, Jennifer and Todd Krueger, Amy and Bill Gurley, Evan, Jennifer, Leah, and Ragen Martinek, Mark and Melissa Zmolik, Randy Lynn and Kathy Ray, Doug, Stephanie, Garrett, and Peyton New, Jennifer and Michael New, Cheryl L and Randall T. Zink, Wesley Turner, Leslie and Nancy March, Don Huskins, David and Elizabeth Adams, Carol Alston, Renate Kriska, Gary D. Witherspoon, Jeff Pouzar, Adell Rejcek, Sheryl and Stuart Maddox, Andrew Kubin, Anne Marie and Kevin Malone, Andrew, Janet, and Daniel Nicolaysen, William D. Sims, Josh and Mary Warner, Chris Valek, Jamie and Keith Rosson, Kasie Spence, Susie Rosson, Justin Schiffner, Tucker and Walker Rosson, Danny Dvorak, Brenda and James Martinek, Mary Ann Allred, Dana Langer, Becky Hubert and John Hubert, Joe Weatherford, Earnest Martinek, Brandon, Jacky, and Larry Brittain, Clayton, and Julie Houston, Lorene Bakluda, Emil K. and Margaret Martinek,

Christopher and Julie Caldwell, Deanna and Thomas Betik, James Novy, Joann Needham Jones, and John Jones. In their filings, each of these requestors articulated interests that are within the Commission's jurisdiction to consider in the context of a district's creation such as water quality, drainage concerns, and potential effects on natural resources. Further, the map prepared by the Executive Director's (ED) staff indicates that each of the above-named requestors resides within 1.12 miles of the proposed District boundaries, which increases any likelihood that they will be affected in a way not common to members of the general public. When considered in combination with their stated concerns, the proximity of these requestors to the proposed District's boundaries demonstrates that each possesses a personal justiciable interest in this matter. Accordingly, OPIC recommends the Commission find that the above-named individuals qualify as affected persons.

B. All Remaining Requestors

A valid hearing request must substantially comply with the factors set forth in 30 TAC § 55.251(b)-(d). As such, a requestor must list a name and address, a description of their personal, justiciable interests affected by the application, and a brief written statement explaining in plain language the requestor's location and distance relative to the proposed district. In addition, 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, and an interest common to members of the general public does not qualify as a personal justiciable interest. 30 TAC § 55.256(a).

The remaining requests fail to substantially comply with the requirements of 30 TAC § 55.251(b)-(d) and 30 TAC § 55.256(a) for multiple reasons. Most often, the requests fail to state a personal justiciable interest within the jurisdiction of TCEQ. For instance, many requestors only expressed concerns regarding traffic and the potential impact to property value, which falls outside the agency's jurisdiction on this matter. Others failed to indicate an approximate location relative to the proposed District boundaries, and many requests contain general concerns rather than a particularized statement indicating how the requestor will be personally or individually impacted by the proposed District. Standing is not legally restricted by distance in this matter. However, many of the remaining requestors reside at distances where a reasonable relationship does not exist between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Finally, the intervening distances also diminish any likelihood that the regulated activity will impact health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). As such, OPIC cannot find that any of the remaining requestors have satisfied the requirements of 30 TAC § 55.251(b)-(d) and 30 TAC § 55.256(a).¹

IV. Conclusion


For the reasons set forth above, OPIC respectfully recommends the Commission find the individuals listed in Section III.A qualify as affected persons

¹ OPIC notes that under 30 TAC § 55.255(d), a person whose hearing request is denied may still seek to be admitted as a party under § 80.109 if any hearing request is granted on an application.

in this matter. OPIC recommends the Commission grant their hearing requests and refer the matter to SOAH for a contested case hearing. Finally, OPIC recommends denial of all remaining hearing requests.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By:  _____

Jennifer Jamison
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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, 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
SHANKLE ROAD MUNICIPAL UTILITY DISTRICT
TCEQ DOCKET NO. 2023-0566-DIS

FOR THE APPLICANT

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REQUESTER(S):

See attached list.

REQUESTER(S)

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Elizabeth Adams
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Palmer, TX 75152-9115

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560 Chmelar Rd
Ennis, TX 75119-0041

Carol Alston
Citizens Against Ellis County Muds
600 Trojacek Rd
Ennis, TX 75119-1466

Robert Alston
1013 Shankle Rd
Ennis, TX 75119-0115

Richard D & Tresa Anderson
1520 Union Hill Rd
Ennis, TX 75119-7452

Aaron Lee Armstrong
716 Woodcrest Dr
Ennis, TX 75119-7742

Aaron Lee Armstrong
8341 Fm 660
Ennis, TX 75119-0153

Lorene Bakluda
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Ennis, TX 75119-1422

Lucy E Barnett
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Ennis, TX 75119

Lucy E Barnett
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Ennis, TX 75119-0129

Thomas Betik
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Ennis, TX 75119-0033

Gregory Bjork
314A Skrivanek Rd
Ennis, TX 75119-0033

Zack Black
2914 Crisp Rd
Ennis, TX 75119-7446

Donna Blagg
305 S Old Walnut
Ennis, TX 75119-9445

Clint & Tish Bouska
219 Eason Rd
Ennis, TX 75119-0098

Lecia & Paul Brewer
1008 Shankle Rd
Ennis, TX 75119-0114

Brandon Brittain
500 Chmelar Rd
Ennis, TX 75119-0041

Jackie Brittain
500 Chmelar Rd
Ennis, TX 75119-0041

Larry Brittain
500 Chmelar Rd
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Kathleen Bronstad
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Jeffrey N Browning
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Colleyville, TX 76034-6678

Connie Budd
5337 Fm 660
Ennis, TX 75119-0190

David Blake Butler
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Ennis, TX 75119-1735

Laurie R Butler
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Julie Caldwell
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Rachel Cepak
214 Lone Oak Rd
Ennis, TX 75119-0351

Bradley & Sarah Cepak
320 Lone Oak Rd
Ennis, TX 75119-1668

Patricia Cervantes
1010 Williams St
Ennis, TX 75119-7696

Mrs Kelli Burton Childs
7338 Fm 879
Palmer, TX 75152-9113

Jack & Vicki Chmelar
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Jeanne Clark
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Ennis, TX 75119-6031

Marc Clark
902 S Paris St
Ennis, TX 75119-6031

Marlene D Clark
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Ennis, TX 75119-0014

Jennie M Clemett
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Glen Copeland
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Robert Crittenden
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Ennis, TX 75119-0125

Nell Cryer
304 Eason Rd
Ennis, TX 75119-0125

Phillip Cryer
304 Eason Rd
Ennis, TX 75119-0125

Shelby Cryer
304 Eason Rd
Ennis, TX 75119-0125

Kevin Davis
601 Novy Rd
Ennis, TX 75119-1485

Tiffany Davis
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Ennis, TX 75119-1485

Ronnie & Rose Dlabaj
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Jimmy Driskill
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Ennis, TX 75119-0111

Stacy Driskill
881 Shankle Rd
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Allis Droste
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Ennis, TX 75119-0014

Tom Droste
2481 Christian Rd
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Danny Dvorak
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Ennis, TX 75119-2063

Kodie Graff
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Trenton Green
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Ennis, TX 75119-7426

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Palmer, TX 75152-9110

Julie Houston
7212 Fm 879
Palmer, TX 75152-9110

Shelly Hubacek
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Ennis, TX 75119-1098

Becky Hubert
8444 Fm 879
Palmer, TX 75152-9125

John Hubert
8444 Fm 879
Palmer, TX 75152-9125

Darrell Wayne & Nancy Huddleston
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Ennis, TX 75119-1419

Alexis Hunter
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Ennis, TX 75119-0021

Daniel L Hunter
233 Eason Rd
Ennis, TX 75119-0098

Laura Lee Hunter
233 Eason Rd
Ennis, TX 75119-0098

Virgil Hurley
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Ennis, TX 75119-3507

Don Huskins
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Palmer, TX 75152-9130

Ernest Jakubik Jr
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Cindy Jenkins
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Ennis, TX 75120-0772

Jerl T Jenkins
Po Box 772
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Hunter Jones
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Hunter Jones
346 Cody Rd
Ennis, TX 75119-8825

Jeff Jones
346 Cody Rd
Ennis, TX 75119-8825

Jeff Jones
581 Novy Rd
Ennis, TX 75119-1419

John Jones
8176 Fm 660
Ennis, TX 75119-1669

Misty Jones
346 Cody Rd
Ennis, TX 75119-8825

Misty Jones
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Ennis, TX 75119-0905

Ronald Kasowski
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Jennifer Keathly
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Charles Keller
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Ennis, TX 75119-7452

Kassynra Keller
1540 Union Hill Rd
Ennis, TX 75119-7452

Carl Kempf
1247 Shankle Rd
Ennis, TX 75119-0119

George Michael Kilpatrick
6738 Fm 660
Ennis, TX 75119-0167

Rhonda Kilpatrick
6738 Fm 660
Ennis, TX 75119-0167

Margaret Krajca
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Ennis, TX 75119-7417

Renate Kriska
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Palmer, TX 75152-9121

Jennifer & Todd Krueger
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Ennis, TX 75119-0139

Andrew Kubin
590 Trojacek Rd
Ennis, TX 75119-1402

Janice Landsfeld
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Dana Langer
560 Chmelar Rd
Ennis, TX 75119-0041

Emil & Judy Langer
947 Shankle Rd
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Phillip A Langer
560 Chmelar Rd
Ennis, TX 75119-0041

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Betty Macalik
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Ennis, TX 75119-0048

Leslie Mach
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Sheryl & Stuart Maddox
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