

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

October 2, 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
WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 38
TCEQ DOCKET NO. 2023-0575-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. 2023-0575-DIS

PETITION FOR THE CREATION
OF WILLIAMSON COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 38

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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

The Commission received requests for a contested case hearing from Dr. T.J. Bulgerin, Alice Grace Liese Bulgerin, and Elaine Liese Sotello. For the reasons discussed herein, OPIC respectfully recommends that the Commission grant all hearing requests and refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

B. Background

Vale Building Group LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 38 (District) with the Texas Commission on Environmental Quality pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code (TWC); Title 30 of the Texas Administrative Code (TAC), Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner

holds title to a majority in value of the land in the proposed District; (2) there is one lienholder, BancorpSouth Bank, a Mississippi State Chartered Bank, on the property to be included in the proposed District and the aforementioned entity has consented to the petition; (3) the proposed District will contain approximately 145.17 acres located within Williamson County; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city.

The application was declared administratively complete on June 2, 2022, and the Notice of District Petition was published on September 27, 2022. According to the notice, the general nature of the work proposed to be done by the District is the design, construction, acquisition, improvement, extension, financing, and issuance of bonds: (i) for maintenance, operation, and conveyance of an adequate and efficient water works and sanitary sewer system for domestic and commercial purposes; (ii) for maintenance, operation, and conveyance of works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate, and amend local stormwaters or other harmful excesses of waters; (iii) for maintenance, operation, and conveyance of park and recreational facilities; (iv) for conveyance of roads and improvements in aid of roads; and (v) for maintenance, operation, and conveyance of such additional facilities, systems, plants, and enterprises as may be consistent with any or all of the purposes for which the District is created and permitted under state law. The comment and contested case hearing request periods ended on October 21, 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. Tex. Water Code § 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); 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

Dr. Bulgerin, Alice Grace Liese Bulgerin, and Elaine Liese Sotello each timely requested a hearing during the public comment period. In their requests, Dr. Bulgerin and Alice Bulgerin raised concerns regarding the District's potential impacts on water quality and the water table, as well as potential effects on human health and safety. Elaine Liese Sotello echoes these concerns and raises additional issues that fall outside the Commission's jurisdiction on this application, such as concerns regarding property value. In addition, the map prepared by the Executive Director's staff confirms that both the Bulgerins' and Ms. Sotello's listed property addresses are less than a quarter mile outside the proposed District boundary.

The concerns expressed by the Bulgerins and Ms. Sotello regarding ground water levels, water quality, and effects on human health and safety, when combined with their proximities and adjacency to the proposed District boundaries, give each of these requestors a personal justiciable interest in this matter which is not common to the general public. Also, the requestors' concerns are interests protected by the law under which this application will be considered, and a reasonable relationship exists between those interests and the regulation of a Municipal Utility District. Finally, the location of the requestors' homes increases the likelihood of impacts to health, safety, and use of their properties. Therefore, OPIC finds that Dr. T.J. Bulgarian, Alice Grace Liese Bulgerin, and Elaine Liese Sotello qualify as affected persons.

IV. Conclusion

For the foregoing reasons, OPIC respectfully recommends the Commission find that Dr. T. J. Bulgerin, Alice Grace Liese Bulgerin, and Elaine Liese Sotello qualify as affected persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing.

Respectfully submitted,

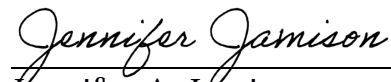
Garrett T. Arthur
Public Interest Counsel

By: *Jennifer Jamison*
Jennifer A. Jamison
Assistant Public Interest Counsel

State Bar No. 24108979
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6363

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2023, the original of the Office of Public Interest Counsel's Response to Request for Hearing 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 A. Jamison

MAILING LIST
WILLIAMSON COUNTY MUD NO. 38
TCEQ DOCKET NO. 2023-0575-DIS

FOR THE APPLICANT

via electronic mail:

John W. Bartram
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701
jbartram@abaustin.com

Ken Heroy
Jones-Heroy & Associates, Inc.
13915 North MoPac Expressway
Suite 408
Austin, Texas 78728
kenh@jones-heroy.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison "Cole" Malley, 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
harrison.malley@tceq.texas.gov

Darryl Smith, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 713/767-3500 Fax: 512/239-2214
darryl.smith@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):

Dr. T. J. Bulgerin
1750 FM 1105, Unit A
Georgetown, Texas 78626

Alice Grace Liese Bulgerin
1750 FM 1105, Unit A
Georgetown, Texas 78626

Elaine Liese Sotello
1501 County Road 149
Georgetown, Texas 78626