

**Ellie Guerra**

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, February 10, 2023 4:03 PM  
**To:** Pubcomment-Dis; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number D-07202022-033  
**Attachments:** 2023-2-10 Request for Contested Case Hearing.pdf

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**From:** bfigg@terrillwaldrop.com <bfigg@terrillwaldrop.com>  
**Sent:** Friday, February 10, 2023 3:18 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number D-07202022-033

**REGULATED ENTY NAME:** JOHNSON COUNTY MUNICIPAL UTILITY DISTRICT 1

**RN NUMBER:** RN111539508

**PERMIT NUMBER:** D-07202022-033

**DOCKET NUMBER:**

**COUNTY:** DALLAS

**PRINCIPAL NAME:** JOHNSON COUNTY MUNICIPAL UTILITY DISTRICT 1

**CN NUMBER:** CN606041473

**FROM**

**NAME:** Beckie Figg

**EMAIL:** [bfigg@terrillwaldrop.com](mailto:bfigg@terrillwaldrop.com)

**COMPANY:** Terrill & Waldrop

**ADDRESS:** 810 W 10TH ST  
AUSTIN TX 78701-2005

**PHONE:** 5124749100

**FAX:** 5124749888

**COMMENTS:** Please see the attached Request for Contested Case Hearing submitted on behalf of Johnson County Special Utility District.

**TCEQ INTERNAL CONTROL NO. D-07202022-033**

<b>PETITION REGARDING THE</b>	§	<b>BEFORE THE TEXAS COMMISSION</b>
<b>CREATION OF JOHNSON COUNTY</b>	§	
<b>MUNICIPAL UTILITY DISTRICT</b>	§	<b>ON</b>
<b>NO. 1</b>	§	
	§	<b>ENVIRONMENTAL QUALITY</b>

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**REQUEST FOR CONTESTED CASE HEARING**

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TO THE HONORABLE COMMISSIONERS:

COMES NOW, Johnson County Special Utility District (“JCSUD”) and files this request for a contested case hearing on Samuel Sparkman Brindley Trust’s (“Trust”) petition for creation of Johnson County Municipal Utility District No. 1 (“Petition”) and for cause would respectfully show the following:

**I. BACKGROUND**

1. JCSUD is a special utility district and a political subdivision of the State of Texas, created in 2004 by conversion from a water supply corporation pursuant to an act of the Texas Legislature. Under Texas Water Code chapters 49 and 65, and pursuant to its state-granted water certificate of convenience and necessity (“CCN”) No. 10081, JCSUD is the sole provider of water services within its certificated areas which covers portions of four counties—Johnson, Tarrant, Ellis, and Hill Counties—and which exclusive service territory encompasses approximately 324 square miles.

2. JCSUD’s water CCN service area covers the entire 333.232 acres owned by the Trust.

3. As such, JCSUD has a unique interest in the outcome of this proceeding that may affect JCSUD’s important rights and plans for further development of water sources for its water service area.

## II. REQUEST FOR CONTESTED CASE HEARING

4. JCSUD requests a contested case hearing regarding the Petition and the issues raised in these comments. For the reasons set forth above, JCSUD is an affected person with a justiciable interest as defined by 30 TAC § 55.256. JCSUD has a personal justiciable interest to a legal right, duty, privilege, power, or economic interest that is not common to the general public and that would be adversely affected should the Petition be granted.

5. The Commission's regulations governing standing provide that, except in circumstances not applicable here, "governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons." 30 TAC § 55.256(b). In determining whether a person is an affected person, the Commission may consider, *inter alia*, "(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; ... (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) (emphasis added). As explained above, the entirety of the 333.232 acres being sought for inclusion in the Johnson County Municipal Utility District No. 1 are within JCSUD's water CCN No. 10081. JCSUD has a unique justiciable interest that could not be adequately represented by any other party. These factors demonstrate JCSUD's unique justiciable interest.

6. JCSUD opposes the Petition because the Petitioner's proposed district would provide one or more services that would duplicate services already provided by JCSUD, which is the exclusive retail public service provider within its certificated service area, thus encroaching in and interfering with JCSUD's exclusive franchise to serve. Therefore, the creation of a municipal utility district is not necessary to provide those services despite representations in the Petition to

the contrary. JCSUD has other concerns, but the creation of a new district within an existing district for the provision of already-available service to the Petitioner's property serves no legitimate purpose. The Commission should therefore deny the Petition.

### III. NOTICE

7. JCSUD requests notice of all future filings in this Application. JCSUD's contact information is as follows:


Geoffrey P. Kirshbaum  
Shan S. Rutherford  
TERRILL & WALDROP  
810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
Phone: (512) 474-9100  
Fax: (512) 474-9888  
gkirshbaum@terrillwaldrop.com  
srutherford@terrillwaldrop.com

D. Scott Cain  
Brent Kiel  
Tyler Green  
CAIN & KIEL, P.C.  
Attorneys at Law  
508 N. Ridgeway  
Cleburne, Texas 76033  
(817) 645-1717  
(817) 645-1739-Fax  
efile@cainlawyers.com

#### IV. PRAYER

Johnson County Special Utility District is an “affected person” within the meaning of the Texas Water Code and the Texas Commission on Environmental Quality’s rules and opposes the Petition. JCSUD requests that the Commission hold a contested case hearing on Samuel Sparkman Brindley Trust’s petition for creation of Johnson County Municipal Utility District No. 1. Upon proper notice and hearing, JCSUD further requests the Commission deny the Samuel Sparkman Brindley Trust’s Petition.

Respectfully submitted,

By: 

Geoffrey P. Kirshbaum  
State Bar No. 24029665  
Shan S. Rutherford  
State Bar No. 24002880  
TERRILL & WALDROP  
810 W. 10<sup>th</sup> Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)  
gkirshbaum@terrillwaldrop.com  
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D. Scott Cain  
State Bar No. 24025279  
Brent Kiel  
State Bar No. 24097064  
Tyler Green  
State Bar No. 24105066  
CAIN & KIEL, P.C.  
Attorneys at Law  
508 N. Ridgeway  
Cleburne, Texas 76033  
(817) 645-1717  
(817) 645-1739-Fax  
efile@cainlawyers.com

**ATTORNEYS FOR JOHNSON COUNTY SPECIAL  
UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2023, a true and correct copy of the foregoing has been served on the following as indicated:

**VIA TCEQ E-COMMENTS**

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

**VIA EMAIL**

Matt McPhail  
Winstead PC  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701

*Attorney for Samuell Sparkman Brindley Trust*



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Geoffrey P. Kirshbaum



TCEQ OCC  
16FEB '23 14:37

February 7, 2023

REVIEWED

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

RECEIVED

FEB 17 2023 H  
By GCW

FEB 14 2023

Water Availability Division

RE: Application by Samuell Sparkman Brindley Trust, to the Texas Commission on Environmental Quality for creation of Johnson County Municipal Utility District No. 1 (the "District"), TCEQ Internal Control No. D-07202022-033.

Dear Chief Clerk:

I am sending this correspondence on behalf of the City of Mansfield, Texas (the "City"). Please direct all future correspondence on this application to me, Vanessa Ramirez at 1200 E. Broad St., Mansfield, Texas 76063. My daytime phone number is (817) 276-4274. The law firm of Taylor Olson Adkins Sralla & Elam, LLP serves as general counsel and city attorney to the City and should be copied on any and all correspondence relating to this matter, with attorney in charge designated as Bradley Anderle, 6000 Western Place, Ste. 200, Fort Worth, Texas 76107.

Samuell Sparkman Brindley Trust is applying to the Texas Commission on Environmental Quality (the "TCEQ") for creation of a new municipal utility district entirely within Johnson County, Texas and wholly within the extraterritorial jurisdiction of the City of Mansfield, Texas. The City of Mansfield opposes the creation of the District.

**I/We (the City) request a contested case hearing.**

The City is an "affected person" entitled to a contested hearing on the issues raised in this hearing request because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256. The proposed municipal utility district will be located wholly within the extraterritorial jurisdiction of the City. The City does not consent to its creation. Pursuant to Texas Water Code § 54.016(a), land within the City's extraterritorial jurisdiction cannot be included within the boundaries of a municipal utility district without the City's consent. For this and additional reasons, local governments, such as the City, with authority under state law over issues contemplated by an application, may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The City has authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial

jurisdiction. TEX. LOC. GOV'T. CODE §§ 42.001, 212.044. Various city functions and services, including water and sewer services, emergency services, and health and safety concerns, may be affected by the creation of the District and are not taken into account by the application.

As a regional water and sewer service provider, the City has an interest to ensure that new development in its extraterritorial jurisdiction regionalizes with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its cities. *See* Texas Water Code § 26.081(a). The City therefore has an interest in ensuring the creation and operation of the proposed municipal utility district is protective of the public health and safety within its extraterritorial jurisdiction. Thus, the City has authority under state law over the issued contemplated by this application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

The creation of the District is not proper because the City does have the reasonable ability to serve the property to be included in the District and has made a commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. On July 5, 2022, the City of Mansfield advised the intended developer of the property to be included in the District, through the developer's attorney, that the City has agreed to provide water and sanitary sewer service to the subject property and will execute a legally binding contract on commercially reasonable terms to provide the service within the time limits prescribed by Section 42.042, Texas Local Government Code. Since this date, the City and representatives of the developer have been in communications related to the development of the property to be included in the District.

The creation of the District is not feasible and practical and is not necessary and would not be a benefit to the land proposed to be included in the District. The creation of the District is not necessary and would not benefit the land to be included in the District because the City can provide water and sanitary sewer service to the property, likely cheaper and at a better quality than the District. The City routinely provides public water and public wastewater service to development within the City and within significant portions of its extraterritorial jurisdiction, and the City is well equipped to provide such services to this property as well. It is consistent with the public interest to limit the number of water and wastewater providers in the state so that the providers can be more easily and carefully managed and monitored. The creation of additional private or semi-private water and wastewater providers and facilities increases the need for inspection, testing and monitoring, and, in circumstances where there is an established provider able to serve, this creates an increased burden without a concomitant public benefit.

Further, there are unanswered questions as to:

- (1) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (2) whether the District and its system and subsequent development within the District will have an unreasonable effect on land elevation, subsidence, groundwater level within the region, recharge capability of a groundwater source, natural run-off rates and



drainage, water quality, and the total tax assessments on all land located within the District.

For these reasons, the City requests that the Commission find that the City is an affected person, grant the City's request for a contested case hearing, and deny the petition for creation of the District.

Sincerely,



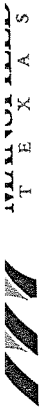
Vanessa Ramirez  
Assistant City Manager

**RECEIVED**

FEB 14 2023

Water Availability Division

cc (via email): Joe Smolinski, City Manager (joe.smolinski@mansfieldtexas.gov)  
Jeff Price, Executive Director of Public Works (jeff.price@mansfieldtexas.gov)  
Bradley A. Anderle, City Attorney (banderle@toase.com)



1200 E. Broad St. Mansfield, Texas 76063



RECEIVED

FEB 14 2023

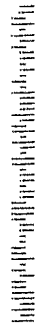
Water Availability

25141 92 88494

600 0001

For Glanis  
Laurie Glanis  
MCHS

Laurie Glanis  
P.O. Box 13087  
Austin, Tx 78711



**Ellie Guerra**

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**From:** PUBCOMMENT-OCC  
**Sent:** Wednesday, February 8, 2023 11:34 AM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis  
**Subject:** FW: Public comment on Permit Number D07202022033  
**Attachments:** Req. for Contested Hearing (JCMUD - 2.7.23).pdf

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**From:** vanessa.ramirez@mansfieldtexas.gov <vanessa.ramirez@mansfieldtexas.gov>  
**Sent:** Wednesday, February 8, 2023 9:53 AM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number D07202022033

**REGULATED ENTY NAME:** JOHNSON COUNTY MUNICIPAL UTILITY DISTRICT 1

**RN NUMBER:** RN111539508

**PERMIT NUMBER:** D07202022033

**DOCKET NUMBER:**

**COUNTY:** DALLAS

**PRINCIPAL NAME:** JOHNSON COUNTY MUNICIPAL UTILITY DISTRICT 1

**CN NUMBER:** CN606041473

**FROM**

**NAME:** Vanessa Ramirez

**EMAIL:** [vanessa.ramirez@mansfieldtexas.gov](mailto:vanessa.ramirez@mansfieldtexas.gov)

**COMPANY:** City of Mansfield

**ADDRESS:** 1200 E BROAD ST  
MANSFIELD TX 76063-1805

**PHONE:** 8172764274

**FAX:**

**COMMENTS:** On behalf of the City of Mansfield, please accept the attached request for contested hearing on the above referenced petition.



February 7, 2023

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

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Vanessa Ramirez  
Assistant City Manager

cc (via email): Joe Smolinski, City Manager (joe.smolinski@mansfieldtexas.gov)  
Jeff Price, Executive Director of Public Works (jeff.price@mansfieldtexas.gov)  
Bradley A. Anderle, City Attorney (banderle@toase.com)