

TCEQ DOCKET NO. 2023-0846-DIS

**APPLICATION FOR THE CREATION OF § BEFORE THE TEXAS
MADERA MUNICIPAL UTILITY § COMMISSION ON
DISTRICT NO. 1 OF DENTON COUNTY § ENVIRONMENTAL QUALITY**

APPLICANTS' RESPONSE TO HEARING REQUESTS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

TCCI Range-Mead 2021, LLC and Hines Acquisitions, LLC, on behalf of Madera Municipal Utility District No. 1 of Denton County (collectively "Applicants") files their Response to Hearing Requests and shows as follows:

I. Introduction and Procedural History

The proposed Madera Municipal Utility District No. 1 of Denton County (the "District") contains approximately 539.203 acres located in Denton County. The proposed District is located within the extraterritorial jurisdiction of the City of Justin.

Applicants filed their Petition for creation of the District on December 28, 2022. The Petition was deemed administratively complete on January 18, 2023. Applicants published the Notice of District Petition in the February 25, 2023 and March 4, 2023 in the Denton Record Chronicle, a newspaper generally circulated in Denton County. On February 24, 2023, notice of the Petition was posted in the Denton County Courthouse. Subsequently, the Texas Commission on Environmental Quality (the "Commission") received a number of requests for a contested case hearing.

The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing requests and setting the hearing on the requests for October 11, 2023.

As more fully set forth below, a contested case hearing is not warranted in this matter, and Applicants' Petition should be granted.

II. Applicable Law

A municipal utility district (“MUD” or “district”) may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission’s administrative rules. A district 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.

TEX. WATER CODE § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. *See* TEX. WATER CODE § 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. *See id.* 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. *See* TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

If all of the proposed district is to be located outside of 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. *See* TEX. WATER CODE § 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 prior to 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. *See id.* at § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. *See id.* at § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. *See* TEX. WATER CODE § 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.

TEX. WATER CODE § 54.021(b).

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. *See* TEX. WATER CODE §§ 49.011(b), 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. *See* 30 TEX. ADMIN. CODE § 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 Texas Administrative Code, Chapter 55 and Texas Water Code section 49.011(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 TEX. ADMIN. CODE § 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 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. *See* 30 TEX. ADMIN. CODE § 55.256(b).

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 section 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. *See* 30 TEX. ADMIN. CODE § 55.255(b).

III. Analysis of the Hearing Requests

The City of Justin (the “City”), requested a contested case hearing on April 3, 2023. This request should be denied. The City asserts it has statutory authority over and interest in the issues relevant to the Petition. If this is the case, the City has failed to demonstrate any nexus between these items and the proposed District. Governmental entities may be an “affected person” if they have statutory authority over or an interest in the issues relevant to the applications. What the City describes as its interest pertains to development in its extraterritorial jurisdiction (“ETJ”); not the application itself.

The City failed to raise any issue within the scope of what the Commission may consider when reviewing the Petition. *See* TEX. WATER CODE § 54.021(b). In addition, it failed to articulate any way that it would be affected by the proposed District in a manner not common to members of the general public have statutory authority over or an interest in the issues relevant to the applications. *See* 30 TEX. ADMIN. CODE § 55.251 § (c)(6). As such, the City’s hearing request does not demonstrate how it meets the definition of an affected person.

IV. Conclusion

The request for contested case hearing does not identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the request has not shown that any person would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the applications. Therefore, the requests do not meet the definition of an “affected person” and the hearing requests should be denied.

WHEREFORE, Applicants request that the hearing requests be denied and that the Petition be granted.

Respectfully submitted,

COATS | ROSE

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ATTORNEYS FOR APPLICANTS

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2023, the original of Applicants' Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed below either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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