

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*

September 18, 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 MADERA  
MUNICIPAL UTILITY DISTRICT NO. 1 OF DENTON COUNTY  
TCEQ DOCKET NO. 2023-0846-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2023-0846-DIS**

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

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUEST FOR HEARING**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to the hearing request in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

The TCEQ Chief Clerk’s office received one timely hearing request from the City of Justin (the City). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing request.

**B. Background**

TCCI Range-Mead 2021, LLC and Hines Acquisitions, LLC (Petitioners) filed a petition for creation of Madera Municipal Utility District No. 1 of Denton County (District) 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 January 18, 2023. On March 4, 2023, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 539.203 acres located within Denton County, and all of the land within the proposed District is within the extraterritorial jurisdiction (ETJ) of the City of Justin. The petition further states that, if approved, the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, and road facilities as shall be consonant with all of the purposes for which the proposed District is created. The comment and contested case hearing request periods ended on April 3, 2023. The Commission received timely comments and a hearing request from the City.

## **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, and 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 must be filed with the Commission. TWC § 54.014. The petition must 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 must: (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 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. TWC § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court must 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 must consider the written opinion submitted by the county commissioners. TWC § 54.0161(c).

The Commission must 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 must 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 must deny the petition. TWC § 54.021(d). The rights, powers, privileges, authority, and functions of a district are 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 must 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:

- (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 must grant a request for a contested case hearing if: (1) the request is made by the applicant or the Executive Director; 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**

The City's hearing request stated that the City and TCCI Range-Mead 2021, LLC executed a sanitary sewer service contract on April 7, 2022.<sup>1</sup> The City asserts that it has a unique statutory interest in the Petition because TWC Section 54.016 imposes certain obligations on the City regarding providing consent or negotiating mutually agreeable terms for the same water or sanitary sewer service that the proposed District might otherwise provide. The hearing request stated that the City is currently in contractual privity with one of the Petitioners regarding the same sewer service that would be provided by the District within the City's ETJ if the Petition is granted. The hearing request also stated that the City has undertaken significant efforts to increase its sewer service capacity in furtherance of its obligations under the sewer service agreement and as a result of these efforts, the City is uniquely impacted by the Petition and the creation of the requested District. The City also asserts that it is statutorily authorized to provide water and wastewater service within its ETJ, and therefore, the City has statutory authority over and interest in the issues relevant to the Petition.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC

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<sup>1</sup> A copy of West Side Regional Sanitary Sewer Agreement is attached to City's hearing request.



§ 55.256(b). Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Here, the City stated that it is currently under the contractual obligations with one of the Petitioners to extend sanitary sewer service to the land proposed to be included in the District, and the City has undertaken efforts to increase its sewer service capacity in order to fulfill its contractual obligations under the sewer service agreement. Also, to allow creation or inclusion of the land in the proposed District, the Commission must first find that the City either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. *See* TWC § 54.016(d). Therefore, OPIC finds that the City has demonstrated it qualifies as an affected person in this matter. OPIC respectfully recommends that the Commission grant the City's hearing request.

#### **IV. Conclusion**

For the reasons set forth above, OPIC respectfully recommends the Commission find that the City qualifies as an affected person and refer the matter to the State Office Of Administrative Hearings for a contested case hearing.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By: Pranjal  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2023, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Pranjal  
Pranjal M. Mehta

**MAILING LIST**  
**MADERA MUNICIPAL UTILITY DISTRICT NO. 1 OF DENTON COUNTY**  
**TCEQ DOCKET NO. 2023-0846-DIS**

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FOR ALTERNATIVE DISPUTE  
RESOLUTION

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