

TCEQ DOCKET NO. NO. 2023-0847-DIS

APPLICATION FOR JOHNSON	§	BEFORE THE TEXAS
COUNTY MUNICIPAL UTILITY	§	COMMISSION ON
DISTRICT NO. 2	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Request (Response) on the Petition by Cipriani Island Laguna Azure, LLC (Petitioner) for the creation of Johnson County Municipal Utility District No. 2 (District). The Office of the Chief Clerk received a hearing request from the City of Mansfield.

Attached for Commission consideration are the following:

Attachment A—Executive Director's Satellite Map.

The Executive Director recommends that the Commission find the City of Mansfield is an Affected Person and grant their Hearing Request.

I. DESCRIPTION OF DISTRICT

Cipriani Island Laguna Azure, LLC filed a revised petition (petition) for creation of Johnson County Municipal Utility District No. 2. The petition states that (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are two lienholders, First Guaranty Bank and MCI Preferred Income Fund IV, LLC, on the property to be included in the proposed District; (3) the proposed District will contain approximately 184.30 acres located within Johnson County, Texas; and (4) all of the land within the proposed district is located wholly within the extraterritorial jurisdiction of the City of Mansfield. In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

The petition further states that the work proposed to be done by the District at the present time is the construction, maintenance, and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the construction, maintenance, and operation of a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; the construction, installation, maintenance, purchase, and operation of drainage and roadway facilities and improvements; and the construction, installation, maintenance, purchase and operation of facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

II. PROCEDURAL HISTORY

The TCEQ received the petition on October 13, 2022. The Application was declared administratively complete on October 17, 2022.

Proper notice of the application was published on April 1, 2023, and April 8, 2023, in the *Cleburne Times Review*, a newspaper regularly published or circulated in Johnson County, the county in which the district is proposed to be located. Proper notice of the application was posted on March 28, 2023, in the Johnson County Courthouse, the place where legal notices in Johnson County are posted. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied. The 30-day comment period ended May 8, 2023.

The TCEQ received a timely hearing request on this Petition from the City of Mansfield.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition for consent the City of Mansfield. After 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by Texas Water Code § 54.016(c) expired without a contract for service being agreed to. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD 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. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

¹ Tex. Water Code § 54.014.

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings ("SOAH") for a hearing; or

² Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

³ Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

⁴ Tex. Water Code § 54.021(b).

⁵ 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

⁶ 30 Tex. Admin. Code § 55.251(a).

- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language 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;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (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 and safety of the person, and on the 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.¹¹

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

⁷ 30 Tex. Admin. Code § 55.255(a).

⁸ 30 Tex. Admin. Code § 55.251(b) and (d).

⁹ 30 Tex. Admin. Code § 55.251(c).

¹⁰ 30 Tex. Admin. Code § 55.256(a).

¹¹ 30 Tex. Admin. Code § 55.256(c).

¹² 30 Tex. Admin. Code § 55.256(b).

V. THE HEARING REQUESTS

A. Analysis of the City of Mansfield's Hearing Request.

1. Whether the City Complied with 30 TEX. ADMIN. CODE § 55.251(c)

The City submitted a timely hearing request which contained all required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1). The City requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3) and provided the TCEQ Internal Control Number for the case as required in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the City complies with the requirements of 30 TAC § 55.251.

2. Whether the City is an Affected Person

Government entities, including cities, may be affected persons if they have authority under state law over issues contemplated by the application. In its request, the City identified its statutory authority and interests in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). Specifically, the City stated it has the authority to protect the public health and safety within its extraterritorial jurisdiction and to regulate development within its extraterritorial jurisdiction pursuant to TEX. LOC. GOV'T. CODE §§ 42.001, 212.044. The City further stated that the district could affect their ability to perform certain functions and provide services which include water services, sewer services, emergency services, and health services. The City stated that they are capable of providing water services and that they had informed the applicant that they had agreed to provide water and sanitary service to the district. The City continued to express concerns with the district's costs and the improvements' impact to the land to be included in the district. However, the City did not explain how their justiciable interests would be affected in these issues.

It is undisputed that the proposed district is entirely within the extraterritorial jurisdiction of the City of Mansfield. The issue of city consent is an interest that is protected by the law under which the application will be considered, and the issue of city consent contains a reasonable relationship between the interest claimed and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(a)(1) and (3).

Without city consent, landowners can pursue creation under the provisions of TEX. WATER CODE § 54.016(b) - (d). Under the Texas Water Code, if the city fails or refuses to grant consent within 90 days after receipt of a written request, the landowners in the area may petition the city to provide the land with the water and sewer services contemplated to be provided by the district. TEX. WATER CODE § 54.016(b); LOC. GOVT. CODE § 42.042(b).

Under the Texas Water Code, if the landowners and the city fail to execute a "mutually agreeable contract" for the provisions of the requested services within 120 days after receipt of the petition, "the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section." TEX. WATER CODE § 54.016(c); LOC. GOVT. CODE § 42.042(c).

The petitioner indicated in the materials they provided to Executive Director staff that no mutually agreeable contract exists. If, as it appears, the City failed to enter a mutually agreeable contract during the 120-day time period, then the

landowners would have authorization “to initiate proceedings to include the land within the district as otherwise provided by this Act.” TEX. WATER CODE § 54.016(c). This issue is both material and relevant to the creation of the proposed District.

Therefore, the Executive Director recommends that the Commission find the City of Mansfield is an affected person and grant their hearing request.

VI. RECOMMENDATION

The Executive Director recommends that the Commission grant the hearing request of the City of Mansfield.

If the Commission chooses to deny the hearing request, then the Executive Director recommends that the creation petition be granted.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

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Environmental Law Division



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CERTIFICATE OF SERVICE

I certify that on October 2, 2023, the “Executive Director’s Response to Hearing Requests” for the was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

A handwritten signature in black ink, appearing to read "Harrison Cole Malley", is written above a horizontal line.

Harrison Cole Malley Staff Attorney
Environmental Law Division

MAILING LIST
Johnson County Municipal Utility District No. 2
Docket No. 2023-0847-DIS; Internal Control No. D-10132022-026

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Attachment A

The Creation of Johnson County Municipal Utility District No. 2

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



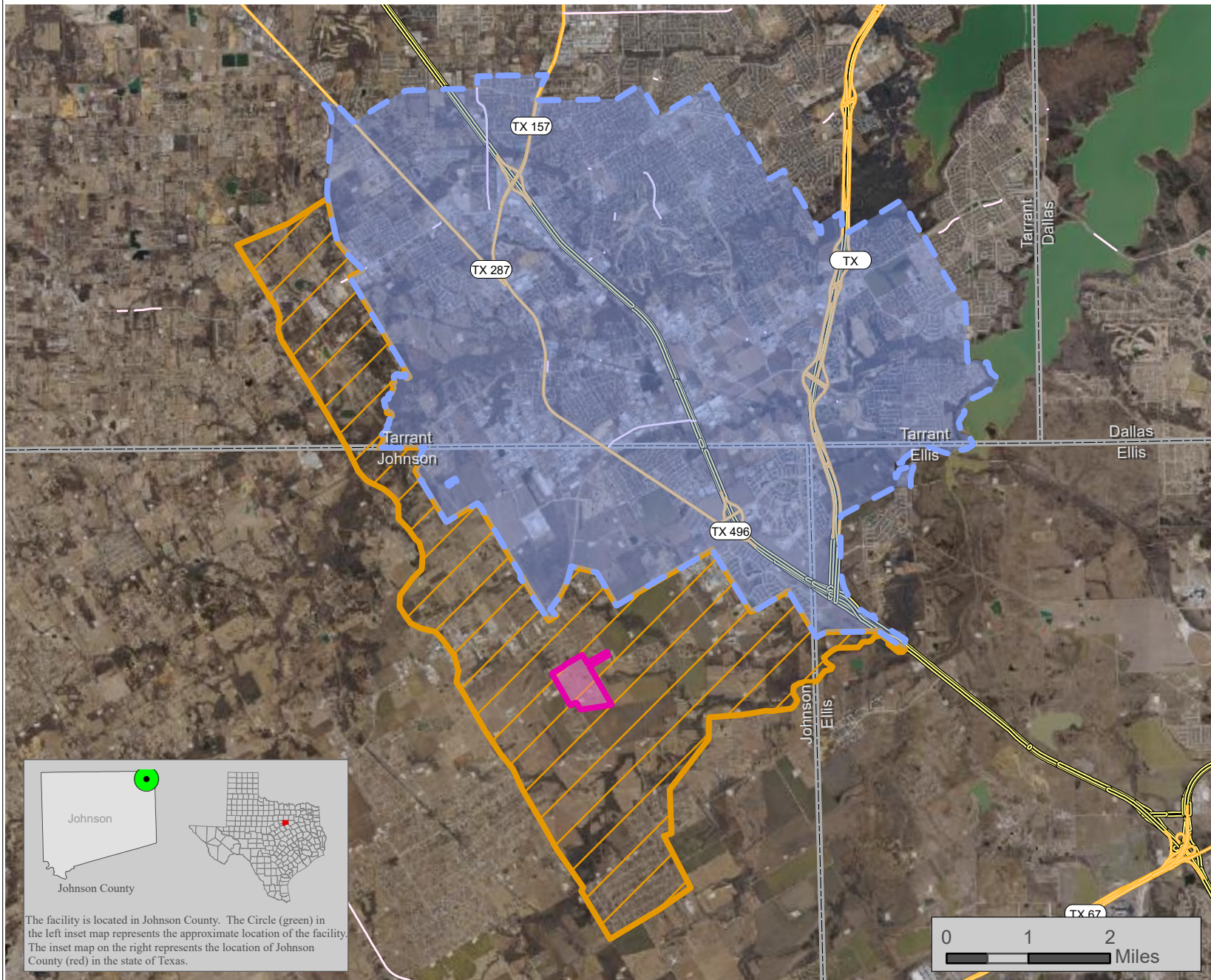
*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
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Austin, Texas 78711-3087
Date: 9/29/2023
CRF 0094464
Cartographer: Abanda



- JCMUD 2
- City of Mansfield City Limits
- City of Mansfield ETJ
- County Boundary

The distance from JCMUD 2 to the City of Mansfield City Limits is 0.56 miles. The distance from JCMUD 2 to the City of Mansfield ETJ is 0.00 miles.



The facility is located in Johnson County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Johnson County (red) in the state of Texas.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.