

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 16, 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 BRAHMAN  
RANCH MUNICIPAL UTILITY DISTRICT OF ELLIS AND JOHNSON  
COUNTIES  
TCEQ DOCKET NO. 2023-1406-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests 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. 2023-1406-DIS

PETITION FOR THE CREATION  
OF BRAHMAN RANCH  
MUNICIPAL UTILITY DISTRICT  
OF ELLIS AND JOHNSON  
COUNTIES

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO REQUESTS 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 requests in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

For the reasons detailed below, OPIC respectfully recommends the Commission grant the hearing requests of the City of Midlothian (the City) and Ellis County (the County). OPIC further recommends that the Commission refer this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing and deny the hearing requests of Phillip Farrell, Sr., Robyn Farrell, Nick Griffin, Rene Griffin, Karen Anderson, Melanie Clifton, Martha Johnson, Jim Justice, Jr., and Christopher Turner.<sup>1</sup>

---

<sup>1</sup> As provided by 30 TAC § 55.211(e), a person whose hearing request is denied may still seek to be admitted as a party under 30 TAC § 80.109 if any hearing request is granted on an application.

## **B. Background**

Miskimon Management III, LLC and Buffalo Hills Development, LLC (Petitioners) filed a petition for creation of Brahman Ranch Municipal Utility District of Ellis County and Johnson 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 February 21, 2023. The Notices of District Petition were published on April 29, 2023, and May 3, 2023.

According to the notice, the proposed District would contain approximately 438.7 acres of land, more or less, located within Ellis and Johnson Counties, and all of the land within the proposed District is within Ellis and Johnson Counties. The petition further states that, if approved, the proposed District will construct, purchase, acquire, maintain, own, and operate water, wastewater, drainage, road, and park and recreational facilities within the proposed District. The comment and contested case hearing request periods ended on June 2, 2023. The Commission received timely comments and hearing requests from the City, the County, Phillip Farrell, Sr., Robyn Farrell, Nick Griffin, Rene Griffin, Karen Anderson, Melanie Clifton, Martha Johnson, Jim Justice, Jr., and Christopher Turner.

## **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 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 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 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). *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 shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the Executive Director (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**

#### *The City*

The Commission received a timely hearing request on behalf of the City. The City's hearing request stated that the proposed District would be located partially within the extraterritorial jurisdiction (ETJ) of the City, and the City did not consent to its creation. The City stated that as a regional water and sewer service provider, it has an interest to ensure that new development in its extraterritorial jurisdiction regionalizes with its existing system to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens, customers, and future customers. The City further stated that various City functions and services, including water and sewer services, and health and safety concerns would be impacted by the creation of the District.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 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). Further, the City has statutory authority to protect public health and safety and regulate development within its ETJ. Tex. Loc. Gov't Code §§ 42.001, 212.044. The City's concerns are relevant to the Commission's final determination on the petition. Based on the City's identified interests and the District's location partially within its ETJ, OPIC finds that the City has demonstrated it qualifies as an affected person in this matter.

### The County

The Commission received a timely hearing request from the County. The County stated that it is vested with the authority over various functions including transportation, emergency services, and the health and safety of its citizens, which would be impacted by the creation of the proposed District. The County raised concerns about the potential contamination or depletion of groundwater as a potential source of supply, and such issues within the region may potentially impact the County's ability to effectively provide emergency services, health and safety due to the reduced water quality, and the County's infrastructure, particularly though subsidence.

As explained earlier, governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 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 County's interests in protecting the health and safety of its citizens and maintaining transportation and emergency services are interests protected by law. *See* Tex. Health & Safety Code § 121.003. Therefore, OPIC finds that the County has demonstrated it qualifies as an affected person in this matter.

*Phillip and Robyn Farrell*

The Commission received multiple timely and identical hearing requests from Phillip Farrell, Sr. and Robyn Farrell. Their hearing requests stated that the establishment of the proposed District could result in an elevation of floodwaters carrying toxins and contaminants into the creeks that traverse their property and this could potentially lead to contamination of both their drinking water well, which is their exclusive source of drinking water, and their stock pond, which they rely on for food through fishing. Their hearing requests also raised concerns about water quality, regionalization, availability of alternative water and wastewater systems, human health and safety, use and enjoyment of property, flooding, and runoff.

The ED's map shows that the Ferrells are located approximately 1.46 miles from the proposed District boundary. While the Ferrells' concerns regarding water quality, effects on human health and safety, and runoff are interests protected by the law under which the application will be considered, they reside at a distance where a reasonable relationship does not exist between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact their health, safety, or use of property. *See* 30 TAC

§ 55.256(c)(4). For these reasons, OPIC cannot recommend that the Ferrells qualify as affected persons.

*Nick and Rene Griffin*

The Commission received timely hearing requests from Nick and Rene Griffin. The hearing requests raised concerns that the establishment of the proposed District could result in an elevation of floodwaters carrying toxins and contaminants into the creek that traverses their property and this could potentially lead to contamination of their drinking water well. Ms. Griffin's hearing request further raised concerns regarding potential impact on her family's health and safety, water contamination, regionalization, potential impact on the existing use of the receiving stream, antidegradation requirements, and need for the proposed District. These concerns are interests protected by the law under which the application will be considered.

However, the ED's map shows that the Griffins are located approximately 1.46 miles from the proposed District. While many of the Griffins' concerns include interests which are protected by the law under which the application will be considered, they reside at a distance where a reasonable relationship does not exist between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact their health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). For these reasons, OPIC cannot recommend that the Griffins qualify as affected persons.

Karen Anderson

The Commission received a timely hearing request from Karen Anderson on June 2, 2023. Ms. Anderson raised health and safety concerns. Her hearing request stated that her health and safety would be affected by the increased flood waters from the proposed District and its sewer plants. She raised concerns that any potential rise in floodwaters could limit access to the local roads necessary for the provision of emergency medical services. The map prepared by the ED shows that Ms. Anderson is located approximately 10.76 miles from the proposed District. While Ms. Anderson's health and safety concerns are interests protected by the law under which this application will be considered, she resides at a distance where a reasonable relationship does not exist between her claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact her health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). For these reasons, OPIC cannot recommend that Ms. Anderson qualifies as an affected person.

Melanie Clifton

The Commission received a timely hearing request from Melanie Clifton. Ms. Clifton expressed concerns about the potential strain on existing government services, including maintenance of perimeter roads, school district and education services, public safety services such as sheriff, fire, and EMS, as well as environmental issues like drainage and discharge into the streams and creeks that ultimately contribute to drinking water sources. The map prepared by the

ED shows that Ms. Clifton is located approximately 2.15 miles from the proposed District. While Ms. Clifton's water quality concerns are interests protected by the law under which this application will be considered, her location is at a distance where a reasonable relationship does not exist between her claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact her health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). For these reasons, OPIC cannot recommend that Ms. Clifton qualifies as an affected person.

*Martha Johnson*

The Commission received a timely hearing request from Martha Johnson. Ms. Johnson raised concerns about flooding and the potential impact on her ability to lease her land for hay production. Her hearing request further stated that flood studies have not been recently updated to account for the impact of the municipal utility districts on the creeks and her property, and she insisted considering both sewer effluent safety and stormwater volume in these studies. The map prepared by the ED shows that Ms. Johnson is located approximately 5.61 miles from the proposed District. The Commission does not have jurisdiction to consider concerns regarding flooding. Further, while Ms. Johnson's water quality concerns are interests protected by the law under which this application will be considered, her location is at a distance where a reasonable relationship does not exist between her claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact her

health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). For these reasons, OPIC cannot recommend that Ms. Johnson qualifies as an affected person.

*Christopher Turner*

The Commission received a timely hearing request from Christopher Turner. Mr. Turner's hearing request raised concerns about the surrounding towns, schools, food and grocery stores, and roads which may not be adequately prepared to accommodate the increased demand resulting from this development. Furthermore, the hearing request stated that there is insufficient capacity for water, sewage, and waste treatment. The map prepared by the ED shows that Mr. Turner is located approximately 5.65 miles from the proposed District. While Mr. Turner's concerns regarding water, sewage, and waste treatment are interests protected by the law under which this application will be considered, his location is at a distance where a reasonable relationship does not exist between his claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Additionally, the intervening distance also diminishes any likelihood that the regulated activity will impact his health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). For these reasons, OPIC cannot recommend that Mr. Turner qualifies as an affected person.

*Jim William Justice, Jr.*

The Commission received a timely hearing request from Mr. Justice. His hearing request includes the correct petition number and Petitioners' details, but does not include any statements or comments to demonstrate how and why Mr. Justice believes he would be affected by the creation of the proposed District.


The map prepared by the ED shows that Mr. Justice is located approximately 22.98 miles from the proposed District. At that distance, OPIC must find that Mr. Justice lacks the proximity needed to establish a reasonable relationship between any claimed interest and the regulated activity. *See* 30 TAC § 55.256(c)(3). Further, the intervening distance diminishes any likelihood that the proposed District will impact his health, safety, or use of property. *See* 30 TAC § 55.256(c)(4). Therefore, OPIC cannot find that Mr. Justice qualifies as an affected person in this matter.

#### **IV. Conclusion**

For the reasons set forth above, OPIC respectfully recommends the Commission find that the City and the County qualify as affected persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing. OPIC further recommends the Commission deny all other hearing requests.

Respectfully submitted,


Garrett T. Arthur  
Public Interest Counsel

By:  \_\_\_\_\_

Pranjal M. Mehta  
Assistant Public Interest Counsel  
State Bar No. 24080488  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-0574

**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 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 M. Mehta



**MAILING LIST**  
**BRAHMAN RANCH MUD OF ELLIS AND JOHNSON COUNTIES**  
**TCEQ DOCKET NO. 2023-1406-DIS**

FOR THE APPLICANT  
via electronic mail:

Ross Martin  
Winstead PC  
2728 North Harwood Street, Suite 500  
Dallas, Texas 75201  
[rmartin@winstead.com](mailto:rmartin@winstead.com)

Ken Heroy, P.E.  
Jones-Heroy & Associates, Inc.  
13915 North MoPac Expressway  
Suite 408  
Austin, Texas 78728  
[kenh@jones-heroy.com](mailto:kenh@jones-heroy.com)

Cassie Gibson  
Residential Strategies, Inc.  
16980 Dallas Parkway, Suite 101  
Dallas, Texas 75248

Rick Miskimon  
Miskimon Management III, LLC  
5940 South West McGee Creek Road  
Lane, Oklahoma 74555  
[mrranch@aircanopy.net](mailto:mrranch@aircanopy.net)

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Kayla Murray, 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  
[kayla.murray@tceq.texas.gov](mailto:kayla.murray@tceq.texas.gov)

Dennis Mostowy, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Supply Division MC-152  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-5232 Fax: 512/239-2214  
[dennis.mostowy@tceq.texas.gov](mailto:dennis.mostowy@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](mailto: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](mailto: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):

See attached list.

**REQUESTER(S)**

Karen Anderson  
466 Bee Creek School House Rd  
Grandview, TX 76050-5110

Melanie Clifton  
536 N Armstrong Rd  
Venus, TX 76084-4848

Robyn Farrell  
1308 Ozro Rd  
Venus, TX 76084-4870

Phillip Farrell Sr  
1308 Ozro Rd  
Venus, TX 76084-4870

Nick Griffin  
1308 Ozro Rd  
Venus, TX 76084-4870

Rene Griffin  
1308 Ozro Rd  
Venus, TX 76084-4870

Martha Johnson  
1017 Shady River Ct N  
Benbrook, TX 76126-2900

Mr Jim William Justice Jr  
5808 Earle St  
Arlington, TX 76016-1115

Leah Marie  
216 Silver Spur Dr  
Waxahachie, TX 75165-5355

Emil J Martinek  
R-Castle Contractor Services Llc  
8046 Fm 660  
Ennis, TX 75119-0158

Ernest D Martinek  
R-Castle Contractor Services Llc  
2256 Bells Chapel Rd  
Waxahachie, TX 75165-6756

Jennifer Martinek  
Addicted To All Things Beautiful Llc  
2256 Bells Chapel Rd  
Waxahachie, TX 75165-6756

Leah Martinek  
2256 Bells Chapel Rd  
Waxahachie, TX 75165-6756

Emily W Rogers  
Bickerstaff Heath Delgado Acosta Llp  
3711 S Mopac Expy  
Bldg 1 Ste 300  
Austin, TX 78746-8013

Christopher Turner  
15158 Fm 916  
Maypearl, TX 76064-1914