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Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 12, 2024

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 WHITE
OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY
TCEQ DOCKET NO. 2023-1587-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer A. Jamison, Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2023-1587-DIS

PETITION FOR THE CREATION
OF WHITE OAKS MUNICIPAL
UTILITY DISTRICT OF
DENTON COUNTY

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the Commission) files this Response to Hearing Requests in the above-entitled matter.

I. INTRODUCTION

A. Summary of Position

The Commission received requests for a contested case hearing from concerned citizens and members of the public regarding the application for the creation of White Oaks Municipal Utility District of Denton County (White Oaks MUD or District). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of Robert Adas, Bonnie A. and Donald F. Ambrose, Terry L. and Mark A. Atchison, Janene Breslin, Amy Brock, Christina M. Brock, Clint Brock, Lynn Brock, Kim and Michael Caley, Brian D. and Bernadine Campbell, Kenneth and Joyce DeWitt, Alan D. Donnell and April H. Salisbury, Kelley and Phillip Eggers, Darlene Freeman, Rowland Shelby Funk, Marc Hodak, Robert Kaiser, Mark Kinney, Julie Lantrip and Matthew Pence, Courtney Linde, Robert and Helen McGraw, Adriana Midkiff, Dennis and Shaun Mills, Joleen Moden and Ron Bourland, Donna Morgan, Jason Pool, Dorothy

Queen, Paul Queen, Blair Roberts, Anthony Scamardo, Joe and Megan Schmidt, Jacob and Sue Sentlingar, David and Bonnie Silva, Luther and Wanda Slay, Jim and Melinda Street, John and Nancy Tague, Bruce and Julie Walker, Philip Wilson, and Debbie and Michael Woodruff. OPIC further recommends that the Commission deny all other hearing requests.

B. Background

White Oaks Ranch Land, LP, a Texas limited partnership (Petitioner) filed a petition for the creation of White Oaks Municipal Utility District of Denton County with the Texas Commission on Environmental Quality pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code (TWC); Title 30 of the Texas Administrative Code (TAC), Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 378.944 acres situated in Denton County; and (4) all of the land within the proposed District is located outside the corporate boundaries and extraterritorial jurisdiction of any municipality.

The application was declared administratively complete on October 3, 2022, and the Notice of District Petition was published on February 5, 2023. According to the notice, the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful

to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plans, and enterprises as shall be consonant with the purposes for which the proposed District is created. The comment period ended on March 7, 2023.

II. APPLICABLE LAW

A municipal utility district may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. 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 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); 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, but are not limited to:

- (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 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. ANALYSIS OF HEARING REQUESTS

A. Affected persons within one mile of the MUD boundary

The following individuals each timely requested a hearing during the public comment period: Robert Adas, Bonnie A. and Donald F. Ambrose, Terry L. and Mark A. Atchison, Janene Breslin, Amy Brock, Christina M. Brock, Clint Brock, Lynn Brock, Kim and Michael Caley, Brian D. and Bernadine Campbell, Kenneth and Joyce DeWitt, Alan D. Donnell and April H. Salisbury, Kelley and Phillip Eggers, Darlene Freeman, Rowland Shelby Funk, Marc Hodak, Robert Kaiser, Mark Kinney, Julie Lantrip and Matthew Pence, Courtney Linde, Robert and Helen McGraw, Adriana Midkiff, Dennis and Shaun Mills, Joleen Moden and Ron Bourland, Donna Morgan, Jason Pool, Dorothy Queen, Paul Queen, Blair Roberts, Anthony Scamardo, Joe and Megan Schmidt, Jacob and Sue Sentlingar, David and Bonnie Silva, Luther and Wanda Slay, Jim and Melinda Street, John and Nancy Tague, Bruce and Julie Walker, Philip Wilson, and Debbie and Michael Woodruff.

In their requests, these individuals raised concerns regarding the District's potential impacts on water quality, land elevation, subsidence, groundwater levels, groundwater recharge capability, and natural runoff rates. Furthermore, the map prepared by the Executive Director's staff confirms that the properties of these individuals are less than one mile from the proposed District boundary.

The concerns expressed by these individuals regarding water quality, land elevation, subsidence, groundwater, and runoff, when combined with their proximities to the proposed District boundary, give each of these requestors a

personal justiciable interest in this matter which is not common to the general public. Also, the requestors' concerns are interests protected by the law under which this application will be considered, and a reasonable relationship exists between those interests and the regulation of a municipal utility district. Finally, the location of the requestors' homes increases the likelihood of impacts to health, safety, and use of their properties. Therefore, OPIC finds that these individuals qualify as affected persons.

B. Unaffected persons within one mile of the MUD boundary

Several requestors with properties less than one mile from the proposed District boundary failed to raise concerns that are interests protected by the law under which this application is considered. Steven and Colleen Newton raised concerns about property values, lifestyle, wildlife, traffic, and infrastructure. Vickie and Frank Rush raised concerns about the neighborhood climate, including crime, vandalism, noise, lighting, wildlife, increased tax rates, and proximity to other homes. Brian Wellmon raised concerns about livestock and wildlife. Given these requestors' failure to articulate concerns that would be protected by the law under which this application is considered, OPIC recommends that the Commission find that Steven and Colleen Newton, Vickie and Frank Rush, and Brian Wellmon do not qualify as affected persons.

C. Unaffected persons further than one mile from the MUD boundary or who failed to provide an address

According to the map prepared by Executive Director staff, all remaining requestors listed property addresses at 1.60 miles or further from the proposed

District boundary or failed to provide an address. These requestors are R. Scott Alagood, Jodi Cuccurullo, Jessica How, Allen L. McCracken, and Ryan Williams. Given the intervening distance between the remaining properties and the location of the proposed District, OPIC finds that there is a diminished likelihood that the regulated activity will impact health, safety, or use of their properties. *See* 30 TAC § 55.256(c)(4). Further, at distances beyond 1.60 miles, these requestors lack a reasonable relationship between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Accordingly, OPIC must respectfully recommend that none of the remaining requestors qualify as affected persons.

IV. CONCLUSION

For the foregoing reasons, OPIC respectfully recommends the Commission find that Robert Adas, Bonnie A. and Donald F. Ambrose, Terry L. and Mark A. Atchison, Janene Breslin, Amy Brock, Christina M. Brock, Clint Brock, Lynn Brock, Kim and Michael Caley, Brian D. and Bernadine Campbell, Kenneth and Joyce DeWitt, Alan D. Donnell and April H. Salisbury, Kelley and Phillip Eggers, Darlene Freeman, Rowland Shelby Funk, Marc Hodak, Robert Kaiser, Mark Kinney, Julie Lantrip and Matthew Pence, Courtney Linde, Robert and Helen McGraw, Adriana Midkiff, Dennis and Shaun Mills, Joleen Moden and Ron Bourland, Donna Morgan, Jason Pool, Dorothy Queen, Paul Queen, Blair Roberts, Anthony Scamardo, Joe and Megan Schmidt, Jacob and Sue Sentlingar, David and Bonnie Silva, Luther and Wanda Slay, Jim and Melinda Street, John and Nancy Tague, Bruce and Julie Walker, Philip Wilson, and Debbie and Michael Woodruff qualify as affected

persons, grant their hearing requests, and refer the matter to SOAH for a contested case hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Jennifer A. Jamison



Jessica M. Anderson

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TCEQ DOCKET NO. 2023-1587-DIS

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See attached list.

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