

**TCEQ DOCKET NO. 2023-1587-DIS**

<b>PETITION FOR THE CREATION OF WHITE OAKS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY</b>	§ § §	<b>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
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**HEARING REQUESTORS' JOINT REPLY TO  
APPLICANT'S RESPONSE TO HEARING REQUESTS**

**TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

COME NOW Phillip and Kelly Eggers, Robert and Helen McGraw, David and Bonnie Silva, John and Nancy Tague, and Blair and Susan Roberts (owners of Capital Properties 2017, LLC and BNR 2012 Holding Company, LLC) (each, a "**Hearing Requestor**," and collectively, the "**Hearing Requestors**") and file this Joint Reply ("**Reply**") to the response to hearing requests filed by the proposed White Oaks Municipal Utility District of Denton County (the "**Proposed District**") on February 8, 2024. In support thereof, the Hearing Requestors would respectfully show as follows:

**I. EXECUTIVE SUMMARY**

As acknowledged by both the Executive Director ("**ED**") of the Texas Commission on Environmental Quality (the "**Commission**") and the Commission's Office of Public Interest Counsel ("**OPIC**"), given their location and distance relative to the Proposed District, the Hearing Requestors are affected persons, with personal justiciable interests affected by the petition for the creation of the Proposed District (the "**Creation Application**") in a manner not common to members of the general public.

Further, the so-called "Applicant's Response to Hearing Requests" should not be considered by the Commission because it contravenes Commission rules codified in 30 Texas Administrative Code ("**TAC**") § 55.254(e).

The Hearing Requestors, therefore, respectfully appeal to the Commission to either (1) grant the hearing requests individually filed by the Hearing Requestors on March 7, 2023 (each, a “*Hearing Request*,” and collectively, the “*Hearing Requests*”); or, in the alternative, (2) find that the project described in the Creation Application is not feasible, practicable, necessary, or a benefit to the land sought to be included in the Proposed District and deny the Creation Application in its entirety.

## II. STATEMENT OF FACTS

Applicant (“*Applicant*”), White Oaks Ranch Land, LP, a Texas limited partnership, filed the Creation Application with the Commission pursuant to Article XVI, Section 59 and Article III, Section 52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code (“*TWC*”); 30 TAC Chapter 293; and the procedural rules of the Commission. The Creation Application was declared administratively complete on October 3, 2022. The Commission issued the applicable Notice of District Petition (“*Notice*”) on January 18, 2023, and said Notice was last published in a newspaper of general circulation in Denton County on February 5, 2023. As such, the deadline to submit written requests for a contested case hearing on the Creation Application was March 7, 2023. Each of the Hearing Requestors timely filed individual Hearing Requests that same day.

Via a letter dated January 31, 2024, the Office of the Chief Clerk (“*Chief Clerk*”) notified the Hearing Requestors that the Creation Application and all timely filed hearing requests thereon will be considered by the Commission on March 6, 2024. Such correspondence also established a deadline of February 12, 2024, for the Applicant, ED, and OPIC to file written responses to hearing requests filed on the Creation Application. On February 8, 2024, the Proposed District filed “Applicant’s Response to Hearing Requests.” On February 12, 2024, the ED and OPIC each also

filed such a response, both of which recommend that the Hearing Requestors' timely filed requests for a contested case hearing on the Creation Application be granted by the Commission. Despite the misleading title of the responsive pleading filed by the Proposed District, *Applicant has not responded to any of the hearing requests in this proceeding*. The correspondence from the Chief Clerk further established February 26, 2024, as the deadline for persons who filed hearing requests to file a written reply to any written responses to hearing requests filed by the Applicant, ED, and/or OPIC. Therefore, this Reply is timely filed.

### III. APPLICABLE LAW

As the Creation Application was declared administratively complete after September 1, 1999, and was not filed under TWC, Chapter 26 or 27; TWC § 11.036; TWC § 11.041; or Texas Health and Safety Code, Chapters 361 or 382, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250–55.256 of the TAC.<sup>1</sup> Under Subchapter G, the Commission, ED, Applicant, or “affected persons” may request a contested case hearing on the Creation Application.<sup>2</sup> 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 Creation Application; and an interest common to members of the general public does not qualify as a personal justiciable interest.<sup>3</sup> In determining whether the Hearing Requestors have affected person status pursuant to Subchapter G, the Commission must consider all relevant factors, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the Creation Application will be considered;

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<sup>1</sup> 30 TAC §§ 55.101, 55.250.

<sup>2</sup> *Id.* 55.251(a).

<sup>3</sup> *Id.* § 55.256(a); TWC § 5.115.

- distance restrictions or other limitations imposed by law on the affected interest;
- whether a reasonable relationship exists between the interest claimed and the activity regulated;
- likely impact of the regulated activity on the health, safety, and use of property of the Hearing Requestor; and
- likely impact of the regulated activity on use of the impacted natural resource by the Hearing Requestor.<sup>4</sup>

To be granted, Subchapter G requires that a hearing request be made by an affected person, in writing, and filed with the Commission's Chief Clerk within the time provided in the Notice.<sup>5</sup> Subchapter G further dictates that each Hearing Request must substantially comply with the following:

- give the name, address, and daytime telephone number of the Hearing Requestor;
- identify the Hearing Requestor's personal justiciable interest affected by the Creation Application, including a brief, but specific, written statement explaining in plain language the Hearing Requestor's location and distance relative to the activity that is the subject of the Creation Application, and how and why the Hearing Requestor believes he or she will be affected by such activity in a manner not common to members of the general public;
- request a contested case hearing; and
- provide any other information specified in the Notice.<sup>6</sup>

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<sup>4</sup> 30 TAC § 55.256(c).

<sup>5</sup> *Id.* § 55.251(b), (d).

<sup>6</sup> *Id.* § 55.251(c).

Once filed, the Chief Clerk processes Hearing Requests by scheduling them for consideration and action by the Commission.<sup>7</sup> Consistent with the Notice, Subchapter G then authorizes the ED, OPIC, and Applicant to submit written responses to the Hearing Requests no later than 23 days before the meeting at which the Commission is scheduled to evaluate the Hearing Requests.<sup>8</sup> Subchapter G also authorizes the Hearing Requestors to submit a written reply to any such response or responses no later than nine days before the meeting at which the Commission will evaluate the Hearing Requests.<sup>9</sup> Finally, in considering and acting upon each of the Hearing Requests, Subchapter G dictates that the Commission may do one of the following:

- determine that the Hearing Request does not meet the requirements of Subchapter G and act on the Creation Application;
- determine that the Hearing Request does not meet the requirements of Subchapter G and refer the Creation Application to a public meeting to develop public comments before acting on it;
- determine that the Hearing Request meets the requirements of Subchapter G and refer the Creation Application to the State Office of Administrative Hearings (“*SOAH*”) for a contested case hearing; or
- refer the Hearing Request to SOAH for a hearing on whether such request meets the requirements of Subchapter G.<sup>10</sup>

Nevertheless, the Hearing Requests “shall be granted” if made by an affected person and submitted in compliance with the foregoing requirements.<sup>11</sup>

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<sup>7</sup> *Id.* § 55.254(c)(2).

<sup>8</sup> *Id.* § 55.254(e).

<sup>9</sup> *Id.* § 55.254(f).

<sup>10</sup> *Id.* § 55.255(a).

<sup>11</sup> *Id.* § 55.255(b).

#### **IV. REPLY TO APPLICANT’S RESPONSE TO HEARING REQUESTS**

**A. The Commission should decline to consider the so-called “Applicant’s Response to Hearing Requests” because such pleading was not filed by a party authorized to do so.**

Pursuant to 30 TAC § 55.254(e) and the January 31, 2024, letter from the Chief Clerk, only the ED, OPIC, and Applicant may submit written responses to hearing requests, yet the pleading titled “Applicant’s Response to Hearing Requests” was filed by the Proposed District.<sup>12</sup> Therefore, because the Proposed District lacks standing to respond to hearing requests on the Creation Application, its February 8, 2024, pleading should be disregarded by the Commission.

**B. Contrary to the assertion of the Proposed District, the Hearing Requestors are affected persons, with personal justiciable interests affected by the Creation Application in a manner not common to members of the general public.**

The so-called “Applicant’s Response to Hearing Requests” incorrectly indicates that none of the Hearing Requestors are affected persons because they failed to “identify any personal justiciable interest” and “have not shown that any person would be affected by the [P]roposed District in a manner not common to members of the general public.”<sup>13</sup> On the contrary, the Hearing Requestors identified, among others, the following personal justiciable interests affected by the Proposed District in a manner not common to members of the general public:

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<sup>12</sup> Applicant’s Resp. to Hr’g Req. 1.

<sup>13</sup> *Id.* at 5.

Hearing Requestor	Personal Justiciable Interests Identified in Hearing Request
Phillip and Kelly Eggers	<p>“Requestor owns approximately 45.223 acres of land located immediately adjacent to and nearly surrounded by the Proposed District . . . . Requestor uses the Affected Property to operate a family-owned agricultural fan business, raise cattle, and enjoy recreational horseback riding. Such agricultural-related activities are inherently incompatible with the creation and development of the Proposed District, which is likely to affect not only the health and safety of Requestor’s livestock, but also Requestor’s use and enjoyment of the Affected Property in a number of ways.”<sup>14</sup></p>
Robert and Helen McGraw	<p>“Requestors own two properties affected by the Proposed District: (1) approximately 440.5073 acres located within about 350 feet of the nearest boundary of the Proposed District; and (2) approximately 51.8035 acres of land separated from the southern portion of the Proposed District by St. John Road . . . . In addition to Requestors, the Affected Properties are home to about 120 head of cattle, 35 horses, and five employees. Such agricultural uses are inherently incompatible with the creation and development of the Proposed District, which is likely to affect not only the health and safety of Requestors’ livestock, but also Requestors’ use and enjoyment of the Affected Properties in a number of ways.”<sup>15</sup></p>
David and Bonnie Silva	<p>“Requestors own approximately 80.1506 acres of land located within about 350 feet of the nearest boundary of the Proposed District . . . . Requestors’ family resides on the Affected Property and uses it for raising cattle. Such agricultural-related activities are inherently incompatible with the creation and development of the Proposed District, which is likely to affect not only the health and safety of Requestors’ livestock, but also Requestors’ use and enjoyment of the Affected Property in a number of ways.”<sup>16</sup></p>

<sup>14</sup> Eggers Hr’g Req. 5.

<sup>15</sup> McGraw Hr’g Req. 5.

<sup>16</sup> Silva Hr’g Req. 5.

Hearing Requestor	Personal Justiciable Interests Identified in Hearing Request
John and Nancy Tague	<p>“Requestors own . . . approximately 42.64 acres of land located within less than ¼ mile of the Proposed District” and “approximately 96.52 acres of land located within less than ½ mile of the Proposed District . . . . The Affected Properties are home to Requestors’ family-owned business focused on breeding and raising champion reining horses. Such equine-related business activities are inherently incompatible with the creation and development of the Proposed District, which is likely to affect not only the health and safety of Requestors’ horses, but also Requestors’ use and enjoyment of the Affected Properties in a number of ways.”<sup>17</sup></p>
<p>Blair and Susan Roberts (owners of Capital Properties 2017, LLC and BNR 2012 Holding Company, LLC)</p>	<p>“Requestor owns the following . . . properties affected by the Proposed District: (1) approximately 13.757 acres of land located immediately adjacent to and abutting the southwestern portion of the Proposed District; (2) approximately 84.4881 acres separated from the east side of the Proposed District by Hub Clark Road; [and] (3) approximately 37.17 acres located about one mile from the Proposed District . . . . The Affected Properties are home to Requestor’s family-owned business focused on breeding, raising, and showing western pleasure horses. Such equine-related business activities are inherently incompatible with the creation and development of the Proposed District, which is likely to affect not only the health and safety of Requestor’s horses, but also Requestor’s use and enjoyment of the Affected Properties in a number of ways.”<sup>18</sup></p>

The Hearing Requestors all own and reside upon or use properties directly adjacent to or abutting the Proposed District and—as explained in more detail in the individual Hearing Requests—development of the Proposed District is likely to affect the health, safety, and use of such properties by the Hearing Requestors as well as the Hearing Requestors’ use of the natural resources on such properties, which are also likely to be impacted by the Proposed District. As such, the Hearing Requestors qualify as affected persons under TWC § 5.115 and 30 TAC § 55.256, and the Commission should grant the timely and procedurally sufficient Hearing Requests individually

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<sup>17</sup> Tague Hr’g Req. 5.  
<sup>18</sup> Roberts Hr’g Req. 5.



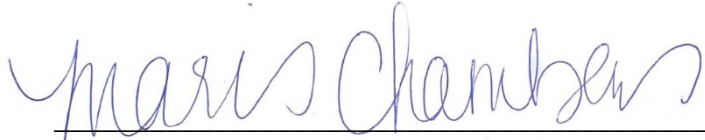
filed by the Hearing Requestors on March 7, 2023.

## V. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, given their location and distance relative to the Proposed District, the Hearing Requestors are affected persons, with personal justiciable interests affected by the Creation Application in a manner not common to members of the general public. Further, the misleadingly titled “Applicant’s Response to Hearing Requests” should not be considered by the Commission because it contravenes Commission rules codified in 30 TAC § 55.254(e). The Hearing Requestors, therefore, respectfully request that the Commission either (1) grant the Hearing Requests individually filed by the Hearing Requestors on March 7, 2023; or (2) find that the project described in the Creation Application is not feasible, practicable, necessary, or a benefit to the land sought to be included in the Proposed District and deny the Creation Application.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 26th day of February, 2024:

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