

Brooke T. Paup, *Chairwoman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 3, 2025

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, TX 78711-3087

Re: Hays Commons Land Investments, LP, TCEQ Docket No. 2023-1588-DIS,
SOAH Docket No. 582-24-15644

Dear Ms. Gharis:

The Office of Public Interest Counsel (OPIC) did not file Exceptions and will not be filing a Reply to Exceptions in the above-referenced matter. OPIC maintains the positions previously stated in our Closing Brief. Please find attached a copy of OPIC's Closing Brief to be included in future Agenda backup materials.

Sincerely,

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

Pranjali M. Mehta
Assistant Public Interest Counsel
Office of Public Interest Counsel

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, the foregoing document was filed with SOAH and the TCEQ Chief Clerk, and all parties listed below were served via email.



Pranjal M. Mehta

Service List

Hays Commons Municipal Utility District

SOAH DOCKET NO. 582-24-15644

TCEQ DOCKET NO. 2023-1588-DIS

For the Applicant

David J. Tuckfield
The AL Law Group PLLC
12400 West Highway 71, Suite 350-150
Austin, Texas 78738
david@allawgp.com

For the City of Hays

Joshua Katz
Bickerstaff Heath Delgado Acosta LLP
Building One, Suite 300
3711 South MoPac Expressway
Austin, Texas 78746
jkatz@bickerstaff.com

For the Aligned Protestants

Victoria Rose
Bill Bunch
Save Our Springs Alliance
4701 Westgate Boulevard, Suite D-401
Austin, Texas 78745
victoria@sosalliance.org
bill@sosalliance.org

For Keith Whittington

Keith Whittington
13511 Carpenter Lane
Manchaca, Texas 78652
keith@lynxpropertyservices.com

For the Office of Public Interest Counsel

Pranjal M. Mehta, Attorney
Josiah T. Mercer, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
pranjal.mehta@tceq.texas.gov
josiah.mercer@tceq.texas.gov

For the Executive Director

Kayla Murray, Staff Attorney
Allie Soileau, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
kayla.murray@tceq.texas.gov
allie.soileau@tceq.texas.gov

For the Office of 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/>

**SOAH DOCKET NO. 582-24-15644
TCEQ DOCKET NO. 2023-1588-DIS**

PETITION OF HAYS COMMONS LAND INVESTMENTS, LP FOR CREATION OF HAYS COMMONS MUNICIPAL UTILITY DISTRICT	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
--	----------------------------	---

**OFFICE OF PUBLIC INTEREST COUNSEL'S
CLOSING ARGUMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Closing Argument in the above-entitled matter and would respectfully show as follows:

I. Introduction

This matter concerns the municipal utility district (MUD) creation petition (Petition) submitted to the TCEQ by Hays Commons Land Investments, LP (Hays Commons or Petitioner). During the TCEQ Agenda Meeting on March 6, 2024, the Commissioners determined that the City of Hays and a few individuals qualified as affected persons and referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. A preliminary hearing was held on May 28, 2024, and the following were admitted as parties: Petitioner; Executive Director (ED); OPIC; City of Hays (City); Save Our Springs Alliance (SOS); Philip Brisky; Darlene and Michael Starr; Antonio Valdez and Lydia Bryan Valdez; and Keith Whittington.¹ The hearing on the merits was held on February 11-12, 2025.

¹ The individual protestants were aligned with Save Our Springs Alliance.

After consideration of all evidence and testimony presented in this matter, OPIC finds that a preponderance of the evidence shows that Petitioner has not met its burden with respect to the requirements discussed in this closing argument. Therefore, OPIC cannot recommend granting the Petition for the creation of Hays Commons MUD.

II. Overview of Petition

Hays Commons filed the Petition for the creation of the Hays Commons Municipal Utility District (the District) 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. According to the notice, (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Horizon Bank, SSB, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 290.388 acres located within Hays County; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Hays.

The Petition further states that, if approved, the proposed District will:

- (1) purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide a water supply for municipal uses, domestic uses, and commercial purposes;
- (2) purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;

- (3) purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to gather, conduct, divert and control local storm water or other local harmful excesses of water in the proposed District, and the payment of organization expenses, operational expenses during construction, and interest during construction;
- (4) purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and
- (5) purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the Petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$30,000,000 (\$24,500,000 for water, wastewater, and drainage and \$5,500,000 for roads).

III. Applicable Law

With respect to the legal burdens in this matter, the burden of proof is on the moving party by a preponderance of the evidence.² Here the moving party is the Petitioner, Hays Commons Land Investments. Therefore, the burden of proof is on the Petitioner to prove their MUD creation petition meets all applicable legal requirements.

Regarding relevant substantive law, a MUD may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution, TWC § 54.011, Chapters 49 and 54 of the TWC, and the

² 30 TAC § 80.17(a).

Commission's administrative rules found at Title 30, Chapter 293, of the TAC. 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.³

To create a MUD, a petition requesting creation shall be filed with the Commission.⁴ 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.⁵ 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.⁶

³ TWC § 54.012.

⁴ TWC § 54.014.

⁵ TWC § 54.014.

⁶ 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.⁷ 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.⁸ The Commission shall consider the written opinion submitted by the county commissioners.⁹

Texas Water Code § 54.016(a) provides that no land within the corporate limits of a city or within the ETJ of a city shall be included in a district unless the city grants its written consent. A request for consent must be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls and shall include description of the land in metes and bounds or lot and block number, state the general nature of the work proposed to be done, the necessity for the work, and the estimated cost of the project.¹⁰ If the city fails to provide its consent within 90 days after receipt of the

⁷ TWC § 54.0161(a).

⁸ TWC § 54.0161(b).

⁹ TWC § 54.0161(c).

¹⁰ TWC § 54.016(a).

written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.¹¹ If the city and the requestors fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition, they may then petition TCEQ for creation of the district.¹²

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.¹³ 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.¹⁴

¹¹ TWC § 54.016(b).

¹² TWC § 54.016(c)-(d).

¹³ TWC § 54.021(a).

¹⁴ 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.¹⁵ 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.¹⁴ The rights, powers, privileges, authority, and functions of a district shall be subject to the continuing right of supervision by the Commission.¹⁶

IV. Whether the project is feasible, practicable, necessary, and would be a benefit to the land included in the District. (TWC § 54.021(b))

As previously discussed, Petitioner bears the burden of showing that its petition complies with all relevant statutory requirements as outlined by TWC § 54.021. OPIC notes that it has limited the scope of its analysis to the water quality issue it viewed as most pertinent to its recommendation in light of the evidence presented. Accordingly, OPIC declines to comment on sub-issues raised in evidence and at the hearing that were non-pertinent to this recommendation. Ultimately, OPIC recommends denial of the petition for the reasons outlined below.

¹⁵ TWC § 54.021(c).

¹⁶ TWC § 54.024.

a. Whether or not the District and its system and subsequent development within the District will have an unreasonable effect on water quality. (TWC § 54.021(b)(3)(F))

The District is located over the Edwards Aquifer Recharge Zone, with approximately 90% of its land directly over this environmentally sensitive area.¹⁷ One of the City's chief concerns with respect to whether the project is feasible, practicable, and necessary centers on the proposed disposal of treated effluent on land within the Edwards Aquifer Recharge Zone under a Texas Land Application Permit (TLAP).¹⁸ The City's expert witness, Mr. Donald Rauschuner, testified that the Edwards Aquifer serves as the sole source of drinking water for nearly 100,000 people—through private wells and the City's public water supply system.¹⁹ He also testified that the City owns two water supply wells, located in the Edwards Aquifer Recharge Zone, one located just 50 feet from the proposed TLAP boundary and the other approximately 300 feet away.²⁰ The proposed 290-acre MUD lies within the Bear Creek and Little Bear Creek watersheds and partially within the South Edwards Aquifer Recharge Zone Regulation area.²¹ According to TCEQ recharge maps, the area falls inside both the recharge and transition zones of the Edwards Aquifer, with the southern portion along Little Bear Creek located within the Federal Emergency Management Agency 100-year floodplain.²² An ACI Consulting study identified 52 surface karst features within

¹⁷ City's Exhibit No. 1 at 18:9-12.

¹⁸ City's Exhibit No. 1 at 18:19-22; Tr. Vol. 1, 161:1-16.

¹⁹ City's Exhibit No. 1 at 19:7-8.

²⁰ City's Exhibit No. 1 at 19:18-20.

²¹ City's Exhibit No. 1 at 21:12-13.

²² City's Exhibit No. 1 at 21:13-18.

the MUD boundaries, 27 of which have the TCEQ rating of sensitive during ACI's site reconnaissance.²³ Mr. Rauschuber further testified that it is not suitable to have a TLAP in the vicinity of karst features because of the potential for degradation of water quality in the area.²⁴ Given the MUD's proximity to their critical water sources, the City argues that spraying treated wastewater over sensitive karst features would lead to pollution and degradation of its sole-source drinking water supply.²⁵

SOS expert witness, Nico Hauwert, testified that it was his opinion that the development as proposed would likely result in significant groundwater contamination.²⁶ He based this opinion on the high sensitivity of the proposed development and effluent irrigation, the re-introduction of effluent irrigation to the Barton Springs recharge zone after multiple facility failures in the 1980's and 1990's, and the lack of consideration of groundwater impacts.²⁷

Petitioner's expert witness, Daniel Ryan, who prepared the Preliminary Engineering Report and assisted with the creation petition, opined that the creation of the MUD is feasible, practicable, and necessary, and is a benefit to the land and future residents of the MUD.²⁸ The Preliminary Engineering Report shows that the District is located in an area of Hays County and the extraterritorial jurisdiction of the City which will include creek buffer setbacks

²³ City's Exhibit No. 1 at 21:21-23.

²⁴ Tr. Vol. 1, 171:6-10.

²⁵ City's Exhibit No. 1 at 23:18-23.

²⁶ Pre-filed Testimony of Nico M. Hauwert at 9:16-19.

²⁷ *Id.*

²⁸ AppEX-2 at 25:1-4.

for larger waterways.²⁹ Additionally, the construction will be subject to inspection by a qualified inspector in order to verify compliance with properly prepared Stormwater Pollution Prevention Plans.³⁰ The Engineering Report proposes water quality ponds to treat stormwater runoff.³¹ With these measures, no adverse impact is expected to downstream water quality according to the report.³²

ED's expert witness, James Walker, testified that the creation of the proposed District does not grant the proposed District permission to construct a wastewater system, but when it is time for the proposed District to do so, it will need to be built and operated per TCEQ's requirements.³³ He further testified that he does not anticipate any adverse effects on water quality,³⁴ and he explained that the Application does not grant the proposed District authority to discharge treated wastewater.³⁵ He explains that the Petitioner must obtain a separate TPDES or TLAP permit, which must comply with all applicable rules and regulations in the area, before they can discharge—he therefore does not have any water quality concerns with the instant permit.³⁶ Mr. Walker also testified that while the Commission is directed to consider water quality in a MUD petition, an analysis of water quality is not part of that review process.³⁷

²⁹ APPEX-2-02 at 014, 015.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ ED-JW-1 at 14:3-6.

³⁴ ED-JW-1 at 14:10.

³⁵ ED-JW-1 at 14:11-14.

³⁶ *Id.*

³⁷ ED-JW-1 at 13:20-21.

OPIC agrees that the creation of the proposed District does not grant it permission to construct the TLAP wastewater system. Approval of such a system would require a separate TCEQ permitting process to ensure compliance with state water quality standards and effluent limits. However, the record shows that the MUD's wastewater treatment proposal involves disposing of treated effluent on land within the Edwards Aquifer Recharge Zone which serves as the sole source of drinking water for nearly 100,000 people. The expert testimony highlights that locating a TLAP area within a region containing karst features is inappropriate because it creates a significant risk of water quality degradation and potential contamination of the City's proximate water supply. The unique hydrological characteristics of the Edwards Aquifer Recharge Zone make such water quality concerns even more serious as the karst features allow surface water to seep quickly into the aquifer, increasing the risk of contamination. Given the strength of this evidence, OPIC finds that Protestants' concerns are relevant for water quality consideration under TWC § 54.021(b)(3)(F). Under § 54.021(b)(3)(F), the Commission must consider whether this proposed District, its system, and subsequent development will have an unreasonable effect on water quality. Concerns about potential long-term effects on regional water quality and public health risks associated with wastewater disposal in such a sensitive recharge area cannot be overlooked during the District creation proceedings or deferred to a separate water quality permit process at a later stage. Therefore, OPIC cannot find that the Petitioner has carried its burden with respect to this issue.

IV. Allocation of Transcript Costs

Under 30 TAC § 80.23(d)(2), OPIC, as a statutory party, cannot be assessed reporting or transcription costs. Therefore, OPIC takes no position on this issue and defers to those parties who have incurred or may be responsible for transcript costs.

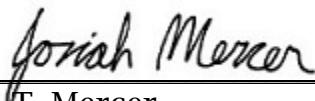
V. Conclusion

OPIC notes that the Petitioner bears the burden of proving that the Petition meets all applicable statutory and regulatory requirements by a preponderance of the evidence. After consideration of all evidence and testimony presented in this matter, OPIC finds that a preponderance of the evidence indicates that Petitioner has not its burden under TWC § 54.021 to show that the project is feasible, practicable, and necessary. Having found that Hays Commons failed to carry its burden of proof, OPIC respectfully recommends denial of the requested Petition.

Respectfully submitted,

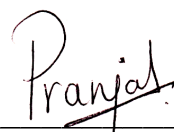
Garrett T. Arthur
Public Interest Counsel

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

By: 
Josiah T. Mercer
Assistant Public Interest Counsel
State Bar No. 24131506
P.O. Box 13087, MC 103
Austin, TX 78711-3087
512-239-0579

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2025, the foregoing document was filed with SOAH, the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.


Pranjal M. Mehta