



February 26, 2024

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

Re: TCEQ Docket No. 2023-1588-DIS; City of Hays, Texas' Reply to Response to City's Request For Contested Case Hearing on Application by Hays Commons Land Investments, LP, to the Texas Commission on Environmental Quality for creation of Hays Commons Municipal Utility District, TCEQ Internal Control No. D-06282023-060

Dear Chief Clerk Gharis:

The City of Hays, Texas (the "City") formally files this Reply to Applicant Hays Commons Land Investments, LP's ("Hays Commons" or "Applicant") Response to the City's request a contested case hearing on the above-referenced application.

Hays Commons opposes the City's request for a contested case hearing on its application (the "Application") to create the Hays Commons Municipal Utility District (the "District") primarily on the basis that, pursuant to SB 2038, it petitioned for removal of the property that would be part of the District from the City's extraterritorial jurisdiction ("ETJ"), and said petition is now effective. Hays Commons does not contest that the subject property was part of the City's ETJ at the time it filed its Application for creation of the District, and also at the time the City filed its request for hearing. On this basis alone, the City has met the standard to request a hearing on the Application. Moreover, the constitutionality of SB 2038 has been challenged in the 261st Judicial District Court of Travis County, Texas. There is no final resolution of that challenge.

But even setting aside the constitutionality of SB 2038 and regardless of whether the proposed District is no longer within the City's ETJ, the City is an affected person for the purposes of being entitled to a contested case hearing on issues raised in this hearing request because the City has interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public and is an affected person under 30 TEX. ADMIN. CODE § 55.256.

First, the Applicant argues that the City's concerns about the District's proposed Texas Land Application Permit ("TLAP") facility are "not the subject of this proceeding or an interest to be protected." To the contrary, the City has asserted a particularized and unique concern regarding the proposed wastewater facility associated with this Application. The City's water wells for its

municipal water system, which it relies upon to meet its statutory obligation to provide safe and reliable drinking water to its citizens and customers, are adjacent to the wastewater facility proposed by the Applicant. The City therefore has an interest in ensuring the creation and operation of the proposed District is protective of the public health and safety. Thus, the City has authority under state law over the issues contemplated by this Application, has interests not common to the general public, and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

The only other basis for the Applicant's opposition to the City's request for a hearing is related, and similarly unavailing. Applicant asserts that the City's concern about "water quality in the Edwards Aquifer" is common to the general public, and not the City in particular. As discussed in more particularity in the City's request for hearing, the City's interest isn't merely in the water quality of the Aquifer – not that this alone is not a significant interest – but rather that the City derives all of the water supply for its public water systems from Edwards Aquifer wells that are on the northern edge of the City, and which are adjacent to the proposed location of Applicant's 200,000 gallon per day wastewater treatment plant and associated TLAP discharge of wastewater effluent. Thus, the City's concern is not Edwards Aquifer water quality generally, but specifically the impact of the proposed District and its related wastewater infrastructure, which will be adjacent to the City's wells, on the people who are served by the City's public water supply system, and the health, safety, and use of property by the residents of the City.

Finally, the City notes that Texas Water Code § 54.021, which sets out the criteria the Commission uses to determine whether a proposed MUD is feasible and practicable, necessary, and would be a benefit to the land included in the district, specifically includes potential effects of the proposed District on water quality. The City's request for hearing expresses this specific concern.

For these reasons, the City requests that the Commission find that the City is an affected person and grant its request for a contested case hearing.

Sincerely,



Joshua D. Katz
Attorney for City of Hays

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