

Jon Niermann, *Chairman*  
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*

March 4, 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 THE CREATION OF  
THEON RANCH MUNICIPAL UTILITY DISTRICT NO. 3  
TCEQ DOCKET NO. 2023-1666-DIS**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink that reads "Pranjal".

Pranjal M. Mehta, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2023-1666-DIS**

**PETITION FOR THE CREATION  
OF THEON RANCH MUNICIPAL  
UTILITY DISTRICT NO. 3**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE  
TO HEARING REQUEST**

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 hearing request in the above-referenced matter.

**I. Introduction**

**A. Summary of Position**

The TCEQ Chief Clerk's office received a timely request for a contested case hearing from Williamson County (the County). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the County's hearing request.

**B. Background**

Theon Ranches, LP (Petitioner) filed a petition for creation of Theon Ranch Municipal Utility District No. 3 (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 July 11, 2023. On September 24, 2023, Notice of District Petition was published.

According to the notice, the proposed District would contain approximately 271.34 acres of land located within Williamson County, and none of the land to be included within the proposed District is within the extraterritorial jurisdiction of any city. The petition further states that, if approved, the work to be done by the proposed District at the present time is to purchase, construct, acquire, provide, operate, maintain, repair, 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, industrial and commercial purposes; to collect, transport, process, dispose of and control domestic, industrial and commercial wastes; to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; to construct, maintain, improve, and operate graveled or paved roads or turnpikes that serve or are intended to serve as arterial or main feeder roads, or works, facilitates, or improvements in aid of those roads or turnpikes inside or outside the boundaries of the proposed District to the extent authorized by Article III, Section 52 of the Texas Constitution; to purchase, construct, acquire, provide, operate, maintain, repair, improve, extend, and develop park and recreational facilities for the inhabitants of the District; and to purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created.

The comment and contested case hearing request periods ended on October 24, 2023. The Commission received a timely request for a contested case hearing from the County.

## **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 County**

The County stated that it has authority over various public functions such as transportation, emergency services, and the health and safety of its citizens, which would be affected by creation of the proposed District. The County also stated that all neighborhood utility districts should have similar rules, whether they are created by the legislature or the TCEQ to ensure fairness for all MUD residents. The County further requests that provisions required in legislatively



created MUDs and standard terms in the Consent and Development Agreements<sup>1</sup> also apply to the TCEQ-created MUDs for equity and public health and safety.

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, OPIC notes that the proposed district is located entirely within Williamson County. Here, the County's interests in protecting the health and safety of its citizens and maintaining transportation and emergency services are interests protected by the law under which this petition is being considered. *See* Tex. Health & Safety Code § 121.003. Therefore, OPIC finds that the County has demonstrated it qualifies as an affected person in this matter. OPIC respectfully recommends that the Commission grant the County's hearing request.

#### **IV. Conclusion**


For the reasons set forth above, OPIC respectfully recommends the Commission find that Williamson County qualifies as an affected person, grant its hearing request, and refer the matter to the State Office of Administrative Hearings for a contested case hearing.

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<sup>1</sup> The County's hearing request outlined standard terms from the Consent and Development Agreements for legislatively created MUDs in Williamson County, covering areas such as roads, law enforcement, fire and emergency medical services, and animal control services.

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 March 4, 2024, 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**  
**THEON RANCHES MUNICIPAL UTILITY DISTRICT NO. 3**  
**TCEQ DOCKET NO. 2023-1666-DIS**

FOR THE APPLICANT  
via electronic mail:

David J. Tuckfield  
The AL Law Group PLLC  
12400 West Highway 71, Suite 350-150  
Austin, Texas 78738  
[david@allawgrp.com](mailto:david@allawgrp.com)

Tony Corbett  
McLean & Howard LLP  
4301 Bull Creek Road, Suite 150  
Austin, Texas 78731  
[tcorbett@mcleanhowardlaw.com](mailto:tcorbett@mcleanhowardlaw.com)

Joseph Yaklin, P.E.  
BGE, Inc.  
101 West Louis Henna Boulevard  
Suite 400  
Austin, Texas 78728

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

Fernando Salazar Martinez, 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  
[fernando.martinez@tceq.texas.gov](mailto:fernando.martinez@tceq.texas.gov)

Darryl Smith, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Supply Division MC-152  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 713/767-3500 Fax: 512/239-2214  
[darryl.smith@tceq.texas.gov](mailto:darryl.smith@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):

J. Grady Randle  
Randle Law Office Ltd., L.L.P.  
820 Gessner Road, Suite 1570  
Houston, Texas 77024  
[grady@jgradyrandlepc.com](mailto:grady@jgradyrandlepc.com)