

TCEQ DOCKET NO. 2023-1666-DIS

APPLICATION FOR THE	§	BEFORE THE
	§	
CREATION OF THEON RANCHES	§	TEXAS COMMISSION ON
	§	
MUNICIPAL UTILITY DISTRICT NO. 3	§	ENVIRONMENTAL QUALITY

**WILLIAMSON COUNTY’S REPLY TO RESPONSES TO REQUEST FOR
CONTESTED CASE HEARING ON APPLICATION FOR CREATION OF THEON
RANCHES MUNICIPAL UTILITY DISTRICT NO. 3**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”):

Williamson County, Texas (the “County”) files this Reply to Responses of Applicant Theon Ranches, LP, a Texas limited partnership, Daniel S. Voss, and Kathryn S. Voss (“Applicant”), the Executive Director (“ED”), and the Office of Public Interest Counsel (“OPIC”) to the County’s Request for Contested Case Hearing on the Application for the Creation of Theon Ranches Municipal Utility District No. 3 (the “District”).

**I.
INTRODUCTION**

The County is an “affected person” entitled to a contested case hearing on issues raised in its hearing request because the County has interests related to legal rights, duties, privileges, powers, and economic interests affected by the Application that are not common to the general public. The relevant factors for the Commission to consider in determining an affected person for the purposes of requesting a contested case hearing are set out in 30 TEX. ADMIN. CODE § 55.256. Specifically, local governments (such as the County) with authority under state law over issues contemplated by an application may be considered affected persons under 30 TEX. ADMIN. CODE § 55.256(b). The County has authority over various functions – including but not limited to transportation, emergency services, and health and safety – that may be affected by the creation of

the proposed District and that the Application fails to take into account. Potential contamination of water within the region may impact the County's ability to effectively provide emergency services, and may impact health and safety by lowering water quality. Moreover, the County's authority over roads, health and safety, and emergency services are potentially impacted by the Application. Thus, the County has authority under state law over the issues contemplated by this application and is therefore an affected person. 30 TEX. ADMIN. CODE § 55.256(b).

II.

REPLY TO APPLICANT'S RESPONSE TO THE COUNTY'S HEARING REQUEST

Applicant believes that the County is not an affected person, and its request for a hearing should be denied, because it disagrees on the merits of the County's opposition to the MUD's creation. Applicant's Response to the County's request for a hearing argues that the County is impermissibly trying to impose requirements on the proposed District similar to such districts that are created by the Legislature; that the issues raised by the County such as MUD tax rates are "outside of the Commission's jurisdiction," and that the County is trying to "shift" burdens such as fire and EMS service and road maintenance onto the proposed District. Applicant's Response at pp. 4-7. But Applicant is putting the cart before the horse. At this stage, the only question is not the merits of these issues, but whether the County is an affected party, and on this question, the TCEQ must look to whether the County has authority over state law issues contemplated by the Application. 30 TEX. ADMIN. CODE § 55.256(b). The County agrees with the ED's assessment in its Response to Hearing Requests, which notes that the County indeed raised interests in the Application that relate directly to the County's statutory authority, including its statutory authority to construct roads in subdivisions, its management of emergency services, its general control over roads, highways, and bridges, and its authority over drainage on public roads. ED Response at 7.

The County respectfully suggests that its authority in these areas, and interests therein that are affected by the Application, entitle it to affected person status. Numerous statutory powers of a county that are potentially affected by the Application include (but are not limited to) various provisions regarding road construction and maintenance, emergency services, and water:

- Local Government Code §§ 232.001-.011 (county authority for road construction in subdivisions as well as other subdivision regulations);
- Local Government Code Chapter 254 (drainage on public roads);
- Transportation Code § 251.016 (general control over roads, highways and bridges);
- Transportation Code § 251.003 (county order and rulemaking authority for roads);
- Local Government Code § 552.101 (regulation of water lines in county right of way);
- Health and Safety Code § 121.003 (enforcement of laws to promote public health);
- Health and Safety Code Chapter 366 (license procedures for private sewage facilities);
- Water Code § 26.171 et seq. (enforcement of water quality controls and inspection of public waters);
- Local Government Code § 352.001 et seq. (emergency fire protection service);
- Government Code Chapter 418 (emergency management);
- Health and Safety Code Chapter 343 (abatement of public nuisances);
- Local Government Code § 561.003 (flood control);
- Local Government Code § 562.016 (authority to own, operate, or acquire wastewater facilities);
- Local Gov't Code Sect. 233.031-.036 (Building set-back lines)
- Local Gov't Code Chapter 233, Subchapter C (fire code in unincorporated areas)
- Local Gov't Code Sect. 232.102-104 (Thoroughfare Plan, lot frontage, set-backs)
- Local Gov't Code Sect. 232.110 (Apportionment of County Infrastructure Costs)

The Application states Applicant's intent to construct, maintain, and operate a waterworks system, operating a sewer utility service, and to construct or operate drainage, storm sewer, roadway, and other facilities within the proposed municipal utility district. As such, operations of the proposed District may impact the County's interests and regulatory authority, as stated above, regarding public health and safety, roads, flood control, drainage, water quality, and emergency management pursuant to these and other statutes, including the County's responsibility to provide emergency services that may be affected by the proposed District. The creation of a MUD whose

governmental powers overlap in many respects to those of the County affects the County in a way that is different from the general public.

As but one example, the proposed District presents water quality concerns, based upon the potential effect of treated effluent from Applicant's project on tributary creeks, rivers, and lakes within Williamson County. The County is concerned that the Application threatens water quality for the citizens of Williamson County.

Further, not only is the County authorized to provide an opinion to TCEQ regarding the potential creation of a MUD within the County,¹ but moreover, a relevant factor in determining whether the County qualifies as an affected person is the County's statutory authority over or interest in issues relevant to the Application. 30 TEX. ADMIN. CODE § 55.256(c)(6). In addition to the statutory authority and public health and safety interests of a county listed above, water quality, for example, is a factor relevant to TCEQ's determination of this Application. Texas Water Code § 54.021(b)(3)(F).

Applicant's Response argues the merits of its Application and the County's opposition to creation of the District. Specifically, Applicant opposes the imposition of any requirements from development agreements it may have concerning the property to be considered by TCEQ, opposes the imposition of requirements for legislatively-created districts, and questions the County's concerns regarding overall tax rates imposed by the District. However, the County is not required to show that it will ultimately prevail on the merits of its claims to be an affected person and request a hearing; it simply must show a potential harm or justiciable interest that will be affected by the application.² On this front, the County has demonstrated that it has statutory authority that is potentially impacted by the District, and concerns that the Applicant has met its burden to

¹ Texas Water Code § 54.0161.

² *United Copper v. TNRCC*, 17 S.W.3d 797, 903 (Tex. App.—Austin 2000, pet. dism'd).

demonstrate all of the factors enumerated in Texas Water Code § 54.021. For example, the County's request for a hearing does not argue, as Applicant suggests, that the TCEQ has authority, or that a contested case hearing should consider, whether the proposed District might "impose higher taxes outside" of its boundaries. Applicant's Response at p. 4. Rather, the prospective residents of the proposed District will be residents of the County, and the County therefore has an interest in ensuring that Applicant has met its burden under § 54.021(b)(3)(G) to demonstrate that the proposed District will not have an unreasonable effect on total tax assessments on all land within the District. Similarly, the County's authority over roads, water quality, and drainage are potentially impacted by the proposed facilities and operation of the District. *See id.* § 54.021(b)(3)(E-G); § 55.234.

Because the Application affects numerous interests and statutory authority of the County, the County should be considered an affected person and the TCEQ should grant the County's request for a contested case hearing on the Application.

III.

REPLY TO ED'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The County agrees with the ED's recommendation related to the County's status as an affected person based upon the City's interest in issues relevant to the application.

IV.

REPLY TO OPIC'S RESPONSE TO THE COUNTY'S HEARING REQUEST

The County agrees with OPIC's recommendation related to the County's status as an affected person based upon the City's interest in issues relevant to the application.

IV.
CONCLUSION

The County urges the TCEQ to find that the County is an affected person so that it may participate in a SOAH proceeding to protect its authority and interests.

Respectfully submitted,

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

Joshua D. Katz
State Bar No. 24044985
Jkatz@bickerstaff.com

Kimberly Kelley
State Bar No. 24086651
kkelley@bickerstaff.com

BICKERSTAFF HEATH DELGADO ACOSTA LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

BY: Emily W. Rogers
Emily W. Rogers

Attorneys for Williamson County, Texas

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on March 18, 2024, a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.



Emily W. Rogers

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

Tony Corbett
McLean & Howard LLP
4301 Bull Creek Road, Suite 150
Austin, Texas 78731
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

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

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

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

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