

TCEQ DOCKET NO. 2025-1450-DIS

PETITION FOR THE CREATION OF	§	BEFORE THE TEXAS
KELLY FARMS MUNICIPAL UTILITY	§	COMMISSION ON
DISTRICT OF JOHNSON COUNTY	§	ENVIRONMENTAL QUALITY

APPLICANTS' RESPONSE TO HEARING REQUESTS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Commissioners of the Texas Commission on Environmental Quality (“**TCEQ**”) should deny each of the three requests for a contested case hearing on the above-captioned petition to create Kelly Farms Municipal Utility District of Johnson County (“**Kelly Farms MUD**” or the “**District**”). As set forth below, Applicants Sunny Jane Elizabeth Ahrens and Thomas Edward O’Kelley (“**Applicants**”) respectfully submit that none of the hearing requests identifies a personal interest affected by the petition that is justiciable by TCEQ in the context of a petition to create a municipal utility district under Chapter 54 of the Texas Water Code and TCEQ’s implementing regulations in Subchapter B of Chapter 293 of Title 30 of the Texas Administrative Code.

I. ANALYSIS OF HEARING REQUESTS

Two of the three requests for a contested case hearing on the petition were submitted by elected representatives. The third hearing request was submitted by a resident who resides a half mile east of, and outside of, the proposed District. The legal sufficiency of each hearing request is analyzed below.

A. Hearing Request by State Representative Helen Kerwin

State Representative Helen Kerwin (District 58) submitted a request for “a hearing regarding the creation of the Kelly Farms Municipal Utility District of Johnson County.” The Representative’s hearing request does not identify the Representative’s “personal justiciable interest affected by the application,” as required by 30 Tex. Admin. Code § 55.251(c)(2). The

Representative's request does not include "a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application," nor does the request explain "how and why" the Representative believes "she will be affected by the activity in a manner not common to members of the general public." *Id.* Therefore, Representative Kerwin's request for a contested case hearing on the petition is not "made by an affected person" and "does not meet the requirements" of 30 Tex. Admin. Code Chapter 55, Subchapter G. Accordingly, Representative Kerwin's hearing request should be denied per 30 Tex. Admin. Code § 55.255(a)(1), (b)(2)(A).

B. Hearing Request by Johnson County Commissioner Larry Woolley

The hearing request filed by Johnson County Commissioner Larry Woolley (Precinct 4) does not state that it was filed on behalf of Johnson County or the Johnson County Commissioners Court; nor does Commissioner Woolley allege that he has been authorized to request a contested case hearing on behalf of Johnson County or the Johnson County Commissioners Court. Accordingly, Commissioner Woolley's hearing request is properly considered as having been made in the Commissioner's individual capacity. As such, the Commissioner's hearing request does not identify the Commissioner's "personal justiciable interest affected by the application," as required by 30 Tex. Admin. Code § 55.251(c)(2). The Commissioner's request does not include "a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application," nor does the request explain "how and why" the Commissioner believes he "will be affected by the activity in a manner not common to members of the general public." Accordingly, Commissioner Woolley's request for a contested case hearing on the petition should be denied per 30 Tex. Admin. Code § 55.255(a)(1), (b)(2)(A).

Additionally, Commissioner Woolley’s hearing request does not raise issues that are justiciable by TCEQ in the context of a petition to create a municipal utility district under Chapter 54 of the Texas Water Code and TCEQ’s implementing regulations in Subchapter B of Chapter 293 of Title 30 of the Texas Administrative Code. Per his hearing request, Commissioner Woolley is concerned about traffic, school enrollment, and the volume of effluent that the District’s wastewater treatment plant may discharge. None of these matters is among the criteria required to be addressed in a petition to create a municipal utility district under Texas Water Code Chapter 54 or TCEQ’s district creation regulations in 30 Tex. Admin. Code Chapter 293, Subchapter B. *See, e.g.*, 30 Tex. Admin. Code § 293.11(a), (d). Traffic and school enrollment are unequivocally out of scope with no arguable relevance to any applicable district creation criteria. And while the Commissioner may claim that the volume of effluent that the District’s wastewater treatment plant may discharge is arguably relevant to the “water quality” criterion under 30 Tex. Admin. Code § 293.11(d)(5)(H)(vi), Commission precedent holds that, if the district will own and/or operate an on-site wastewater treatment plant pursuant to a Texas Pollutant Discharge Elimination System (“*TPDES*”) permit issued by TCEQ, the impact of the wastewater treatment plant’s discharge on receiving waters should be assessed in the TPDES permitting process, not in the context of the petition to create the District. *See, e.g., Order Denying Petition for Creation of Shankle Road Municipal Utility District of Ellis County*, TCEQ Docket No. 2023-0566-DIS, SOAH Docket No. 582-23-26772 at 6, Findings of Fact Nos. 43-47 (Dec. 3, 2024) (“The Commission has a separate permitting process for wastewater treatment plants and does not regulate those matters as part of the MUD-approval process.”).¹

¹ *See also, e.g., Application by Highland Lakes Midlothian I, LLC for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, TCEQ Docket No. 2022-0532-DIS, SOAH Docket No. 582-22-07138, Proposal for Decision at 41 (June 29, 2023); *Order Granting Petition for Creation of*

The application for the TPDES permit (Permit No. WQ0016696001) for the District's wastewater treatment plant is under technical review by the Executive Director, and Commissioner Woolley has requested a public meeting on that application. The Commissioner's concerns regarding the volume of effluent that the plant proposes to discharge are properly considered in the docket for the TPDES permit application, not in this docket for the petition to create the District. For the foregoing reasons, Commissioner Woolley's request for a contested case hearing on the petition should be denied per 30 Tex. Admin. Code § 55.255(a)(1), (b)(2)(A).

C. Hearing Request by Resident Luanne Langley

The interests raised in Luanne Langley's hearing request are not justiciable by TCEQ in the context of a petition to create a municipal utility district under Chapter 54 of the Texas Water Code and TCEQ's implementing regulations in Subchapter B of Chapter 293 of Title 30 of the Texas Administrative Code. Like the concerns raised by Commissioner Woolley, Ms. Langley's concerns about prior land uses, land use planning and property values outside of the District, school enrollment, traffic, and wastewater discharges are not among the criteria required to be addressed in a petition to create a municipal utility district under Texas Water Code Chapter 54 or TCEQ's district creation regulations in 30 Tex. Admin. Code Chapter 293, Subchapter B. *See, e.g.*, 30 Tex. Admin. Code § 293.11(a), (d).

Moreover, Ms. Langley's hearing request expresses only generalized concerns for "our creeks that surround us" and "the natural waterways." As to the creeks and other waterways in the vicinity of the proposed District, Ms. Langley does not explain "how and why" she believes "she will be affected by the activity in a manner not common to members of the general public,"

Highland Lakes Municipal Utility District No. 1 of Ellis County, TCEQ Docket No. 2022-0532-DIS, SOAH Docket No. 582-22-07138, Finding of Fact No. 43 (Nov. 6, 2023).

as required by 30 Tex. Admin. Code § 55.251(c)(2). “An interest common to members of the general public does not qualify as a personal justiciable interest.” *Id.* § 55.103. Ms. Langley does not allege that a potentially impacted creek or other waterway crosses or abuts her property. Ms. Langley does not allege that she recreates in or on any potentially impacted creek or other waterway. Ms. Langley does not allege that she uses water from a potentially impacted creek or other waterway to water livestock, for irrigation, or for any other purposes. Ms. Langley does not even name a single creek or other waterway that she has a personal interest in and that may be impacted by creation of the District.

Furthermore, the Preliminary Engineering Report supporting the petition to create the District states that “[t]he natural drainage is in a generally southerly direction flowing to the South Fork Chambers Creek.” Preliminary Engineering Report for the Creation of Kelly Farms Municipal Utility District of Johson County at 5. In her hearing request, Ms. Langley claims to “live a half mile east of [the] proposed site.” Ms. Langley makes no attempt to explain “how and why” she will be affected by the District’s stormwater drainage or wastewater discharge given her “location and distance relative to the activity” – i.e., when she lives a half mile east of the site of the proposed District and the site drains to the south, not to the east. 30 Tex. Admin. Code § 55.251(c)(2).

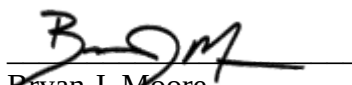
For the foregoing reasons, Ms. Langley has not alleged a justiciable interest affected by the petition to create Kelly Farms MUD and has not demonstrated that she will be affected by the petition “in a manner not common to members of the general public,” as required by 30 Tex. Admin. Code § 55.251(c)(2). Accordingly, Ms. Langley’s request for a contested case hearing on the petition should be denied per 30 Tex. Admin. Code § 55.255(a)(1), (b)(2)(A).

II. CONCLUSION

The Commissioners should not grant any of the requests for a contested case hearing on the petition to create Kelly Farms MUD. None of the hearing requests identifies a personal interest affected by the petition that is justiciable by TCEQ in the context of a petition to create a municipal utility district under Chapter 54 of the Texas Water Code and TCEQ's implementing regulations in Subchapter B of Chapter 293 of Title 30 of the Texas Administrative Code.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, the original of Applicants' Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed on the attached mailing list either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.



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