

TCEQ DOCKET NO. 2025-1450-DIS

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

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Request (Response) on the Petition by Sunny Jane Elizabeth Ahrens and Thomas Edward O’Kelley (Petitioners) for the creation of Kelly Farms Municipal Utility District of Johnson County (District). The Office of the Chief Clerk received hearing requests from State Representative Helen Kerwin, Johnson County Commissioner Larry Woolley, and Luanne Langley.

Attached for Commission consideration is the ED’s Satellite Map.

The ED recommends that the Commission deny all hearing requests.

I. DESCRIPTION OF DISTRICT

Sunny Jane Elizabeth Ahrens and Thomas Edward O’Kelley, (Petitioners) filed a petition for creation of Kelly Farms Municipal Utility District of Johnson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to 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 petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 410.25 acres located within Johnson County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The proposed District is located east of Interstate Highway 35 West, west of County Road 106, and approximately three miles north of the City of Grandview in southeastern Johnson County, Texas. The proposed District is located entirely outside the corporate limits and extraterritorial jurisdiction of any city, town, or village. Primary access to the proposed District will be from IH 35 and CR 203. The proposed District will also have access from IH 35 and Farm-to-Market Road 2258.

The petition further states that the proposed District will: (1) purchase, construct, acquire, 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, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and, (5) purchase, construct, acquire, 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.

II. PROCEDURAL HISTORY

TCEQ received the petition on March 31, 2025. The Application was declared administratively complete on April 9, 2025.

Proper notice of the application was published on May 6 and May 13, 2025, in the *Cleburne Times Review*, a newspaper regularly published or circulated in Johnson County, the county in which the district is proposed to be located. Proper notice of the application was posted on May 6, 2025, at the place for posting legal notices at the Johnson County Courthouse. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied. The opportunity for the public to request a contested case hearing (comment period) expired June 12, 2025.

The proposed District is located outside the corporate limits and extraterritorial jurisdiction of any city, town, or village. Therefore, city consent is not required.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD may 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. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the

¹ TWC § 54.014.

district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

In determining if the project is feasible and practicable and if it is necessary and would be a benefit 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.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings ("SOAH") for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

² TWC § 54.021(a); 30 TAC § 293.13(b)(1).

³ TWC § 54.021(d); 30 TAC § 293.13(a).

⁴ TWC § 54.021(b).

⁵ 30 TAC § 293.13(b)(2); TWC § 54.021(c).

⁶ 30 TAC § 55.251(a).

⁷ 30 TAC § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including 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 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;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (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 and safety of the person, and on the 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.¹¹

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

⁸ 30 TAC § 55.251(b) and (d).

⁹ 30 TAC § 55.251(c).

¹⁰ 30 TAC § 55.256(a).

¹¹ 30 TAC § 55.256(c).

¹² 30 TAC § 55.256(b).

V. THE HEARING REQUESTS

A. Analysis of Non-Affected Persons

○ State Representative Helen Kerwin.

- Representative Kerwin filed a timely hearing request which contained the relevant contact information pursuant to 30 TAC § 55.251(c)(1), and she provided the internal control number as required in the notice pursuant to 30 TAC § 55.251(c)(4).

In her hearing request, Representative Kerwin only requested a hearing and did not identify any justiciable interests that would be affected by the creation of the District.

Because Rep. Kerwin's hearing request did not identify any personal justiciable interest unique to her, the ED recommends that the Commission deny her hearing request pursuant to 30 TAC § 55.251(c)(2).

○ Johnson County.

- Johnson County Commissioner Larry Woolley submitted timely comments and a hearing request on behalf of Johnson County which contained the pertinent contact information pursuant to 30 TAC § 55.251(c)(1) and the internal control number as required in the notice pursuant to 30 TAC § 55.251(c)(4).

In the hearing request, the County expressed concerns about the District's impact on traffic, increased enrollment in Grandview ISD, and concerns about the District's impact on the water quality of local tributaries from its wastewater facility. Based on the issues raised in the hearing request, Johnson County should not be considered an affected person. The concerns raised are outside the scope of the Commission's jurisdiction to consider during the review of a MUD creation petition. The County's concerns about impacts to traffic and school enrollment are outside the scope of the Commission's jurisdiction under TWC Chapter 54 to consider as part of the MUD creation process. Regarding the County's comments about water quality, this issue concerned the discharge from a wastewater treatment facility, which is an issue addressed during the review of a TPDES permit and is not part of the review of a MUD creation under Chapter 54 of the TWC.

Additionally, according to 30 TAC § 55.256(c), the Commission considers several factors when determining affected person status. For governmental entities this analysis includes, "their statutory authority over or interest in the issues relevant to the application." In its request, the County did not cite to any statutory authority over interests relevant to the Commission's consideration of a MUD creation petition.

Having failed to cite to any statutory authority over an issue relevant to the consideration of a MUD creation petition, or to demonstrate any justiciable interests affected by the petition, the ED recommends to the Commission that Johnson County should not be considered an affected person and its hearing request be denied pursuant to 30 TAC § 55.256.

- Luanne Langley
 - Ms. Langley submitted a timely hearing request which contained her contact information pursuant to 30 TAC § 55.251(c)(1), and she provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4). According to the address she provided in her hearing request, her property is located approximately half a mile from the boundary of the proposed District.

In her request, Ms. Langley raised concerns about water quality and erosion in the creeks surrounding her property. Ms. Langley stated that the land to be included in the district was formerly used for biosolids applications and she expressed concerns that the creeks could erode from wastewater discharges thus bringing PFAS and other wastes onto her property. She also expressed concerns about taxes, property values, increased traffic, and housing density. Based on the issues she raised, her hearing request should be denied.

Ms. Langley's concern about water quality is a concern about a discharge from a wastewater treatment facility, which is an issue addressed during the review of a TPDES permit and is not part of the review of a MUD creation under Chapter 54 of the TWC. Her concerns about property values, traffic, and housing density are outside the scope of the Commission's jurisdiction to consider during the review of a MUD creation petition. Ms. Langley also raised a concern about the impact on her taxes. While the impact of a proposed district on the total tax assessment is an issue the Commission must consider under TWC Section 54.021, this consideration is limited to the effect on all land located within a district. As Ms. Langley does not reside within the proposed district, her concern about increased taxes is outside of the scope of what the Commission can consider during the review of a MUD creation petition.

Based on the concerns expressed in her request, Ms. Langley has not demonstrated that she has a personal justiciable interest related to an issue relevant to the Commission's consideration of a MUD creation petition.

The ED therefore recommends that her request be denied pursuant to 30 TAC § 55.251(c)(2).

VI. RECOMMENDATION

The ED recommends that the Commission deny all hearing requests.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division



Harrison Cole Malley, Staff Attorney
Environmental Law Division
State Bar No. 24116710
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-1439
Fax: (512) 239-0626

VII. CERTIFICATE OF SERVICE

I certify that on October 27, 2025, the “Executive Director’s Response to Hearing Requests” for the creation of Kelly Farms Municipal Utility District of Johnson County was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

A handwritten signature in black ink, appearing to read "Harrison Cole Malley", is written over a horizontal line.

Harrison Cole Malley Staff Attorney
Environmental Law Division

MAILING LIST
KELLY FARMS MUNICIPAL UTILITY DISTRICT OF JOHNSON COUNTY
DOCKET NO. 2025-1450-DIS; INTERNAL CONTROL NO. D-03312025-063

FOR THE APPLICANT

Mindy L. Koehne
Coats Rose PC
9 Greenway Plaza, Suite 1000
Houston, Texas 77046

Chris Ulmann
Jones-Heroy & Associates
13915 North Mopac Expressway, Suite 408
Austin, Texas 78728

REQUESTER(S)

The Honorable Helen Kerwin
State Representative, Texas House Of
Representatives District 58
PO Box 12910 Rm E1.216
Austin, Texas 78711

Luanne Langley
9601 FM 2258
Grandview, Texas 76050

Larry Woolley
Commissioner Precinct 4, Johnson County
4300 E FM 4
Cleburne, Texas 76031

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison Cole Malley, Staff Attorney
Texas Commission on
Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Jacob Houston, Technical Staff
Texas Commission on
Environmental Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on
Environmental Quality
External Relations Division, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Public Interest Counsel
Texas Commission on
Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on
Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on
Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efilings>

Attachment A

Sunny Jane Elizabeth Ahrens and Thomas Edward O'Kelley for Kelly Farms Municipal Utility District of Johnson County

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 5/21/2025
CRF 0123142
Cartographer: RKukushk

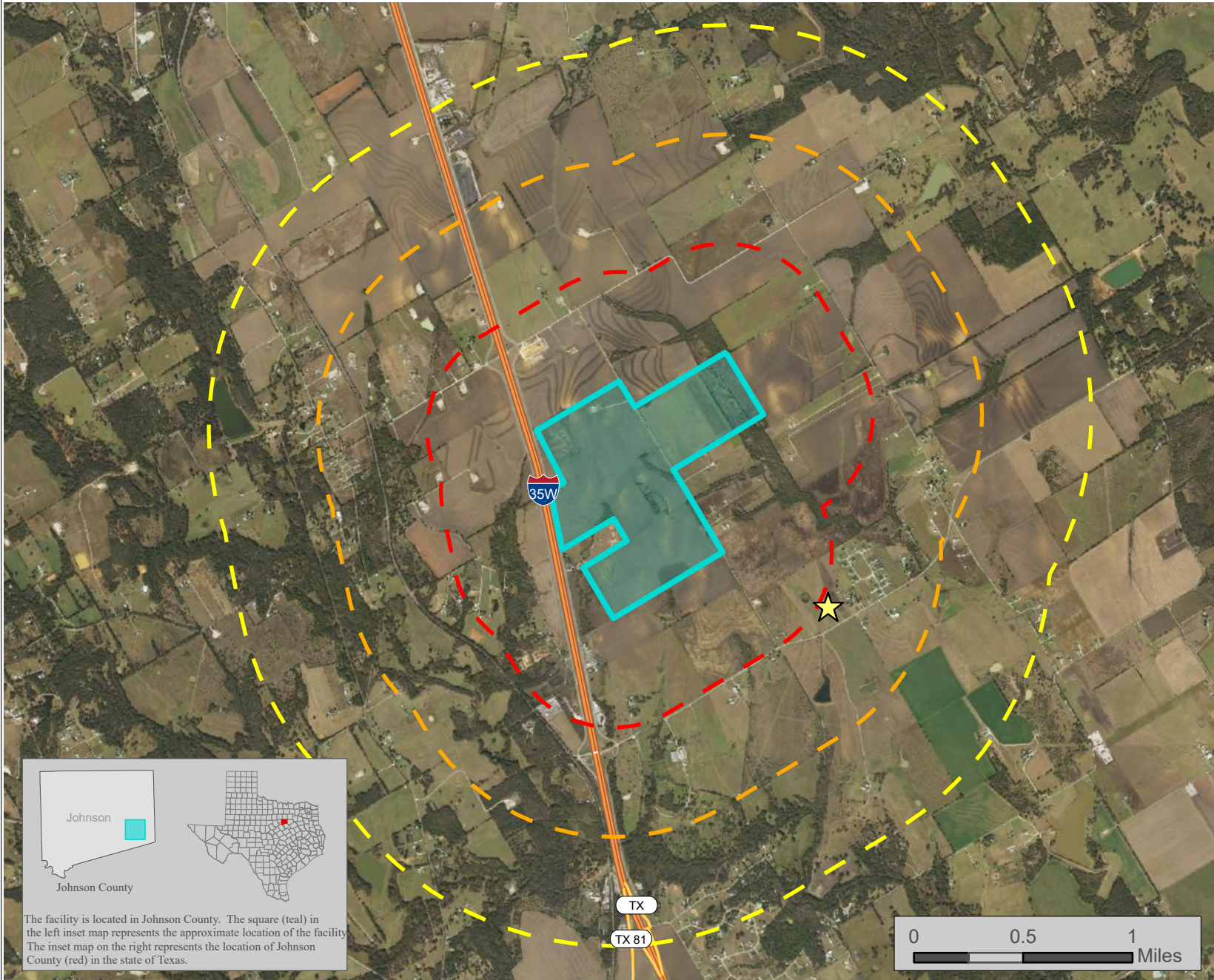
- ★ Luanne Langley
- District Boundary
- 1.5 miles
- 1 mile
- 0.5 miles
- Interstate
- Highway
- Intermediate Roads

Luanne Langley is 0.55 miles
from the proposed District
Boundary.

Rep. Helen Kerwin did not
provide a physical address in the
hearing request.

Source: This map was requested by the Office of Legal
Services (OLS) and is based on information provided in
the application and hearing requests. The applicant
provided site location information, and the hearing
requestors provided physical addresses. The map is a
visual representation and approximation

This map was generated by the Information Resources
Division of the Texas Commission on Environmental
Quality. This product is for informational purposes and
may not have been prepared for or be suitable for legal,
engineering, or surveying purposes. It does not represent
an on-the-ground survey and represents only the
approximate relative location of property boundaries.
For more information concerning this map, contact the
Information Resource Division at (512) 239-0800.



The facility is located in Johnson County. The square (teal) in
the left inset map represents the approximate location of the facility.
The inset map on the right represents the location of Johnson
County (red) in the state of Texas.