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January 11, 2008

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
MC-105  
P.O. Box 13087  
Austin, Texas 78711

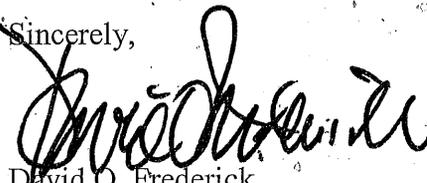
**Re: Travis County District Court's "Order on Motion to Reconsider Order to Remand to Agency to Consider Material New Evidence" in the matter of Consideration of a Petition from Lerin Hills Development Company LLC for the Creation of Lerin Hills Municipal Utility District; TCEQ Docket No. 2006-0969-DIS**

Dear Ms. Castañuela,

Enclosed for filing please find an original and eleven copies of the Requestors' Initial Pleading on Remand in the above-referenced matter.

If you have any questions please call.

Sincerely,



David O. Frederick  
LOWERRE & FREDERICK

Enclosures

cc: Service List

CHIEF CLERK'S OFFICE

2008 JAN 14 AM 8:18

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



**In Re: Travis County District Court’s** §  
**“Order on Motion to Reconsider Order** §  
**to Remand to Agency to Consider** §  
**Material New Evidence” in the matter of** § **BEFORE THE TEXAS**  
**Consideration of a Petition from Lerin** § **COMMISSION ON**  
**Hills Development Company LLC for** § **ENVIRONMENTAL QUALITY**  
**the Creation of Lerin Hills Municipal** §  
**Utility District; TCEQ Docket No. 2006-** §  
**0969-DIS** §

**Requestors’ Initial Pleading on Remand**

TO THE HONORABLE COMMISSIONERS:

Come now Tapatio Springs Service Company, Lee Roy and Joan Hahnfeld, and Edgar Blanch (collectively, “Requestors”) and, consistently with the General Counsel’s letter of December 14, 2007, and Travis County District Court Judge Jeanne Meurer’s order of December 4, 2007, offer the following evidence in support of its position is an “affected person” on the basis of groundwater use.<sup>1</sup>

About the Requestors and the proposed MUD

Briefly, as two of you were not on the Commission when this application first came before it: the present dispute involves a proposed Ch. 54 municipal utility district in Kendall County. The proposed MUD, Lerin Hills, would serve 1475 single-family residential units and commercial establishments equivalent to another 723 single-family units. Your staff has correctly noted that these water demands, plus a few others within

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<sup>1</sup> Judge Meurer’s order, Attachment F to this filing, indicates that the remand from her court was to allow the “Plaintiffs to present additional evidence ... in respect to the use of groundwater and Plaintiff status as “affected persons.”

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 CHIEF CLERK'S OFFICE  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

the proposed MUD, should total about 881 acre-feet/year, of which the proposed MUD has a commitment from the Guadalupe-Blanco River Authority for 750 acre-feet/year, leaving the proposed MUD about 15% short of its projected needs. See, Attachment A, TCEQ Interoffice Memorandum (Aug. 28, 2006), pp. 7-8.

Tapatio Springs Service Co. ("Tapatio Springs") protested the application on multiple grounds and requested a hearing. Tapatio Springs is a long-existing water and sewer utility with a service area immediately adjacent to the proposed MUD. Tapatio Springs was and is willing and able to serve the development that would be served by the proposed MUD. Tapatio Springs serves its present customers exclusively with groundwater, so it is particularly apprehensive about the impact of the proposed MUD and the development projected to be occasioned by the proposed MUD on area groundwater. Tapatio Springs is also the nearest source of alternative water supply and waste water treatment for the proposed MUD, so it stands to have to interconnect, if the proposed MUD is unable to meet its service commitments. See, Attachment A, TCEQ Interoffice Memorandum (Aug. 28, 2006), p.3; and Attachment B, initial hearing request of Tapatio Springs Service Co. (May 22, 2006).

Lee Roy and Joan Hahnfeld protested the application for multiple reasons as well. Their property is adjacent to and surrounded on three sides by the proposed MUD and storm water runoff and sewer discharge from the development could adversely impact their property, which is located at the base of a severe slope and already receives

significant flows of runoff. Increased flows resulting from the proposed development, which would be located at the top of this slope, would exacerbate flows from runoff and could contaminate their property and groundwater. See, Attachment A, TCEQ Interoffice Memorandum (Aug. 28, 2006), p.4, and Attachments C and D, initial hearing request and response to denial of hearing request by the Hanhfelds. (May 24, 2006 and November 5, 2006).

Edgar W. Blanch, Jr., protested the creation of the MUD and requested a contested case hearing, because portions of the proposed district would be located adjacent to his property, a high-quality residential subdivision, and the petitioner failed to provide him adequate legal notice. Blanch also opposed creation on other grounds, including, of most present relevance, the fact that his subdivision is entirely dependent on groundwater, to which the proposed MUD is a potential threat. See, Attachment A, TCEQ Interoffice Memorandum (Aug. 28, 2006), p.4, and Attachment E, initial hearing request by Mr. Blanch. (May 26, 2006).

The Commission, after considerable debate at its November 15, 2006, open meeting, approved the MUD application by order of November 20, 2006. Requestors appealed that decision to Travis County District Court, where they demonstrated that material evidence had arisen since November 2006 indicating that the proposed MUD and/or the development within the proposed MUD would likely, in fact, have an impact on regional groundwater levels and, inferentially, quality. Judge Jeanne Meurer

remanded the case to the Commission for consideration of Requestors' additional evidence.

Law

The law is straight-forward.

At the stage of a proceeding when a party's right to participate is being determined, the "standard does not require parties to show they will ultimately prevail in their law suits; it requires them to show only that they will potentially suffer harm or have a "justiciable interest" related to the proceedings." *Heat Energy Advanced Technology, Inc., TNRCC, et al., v. West Dallas Coalition for Environmental Justice*, 962 S.W.2d 288 (Tex. App. Austin – 1998), pet. denied ("Person affected" need not prove merits of his case to have standing to prove them again in a hearing on the merits), emphasis added.

The TCEQ is charged by statute to consider, among other matters:

(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.

Sec. 54.021(b)(3), Water Code. So, whether the Lerin Hills MUD or subsequent development within the MUD will affect the groundwater level within the region or the recharge capability of the groundwater source or water quality is plainly both within the jurisdiction of TCEQ and, if either might potentially affect the Requestors, encompassed by the remand from Judge Meurer.

The Commission's Previous Consideration of Requestors' Status

At its November 15, 2006, open meeting, the Commission considered whether Requestors were "affected persons" entitled to hearing on the Lerin Hills MUD application. Lerin Hills, Ltd., as the owner of the land within the district and the district developer, had represented to you that it was "negotiating an agreement for wholesale water supply with the Guadalupe Blanco River Authority."<sup>2</sup> Thus, as your staff understood it, groundwater definitely would not be used by the MUD to supply its customers. In persuading you to deny the hearing requests and approve the petition without an opportunity for a hearing, your staff informed you, "This district is proposing to get its water from the GBRA...that would not affect groundwater." See Attachment G, Transcript of TCEQ Meeting on November 15, 2006, Page 25, lines 19 through 23.

In response to then-Chairman White's question regarding groundwater level, your staff representative responded: "In this district, the --the water is proposed to come from

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<sup>2</sup> Preliminary Engineering Report of the Creation of the Lerin Hills Municipal Utility District (Feb. 2006), p. 5 of 14.

the GBRA, and so it -- as far as water supply, that would not affect the groundwater." See Attachment G, page 25, lines 13 through 16. Then-commissioner Hubert (correctly) took this to be an important condition and asked the staff representative to repeat the answer, which he did.

Then-chairman White later confirmed that the non-use of groundwater, in her mind, was a or the critical factor in evaluating Requestor Tapatio Springs' request for a hearing. She said, "And, if I look at Tapatio Springs, to me [it] is the most -- in my assessment -- the entity that I could be most willing to grant a hearing request. And the issues it raises are groundwater availability and quality. And this is -- this district is not -- not going to use groundwater, correct?" Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 27, lines 12-17.

There was discussion at your meeting of whether persons or entities outside the boundaries of the MUD could possibly be affected persons. All three of the then-commissioners, however, ultimately rejected the staff position that requestor residence outside the MUD boundaries justified denial of the request.<sup>3</sup> Commissioner Soward said, "I do not think we can just say ... that any requests outside the boundaries of the district are automatically excluded." Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 12, lines 13-16. Then-chairman White said, "... I can imagine ... how

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<sup>3</sup> Staff's thought was that, "since all these requestors are residing outside of the proposed district boundaries, they don't have a personal and justiciable interest uncommon to the general public...." Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 17, lines 5-8.

parties outside the district could be affected and raise justiciable issues ....” Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 28, lines 12-14. Then-commissioner Hubert was less emphatic, but his comments clearly support hearings for extra-MUD requestors in some circumstances. See, Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 12, lines 23, through p. 13, line 18. In any event, the standard set in *Heat*, above, certainly would not conscience a rule that automatically denied extra-MUD residents or entities a hearing opportunity.

Evidence of likely groundwater use

Lerin Hills, Ltd. (i.e., of the real estate development firm sponsoring the MUD), was, by late March 2007 (i.e., four months after the TCEQ action), representing to the Kendall County Commissioners that neither the developer nor the Commissioners Court could stop the district from drilling for or using groundwater. Its representative said (regarding subdivision plat notes for one section of Lerin Hills), “[W]hat we are asking for is relief from the requirement to have the plat note that requires that no Kendall County groundwater be used to provide water service to this development. ... I don’t know what we can do to control the actions of a governmental entity [i.e., the MUD or GBRA] on where they get their water from.” See Attachment H, Transcript of Meeting of the Kendall County Commissioners Court on March 26, 2007, p. 2, lines 18 through 21, and p. 3, lines 11-13, and Attachment I, a newspaper summary of the meeting, in

which the attorney for the Lerin Hills developer is quoted as saying, “The district can do what it wants and tell the County to go pound sand.”

The Lerin Hills developer also argued to the Kendall County Commissioners’ Court that it, the developer, wanted to use groundwater it owned by virtue of its ownership of land within the MUD to develop residential infrastructure. It argued “it should be able to have access to water that [it] owns.” Attachment H, Transcript of Meeting of the Kendall County Commissioners Court on March 26, 2007, p. 4, lines 3 through 8. What this argument overlooks, however, that would have been relevant to earlier to the TCEQ Commissioners is that the law requires consideration of the impacts of not only of the MUD’s activities, but, also, of subsequent development within the MUD. Sec. 54.021(b)(3), Water Code, quoted earlier.

Two days later (March 28<sup>th</sup>), at the MUD board meeting, Item 10 on the agenda included discussion of a MUD engineering report requesting the MUD apply for a groundwater pumping permit in order (1) to provide back-up water supply to the Lerin Hills, Ltd., subdivision and (2) to provide “conjunctive use of groundwater [that] will allow a lower overall operating cost to the residents.” See, Attachment J, Transcript of the March 28, 2007, MUD board meeting, page 41, line 19, through Page 42, line 11.

#### Argument and Summary

From the foregoing, it is pretty clear what the situation is. This Commission made a decision on hearing requests in November of 2006 based on a strong belief that no

groundwater would be used to serve development within the Lerin Hills MUD. Whatever grounds once existed for that belief have largely disappeared. The developer of the land within the MUD has begun protesting plat restrictions that, in part, would implement legally the “no groundwater use” commitment that is, otherwise and charitably-characterized, simply an aspirational statement. Common-sense decisionmaking should not ignore the implications of this protest. If the developer does not harbor groundwater use intentions, it is very unlikely he would fight – apparently, belligerently -- for the right to use groundwater.

The MUD, itself, since November 2006, has been informed by its engineer that it should seek a permit for groundwater withdrawal. One might – or might not – think that a backup water supply is a groundwater demand of not much moment, but it hard not to worry about a demand based on the financial benefits of “conjunctive use” of groundwater and surface water. This is just so diametrically opposite the situation that was represented to the Commissioners when they made their November 2006 decision.

The standing law is not generous to those who would oppose hearings. All that a would-be party need demonstrate to be entitled to a hearing is that he/she/it is at an elevated risk of some specialized harm from the proposed agency action. Here, we have immediately adjoining landowners and service providers requesting a hearing and expressing concerns about groundwater levels and quality and recharge and about surface water run-off associated with the MUD or with subsequent development in the MUD, all

of which are legitimate statutory grounds for opposition to MUD approval. We have evidence that surfaced after the Commission's initial decision that certainly supports the rationality of the Requestors' concerns.

Under these circumstances, the reasonable and prudent thing to do is to recant the earlier decision to deny a hearing. That earlier decision was made largely on the basis of a representation that no longer seems sufficiently reliable.

Requestor pray you inform Judge Meurer that the earlier MUD approval is suspended and that you are sending the question of the Lerin Hills MUD approval to the State Office of Administrative Hearings for an evidentiary hearing and recommendation. Requestors pray you refer to SOAH all the issues raised by the various Requestors in their earlier hearing requests.

Respectfully submitted,

LOWERRE & FREDERICK  
44 East Avenue, Suite 100  
Austin, Texas 78701  
Telephone: (512) 469-6000  
Facsimile: (512) 482-9346

By:



David Frederick  
State Bar No. 07412300  
Richard W. Lowerre  
State Bar No. 12632900  
Marisa Perales  
State Bar No. 24002750

#### CERTIFICATE OF SERVICE

By my signature, above, I hereby certify that a true and correct copy of the foregoing document has been forwarded by postage prepaid U.S. mail on January 11, 2008, to the following representatives.

Thomas H. Watkins  
Danny G. Worrell  
Brown McCarroll, L.L.P.  
111 Congress Ave., Suite 1400  
Austin, Texas 78701-4043

Garrett Arthur, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
PO Box 13087, MC-103  
Austin, Texas 78711-3087

Shana Horton, Attorney  
Texas Commission on Environmental Quality  
Office of Legal Services MC-173  
PO Box 13087, MC-103  
Austin, Texas 78711-3087

# Attachment

A

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

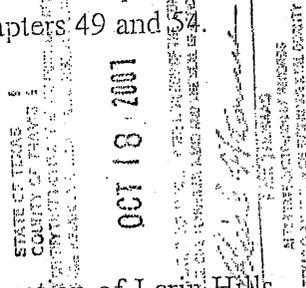
To: Michael D. Cowan, Director  
Water Supply Division

Date: August 28, 2006

Thru: *RC* Robert Cummins, P.E., Leader, Districts Review Team

From: Districts Review Team

Subject: Petition by Lerin Hills, LTD., for the Creation of Lerin Hills Municipal Utility District of Kendall County; Pursuant to Texas Water Code Chapters 49 and 54. TCEQ Internal Control No. 02162006-D01 (TC) CN:602989105 - RN:104893938



### A. GENERAL INFORMATION

The petition within the application requests Commission approval of the creation of Lerin Hills Municipal Utility District ("District"). The petition was signed by J. Abel Godines, manager of Lerin Development Company, LLC, a general partner of Lerin Hills, LTD. (the "Petitioner"). According to the petition, the Petitioner holds title to a majority in value of the land to be included in the proposed District and that Wachovia Bank, USA Commercial Mortgage Company, as a separate entity and as Attorney-in-Fact for 135 persons shown on Exhibit B, are lien holders on the land in the proposed District. By separate affidavit, the lien holders have consented to the creation.

The District 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.

#### Location and Access

The proposed District would contain approximately 866.53 acres of land, located approximately 4 miles west southwest of downtown Boerne, Texas and approximately 31 miles northwest of the San Antonio Central Business District, in Kendall County. Access to the proposed District is provided by State Highway 46, on the south side, and Johns Road on the north side. The other sides are adjacent to undeveloped land. The petition states that the land of the proposed District is not located within the corporate limits or the extraterritorial jurisdiction ("ETJ") of any city.

#### Metes and Bounds Description

The proposed District contains one tract totaling approximately 866.53 acres of land. The metes and bounds description of the proposed District has been checked by the Commission's staff and has been found to form an acceptable closure.

Exhibit "A"

City Consent

The petition asserts that the land within the proposed District is not located within the corporate limits or the ETJ of any city, town, or village. Therefore, city consent is not applicable.

Statements of Filing Petition

Certificates were provided showing that a copy of the petition has been filed with the Kendall County Clerk's office and TCEQ's Austin Region 13 office.

Type of Project

The proposed District will be considered a "developer project" as defined by Commission rules. Therefore, developer cost participation, in accordance with Title 30 of the Texas Administrative Code (30 TAC), Section 293.47, will be required.

Certificate of Ownership

The Commission has received a certificate from the Kendall County Appraisal District, dated February 9, 2006, indicating that the Petitioner is the title holder to a majority in value of the land in the proposed District.

Temporary Director Affidavits

The Commission has received affidavits for Commission consideration of the appointment of the following temporary directors:

Ruby A. Perez  
Anastacio M. Nieto

Sameera M. Hashmi  
Edward Suarez

STATE OF TEXAS  
COUNTY OF DALLAS  
ASSAULT (CR) 100-11071-1  
A TEXAS COURT REPORTER & VIDEO SERVICE

OCT 18 2007

1007 1 100

James Lindsay

STATE OF TEXAS  
COUNTY OF DALLAS  
ASSAULT (CR) 100-11071-1  
A TEXAS COURT REPORTER & VIDEO SERVICE

STATE OF TEXAS  
COUNTY OF DALLAS  
ASSAULT (CR) 100-11071-1  
A TEXAS COURT REPORTER & VIDEO SERVICE

Developer Qualifications

Information provided indicates that J. Abel Godines, who signed the petition, plans to manage the development of the proposed District. The information shows that he owns KGME, a construction company, that has built water and wastewater lines and roads. The provided information does not show that the Petitioner has experience with districts or developing in districts. The engineering report indicates that Mr. Godines plans to use his own staff to construct the subject project; however, as a district, competitive bidding and awarding requirements are to be followed.

STATE OF TEXAS  
COUNTY OF TARRANT  
OCT 18 2007  
TARRANT COUNTY CLERK  
TARRANT COUNTY, TEXAS

**B. SPECIAL CONSIDERATIONS**

1. Lien holders

The lien holders of the proposed District are Wachovia Bank National Association and USA Commercial Mortgage Company, as a separate entity and as Attorney-in-Fact for 135 persons shown on Exhibit B to the petition.

2. Location

The provided information indicates that the proposed District is not located within the limits or ETJ of any city. In accordance with Texas Water Code, Section 54.0161, Commission staff submitted a letter, dated April 10, 2006, to Kendall County Judge Vogt requesting comments from the County on the proposed petition. The location of the proposed District is also close to a dam that has been classified as a high-hazard potential structure in an inspection report dated, March 9, 1981, by the Texas Department of Water Resources. In response to a request concerning the effect of the proposed District on the dam, the District's engineer indicated that commercial development is proposed in the affected downstream area, that the feasibility of the proposed District is not dependent on development within that area, and that no improvements to the dams are anticipated.

3. Hearing Requests

Hearing requests were received from the Commissioners Court of Kendall County, Tapatio Springs Service Company ("Tapatio"), Cow Creek Groundwater Conservation District ("CCGCD"), RLC Designs, Inc. ("RLC"), Lee Roy and Joan Hahnfeld ("Hahnfelds"), and Edgar W. Blanch, Jr. ("Blanch").

In response to a letter submitted to the County, in accordance with Texas Water Code, Section 54.0161, the Commissioners Court of Kendall County stated that they do not have enough information to recommend approval or denial of the District's petition, and accordingly requested a contested case hearing.

Tapatio requested a contested hearing because the proposed District includes territory adjacent to Tapatio's existing water and wastewater service area, and Tapatio contends that they are ready, willing, and able to provide services to the area. Tapatio also states that the developer of the proposed District falsely stated a prior ownership interest in Tapatio to show experience in dealing with public utilities. Tapatio believes that the Petitioner failed to seek service from Tapatio and that the information presented in the application regarding service from Tapatio is incorrect and misleading. Tapatio is opposed to the application because they believe the Petitioner failed to satisfy the applicable legal requirements, including but not limited to potentially defective notice.

CCGCD's letter to TCEQ supports the Kendall County Commissioners Court's decision to request a contested case hearing.

Exhibit "A"

RLC requested a contested case hearing because the proposed District includes property located immediately adjacent to RLC's property, which consists of lots in a residential subdivision held for resale and possible re-development. RLC contends that the Petitioner proposes to discharge wastewater through RLC's property, but has not proposed to include or serve RLC's property. RLC states that allowing the current providers, Tapatio, to expand their systems would be less expensive and have less impact on RLC. Also RLC contends that the Petition failed to satisfy applicable legal requirements, including but not limited to, potentially defective notice and illegal or sham transfers of land to the purported "directors" of the proposed District.

The Hahnfelds requested a contested hearing because their property is adjacent to and surrounded on three sides by the proposed District. They are concerned about the impact that storm water runoff and sewer discharge from the proposed District will have on their property.

Blanch requested a contested case hearing because the proposed District includes property immediately adjacent to his property, which has been developed into a high-quality residential subdivision. Blanch is concerned that the Petitioner has previously represented that an agreement exists between the proposed District and Blanch regarding the extension of service to Blanch's property, and that Blanch has consented to the discharge of wastewater onto Blanch's property. Blanch contends that no such agreement or permission exists, nor has been requested by or proposed to Blanch. Blanch also contends that the Petitioner failed to satisfy applicable legal requirements, including but not limited to, potentially defective notice and illegal or sham transfers of land to the purported "directors" of the proposed District.

### C. CONCLUSIONS

1. Based on Commission policy, compliance with Commission rules, and review of the engineering report and supporting documents, the proposed District is considered feasible, practicable, would be a benefit to the land within the proposed District, and would be necessary as a means to finance utilities and to provide utility service to future customers, provided the proposed District does the following:
  - (a) Scale back its development to be consistent with the availability of water.
  - (b) Restrict residential development in the spillway of dam site no. 4.
  
2. Based on a review of the preliminary engineering report, market study, the proposed District's water, wastewater and drainage facilities, combined projected tax rate of \$0.76 (70% reimbursement) or \$0.92 (100% reimbursement), and other supporting data, the proposed District is considered feasible under the feasibility limits prescribed by Commission Rule, 30 TAC, Section 293.59.

OCT 18 2007  
STATE OF TEXAS  
COMMISSION ON WATER RESOURCES  
MICHAEL D. COWAN, DIRECTOR  
ALTERNATE TO TECHNICAL SERVICES  
TEXAS COMMISSION ON WATER RESOURCES

Exhibit "A"

**D. RECOMMENDATIONS**

1. Grant the petition for creation of Lerin Hills Municipal Utility District of Kendall County.
2. The order granting the petition should include the following statement:

"This order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the petition for creation, nor as a commitment or requirement of the Commission in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for Commission consideration."

3. Appoint the following five persons to serve as temporary directors until permanent directors are elected and qualified:

Ruby A. Perez  
Anastacio M. Nieto

Sameera M. Hashmi  
Edward Suarez

James Lindsay

4. The District should be advised of the competitive bidding and awarding requirements of Texas Water Code, Section 49.273.

STATE OF TEXAS  
COUNTY OF KENDALL  
KENDALL COUNTY CLERK  
AT THE COURTHOUSE, 1000 W. 11TH STREET  
DALLAS, TEXAS 75201

OCT 18 2006

RECEIVED BY THE CLERK OF THE COUNTY OF KENDALL TEXAS  
OCT 18 2006



STATE OF TEXAS  
COUNTY OF KENDALL  
KENDALL COUNTY CLERK

**E. FEASIBILITY OF PROJECT**

Market Study

A market study, prepared by Metrostudy, has been submitted in support of the creation of the proposed District. The market study, prepared in February, 2006, projects development of 1,475 single-family homes, at values from \$200,000 to \$1,000,000, at a rate of 99 in 2007, 156 in 2008, 159 in 2009, and 163 in 2010.

Project Financing

Based on an average home value of approximately \$385,000 and 1,475 projected homes, a projected value of \$567,675,000 has been indicated. A projected value for the commercial development was not indicated.

The projected debt service tax was summarized in the engineering report as follows: based on a projected assessed valuation of \$567,675,000, a 6.0% interest rate with a term of 30 years, and a 95% collection rate, a debt service tax rate of \$0.76 is required for bond issuance of \$56,745,000 (70% reimbursement) or a debt service tax rate of \$0.92 is required for a bond issuance of \$68,420,000 (100% reimbursement). A maintenance and operation tax of \$0.03 is anticipated, resulting in a total District tax rate of \$0.79 or \$0.95, depending on the reimbursement percentage.

Exhibit "A"

The total year 2005 overlapping tax rates on land within the proposed District are shown in the following table:

Taxing Jurisdiction	Tax per \$100 valuation
Kendall County	\$0.37
Boerne ISD	\$1.74
Lerin Hills MUD	\$0.95
<b>Total tax per \$100 valuation</b>	<b>\$3.06</b>

OCT 18 2001  
 COUNTY OF BEXAR  
 REGISTERED  
 DEPARTMENT OF REVENUE  
 RECEIVED  
 1001001001  
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Based on the proposed District tax rate and the year 2005 overlapping tax rate on land within the proposed District, the project is considered feasible.

Water and Wastewater Rates

The proposed District plans to purchase wholesale water service from Guadalupe-Blanco River Authority ("GBRA"). Retail rates for the proposed District are expected to be as follows:

Monthly Base Charge (includes 6,000 gallons)	\$35.00
Usage between 6,001 and 10,000 gallons	\$3.00 per 1,000 gallons
Usage between 10,001 - 20,000 gallons	\$4.00 per 1,000 gallons
Usage over 20,000 gallons	\$5.00 per 1,000 gallons

Based on 10,000 gallons of water use, the projected average water bill for a typical home will be \$47.00.

The engineer's report states that the proposed District plans to obtain wastewater treatment services from its own facility. Wastewater rates are projected to be a base charge of \$25.00 per month base charge plus \$2.00 per gallon of water consumption. Based on 10,000 gallons of water use, the average monthly wastewater bill for a typical home will be \$45.00.

Based on the above rates, the engineering report estimated that the monthly fee for 10,000 gallons of water and wastewater service would be \$92.00.

Comparative Water District Tax Rates

A combined tax rate of \$3.06 for the proposed District is considerably higher than the tax rates of similar subdivisions in the area. Financial planning by the Petitioner/developer and anticipated reimbursements from the proposed District should take into consideration the competitiveness of the projected District tax rate.



Proposed District water needs per day =  $2,248 \times 3.5 \times 100 = 786,800$  gals  
Water per year =  $786,800 \text{ gals} \times 365 \text{ days} = 287,182,000$  gals  
Acre-feet of water required =  $287,182,000 / 325,900 = 881$  acre-feet

Therefore the water supply seems to be inadequate for the proposed development. The proposed District can only support 1,913 ESFCs, based on the anticipated usages above and a water supply of 750 acre-feet. Actual usages will determine if 750 acre-feet is adequate.

#### Water Distribution Improvements

The internal water distribution system is expected to include approximately 78,679 linear feet (LF) of 6, 8, and 12-inch lines. Additionally, the District proposes to use approximately 41,500 LF of 12-inch offsite water main.

#### Wastewater Treatment Improvements

The proposed District plans to treat its wastewater in its own treatment facility. The engineering report states that the District has applied to the TCEQ for a wastewater discharge permit. In the event that a no-discharge system is required, the proposed cost summary also includes funds for a no-discharge permit and a drip irrigation system.

#### Wastewater Collection Improvements

The engineer's report indicates that the proposed District's wastewater will be collected through approximately 82,586 LF of 6 to 12-inch sewer lines, four lift stations, and 5,990 LF of 4 to 6-inch force main. It is anticipated that the wastewater treatment facility will not be located within the proposed District, but on property next to the proposed District.

#### Drainage Improvements

The proposed District plans to collect storm water and transport it through approximately 3,038 LF of 24 to 60-inch diameter pipe into open channels. The channels will drain into tributaries of Frederick Creek and Deep Hollow Creek, both tributaries of Cibolo Creek. The design of the proposed system will be based on the requirements of Kendall County and TCEQ.

### G. DESCRIPTION AND IMPACT ON NATURAL RESOURCES

The preliminary engineering report includes the following findings:

#### Topography

The area within the proposed District is hilly. The land elevations range from 1,900 feet above mean

STATE OF TEXAS  
COUNTY OF TRAVIS  
RECORDED  
OCT 18 1 2007  
ALBERT J. THOMAS  
COUNTY CLERK  
TEXAS COUNTY OF TRAVIS

Exhibit "A"

ALBERTA WATER SERVICES CORPORATION  
 WATER AND SEWERAGE DIVISION  
 9720 101 ST  
 EDMONTON, ALBERTA T6C 2K1  
 TEL: 780-443-3333 FAX: 780-443-3334  
 WWW.AWSC.CA

criteria. Therefore, there should be minimal effect on water quality.

1007 81 130

**H. SUMMARY OF COSTS**

ALBERTA WATER SERVICES CORPORATION  
 WATER AND SEWERAGE DIVISION  
 9720 101 ST  
 EDMONTON, ALBERTA T6C 2K1  
 TEL: 780-443-3333 FAX: 780-443-3334  
 WWW.AWSC.CA

<b>1. Construction Costs</b>		
A. Developer Contribution Items	District Cost (100%)	District Cost (70%)
1. Water Distribution	\$10,953,096	\$7,667,167
2. Wastewater Collection	9,236,251	6,465,376
3. Drainage	890,065	623,046
4. Contingencies (15% of Items 1 – 3)	3,161,912	2,213,338
5. Engineering (15% of Items 1 – 4)	3,636,199	2,545,339
<b>Sub-Total Developer Contribution Items</b>	<b>\$27,877,523</b>	<b>\$19,514,266</b>
<b>B. District Items</b>		
1. Off-Site Water Line	\$ 6,871,587	\$6,871,587
2. Water Tank Complex - Internal	1,800,000	1,800,000
3. Wastewater Treatment & Disposal	4,800,000	4,800,000
4. Contingencies (15% of Items 1 – 3)	2,020,000	2,020,738
5. GBRA Capital Cost Fee	206,250	206,250
6. Engineering Costs (15% of Items 1 – 4)	2,323,849	2,323,849
7. Land Acquisition Cost <sup>(1)</sup>	2,193,750	2,193,750
<b>Sub-Total District Items</b>	<b>20,216,174</b>	<b>\$20,216,174</b>
<b>TOTAL CONSTRUCTION COST</b>	<b>\$48,093,697</b>	<b>\$39,730,440</b>
<b>2. NON-CONSTRUCTION COSTS</b>		
A. Legal Fees (3%)	\$2,052,600	\$1,702,350
B. Fiscal Agent Fees (2%)	1,368,400	1,134,900
<b>C. Interest Costs</b>		
1. Capitalized Interest (2 yrs. @ 6.0%)	8,210,400	6,809,400
2. Developer Interest (2 yrs. @ 6.0% on const cost)	5,771,244	4,767,653
D. Bond Discount (3.0%)	2,052,600	1,702,350
E. Creation costs (Legal & Engineering)	150,000	150,000
F. Bond Application Report Cost	280,000	350,000
G. Bond Issuance Expenses	201,589	199,299
H. Attorney General's Fee	68,420	56,745
I. TCEQ Fee (.25% BIR)	171,050	141,863
<b>TOTAL NON-CONSTRUCTION COSTS</b>	<b>\$20,326,303</b>	<b>\$17,014,560</b>
<b>TOTAL BOND ISSUE REQUIREMENT</b>	<b>\$68,420,000</b>	<b>\$56,745,000</b>

Note: (1) Estimated 110 acres for treatment plant, tank complexes, lift stations, irrigation fields and detention areas at \$20,000 per acre.

The eligibility of costs and 30% developer contribution requirements are to be determined in accordance with Commission rules in effect at the time bond applications are reviewed.

**I. ADDITIONAL INFORMATION**

The petitioner's professional representatives are as follows:

Attorney: Mr. Trey Lary- Allen Boone Humphries Robinson, LLP  
Engineer: Mr. Samuel W. Jones, P.E. - Sam Jones Consulting, Inc.  
Market Analyst: Mr. Eldon Y. Rude, MAI & Erik M. Lind - Metrostudy



Greg Charles  
Districts Review Team

STATE OF TEXAS  
COUNTY OF TARRANT  
SHERIFF'S OFFICE  
A TEXAS COMMISSION ON LAW ENFORCEMENT

OCT 18 7 10 PM '06

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ALTERNATE SHERIFF  
TARRANT COUNTY, TEXAS

OFFICE OF THE CLERK  
SHERIFF'S OFFICE

# Attachment B

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
CHERE TULL KINZIE  
R. GAINES GRIFFIN  
RICHARD E. HETTINGER  
PATRICK W. LINDNER  
IRWIN D. ZUCKER  
RICHARD D. O'NEIL  
J. MARK CRAUN

LAW OFFICES OF  
**DAVIDSON & TROILO**  
A PROFESSIONAL CORPORATION

SAN ANTONIO  
7550 W IH-10, SUITE 800, 78229-5815  
210/349-6484 • FAX: 210/349-0041

LEA A. PEAM  
FRANK J. GARZA  
JAMES C. WOO  
RICHARD L. CROZIER  
R. JO RESER  
MARIA S. SANCHEZ  
DALBY FLEMING  
LISA M. GONZALES

AUSTIN OFFICE  
919 CONGRESS, SUITE 810, 78701  
512/469-6006 • FAX 512/473-2159

May 22, 2006

**FILE COPY**

Office of the Chief Clerk MC-105 via fax 512-239-3311 and certified mail  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

**Certified Article Number**  
7160 3901 9849 0934 6043  
**SENDERS RECORD**

RE: Petition for Creation of Lerin Hills Municipal Utility District; TCEQ Internal Control No. 02162006-D01

Dear Ms. Castanuela:

We represent Tapatio Springs Service Company ("Tapatio") and have been authorized to protest and request a public hearing on the above-referenced application. Tapatio is an affected person because it has a personal justifiable interest related to a legal right, duty and economic interest affected by this application.

The proposed district includes territory located immediately adjacent to Tapatio's existing water and wastewater service area. Tapatio is ready, willing, and able to serve the customers to be located within the proposed district, subject to the developer of the property complying with the applicable tariff requirements and TCEQ approval of a CCN amendment. Tapatio is also affected because, as the nearest utility and source of alternative water supply, it may be required by the TCEQ to provide an interconnect to the proposed district or be forced to assume operation of the district in the event the district's plans for providing water and wastewater service prove to be unfeasible and impracticable. Also, the developer of the proposed district falsely stated a prior ownership interest in Tapatio and its affiliated companies to show experience dealing with public utilities and a contested case hearing is needed to correct the record and determine whether other representations were made that are not accurate.

Tapatio is opposed to the application because the petitioner failed to satisfy applicable legal requirements, including but not limited to potentially defective notice. The notice was published in the Comfort News, a weekly paper for a small, unincorporated community located more than eighteen miles by road from the proposed district. By contrast, the proposed district is located less than three miles from the City of Boerne, a home rule city served by two

newspapers, one published twice a week and one published once a week. In addition, the San Antonio Express News is a daily paper that probably has a greater circulation in Kendall County than all of the other newspapers.

Tapatio is further opposed to the application because the proposed district is not necessary. Tapatio is an existing retail water and wastewater utility with service area adjacent to the proposed subdivision and is ready, willing, and able to serve the territory subject to compliance with tariff requirements and TCEQ approval of the CCN amendment. Federal and state policy relating to retail water and wastewater suppliers encourages the consolidation of utilities, in order to provide the greater customer base to properly maintain and improve the systems for public health reasons and to lessen the federal and state regulatory burden. The petitioners failed to seek service from Tapatio and the information presented in the application regarding service from Tapatio is incorrect and misleading.

The district is not feasible or practical for at least any one of the following reasons, and certainly by the combination effect of all of the following reasons:

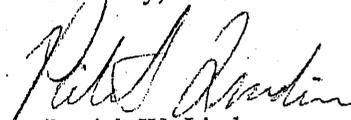
1. Misstatements. As part of the statement of qualifications and experience, the developer states that he owned interests in Tapatio. This statement is absolutely false. At no time did the developer own any interest in Tapatio. In addition, the petitioner has made statements regarding obtaining water from GBRA and having GBRA operate the utility system, but GBRA's manager disagrees about the extent of these alleged agreements, as illustrated by the attached newspaper article.
2. Adequacy of the water supply and undisclosed cost of water supply. Tapatio is one of the original participants in the GBRA's Western Canyon water supply project, the planned source for all of the district's water supply. The petitioner does not appear to have a signed contract with GBRA because the application contains only a letter from a GBRA employee other than the general manager. The amount of water alleged to be available from GBRA does not appear to be adequate to supply the base or peak demands of the proposed district based upon the density used for the cost projections and practicability of the district. In addition, the standard form GBRA contract provides that water is delivered on a steady stream basis every day of the year, and flow is not increased for peaking purpose. The proposed district plans to obtain all of its water from GBRA, meaning that its annual "take or pay" amount must equal the maximum amount of water that it needs during any 24 hour period during peak use, multiplied by 365 days. During most days of the year when demand is less than the peak daily demand, GBRA will deliver water to the district, and the proposed district must pay for the water, but the district will have no means to receive and store the all of the excess water delivered and the water will be available for use by others. There is no requirement in the standard form contract that GBRA or the user of the water reimburse the district. The result is that the district customers will be paying a significant cost for water that they do not need and cannot use most days of the year. This significant additional cost to the district's taxpayers was not addressed in the information submitted with the application. The projected rates used by the district are not applicable because the utilities

use groundwater, or sources other than the GBRA water, to satisfy peak demands in order to reduce the costs of their customers.

3. Wastewater disposal. The proposed plan to dispose of wastewater is insufficient upon which to determine if the plan is feasible or practical and whether the projected costs are adequate or not. The feasibility and practicability of constructing and operating a wastewater treatment in land subject to an easement for an electric line is doubtful. The owner of the land immediately downstream of the proposed discharge point has publicly stated opposition to the proposed discharge.
4. SCS Lake. The petitioner has not addressed the ability of obtaining the water rights permit to convert the lake from an exempt domestic and livestock use lake to recreational use relating to a subdivision permit and the ability to obtain the consent of the governmental agencies in order to obtain the required permit.
5. The land use plan submitted with the application shows that certain tracts will be included as part of the development, but are not included within the proposed district. The exclusion of these tracts is not addressed and how these tracts will obtain service is not addressed.
6. The application contained nominations for temporary directors, the affidavits for whom all state that they own taxable property within the proposed district. The developer may have transferred property to the director nominees before obtaining approval of the subdivision of land from the county.

In conclusion, Tapatio Springs Service Company is an affected person and requests a contested hearing on the above-referenced application. The petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied and this project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

Sincerely,



Patrick W. Lindner  
For the Firm

cc: Jay Parker  
Michael Shalit

PWL/ep

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## Diverging counterpoints: GBRA's West & MUD's Godines



Hill Country View - [More Hill Country News](#)  
Wednesday, 10 May 2006

By JUDITH PANNEBAKER  
View Staff Writer

J. Abel Godines, manager for Lerin Hills, Ltd., addressed Kendall County Commissioners Court Monday, May 8, on behalf of the proposed Lerin Hills Municipal Utility District (MUD). The 867-acre MUD is slated for construction southwest of Boerne between Highway 46 and Johns Road and will receive surface water from the Guadalupe-Blanco River Authority's Western Canyon Regional Water Supply Project.

During the course of the discussion, Godines made some assertions about GBRA's role in the proposed MUD. According to GBRA General Manager William "Bill" West, some of Godines' statements were incorrect. To set the record straight, West's comments about Godines' claims and Godines' explanations are listed below.

- "GBRA wants to sell to public entities. Only 10 percent of the (Canyon Lake) water can be sold to for-profit entities, and they have reached that limit," Godines said.

"That statement is incorrect," West countered. "GBRA is a public entity and, as such, cannot discriminate among classes of customers." West also was perplexed as to where Godines came up with the 10 percent figure.

To Godines' recollection, Randy Worden, executive manager of business development for GBRA, had presented a program in Kendall County. During the presentation, Worden had indicated that issuance of "certain types of (treasury) bonds," which funded the Canyon Lake project, limited the amount of water that could be sold to for-profit and non-profit utilities.

- GBRA had determined the volume of water necessary to sustain the (Lerin Hills) community, Godines said.

West countered that the Lerin Hills MUD had determined the number of acre-feet (750 per year) that would be needed annually. "We are not a regulatory agency, but we have a fiduciary responsibility to see that GBRA water is used wisely," West added.

"He's right. GBRA didn't mandate the amount," Godines said, explaining that the MUD's consulting engineers had worked with Worden to estimate the amount of water necessary based on population expectations. "We worked in consultation with GBRA (personnel) and our numbers dovetailed with those of the GBRA," Godines said.

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- Addressing a discrepancy about the amount of GBRA water requested and projected demand, John Kight had pointed out, "Based on data provided for all projected users, the estimated water demand of 881 acre-feet per year exceeds the GBRA supply agreement of 750 acre-feet per year by 17 percent," Kight said. In addition, peak water usage was never addressed, he noted. Kight used statistics gleaned from the Lerin Hills MUD's Preliminary Engineering Report submitted to the Texas Commission on Environmental Quality in February.

Godines had asserted to the court that, "as operator of the MUD water system," GBRA would ensure that the development would have sufficient water.

However, West said that GBRA had not been approached about managing the water system of the Lerin Hills MUD. "They may request that we take it over at a later date, but as of now, we have made no such commitment." He also said that GBRA delivers a base load or flat amount of water, and makes no provisions for increasing the amount during times of peak usage. "The entities are responsible for internal distribution of the base load," West emphasized.

"We've had discussions with GBRA (about managing the Lerin Hills water system), but no commitment," Godines acknowledged. "They would like to be our operator and we would like them to be our operator, but our board of directors would have awarded the contract. I cannot do it." A temporary board is in place at this time, but has not convened, Godines said, adding, "It will convene when TCEQ approves the MUD."

- "We will use 100 percent GBRA water, not ground-water," Godines said. "We agreed to give water rights to GBRA and not to drill wells."

West seemed nonplussed to hear that GBRA had been given "water rights" to the 876-acre tract. "I just cannot respond to that statement," he said. "I am not aware of that type of arrangement." West mused that perhaps Godines was inferring that while Lerin Hills was not going to drill wells, perhaps GBRA might - which would not be the case.

Godines stated unequivocally that GBRA has no intention of drilling wells within Lerin Hills. "The MUD would use no groundwater, just treated surface water purchased from GBRA," he reiterated. Godines added that GBRA wanted the MUD to give up its right to drill wells. By inference, he had speculated that perhaps GBRA would retain the water rights.

West said that in 1996, original participants in the GBRA surface water project from Canyon Lake were Boerne, Fair Oaks Ranch, Tapatio Springs, Cordillera Ranch and Bulverde. "Now we're receiving requests from developers," he said. To acquire GBRA water, entities must request a specified amount of water from GBRA with proper treatment capacity. In addition, developers must prove ownership of the property to be served and demonstrate that they have the "financial wherewithal" to embark on the project, West said.

"After the GBRA Board of Directors approves a preliminary agreement, the developer has two years to obtain all the necessary federal, state and local permits and to comply with those permits," he explained. West emphasized that developers must comply with county development rules and regulations. "Once the permits are obtained and a final plat is approved by the county, the amount of water necessary for the project is adjusted and reflected in the final contract which also must be approved by the board," he said, reiterating, "GBRA has no regulatory authority, but requires that the end user comply with federal, state and local statutes and rules."

A letter explaining GBRA's role in allocating surface water for proposed MUDs would be forwarded to County Judge Eddie John Vogt, West said.

Godines observed, "The county has created rules for developments using public water systems

and (surface) water from outside the county. The county is trying to manage a scarce resource and we are doing our best to live within the rules." He went on, "Without reservation, I defer to Mr. West's interpretation of GBRA rules and management."

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# Attachment C

# LENN HILLS MVD

Common PROPERTY LINE

← HAHNFELD PROPERTY →

Jacob Remick Survey No 731  
Abstract No 403

151.94 Acres

HOUSE →

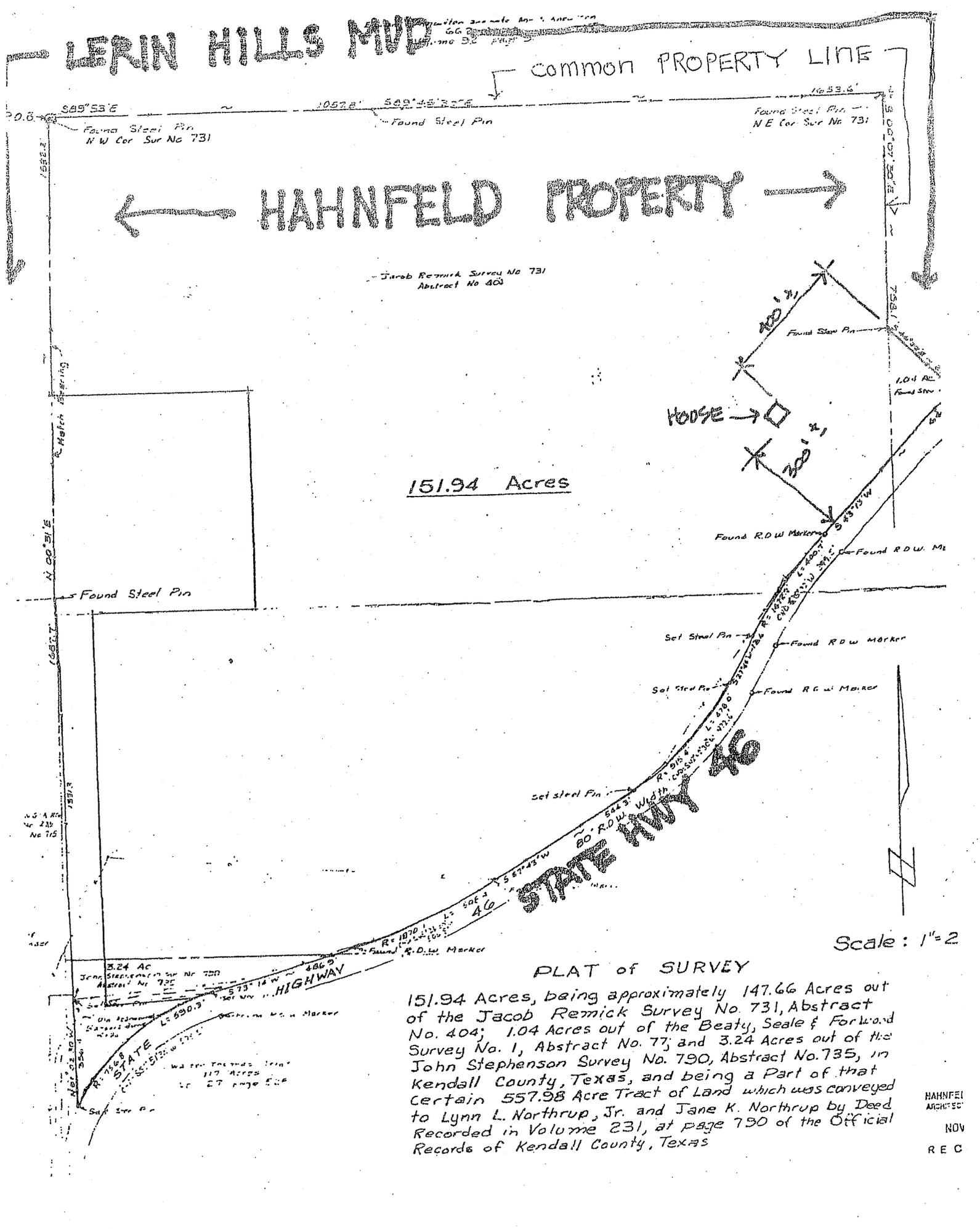
STATE HWY 46

Scale: 1" = 2'

## PLAT of SURVEY

151.94 Acres, being approximately 147.66 Acres out of the Jacob Remick Survey No. 731, Abstract No. 404; 1.04 Acres out of the Beaty, Seale & Forward Survey No. 1, Abstract No. 77; and 3.24 Acres out of the John Stephenson Survey No. 790, Abstract No. 735, in Kendall County, Texas, and being a Part of that Certain 557.98 Acre Tract of Land which was conveyed to Lynn L. Northrup, Jr. and Jane K. Northrup by Deed Recorded in Volume 231, at page 790 of the Official Records of Kendall County, Texas

HAHNFELD  
ARCHITECTS  
NOV  
REC



# Attachment D

November 5, 2006

Ms. LaDonna Castanuela  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE

NOV 5 PM 2:22

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

RE: Docket No. 2006-0969-DIS, Lerin Hills Municipal Utility District

Dear Ms. Castanuela:

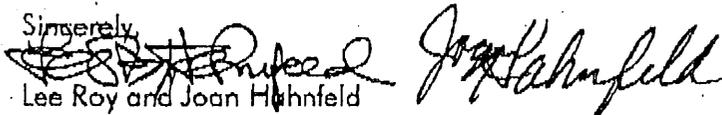
We are very disappointed to learn that the request for a Contested Case Hearing has been denied, and that we and others, namely William Wood, Edgar Blanch, Tapatio Springs, RLC Designs, Inc., and Cow Creek Groundwater Conservation District, to name a few, do not have an "individual justiciable interest" regarding the proposed Lerin Hills MUD. It is also my understanding that Kendall County, the county in which the proposed MUD is located, also considered changing their position regarding this issue. We are all affected by the mess that will, in our opinion, result from the Lerin Hills debacle. There has been evidence presented by others that the plan devised by Lerin Hills is replete with incomplete and erroneous engineering and economic data that will likely result in the proposed District's failure.

It is interesting to note that in the TCEQ Executive Director's response, affected parties are only those whom reside within the proposed boundaries of the MUD, all of which the developers of Lerin Hills own or control. However, the groups and individuals referred to herein surround or are surrounded by the proposed MUD, and are absolutely affected by their actions or inactions, and therefore should be granted status.

Whether or not we are granted affected status, we offer this: most of the Lerin Hills property lies above and severely slopes toward our property. One portion of our property, the northwest corner, receives significant water flows currently. The water impounds in an existing swale, and recedes rapidly (within days), causing us to believe it is recharging the ground water. Increased flows as a result of the Lerin Hills development will adversely affect our land below the impound area, but more importantly, the runoff from the developed land within the MUD, could contain contaminants; i.e., pesticides, fertilizers, oils from vehicles, roads, etc., that could affect our groundwater. It is my understanding that the developer has not addressed this issue in his plans.

We find it impossible to believe that a contested case hearing cannot be granted, where evidence and testimony, under oath, can be presented, as, at least, one more step in assuring the public's interest is best served by the creation of this district.

Sincerely,

  
Lee Roy and Joan Hahnfeld  
306 Hwy 46 West  
Boerne, Texas 78006

830-249-0226 (Boerne)  
817-377-1404 (Office)  
817-569-9422 (Fax)

# TRANSMITTAL

**To:** Office of the Chief Clerk MC-105  
Texas Commission On Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
SENT VIA HAND DELIVERY

**Date:** 11/06/06

**Attn:** Ms. LaDonna Castanuela

**Re:** Docket No. 2006-0969-DIS, Lerin Hills Municipal  
Utility District

CHIEF CLERK'S OFFICE

NOV - 6 PM 2:22

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

QUANTITY	DESCRIPTION
11	Copies of Letter Response from L.R. & Joan Hahnfeld dated 11/06/06 (original was faxed to Chief Clerk's Office)

*If enclosures are not as noted, kindly notify us at once.*

For Approval     For Your Use     As Requested     For Review and Comment

**COMMENTS**

**From:** L.R. & Joan Hahnfeld

**cc:**

**MAILING LIST**  
**LERIN HILLS MUNICIPAL UTILITY DISTRICT**  
**DOCKET NO. 2006-0969-DIS; PERMIT NO. 02162006-D01**

FOR THE APPLICANT:

Samuel W. Jones, P.E.  
P.O. Box 427  
Hutto, Texas 78634-0427

Trey Lary  
3200 Southwest Fwy., Ste. 2600  
Houston, Texas 77027-7537

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
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

FOR THE EXECUTIVE DIRECTOR:

Robert Martinez, Senior 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

Gregory Charles, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division, MC-152  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-3708  
Fax: 512-239-2214

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jody Henneke, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-4000  
Fax: 512-239-4007

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-6363  
Fax: 512-239-6377

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-4010  
Fax: 512-239-4015

REQUESTERS:

Joan & Lee Roy Hahnfeld  
306 State Highway 46 W.  
Boerne, Texas 78006-8104

Grady B. Jolley  
Nunley, Davis, Jolley, Cluck, Aelvoet, LLP  
1580 S. Main St., Ste. 200  
Boerne, Texas 78006-3311

Patrick W. Lindner  
Davidson & Troilo, P.C.  
7550 W. IH-10, Ste. 800  
San Antonio, Texas 78229-5803

The Honorable Eddie J. Vogt  
Kendall County Judge  
201 E. San Antonio, Ste. 120  
Boerne, Texas 78006-2013

Micah Voulgaris  
Cow Creek Groundwater Conservation District  
216 Market Ave., Ste. 105  
Boerne, Texas 78006-3003

William R. Wood  
306 State Highway 46 W.  
Boerne, Texas 78006-8104

# Attachment

E

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CLUCK • AELVOET

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

Andrew J. Aelvoet  
Cecil W. (Tres) Bain, III  
Jonathan B. Cluck  
Joe M. Davis\*\*  
Grady B. Jolley\*\*\*  
J. Ken Nunley\*\*

1580 South Main Street, Suite 200  
Boerne, Texas 78006-3308  
Phone (830) 816-3333  
Fax (830) 816-3388  
e-mail: [info@texastriallaw.com](mailto:info@texastriallaw.com)  
[www.texastriallaw.com](http://www.texastriallaw.com)  
Offices Also in Hondo, Texas

Of Counsel:  
William A. Brant

Board Certified Civil Trial Law\*  
Board Certified Personal Injury Trial Law\*\*  
American Board of Trial Advocates†

HR OPA  
JUN 29 2006

BY Christopher Byrd  
Lisa L. Hill  
\*\*George Ann Harpole, Maixner  
Patricia M. Oviatt  
Kelly P. Rogers  
Chad M. Upham  
Kathy Hyatt Waldrop  
Of Counsel:  
\*\*\*Rhonda G. Jolley  
Jacquelyn W. Bloft

\*Texas Bar Foundation  
\*\*\*Member of the College of the State Bar of Texas

DIS  
5/26/06

May 26, 2006

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

VIA TELECOPY @ 512-239-3311 and  
VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7005-1820-0007-1470-0125

RE: Petition for Creation of Lerin Hills Municipal Utility District; TCEQ Internal Control No. 02162006-D01

Dear Ms. Castanuela:

We represent Edgar W. Blanch, Jr. ("Blanch") and have been authorized to protest and request a public hearing on the above-referenced application. Blanch is an affected person because it has a personal justifiable interest related to a legal right, duty and economic interest affected by this application.

The proposed district includes territory located immediately adjacent to Blanch's property, which has been developed into a high-quality, residential subdivision. The petitioner has previously represented that an agreement exists between it and Blanch regarding the extension of service to Blanch's property and Blanch's consent to discharge waste water onto Blanch's property. No such agreement or permission exists, nor has such been requested by or proposed to Blanch.

Blanch is further opposed to the application because the petitioner failed to satisfy applicable legal requirements, including but not limited to, potentially defective notice and illegal or sham transfers of land to the purported "directors" of the proposed district. The notice was published in the Comfort News, a weekly paper for a small, unincorporated community located more than eighteen miles by road from the proposed district. By contrast, the proposed district is located less than three miles from the City of Boerne, a home rule city served by two newspapers, one published twice a week and one published once a week. In addition, the San Antonio Express News is a daily paper that probably has a greater circulation in Kendall County than all of the other newspapers.

CHIEF CLERK'S OFFICE

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MAY 30 2006

AIR PERMITS DIVISION

COMMISSION ON ENVIRONMENTAL QUALITY  
TEXAS

In conclusion, Blanch is an affected person and requests a contested hearing on the above-referenced application. The petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied and this project is feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district.

Very truly yours,

NUNLEY DAVIS JOLLEY CLUCK AELVOET LLP

By: \_\_\_\_\_

GRADY B. JOLLEY

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AIRPERMITS DIVISION

# Attachment

# F

TAPATIO SPRINGS SERVICE COMPANY, §  
LEE ROY AND JOAN HAHNFELD, and §  
EDGAR W. BLANCH, JR., §  
Plaintiffs §

IN THE DISTRICT COURT

v.

345<sup>TH</sup> JUDICIAL DISTRICT

TEXAS COMMISSION ON §  
ENVIRONMENTAL QUALITY, §  
Defendant §

and

LERIN HILLS M.U.D., §  
Intervenor §

TRAVIS COUNTY, TEXAS

**ORDER ON MOTION TO RECONSIDER ORDER TO REMAND TO  
AGENCY TO CONSIDER MATERIAL NEW EVIDENCE**

On October 29, 2007, the Court entered an Order on Plaintiffs' Motion to Remand to Consider Material New Evidence. The Court granted the motion and ordered that the matter be remanded to the Texas Commission on Environmental Quality to allow Plaintiffs to present additional evidence in support of Plaintiffs' Original Petition for review of the creation of Lerin Hills M.U.D. with respect to the use of groundwater and Plaintiffs' status as "affected persons." Defendant Texas Commission on Environmental Quality and Intervenor Lerin Hills M.U.D. have each filed motions to reconsider asking the Court to withdraw the order and enter an order denying Plaintiffs' Motion to Remand.

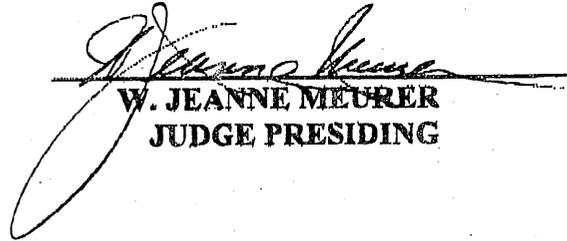
The Court has reviewed the motions to reconsider under submission and DENIES those motions. The Court finds the evidence is material and was not available at the time of the agency's decision; therefore, the Court GRANTS the motion to remand and DENIES the motions to reconsider. The Court ORDERS the remand pursuant to Tex. Gov't Code § 2001.175(c) and the Court's authority to remand an issue to the Commission that has not been addressed by the agency.

The Court REMANDS this matter to the Texas Commission on Environmental Quality to allow Plaintiffs to present additional evidence in support of Plaintiffs' Original Petition for review of the creation of Lerin Hills M.U.D. with respect to the use of groundwater and Plaintiffs' status as "affected persons." The Commission may modify its findings and decision by reason of the additional evidence. The Commission shall file such evidence and modifications, new findings, or decisions with this Court.

All proceedings in this cause are STAYED for 90 days from this Order to allow further action by the Commission.

All relief not granted in this order is DENIED.

Signed this 4<sup>th</sup> day of December, 2007.



**W. JEANNE MEURER**  
**JUDGE PRESIDING**

# Attachment G

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
NOVEMBER 15, 2006  
DOCKET NO. 2006-0969-DIS  
(Transcription of Audiotapes)  
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EXHIBIT  
P-2

*ORIGINAL*

1 MADAME CHAIRMAN: Good morning. This  
2 is a meeting of the Texas Commission on Environmental  
3 Quality. The day is Wednesday, December 15th --  
4 November 15th. The time is 9:37. I am Kathleen  
5 Hartnett White, chairman. Present also for the record  
6 are Commissioner Larry Soward and Commissioner Martin  
7 Hubert.

8 Derek, would you please address our first  
9 item of business? Oh, by the way, today is Texas  
10 Recycles Day, which I just bring to everyone's  
11 attention. The State has this Agency as well as all  
12 other parts of the State have done a lot on recycling,  
13 reuse, and all that, and I think it is a very  
14 important objective for the State, and I bring that to  
15 everyone's attention, and hope today you will  
16 particularly recycle and reuse.

17 (Old Business and New Business Items 1  
18 and 2 heard.)

19 MR. SEAL: Commissioners, that brings  
20 you to New Business Item Number 3, which is a  
21 Non-House Bill 801 Hearing Request. It's a petition  
22 by Lerin Hills Development Company, LLC, to create  
23 Lerin Hills MUD in Kendall County.

24 Commissioners, the parties have been  
25 notified that you will not take oral argument, but you

1 may ask questions. Commissioners, I should note that  
2 the applicant filed late yesterday or mid-yesterday  
3 afternoon what purports to be a reply to the hearing  
4 requestors' response. Our rules don't provide for  
5 that, so that document has not been distributed to  
6 you. But if you request a copy, we'll have one for  
7 you. Also, I would note that Senator Wentworth has a  
8 staff member in attendance here today. They have  
9 provided you a letter, and we have copies if anybody  
10 from the public would like to see that. Also, we also  
11 have Representative Macias here, who has requested to  
12 address you, I believe, on this matter at the  
13 appropriate time. And I would suggest that before you  
14 hear the ODC presentation that now would be an  
15 appropriate time to do that.

16 MADAME CHAIRMAN: That is our custom,  
17 to welcome comments from elected officials or their  
18 representatives, so, please, Representative Macias.

19 Good morning, sir.

20 MR. MACIAS: Good morning. Good  
21 morning, Chairman, good morning Commissioners.

22 My name is Nathan Macias. I'm the state  
23 representative elect for District 73, which includes  
24 Kendall County. I appreciate the opportunity to speak  
25 before you this morning. I wanted to encourage you to

1 grant the request for a contested case hearing  
2 regarding the Lerin Hills MUD. Many, many of my soon  
3 to be constituents, including those directly impacted,  
4 have expressed their concerns about the MUD proposal  
5 and its potential impact, especially on the  
6 groundwater supply in Kendall County. Given the  
7 current situation, and the circumstances, I  
8 respectfully request that you grant the hearing. And,  
9 as was noted, I believe Senator Wentworth has also  
10 encouraged that request. At this -- At this time, I  
11 just wanted to approach and let you know that, in  
12 fact, I do support the granting of that hearing.

13 MADAME CHAIRMAN: Thank you, sir.

14 MR. MACIAS: Thank you so much.

15 MADAME CHAIRMAN: We may have, if  
16 you -- we may seek to have you respond to a question  
17 later, but at the moment, --

18 MR. MACIAS: Very good.

19 MADAME CHAIRMAN: -- not now.

20 MR. MACIAS: Thank you all so much.

21 MADAME CHAIRMAN: Thank you.

22 MR. SEAL: Commissioners, you do have a  
23 significant number of people who have signed up on  
24 this matter, a few have requested to speak. But,  
25 there again, the parties have been notified that you

1 normally don't take oral argument at this stage, but  
2 that you may ask questions.

3 And, Chairman, with all of that, I would  
4 recommend that you hear from Tracy Gross, from the  
5 General (inaudible) office.

6 MADAME CHAIRMAN: We have not heard  
7 from the representative of Senator Wentworth yet.

8 MR. SEAL: I don't believe he has  
9 requested to speak, Chairman, --

10 MADAME CHAIRMAN: Oh, he hasn't?  
11 Okay.

12 MR. SEAL: -- but now is certainly an  
13 appropriate time to do that.

14 MADAME CHAIRMAN: Okay. I thought he  
15 had requested to speak. Okay. No, but I recognize  
16 all of the those many, many of you who have come  
17 today.

18 Tracy, please?

19 MS. GROSS: Good morning. The proposed  
20 Lerin Hills MUD would contain approximately 866.53  
21 acres and would be located approximately four miles  
22 west southwest of Boerne and approximately 31 miles  
23 northwest of the San Antonio Central Business District  
24 in Kendall County. Seven timely requests for hearing  
25 were received regarding the petition. One of the

1 requestors, the commissioners court of Kendall County,  
2 has notified the agency that it no longer believes  
3 that a contested case hearing is necessary. Of the  
4 remaining requests, Edgar Blanch, Jr., Leroy and Joan  
5 Hanfeld, RLC Designs, Incorporated, and William Wood  
6 filed requests stating that they owned property  
7 adjacent to the proposed district. Those requests  
8 raised concerns about defective notice, illegal  
9 transfers of land to the proposed directors, impact  
10 from stormwater runoff and sewer discharges,  
11 discharges of waste water through the requestors'  
12 properties, more efficient and beneficial  
13 alternatives, the land use plan and property values.

14 Cow Creek Groundwater Conservation

15 District's letter states that they voted to support  
16 the Kendall County Commissioners Court's position  
17 regarding -- requesting a contested case hearing.  
18 Tapatio Springs Service Company's request states that  
19 its service area is immediately adjacent to the  
20 proposed district, and it is able to serve the area.  
21 The request -- That request raises concerns about  
22 misstatements in the petition, defective notice, the  
23 necessity for the proposed district, the adequacy of  
24 water supply and costs, insufficiency of the proposed  
25 waste water disposal plan, the need for a water rights

1 permit, the land use plan, and the transfer of  
2 property to the proposed temporary directors. The ED,  
3 OPIC and applicant each filed responses to the hearing  
4 requests. The ED recommends that the commission deny  
5 all hearing requests because the requestors are not  
6 effected persons and because the hearing requests are  
7 not reasonably related to the factors established in  
8 Texas Water Code 54021. The ED further states that  
9 Cow Creek has failed to request a hearing. The ED  
10 points out that none of the hearing requestors own  
11 land within the proposed district, and Tapatio  
12 Springs' CCN does not overlap any land within the  
13 boundaries of the proposed district.

14 Finally, the ED states that the requestors  
15 have failed to demonstrate individual justiciable  
16 interests. OPIC points out that the Hanfelds,  
17 Mr. Blanch, Cow Creek and Mr. Wood do not qualify as  
18 effected persons as they do not reside within the  
19 proposed MUD, and, therefore, lack a personal  
20 justiciable interest in the MUD creation. In  
21 addition, those requestors did not raise concerns  
22 which are protected by Water Code 54021.

23 OPIC concludes that RLC Designs and Tapatio  
24 Springs have raised concerns that are common to  
25 members of the general public. Since they have not

1 asserted personal justiciable interests, OPIC finds  
2 that they are not effected persons.

3           The applicant filed a lengthy response to  
4 the hearing request which contains many factual  
5 responses to the issues raised by the requestors. In  
6 addition, the Applicant also notes that Cow Creek's  
7 letter does not constitute a hearing request and  
8 argues that all of the hearing requests should be  
9 denied for numerous reasons.

10           Four timely replies were received. Cow  
11 Creek's reply notes that the proposed MUD is located  
12 within Cow Creek's boundaries, and raises concerns  
13 about whether the engineering report adequately  
14 addresses groundwater consideration and notes that the  
15 application fails to take into account ad valorem tax  
16 rate proposed by Cow Creek to which the property is  
17 subject. The Hanfelds state that they believe that  
18 individuals who surround or are surrounded by the  
19 proposed MUD are absolutely effected by the district's  
20 actions or inactions. They also note that because of  
21 the severe slope toward their property, their land and  
22 groundwater will be adversely effected by the runoff,  
23 which may contain contaminants. Tapatio Springs  
24 states that it has standing to request a hearing as an  
25 adjacent water and sewer utility. It explains that

1 just like in CCN proceedings, neighboring utilities  
2 are effected entities. They raise concerns about  
3 regionalization, groundwater availability and quality,  
4 the potential for forced interconnect, customer base,  
5 the excessiveness of the projected water and waste  
6 water rates, undisclosed construction costs, the  
7 developer's plan to allow his own construction company  
8 to perform the work, the developer's lack of  
9 experience, and his lack of candor. In addition, they  
10 note that they have a competing CCN application that  
11 would provide for their merger with Kendall County  
12 Utility Company and thus would include a portion of  
13 the requested district within the CCN's boundaries.

14 Finally, Mr. Wood filed a reply stating that  
15 he has concerns about whether there is a sufficient  
16 quantity of water for the proposed development,  
17 whether adequate detention facilities for stormwater  
18 have been proposed along his common boundary with the  
19 proposed development, and whether the land plan will  
20 result in the complete devastation of the natural  
21 topography.

22 The written filings have been provided to  
23 you in your backup, and this matter is before you for  
24 your deliberation and decision.

25 MADAME CHAIRMAN: Thank you, Tracy.

1           It seems to me that -- well, for one, there  
2 is a lot of interest in the creation of this district  
3 from those who live adjacent or close to it. Are  
4 there any -- I guess I could ask this of the General  
5 Counsel or perhaps the Executive Director. Are there  
6 any of the hearing requests from parties inside who  
7 would reside inside the district?

8           MR. CUMMINS: No, there are not.

9           MADAME CHAIRMAN: So, I just wanted to  
10 clarify that. So, the issue is, for me, the basis  
11 upon which those outside the district are effected in  
12 the legal sense of a hearing request. Can, again,  
13 whether it be General Counsel with the ED, remind me  
14 of any district creations that involved granting  
15 hearing requests and hearings from parties outside the  
16 district?

17           MR. CUMMINS: No, we -- we do not -- we  
18 have not had that.

19           MADAME CHAIRMAN: You cannot recall  
20 that?

21           MR. CUMMINS: Right.

22           MADAME CHAIRMAN: So, this would be a  
23 first time, as we say, a case of first impression?

24           MR. CUMMINS: Yes.

25           COMMISSIONER SOWARD: You can't recall

1 one, or there hasn't been one?

2 MR. CUMMINS: I can't recall one at  
3 this time.

4 MADAME CHAIRMAN: I really welcome my  
5 colleagues' input into this. I know we also are in a,  
6 I believe, a different stage of our State's history,  
7 when there was not such rapid growth, and sometimes  
8 competitive interests, whether that be for development  
9 or for the same -- utilization of the same water  
10 resources. And I'm interested to see how my  
11 colleagues assess this.

12 COMMISSIONER SOWARD: Well, the statute  
13 is somewhat flexible, I guess, in the -- in the things  
14 that the Commission is supposed to look at. And, you  
15 know, one of them is feasibility and practicability.  
16 And the other, is the district necessary and would be  
17 of a benefit to the land to be included in the  
18 district.

19 But there -- there are other considerations  
20 that more specifically kind of outline that,  
21 especially with regard to what's feasible and  
22 practical and necessary and of benefit to the land.  
23 And one of them, of course, is the availability of  
24 comparable services. And then another one, which I  
25 think directly bears on the questions that we have in

1 front of us, is the one that says whether or not the  
2 district and its system and subsequent development  
3 within the district will have an unreasonable effect  
4 on the following: Land elevation, subsidence,  
5 groundwater level within the region, recharge  
6 capability of a groundwater source, natural runoff  
7 rates and drainage, water quality, and then total tax  
8 assessments, which is not really in front of us.

9 I -- To me, we do have the authority to look  
10 at issues outside the boundaries of the district,  
11 under that particular provision. Now, -- And we have  
12 to decide whether or not they have been sufficiently  
13 raised to merit a hearing. But I -- I don't think we  
14 can just say, as a matter of -- of course, or even a  
15 matter of law, that any request outside the boundaries  
16 of the district are automatically excluded. I think  
17 the statute contemplates looking at issues outside the  
18 boundaries of the district, before we determine if  
19 that particular district is reasonable and necessary  
20 and of benefit to the land. And I think we have -- I  
21 think we have some of those issues raised that should  
22 be -- should be ferreted out in a hearing.

23 COMMISSIONER HUBERT: And I don't  
24 disagree with -- entirely with what you have said,  
25 Commissioner. I think there's an issue here of the

1 particular parties' requesting, and some of how --  
2 some of how the requests were made, and they didn't  
3 specifically request hearings, as well, that we need  
4 to look through as we look at the parties involved.  
5 And then it comes down to whether or not we want to  
6 look beyond, as you -- as you stated.

7 MADAME CHAIRMAN: But all of the  
8 hearing requestors reside or represent parties outside  
9 the district?

10 MR. CUMMINS: Yes.

11 MADAME CHAIRMAN: Outside the  
12 district.

13 COMMISSIONER HUBERT: Well, then, it  
14 begs the question of how far outside the district are  
15 they considered to be -- to have standing to request a  
16 hearing. These are adjacent to, it appears, or most  
17 of the parties are adjacent to -- If they were not  
18 adjacent to, would that make a difference then?  
19 Clearly, the ED has identified if you are within the  
20 boundaries, then you do have standing to request a  
21 hearing, you get over that first hurdle.

22 COMMISSIONER SOWARD: But it seems to  
23 me that we have two categories of requests here. We  
24 have a category which is -- comprises all of -- all of  
25 the potential requests but one, in which they are

1 alleging adjacency or nearby location. But then you  
2 also have a second category, with one requestor, and  
3 that's the -- the Tapatio Springs, which is raising  
4 the issue of necessity in relation to other available  
5 services. And, so, I am not sure that -- that  
6 adjacency or distance would determine the issue with  
7 regard to Tapatio Springs. It may with regard to the  
8 others. But, again, all you have to do is find one of  
9 the others that you believe raises the issues of being  
10 effected, and -- and it can go to a hearing. You  
11 don't have to necessarily find all of them. But  
12 Tapatio Springs, to me, is in a different category,  
13 because it's raising the necessity issue as it relates  
14 to other available services.

15 MADAME CHAIRMAN: I think it would be  
16 important, were we to grant any of these hearing  
17 requests, for a number of reasons, one of which is  
18 that, as I understood from the Executive Director, it  
19 would be unusual, if not the first time, we had  
20 granted a hearing request for many interests outside  
21 the district that we somehow tried to explain the  
22 basis upon which we did that to assist SOAH, because  
23 if, as we have done with others hearing requests, if  
24 we granted the hearing request of -- of one entity,  
25 like Tapatio Springs, and allowed the others to go to

1 SOAH, there would, I don't think, be a clear basis  
2 upon -- for SOAH to determine whether other hearing  
3 requestors were or were not effected. And a related  
4 issue is if we were to grant the hearing request of  
5 one party, I think -- I understand on referral of  
6 issues in a district creation, we have some  
7 flexibility to narrow and/or specify the issues we  
8 would like considered?

9 MR. SEAL: Commissioners, you always,  
10 always have that authority to narrow those issues, but  
11 as this is not a House Bill 801 request, you are not  
12 required to do so.

13 MADAME CHAIRMAN: Not required to, but  
14 we could if we so chose.

15 MR. SEAL: You could if you so chose.  
16 SOAH has the -- the general authority to add new  
17 issues or parties or admit parties at the preliminary  
18 hearing.

19 MADAME CHAIRMAN: Right. Right.

20 MR. SEAL: If good cause is shown. You  
21 can certainly give SOAH some direction on what  
22 specifically you would like them to look at and who  
23 you would like to be a party. They -- They could add  
24 to that.

25 MADAME CHAIRMAN: But my point, were I

1 to grant one of these hearing requests, I would like  
2 to communicate to SOAH the -- how I was understanding  
3 the affectedness of a party, so that that was not kind  
4 of a blank page for SOAH.

5 MR. SEAL: You could certainly do that.

6 MADAME CHAIRMAN: Because this is  
7 unusual, if not the first time we would have done --  
8 we would have done that, as well as the issues.

9 MR. SEAL: You could certainly do that,  
10 Chairman. You could narrow that as -- as much as you  
11 wanted to.

12 And, Chairman, I would also just add to that  
13 very quickly that this application, Subchapter G of  
14 Chapter 55 are your rules that apply, and there is a  
15 specific section on determination of an effected  
16 person in 55-256, which would provide you some  
17 guidance.

18 MADAME CHAIRMAN: Yeah, I know what  
19 those are. They're the generic ones.

20 I guess I would also ask the Executive  
21 Director one more time, although I am aware of how  
22 you, in -- in filings, have assessed these hearing  
23 requests, but I would like to hear, once again, the  
24 basis upon which the Executive Director would, as I  
25 understand, recommend a denial of all the hearing

1 requests.

2 MR. CUMMINS: As has been our practice,  
3 our previous practice, as we stated, that we look at  
4 the effects on the land within the district, itself,  
5 for determining effected party status. And since all  
6 these requestors are residing outside of the proposed  
7 district boundaries, they don't have a personal and  
8 justiciable interest uncommon to the general public,  
9 and that's the basis for our denial of all their  
10 requests.

11 MADAME CHAIRMAN: I think this is  
12 difficult, because I am very aware -- I can understand  
13 how someone outside the district, or at Tapatio  
14 Springs, particularly, could raise issues under  
15 54021(a), on availability of -- well, particularly 3,  
16 where the district creation, you know, could have an  
17 affect on the subsidence, land elevation, groundwater,  
18 all of that. I can understand how that -- But I'm --  
19 I'm very hesitant, without solid grounds, to open up  
20 a --

21 COMMISSIONER HUBERT: That -- Chairman,  
22 that's -- and that's a question I have in my mind,  
23 because it is a creation of a district. And it seems  
24 to me that a lot of these issues that would be raised  
25 would be more appropriately dealt with in a waste

1 water --

2 MADAME CHAIRMAN: Right.

3 COMMISSIONER HUBERT: -- permit or some  
4 other permitting --

5 MADAME CHAIRMAN: Or CCN applications.

6 COMMISSIONER HUBERT: And, so, that's  
7 what I'm -- I'm working through here is, for the  
8 creation, this is how it's been dealt with in the past  
9 regarding interested parties. And then you get to the  
10 adjacency issue, and how far adjacent -- I mean, how  
11 far outside the district are you going to go? And I  
12 recognize what Commissioner Soward has said, it's a  
13 little different determination for another utility or  
14 another provider, and that's kind of a different  
15 analysis there.

16 COMMISSIONER SOWARD: Chairman, I -- I  
17 agree with you. I think we should be extremely  
18 cautious and judicious if we do proceed to a hearing  
19 on this one, but I also agree with you that, you know,  
20 we're in a different day now, that our past practices  
21 with regard to MUD creations may need to adjust to  
22 changing times and changing circumstances. As a  
23 practical matter, almost always the lands within the  
24 district are owned by the developer. So, you're --  
25 you're not going to have hearing requests come from

1 the very people that want the district created. So,  
2 if -- you, in effect, render moot the statutory  
3 opportunity for a hearing on MUD creations if you  
4 limit it to the issues of land within the district.

5 (Applause:)

6 COMMISSIONER SOWARD: So, I think we  
7 need to look closely at who requested a hearing, and  
8 on what basis do they request a hearing. But merely  
9 to say they are outside the boundaries of the district  
10 and they have no interest different than the general  
11 public, I don't think that's what the statute says. I  
12 think we need to look at, like you said, Chairman,  
13 issues of subsidence. And it says groundwater level  
14 within the region. It doesn't say within the  
15 district, it says within the region. And, so, that  
16 tells me that the legislature didn't take as narrow a  
17 view of this as what we have done in practice. And  
18 I'm not criticizing what we have done in the past,  
19 because I think there's been different circumstances.  
20 But we're -- And we don't often get contested MUD  
21 creations. But where we have one, I think it's our  
22 responsibility to determine whether there are people  
23 or entities that have alleged sufficient effectiveness  
24 and raised sufficient issues, that we at least ought  
25 to look at those before we determine whether the

1 creation of the district is reasonable and practical  
2 and the benefit of the land. And I think they have  
3 raised that here. It doesn't -- I -- Otherwise,  
4 you're not ever going to have a hearing on a MUD  
5 creation.

6 MADAME CHAIRMAN: This one did -- I  
7 believe all the land lies within Kendall County;  
8 right?

9 UNIDENTIFIED SPEAKER: That's correct.

10 MADAME CHAIRMAN: There was, although  
11 it has been withdrawn, evidently, but Commissioners  
12 Court, Kendall County, evidently initially; is that  
13 correct?

14 UNIDENTIFIED SPEAKER: Yes.

15 MADAME CHAIRMAN: Initially requested a  
16 hearing. And the other things that -- And, again, I  
17 ask these really as questions. But the creation of a  
18 MUD, in order to provide water or waste water service,  
19 the -- there also has to be a CCN; correct? No? The  
20 MUD, itself. The MUD, itself, provides that  
21 authority?

22 MR. CUMMINS: Correct.

23 MADAME CHAIRMAN: So, it's an  
24 alternative to a CCN?

25 MR. CUMMINS: Yes, ma'am. That's

1 correct.

2 MADAME CHAIRMAN: But the operation of  
3 the facilities obviously would have to be permitted  
4 through waste water and drinking water.

5 UNIDENTIFIED SPEAKER: Yes.

6 MADAME CHAIRMAN: So that --

7 COMMISSIONER SOWARD: And -- And I  
8 agree. I think either you, Chairman, or Commissioner  
9 Hubert raised that. If -- If there were an  
10 opportunity for some of these issues to be raised  
11 somewhere else, then that would be another matter.  
12 But, as you just heard, there's not going to be a  
13 CCN. So, the issue of service is not going to come up  
14 anywhere except here. The issue of water quality,  
15 yes, that can come up in a waste discharge permit  
16 application. But the issue of subsidence and  
17 groundwater impacts can't come up anywhere else but  
18 here.

19 So, I -- I agree this is a -- this is a  
20 sticky one, but it -- nonetheless, I think it's one  
21 that we need to take a close look at, and not just  
22 say, well, we -- we haven't done it this way in the  
23 past, so we're not going to do it this time. I think  
24 we have a different situation here than we usually  
25 have.

1 MADAME CHAIRMAN: I'm -- I find this  
2 very difficult. I do not reach an easy conclusion.

3 COMMISSIONER SOWARD: I -- I would  
4 suggest that by us finding it extremely difficult, the  
5 safest course would be to send it to a hearing, and  
6 see what happens.

7 MADAME CHAIRMAN: A number of the  
8 issues raised I find totally outside the bounds of --  
9 Like the developer's candor, for instance.

10 I'm -- I'm -- Part of my hesitancy, I'm very  
11 willing to say, has to do with issues really outside  
12 our jurisdiction that I don't want to indirectly --  
13 for the State to indirectly influence, and that --  
14 You know, development is competitive. And that's  
15 great, as far as I'm concerned. And there are all --  
16 all manner of utilizing State requirements, totally  
17 unrelated to development and healthy private  
18 competition about that, to use that to influence  
19 that. And I want to, wherever possible, avoid the  
20 State influencing that circle.

21 Well, I'm not the only one that can make a  
22 motion, you know.

23 COMMISSIONER HUBERT: I've got a  
24 question for the ED.

25 In the factors that you look at for the

1 creation of a MUD, concerning the subsidence or  
2 groundwater level within the region, recharge,  
3 et cetera, are those looked at in the process as you  
4 consider and work your way through, when they apply,  
5 are those factors considered and looked at and  
6 analyzed and dealt with through the -- through the  
7 process of submitting the application?

8 MR. CUMMINS: Yes, they are. That is  
9 done by the district engineer, or the proposed  
10 district's engineer, and we rely on that information.

11 COMMISSIONER HUBERT: Okay. So, it's  
12 not as if none of that has been looked at or -- by a  
13 professional engineer and -- and considered as this --  
14 this developed?

15 MR. CUMMINS: That's correct.

16 COMMISSIONER SOWARD: You said  
17 professional engineer hired by the applicant?

18 MR. CUMMINS: Yes, sir.

19 COMMISSIONER SOWARD: And you all rely  
20 on that. You don't do an independent review?

21 MR. CUMMINS: No, we don't.

22 MADAME CHAIRMAN: Has the engineer's  
23 seal on it?

24 MR. CUMMINS: Yes, ma'am. That's  
25 correct.

1                   COMMISSIONER SOWARD: And when that  
2 engineer looks at the groundwater within the region,  
3 do you recall what the region might have been in this  
4 application?

5                   MR. CUMMINS: No, sir, I don't, at this  
6 time.

7                   COMMISSIONER HUBERT: Here's -- Here's  
8 the -- The point I was making was, it's not as if  
9 these factors are not looked at and they are not  
10 looked at by a professional engineer and an expert in  
11 the area, as the process -- as the application is  
12 developed. And that is required by statute, and that  
13 is what's being done. So, you know, that would be my  
14 point, is those are being -- being looked at and -- as  
15 this has developed. It just hasn't been publicly  
16 commented on or analyzed in that regard.

17                   MADAME CHAIRMAN: Or challenged in an  
18 evidentiary hearing. I mean, that would be the...

19                   (Pause.)

20                   MADAME CHAIRMAN: For example, and I  
21 ask this of the Executive Director: In the factors  
22 listed in, I guess, 54021(a), if that's where it is,  
23 the Section 3 that starts with land elevation,  
24 subsidence, et cetera, how would someone outside the  
25 district raise the issue of land elevation,

1 topography, in a contested case hearing, in a way  
2 which could challenge whether the applicant for this  
3 district met the requirements?

4 MR. CUMMINS: I -- I would think only  
5 if that person was adjacent to the district and  
6 adjacent to construction, that they may be effected,  
7 but it's not likely.

8 MADAME CHAIRMAN: Like drainage pattern  
9 or something? I'm really just trying to imagine how  
10 these would be -- And ground -- A groundwater level  
11 issue would be raised as if -- groundwater withdrawals  
12 from within the region?

13 MR. CUMMINS: In this district, the --  
14 the water is proposed to come from the GBRA, and so  
15 it -- as far as water supply, that would not affect  
16 the groundwater.

17 COMMISSIONER HUBERT: Would you repeat  
18 what you just said?

19 MR. CUMMINS: The district is proposing  
20 to get its water from the -- from GBRA. They're going  
21 to run a truck line to their facilities. And, so,  
22 that would not -- as far as any withdrawal from  
23 groundwater, that would not affect the groundwater.

24 COMMISSIONER SOWARD: How about the  
25 recharge capability of the groundwater, with

1 development over the recharge area of an aquifer?

2 MR. CUMMINS: I think there would be  
3 minimal effect, due to impervious cover. But there  
4 will be detention facilities and green space, so that  
5 should not have a major affect.

6 COMMISSIONER SOWARD: Well, and I -- I  
7 respect your conclusions, Mr. Cummins, but that's --  
8 that's a fact question that others may disagree with  
9 and others may have evidence to support, and that --  
10 to me, that's the whole reason to have a hearing, is  
11 if there are disputed facts, let -- let everyone come  
12 in and put the cards on the table and see who wins the  
13 hand, with the evidence that they present.

14 But I respect what you're saying, and I --  
15 I know you believe, based on your professional  
16 judgment and professional experience, that that's the  
17 case. It's not uncommon to have dueling experts.  
18 And, you know, the ALJ and the Commission then gets to  
19 decide which one wins the dual. And that -- that's  
20 the only reason that I'm suggesting that there are  
21 some -- there are some real fact questions raised, and  
22 the only way that those can be reasonably addressed is  
23 through a hearing that gives all parties an  
24 opportunity to present whatever they have. And if --  
25 if these protestants can't present evidence that would

1 counter the Applicant's engineer or the staff's  
2 viewpoint, so be it. But just to say that you don't  
3 have that opportunity at all, I don't think that's  
4 what the statute contemplated.

5 MADAME CHAIRMAN: But if you take, for  
6 instance, one of the requirements, the availability of  
7 comparable service from other systems, having people  
8 outside a district argue that there was comparable  
9 service for those inside the district is different  
10 than someone inside a district arguing that there's  
11 comparable service. I mean, you see what -- you see  
12 what I mean? And if I look at -- Tapatio Springs, to  
13 me, is the most, in my assessment, the entity that I  
14 could be most willing to grant a hearing request. And  
15 the issues it raises are groundwater availability and  
16 quality. And this is -- this district is not -- not  
17 going to use groundwater; correct?

18 MR. CUMMINS: Correct.

19 MADAME CHAIRMAN: And potential for a  
20 forced interconnect, increased customer (inaudible),  
21 excessiveness of projected water and waste water  
22 rates, developer's undisclosed construction costs,  
23 developer's plan to allow his own construction company  
24 to perform the work. I don't think those are issues I  
25 want to go to SOAH. I don't -- I see those as -- as

1 motion. But I can understand how -- This is very  
2 different, to me, than a decision on whether to grant  
3 a hearing request. But I can understand how parties  
4 outside a district could be effected, but I can't, as  
5 is often stated, I can't get there on these. And, so,  
6 I don't -- I do not believe I could support referring  
7 any of these requests to SOAH. But perhaps I can be  
8 further persuaded.

9 COMMISSIONER HUBERT: And I agree with  
10 that, as well, looking at the parties and the  
11 requests, or the requests that were not submitted but  
12 comments were submitted. I don't think they got there  
13 on that on that -- on that ground either.

14 COMMISSIONER SOWARD: I've -- I've said  
15 all I know to say.

16 MADAME CHAIRMAN: Are you all going to  
17 force me to make this motion?

18 I will take -- I will do so. And that would  
19 be to deny all the hearing requests and to grant the  
20 petition for the creation of this MUD and the order  
21 filed by the ED finding that the project has met all  
22 the requirements under the Water Code 54021(a), and to  
23 appoint as temporary directors the individuals  
24 proposed, Rudy Perez, Samara Hashimi, James Lindsey,  
25 Astacio Nieto, and Edward Suarez (phoentic).

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COMMISSIONER HUBER: Second.

MADAME CHAIRMAN: We have a motion and  
a second. All in favor?

COMMISSIONER HUBER: Aye.

MADAME CHAIRMAN: Aye.

COMMISSIONER SOWARD: Show me voting  
no.

(End of discussion on Item 3.)

\*\*\*\*\*

1 THE STATE OF TEXAS )

2 COUNTY OF BEXAR. )

3 REPORTER'S CERTIFICATE

4 I, DARLA MESSINA, a Certified Shorthand  
5 Reporter in and for the State of Texas, do hereby  
6 certify that this transcript is as true and correct a  
7 record as possible, transcribed from audio tapes, of  
8 the proceedings recorded herein. Speaker  
9 identifications were not available.

10 I further certify that I am neither attorney  
11 nor counsel for, related to, nor employed by any of  
12 the parties to the action in which this testimony was  
13 taken. Further, I am not a relative of any attorney  
14 of record in this cause, nor do I have a financial  
15 interest in this action.

16 SUBSCRIBED AND SWORN to on this the 27th day  
17 of November 2006.

18

19

20

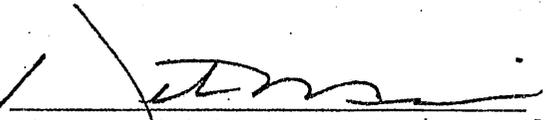
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DARLA MESSINA, CSR in and  
for the State of Texas  
Certification No. 2612

# Attachment

# H

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TRANSCRIPTION OF A PORTION OF THE TAPE  
OF  
THE REGULAR MEETING OF  
KENDALL COUNTY COMMISSIONERS COURT  
HELD ON MARCH 26, 2007

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1 JUDGE SCHROEDER: Item number 23.  
 2 Request for relief to the requirement that a plat  
 3 note that no Kendall County well water be used to  
 4 provide water service to this development as included  
 5 on a preliminary plat approved by commissioners court  
 6 from June the 26th, 2006, remain on the final plat  
 7 for Lerin Hills unit one, in accordance with Section  
 8 301, 303 and Exhibit A to the Kendall County  
 9 Development Guidelines and regulation rule book dated  
 10 January 1, 1997, which was amended November 24, 2003.

11 MR. TSCHIRHART: If it please the  
 12 court, I'm Scott Tschirhart. May I address?

13 JUDGE SCHROEDER: You certainly may.

14 MR. TSCHIRHART: Again, Your Honor and  
 15 Commissioners, thank you for letting us appear before  
 16 you today. I'm Scott Tschirhart. I represent Lerin  
 17 Development Company that owns this piece of property.

18 What we're asking for is relief from the  
 19 requirement to have the plat note that requires that  
 20 no Kendall County groundwater be used to provide  
 21 water service to this development.

22 For background, the preliminary plat  
 23 which was approved by the commissioners court on June  
 24 26, 2006, contains that particular plat note;  
 25 however, the situation has really changed. This plat

1 The other argument is this particular  
 2 provision is overly broad because Lerin Development  
 3 Company owns the property. They also own the water  
 4 that's attached to the property. They want to use  
 5 that water for the purpose of building the roads or  
 6 infrastructure but not for provision to the residents  
 7 for their water supply. They should be able to have  
 8 access to water that they own. Those circumstances,  
 9 I think, if we have to have this provision on the  
 10 plat, may be considered a taking of their water  
 11 rights, and those water rights are valuable. Those  
 12 are the reasons why we think that this should be --  
 13 this should be taken out.

14 JUDGE SCHROEDER: Commissioner  
 15 Reissig?

16 COMMISSIONER REISSIG: I just have a  
 17 couple of things, and then if anyone else would like  
 18 to address it. Back when all this started I believe  
 19 Mr. Godines came in to us and said that he was not  
 20 going to use any type of groundwater for his  
 21 subdivision but he knew that he was going to be going  
 22 with the MUD, and it's strange he wouldn't have told  
 23 us then at that time that he needed that for the MUD.

24 So I'm really unhappy about this, but that's all I  
 25 want to say for right now.

1 was submitted before the Municipal Utility District  
 2 was created. Now the MUD is in place, and it's going  
 3 to be responsible for delivering water service, sewer  
 4 service, et cetera. Lerin Development Company, LLC,  
 5 the developer, is not in control of the provision of  
 6 water for this tract, so I think that the plat note  
 7 is overly broad at this particular point in time.  
 8 The GBRA is going to be supplying water service to  
 9 this subdivision. The MUD is going to be taking care  
 10 of administrative matters. Both of those are  
 11 governmental entities, and I -- I don't know what we  
 12 can do to control the actions of a governmental  
 13 entity on where they get their water from. They  
 14 might get Kendall County groundwater from some place  
 15 for the provision of this -- of water service to this  
 16 particular subdivision.

17 I think that this -- that because of  
 18 that we think that this plat note is overly broad and  
 19 should be deleted from it. The county has a  
 20 legitimate interest to protect potential property  
 21 owners from buying lots that they don't have water  
 22 service to, but in this particular case we have the  
 23 GBRA and the MUD taking care of that water service.  
 24 The developers are kind of out of the loop as far as  
 25 that is concerned.

1 JUDGE SCHROEDER: We have a couple of  
 2 individuals that want to speak to this issue. Let's  
 3 hear them out, if you will, Mr. Tschirhart. Juan  
 4 Gonzales?

5 MR. GONZALES: Good morning.

6 JUDGE SCHROEDER: Good morning, sir.

7 MR. GONZALES: I'd like to --

8 JUDGE SCHROEDER: Is that one working?

9 UNIDENTIFIED SPEAKER: I believe it  
 10 is.

11 MR. GONZALES: Judge, Honorable  
 12 Commissioners, my name is Juan Gonzales. I'm a  
 13 resident at Tapatio Springs, and I have been at  
 14 several of these hearings, and at this -- before this  
 15 commissioners court, also before the Cow Creek  
 16 District, the TCEQ, Lerin Hills has represented that  
 17 no groundwater would be used. I'm sure, as you all  
 18 know, we had severe water restrictions last year. We  
 19 rely on the groundwater. I'm very concerned that if  
 20 we have 4,000 new homes being built that would use  
 21 groundwater that it could have a significant impact  
 22 on not only the current residents but also the future  
 23 residents of Lerin Hills. So I'm here to urge you to  
 24 maintain the plat note. It's consistent with the  
 25

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1 rules that Lerin Hills understood that they were  
2 going to be required to follow as far as their  
3 development, and I think that for consistency sake  
4 and also for the benefit of current residents and  
5 future residents that that provision is a very valid  
6 one. So I would urge you to maintain it. Thank  
7 you.

8 JUDGE SCHROEDER: Thank you very much,  
9 Mr. Gonzales. Patrick Lindner.

10 UNIDENTIFIED SPEAKER: Judge, do you  
11 want the five-minute rule?

12 JUDGE SCHROEDER: Yes. Make it three  
13 now that Patrick is up here. I wonder why she said  
14 that -- (inaudible). No offense taken.

15 MR. LINDNER: Good morning. My name  
16 is Patrick Lindner. I'm a resident of precinct  
17 number four. I'm also an attorney representing  
18 Tapatio Springs Service Company, the water and sewer  
19 utility servicing Tapatio Springs. Dave Parker is  
20 here with me as well today. Tapatio requests that  
21 you deny the request to remove the plat note. As far  
22 as the application to create the Lerin Hills MUD, the  
23 developer represented under oath to the TCEQ that the  
24 project would use only surface water from GBRA and  
25 would not use groundwater. The developer further

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1 state law requires the commissioners to analyze the  
2 effect of the district on groundwater levels when  
3 creating the MUD. The commission chose not to make  
4 this analysis but relied solely on the  
5 representations by the developer that they weren't  
6 going to use groundwater. And with that I'd like to  
7 hand out this letter and then repeat the request that  
8 you deny the request to remove the plat note. That  
9 concludes my comments.

10 JUDGE SCHROEDER: Thank you very much.  
11 Commissioner?

12 COMMISSIONER REISSIG: Yes, sir. No  
13 more comments.

14 JUDGE SCHROEDER: Any other comments?

15 UNIDENTIFIED SPEAKER: I would like  
16 to --

17 JUDGE SCHROEDER: Approach.

18 UNIDENTIFIED SPEAKER: This may be a  
19 procedural thing, but if -- it seems to me that the  
20 preliminary plat was approved based on the no use of  
21 groundwater. Now, if we go back and change that,  
22 wouldn't the preliminary plat process have to begin  
23 over again? I mean, that was the condition of  
24 approving the preliminary plat that there would be no  
25 groundwater use, and that's what defined the amount

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1 represented under oath to the TCEQ that the project  
2 was feasible and practicable using only surface  
3 water. The TCEQ staff and the commissioners relied  
4 on these representations and made a finding of fact  
5 that the project was feasible and practicable using  
6 only surface water and based upon this finding denied  
7 the hearing request by Tapatio and others and created  
8 the Lerin Hills MUD. Tapatio has appealed this  
9 decision, and that case is pending in state district  
10 court in Travis County. Based upon the prior  
11 judicial admission that the project is feasible and  
12 practicable using only surface water, the  
13 developer -- and the subsequent finding of fact by  
14 the state agency based upon that representation that  
15 it was indeed so, the developer cannot now change his  
16 mind and say that the project is not feasible and  
17 practicable or that he needs to have groundwater or  
18 that the MUD needs to use MUD groundwater because  
19 that's contrary to their representations. The TCEQ  
20 relied upon the developer's representations when it  
21 denied Tapatio's hearing request. I have a letter  
22 addressed to the county judge with a copy to each of  
23 you that I will pass out describing in detail the  
24 substance of this reliance, quoting the transcript of  
25 the hearing by the commissioners. Basically the

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1 of density in that subdivision. If we change the  
2 ground rules, well, then the density has to change,  
3 and we can go back and start all over.

4 JUDGE SCHROEDER: Well, that's one of  
5 the concerns was when Mr. Godines filed the original  
6 master plan on the representation that it would use  
7 solely water from GBRA, the density of .6 acres was  
8 based on that in the '97 rules. I think Mr. Godines  
9 has filed another relief that has not gotten to the  
10 court yet. I had a question for Mr. Sherlock.

11 MR. TSCHIRHART: Tschirhart.

12 JUDGE SCHROEDER: I believe -- did you  
13 say in your presentation that the groundwater would  
14 be used only for construction and not for a potable  
15 water source for the subdivision?

16 MR. TSCHIRHART: That's correct.

17 Mr. Godines does not intend to use water from the  
18 groundwater there to provide service to the  
19 subdivision but he shouldn't be restricted from being  
20 able to use that water for other purposes.

21 JUDGE SCHROEDER: Of course, you know  
22 that Cow Creek regulates water wells in the county.

23 MR. TSCHIRHART: Certainly, certainly.

24 And no application has been filed for a water well.  
25

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1 JUDGE SCHROEDER: Mike is here from  
2 Cow Creek, and it seems to me like if you want to  
3 just complete and operate wells, water wells,  
4 strictly for the purpose of construction, that's  
5 something that should go to Cow Creek.

6 MR. TSCHIRHART: Yeah, it certainly  
7 would be something that we would take to Cow Creek.  
8 The problem with this provision right now is that the  
9 developer doesn't control the MUD and doesn't control  
10 the GBRA, which are the ones that provide the water.

11 UNIDENTIFIED SPEAKER: What concerns  
12 me is the word intent, you know. Either you intend  
13 on using it for construction, you know, and then  
14 previously we intended not to use any of it. So that  
15 is a pretty good concern of mine. And so anyway --

16 JUDGE SCHROEDER: Also I have a  
17 question about the pending litigation in Austin. If  
18 that litigation is successful, then the MUD will not  
19 be created. Is that right, Mr. Lindner?

20 MR. LINDNER: If the appeal is  
21 successful, it goes back to the agency who conducted  
22 the hearing that should have been held on whether or  
23 not the MUD should be created. The order creating  
24 the MUD would be set aside and we would start the  
25 hearing process.

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1 believe he's actually purchased enough water to meet  
2 their full operating needs. In other words, they do  
3 not have peaking conditions in their amount of water  
4 that's available. And he's talked about using  
5 recycled water, and he's talked about possibly  
6 dumping the sewage in San Antonio, and he's talked  
7 about going and having zero discharge, which none of  
8 that has ever happened. It's nice to talk about, but  
9 it didn't happen. He filed this just prior to the  
10 changes of the rule, so he's under the '97 rule that  
11 allows him to have this density. When we went up to  
12 the hearing in Austin at TCEQ, that's exactly what  
13 they did. They asked the questions. They wouldn't  
14 let -- Cow Creek asked to speak, and they wouldn't  
15 let us speak. But they said there was no groundwater  
16 there. That's what their permit -- the MUD was  
17 approved based on no groundwater, so now we're  
18 baiting and switching. Every time we turn around  
19 there's something different here. If this occurs and  
20 you take this off, it ought to negate his preliminary  
21 plat, it ought to fall under the current rules, and  
22 it ought to negate the MUD itself. When he says the  
23 developer wants this, he's the developer. He's going  
24 to be gone. So that what you're doing is -- he's  
25 also got surface water available. He's got a lake on

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1 JUDGE SCHROEDER: So a lot of this is  
2 out of the hands of the county right now. But I was  
3 going to ask Mr. Godines and Mr. Tschirhart if  
4 amending that note to just say that no groundwater  
5 will be used as a source of potable water to the  
6 residents of the subdivision.

7 MR. TSCHIRHART: We would be agreeable  
8 to an amendment that says that the developer will not  
9 use any groundwater, the Kendall County groundwater,  
10 for provision of services, water services, to  
11 residents. The problem is we don't control the MUD  
12 and we don't control the GBRA.

13 JUDGE SCHROEDER: Which means that  
14 that could happen, and you could say, well, that  
15 wasn't under our control. That's my -- that's the  
16 problem I have. Mr. Kight, have you got a comment?  
17 John Kight. You have five minutes, John.

18 MR. KIGHT: I'll take less than that.

19 JUDGE SCHROEDER: Good.

20 MR. KIGHT: I wanted to point out some  
21 of the things that had been mentioned. When the  
22 developer came in, he brought the court that this  
23 would be a surface-water-only, out-of-county water  
24 source, which is GBRA. I had talked about -- Abel  
25 and I had another discussion with Mr. -- I don't

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1 his property. He can get all the water he needs  
2 there without using any well water. He is not  
3 requesting a permit for a well yet, although he's  
4 threatened to do it. So my thing to y'all is do not  
5 change this. He is the one that instigated this.  
6 (Inaudible).

7 JUDGE SCHROEDER: Thank you. Any  
8 other questions? Comments?

9 COMMISSIONER REISSIG: Judge?

10 JUDGE SCHROEDER: Yes.

11 COMMISSIONER REISSIG: I would like  
12 to -- there is some new information that has come up,  
13 and I would like to table this item at the present  
14 time and go into executive session on it.

15 JUDGE SCHROEDER: Is that a motion?

16 COMMISSIONER REISSIG: Yes, sir.

17 JUDGE SCHROEDER: A motion is being  
18 made that would table the issue and that we have time  
19 to discuss it in executive session. Do I have a  
20 second?

21 COMMISSIONER LUX: Second.

22 JUDGE SCHROEDER: The second is by  
23 Commissioner Lux. All in favor?

24 (Several aye responses.)

25 JUDGE SCHROEDER: The ayes have it.

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1 UNIDENTIFIED SPEAKER: Are you asking  
2 for a meeting in executive session?

3 UNIDENTIFIED SPEAKER: I just wanted  
4 to clarify. The purpose of the executive session is  
5 to seek the advice of the county attorney?

6 COMMISSIONER REISSIG: Yes, sir.

7 JUDGE SCHROEDER: Right.

8 COMMISSIONER REISSIG: I'm sorry. I  
9 may not have said that.

10 UNIDENTIFIED SPEAKER: We'll just go  
11 downstairs, and we'll be back, so y'all don't have to  
12 leave.

13 UNIDENTIFIED SPEAKER: Is that a part  
14 of the motion then? To seek the advice of the county  
15 attorney?

16 JUDGE SCHROEDER: Yes. Well, then we  
17 will go into recess. Actually, we'll go ahead and  
18 close and then reopen. We'll close the open  
19 session.

20 UNIDENTIFIED SPEAKER: Well, we might  
21 want to come back, and I'm sure we have some  
22 interested parties here who would like the judge to  
23 come back and make a decision one way or the other.

24 JUDGE SCHROEDER: We'll take a recess  
25 and leave the session open. If we're not back by

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1 JUDGE SCHROEDER: Yes.

2 UNIDENTIFIED SPEAKER: Actually, I've  
3 just been given the preliminary agreement between  
4 Lerin Development Company, Inc. and Guadalupe-Blanco  
5 River Authority. That's, I think, one of the things  
6 Tom had asked for in the plat processing for Lerin  
7 Hills. And I believe you got this Friday; is that  
8 correct?

9 JUDGE SCHROEDER: Yes, sir.

10 UNIDENTIFIED SPEAKER: And this is  
11 Section 14 of that agreement. Exclusive source.  
12 Lerin agrees that, except as otherwise agreed to in  
13 writing by the parties, the exclusive source of  
14 potable water for use by users within the Lerin Hills  
15 service area shall be treated water delivered by  
16 GBRA, and the exclusive source of wastewater service  
17 within the Lerin Hills service area shall be  
18 wastewater service provided by GBRA. Lerin agrees to  
19 impose deed restrictions and utilize contractual  
20 provisions and other lawful means by which those who  
21 purchase or lease lands currently owned or controlled  
22 by Lerin or that Lerin may own or control at some  
23 time in the future within the Lerin Hills service  
24 area are required to comply with the restriction set  
25 forth above in Section 14. So to me the note on the

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1 2:00, we're not coming back.

2 (Executive session was held.)

3 JUDGE SCHROEDER: We are closing that  
4 session and reopening the open session. The court is  
5 now in session. It is ten minutes after 11:00. We  
6 are on the issue of number 23, request for relief.  
7 We're dealing with Lerin Hills. Commissioner  
8 Reissig.

9 COMMISSIONER REISSIG: Yes, sir. I'd  
10 like to make a motion. I so move to deny request for  
11 relief.

12 COMMISSIONER MIERTSCHIN: Second.

13 JUDGE SCHROEDER: Motion has been made  
14 by Commissioner Reissig to deny the request for  
15 relief, and it was seconded by Commissioner  
16 Miertschin. Any discussion?

17 UNIDENTIFIED SPEAKER: I think one of  
18 the things that, you know, whenever you presented the  
19 preliminary plat to us, as far as density, that was  
20 one of the things that you said, that there would be  
21 no groundwater used, and that is obviously an  
22 important factor in coming up with the density  
23 requirement, and I think there are some other issues  
24 that possibly that the people might have.

25 UNIDENTIFIED SPEAKER: Judge?

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1 plat is consistent with what they agreed to do with  
2 GBRA, prohibits use of groundwater as a source of  
3 potable water.

4 UNIDENTIFIED SPEAKER: That certainly  
5 is consistent with our agreement with the GBRA. It  
6 doesn't want you to provide potable water for this  
7 system.

8 UNIDENTIFIED SPEAKER: We're not  
9 saying anything different from that. What we're  
10 saying is this restriction in that plat is overly  
11 broad because it seeks to impose the county's  
12 authority on the MUD and the county's authority on  
13 the GBRA.

14 UNIDENTIFIED SPEAKER: I see here a  
15 list of nine plus things that need to be addressed  
16 before the final plat is -- you know, is brought to  
17 the court anyway. This is just one of numerous  
18 things that need to be addressed. Is that not  
19 correct? And I didn't see that you recommended any  
20 appropriate verbiage to be included on the plat  
21 except that we just remove that no Kendall County  
22 groundwater will be used to provide service to this  
23 development. There was no -- I don't see any  
24 recommended verbiage to put on that plat that you're  
25 asking for it to be replaced with. My concern also

1 is that there's item number two, three, four, five,  
2 six, seven, eight, nine, and nine has about eleven or  
3 twelve different parts to that that haven't been  
4 addressed either; you know, that we need to be  
5 looking at probably.

6 UNIDENTIFIED SPEAKER: Well, I think  
7 that the note is inappropriate because it seeks to  
8 have amendment to a plat and enforce regulatory  
9 authority over two governmental bodies. I don't have  
10 any opposition to a note that regulates me, the  
11 developer, but when a note tells me where GBRA can  
12 and can't get its water or where the MUD can and  
13 can't get its water, then I think it's overreaching  
14 because it's seeking to ask the developer to regulate  
15 a governmental body. I could no more put a note in  
16 there to regulate GBRA than I could to regulate the  
17 City of Boerne, and as long as the note is specific  
18 and says that I'm not doing something, I have no  
19 problem with it. The development company you can  
20 regulate, but I don't think that a note that tries to  
21 ask me to regulate third parties is appropriate, so I  
22 think the note should be stricken since I don't have  
23 any authority over where the water is gotten from.

24 JUDGE SCHROEDER: According to what he  
25 just read here is Lerin agrees to -- that except as

1 stipulated that I had to create a MUD.

2 JUDGE SCHROEDER: Any other  
3 discussion? Yes, sir.

4 UNIDENTIFIED SPEAKER: Well, on one  
5 end, I could recommend paraphrasing this note here to  
6 put on the plat, but from what Mr. Godines is saying  
7 is they're doing the final agreement, and it may be  
8 premature to even be here asking for relief on this  
9 note because this is what will go on your final  
10 plat. Whatever is on the final plat, my  
11 recommendation would be whatever GBRA and the MUD  
12 agrees to be considered by the court as going on the  
13 final plat. So at this point the court may have to  
14 at this point deny your request for relief. Then you  
15 can come back when that contract is finalized with  
16 the MUD.

17 JUDGE SCHROEDER: There's two issues  
18 that we have a dilemma with. One is the litigation  
19 that's in Austin right now, and two is what Cow Creek  
20 is going to have to say. They're the water folks.

21 MR. GODINES (?): Sir, I am not a  
22 party to that litigation nor is Lerin Development  
23 Company or Lerin Development. That is a litigation  
24 that is between Tapatio Springs and the TCEQ. So  
25 what we would say is that a third-party litigation

1 otherwise agreed to in writing by the parties, the  
2 exclusive source of potable water for the use by  
3 users, it doesn't make any difference who these users  
4 are, whether it's the MUD or the individuals or what,  
5 they're using the water; is that right?

6 MR. GODINES (?): Judge, what I think  
7 you are referencing is a contract that is set up as  
8 an interim contract between the developer and GBRA.  
9 As soon as the MUD was created, that GBRA contract  
10 was required to go into its primal phase, and that is  
11 the contract that is being negotiated between the MUD  
12 and GBRA, not between myself and GBRA. The MUD  
13 brought its attorneys and its engineering consultant  
14 to dictate the terms and conditions of that final  
15 agreement. That as yet is an unsigned agreement,  
16 including GBRA and the MUD. So whatever the  
17 provisions are in that contract, after this  
18 Wednesday, the 28th, the MUD board will receive  
19 authority to go into a contract with GBRA. I  
20 relinquish all rights to my water under that GBRA  
21 contract to the MUD. That was part of the  
22 requirement of GBRA before I even set up the --  
23 before I could enter into a contract with GBRA, there  
24 was a requirement that stipulated that I create a  
25 MUD. It wasn't my wanting to create a MUD. GBRA

1 would have an effect on a part -- on a platting  
2 agreement when that party is not party to the  
3 litigation. So I mean there's millions of other  
4 litigations going on in the country. I don't think  
5 any of them that I'm not a party to should have an  
6 effect on my platting.

7 JUDGE SCHROEDER: How do you respond  
8 to that?

9 UNIDENTIFIED SPEAKER: This agreement  
10 here, you entered into this agreement with GBRA as  
11 the developer, right?

12 MR. GODINES (?): Well, sir, we were  
13 talking about the litigation.

14 UNIDENTIFIED SPEAKER: Forget the  
15 litigation. It has to do with the MUD. You entered  
16 into this agreement as the developer with GBRA.

17 MR. GODINES (?): Yes, sir.

18 UNIDENTIFIED SPEAKER: And you agreed  
19 to that provision that I just read, right?

20 MR. GODINES (?): In addition to a  
21 provision that says it will be transferred to the  
22 MUD, so that preliminary agreement has --

23 UNIDENTIFIED SPEAKER: I'm not talking  
24 about that. I'm talking about what you agreed to as  
25 the developer. Okay? And that's in this contract



1 THE STATE OF TEXAS )  
2 COUNTY OF BEXAR )

3  
4 I, CATHEY RIMMER, Certified Shorthand  
5 Reporter in and for the State of Texas, hereby  
6 certify that I have transcribed to the best of my  
7 ability a designated portion of a tape of a portion  
8 of the regular meeting of the Kendall County  
9 Commissioners Court held on March 26, 2007.  
10 TO WHICH I CERTIFY on this the 6th day  
11 of April, 2007.

12  
13 CATHEY RIMMER, Texas CSR 519  
14 Expiration Date: 12/31/2008  
15 Firm Registration No. 415  
16 Expiration Date: 12/31/2008  
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# Attachment

## I



## Kendall panel won't yield on water issue

Web Posted: 03/26/2007 10:51 PM CDT

Zeke MacCormack  
Express-News

BOERNE — Kendall County commissioners refused Monday to lift their prohibition on groundwater pumping in a new municipal utility district whose planned 1,475 homes are to be served with water from Canyon Lake.

Developer Abel Godines contends the restriction specified on the preliminary plat for his Lerin Hills subdivision unduly constrains the Guadalupe-Blanco River Authority, from which he plans to buy drinking water, and the municipal utility district, a taxing entity that will oversee the water and sewage systems there.

Godines said he'll have no role once he turns the site over to the district.

Godines' attorney, Scott Tschirhart, assured commissioners that removal of the "plat note" would not result in groundwater there being used to serve residents, but only for construction-related uses.

But resistance among commissioners was unanimous. Commissioner Darrel Lux said "an important factor" in Godines getting the preliminary plat approved last June was his pledge to draw no groundwater at the 866-acre site, where 255 acres are slated for homes, 354 for open space and 134 for commercial use.

If the ban is lifted, former Commissioner John Kight said, Godines must restart the entire platting process under newer county rules than the 1997 codes that now govern the project.

Kight and others have contended the 750-acre-feet of water that Godines plans to buy from the GBRA isn't enough to quench peak demands at Lerin Hills.

Patrick Lindner, attorney for Tapatio Springs Services Co., a water utility near Lerin Hills that's fighting to undo the district's permit, noted Godines' no-groundwater pledge was one reason why the Texas Commission on Environmental Quality refused his client's request to conduct hearings on the utility district.

County Judge Gaylan Schroeder said no change to the plat note should be considered without checking with the Cow Creek Groundwater Conservation District or before resolution of a suit Tapatio Springs filed against the TCEQ over its approval of the utility district permit.

Tschirhart later said the plat note may be "a moot point."

"I don't think the county can regulate" the utility district, he said. "The (district) can do what it wants, and tell the county to go pound sand."

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*zeke@express-news.net*

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Online at:

[http://www.mysanantonio.com/news/metro/stories/MYSA032707.05B.Lerin\\_Hills.37392bd.h](http://www.mysanantonio.com/news/metro/stories/MYSA032707.05B.Lerin_Hills.37392bd.h)

# Attachment

# J

MEETING OF THE  
LERIN HILLS MUNICIPAL UTILITY DISTRICT

March 28, 2007

TRANSCRIPTION OF VIDEOTAPED PROCEEDINGS

1 MR. SUAREZ: Is there a substitute  
 2 motion?  
 3 MS. DORMAN: I think we can just make  
 4 a motion to clarify.  
 5 MR. SUAREZ: Clarify? Motion to  
 6 clarify?  
 7 MS. DORMAN: Motion to clarify.  
 8 Because it's not any different. I mean, the motion  
 9 isn't different. It's just --  
 10 MR. SUAREZ: It's just understanding  
 11 that they are two separate --  
 12 MS. DORMAN: -- for purposes of  
 13 clarity, yes.  
 14 MR. SUAREZ: -- two separate  
 15 discussions.  
 16 MS. DORMAN: Correct.  
 17 MR. SUAREZ: And let me try to see if  
 18 I get this correct and don't confuse everybody. I  
 19 would like to make a motion that we authorize the  
 20 discussion of negotiations of both water supply and  
 21 maintenance and operations, which are separate, to  
 22 include potential other --  
 23 MR. GODINES: Proposers.  
 24 MR. SUAREZ: -- proponents. Does that  
 25 make sense? Or is that clear? Is there a second,

1 please?  
 2 SAMIRA: Second.  
 3 MR. SUAREZ: All those in favor?  
 4 (Show of hands.)  
 5 MR. SUAREZ: Motion carries. Number  
 6 nine, please.  
 7 MS. DORMAN: All right. Authorized  
 8 posting of the district name signs. We need to --  
 9 the district needs to post name signs at two  
 10 entrances. Typically, the engineer does that. Would  
 11 you be undertaking that, Ron?  
 12 MR. HOLLINGER: Okay.  
 13 MS. DORMAN: All right. So you need  
 14 to authorize Ron as the district's engineer to post  
 15 the new signs as appropriate.  
 16 MR. SUAREZ: Do we have a motion  
 17 authorizing the posting of the district name signs --  
 18 signs by the contracted engineer?  
 19 SAMIRA: So move.  
 20 MR. SUAREZ: Second, please.  
 21 MR. HERNANDEZ: Second.  
 22 MR. SUAREZ: All those in favor.  
 23 (Show of hands.)  
 24 MR. SUAREZ: Thank you. The next one,  
 25 number ten, please.

1 MS. DORMAN: Engineer's report.  
 2 MR. HOLLINGER: I have from the  
 3 \_\_\_\_\_, just to our office, I'm in the local  
 4 office here in San Antonio, and I have an original --  
 5 I have a couple of other original signatures just in  
 6 case. And then I have copies of everything for your  
 7 use. Is that an adequate number of originals?  
 8 MS. DORMAN: Yes.  
 9 MR. LINDSEY: Okay.  
 10 MR. SUAREZ: These are copies of the  
 11 same?  
 12 MR. HOLLINGER: They would be extras  
 13 for the board members. Do you want me to read these  
 14 all for you or just submit them?  
 15 MS. DORMAN: I think we would like you  
 16 to go over them.  
 17 MR. SUAREZ: If you could, please,  
 18 just an overview.  
 19 MR. HOLLINGER: Well, I'm going to  
 20 read them so that I don't --  
 21 MR. SUAREZ: Okay. That will be fine.  
 22 MR. HOLLINGER: First item is offsite  
 23 surface water supply, repumping, and transmission  
 24 facilities, Lerin Hills, Limited. The district  
 25 developer has contracted for a treated surface water

1 supply for the Guadalupe Blanco River Authority that  
 2 will be delivered at a location in the City of  
 3 Boerne.  
 4 Lerin Hills, Limited requests the  
 5 board's authorization to begin designing of repumping  
 6 facilities and offsite water transmission line which  
 7 will bring this contract surface water from the  
 8 Boerne take point into the district's water plant.  
 9 This project will require purchasing of a facility  
 10 site and waterline easements.  
 11 Number two, water storage, pressure  
 12 maintenance, and surface pumping facilities, phase  
 13 one. A groundwater storage tank and pressure  
 14 maintenance pumps will be required on-site to serve  
 15 the district. Lerin Hills, Limited requests the  
 16 board's authorization to begin design of these -- the  
 17 first phase of these facilities to be constructed on  
 18 site.  
 19 Number three, application for  
 20 groundwater withdraw permit, from Cow Creek  
 21 Groundwater Conservation District. In addition to  
 22 the treated surface water that has been contracted  
 23 from the GBRA, the district will require the ability  
 24 to pump groundwater for several reasons. The  
 25 groundwater supply will serve as a backup to the

1 groundwater supply, which is delivered by a series of  
2 pipelines from Canyon Lake.

3 Any disruption to that series of  
4 pipeline will leave the district at risk without the  
5 groundwater supply to fight fires and serve the  
6 health, safety, and welfare of the district's  
7 residents.

8 Secondly, the conjunctive use of  
9 groundwater will allow a lower overall operating cost  
10 to the residents. We recommend that the district  
11 make application at this time.

12 MR. GODINES: I -- I think -- I think  
13 that that's an item that -- that we need to -- to  
14 table until we get further clarification from Kendall  
15 County --

16 MR. HOLLINGER: Okay.

17 MR. GODINES: -- regarding that.

18 MR. SUAREZ: Number three or the  
19 entire --

20 MR. GODINES: The whole groundwater  
21 issue. I think that at this time it's not --

22 MR. HOLLINGER: That's number three.

23 MR. GODINES: Yeah. It's not an item  
24 that we should approach Cow Creek with until we have  
25 an understanding of or clarification of -- of

1 groundwater issues, and that at this time the MUD  
2 should probably allow legal counsel to, you know, to  
3 handle those items before the MUD undertakes anything  
4 on those issues.

5 MS. DORMAN: Now, Abel, when you say  
6 those items, are you referring only to item number  
7 three on the --

8 MR. GODINES: I'm talking to item --  
9 yeah.

10 MS. DORMAN: Or four?

11 MR. GODINES: I'm talking about item  
12 number three, which is groundwater. Anything related  
13 to groundwater, we should allow legal counsel for the  
14 developer to -- to get those items clarified with the  
15 county and with Cow Creek prior to the MUD.

16 MS. DORMAN: All right.

17 MR. SUAREZ: So everything under --

18 MS. DORMAN: Now, I think he's  
19 speaking only of this item.

20 MR. SUAREZ: Oh, just in regards to  
21 this report?

22 MR. GODINES: Right.

23 MR. SUAREZ: I was referencing the  
24 attendance.

25 MS. DORMAN: Right.

1 governmental authority and rules and what the  
2 willingness is of Kendall County to -- to move  
3 forward on that item, and I think that we need to  
4 have our engineer or our legal counsel discuss that  
5 item with the Kendall County.

6 There's also some third-party  
7 litigation that hasn't -- that's not -- we're not --  
8 we're not a party to the developer nor the MUD is a  
9 party too that is looking at that item. And I think  
10 until some of those issues are clarified, that  
11 probably we'd rather not step into that hornet's  
12 nest.

13 MR. SUAREZ: Which would be all of  
14 ten. Correct?

15 MR. GODINES: Right. I mean, I  
16 just -- I think that there should be clarification --  
17 there should be clarification to the developer and to  
18 the MUD regarding that item. And I think that we are  
19 going to seek counsel on that. And probably the  
20 first units and those items in which the -- the  
21 developer has -- has agreed not to use groundwater,  
22 that we should uphold those agreements. And that the  
23 MUD may want to -- the MUD has a different view.  
24 They may have a long-term view of what needs to  
25 happen, but I think legal counsel will advise us on

1 MR. SUAREZ: Okay.

2 MS. DORMAN: So, Abel, your thinking  
3 is that at least in part because of the pending  
4 litigation, which I don't want to go into now.

5 MR. GODINES: Right.

6 MS. DORMAN: -- but at least in part  
7 because of pending litigation, that the board might  
8 want to defer number three --

9 MR. GODINES: Yeah.

10 MS. DORMAN: -- for the engineer's  
11 report.

12 MR. GODINES: Yeah. The -- I -- I  
13 think the board should tell the engineer to -- to  
14 hold on any of that work or any of -- any -- even  
15 undertaking any of those items until there is a  
16 meeting of the minds between the county and the  
17 developer and potential litigation has made sure that  
18 it's kept out of our -- out of our district.

19 MS. DORMAN: And, now, the board,  
20 since we're sort of a new board and certainly new  
21 together, you know, just know that you can take our  
22 advice or leave our advice of -- we're here only as  
23 your consultants and advisers, but --

24 MR. SUAREZ: I guess I would just like  
25 to make sure I understand. And a motion be made to

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1 accept the report, excluding number three.  
 2 MS. DORMAN: Yes. Or anything else --  
 3 MR. HOLLINGER: or anything else that  
 4 you choose.  
 5 MR. SUAREZ: Correct.  
 6 MS. DORMAN: -- as we go through the  
 7 report.  
 8 MR. SUAREZ: And is it adequate to  
 9 reference just the number in the report as opposed to  
 10 having to go through the application for groundwater  
 11 withdrawal?  
 12 MS. DORMAN: Since a copy of the  
 13 report is attached to your minutes, I think if you  
 14 would reference it, for example, by item number 3 of  
 15 the March 28th, 2007, Pape Engineers report --  
 16 MR. SUAREZ: That will be acceptable.  
 17 MS. DORMAN: -- that will be  
 18 acceptable because we didn't catch all of it.  
 19 MR. SUAREZ: Okay.  
 20 MS. DORMAN: And just so you'll know,  
 21 in some parts, when we get the agenda, we -- we put  
 22 on it -- we confer with the engineer because our  
 23 office prepares the agenda. We confer with the  
 24 engineer and we try to get a meeting of the minds on  
 25 the exact items they need, and then we typically have

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1 a few more items that we actually go over, as it  
 2 works out, so --  
 3 MR. SUAREZ: Right.  
 4 MS. DORMAN: -- so we're trying to  
 5 track -- the engineer's report sort of tracks your  
 6 items on number 10, but not exactly, on the agenda.  
 7 MR. GODINES: And that was -- that was  
 8 my --  
 9 MR. SUAREZ: And that was my next  
 10 question. What clarification or correlation of the  
 11 Pape report itself --  
 12 MR. HOLLINGER: If you look at  
 13 subparagraph A, all we're doing out of that paragraph  
 14 A here on the --  
 15 MR. HERNANDEZ: On the agenda.  
 16 MR. HOLLINGER: -- is firm and holding  
 17 on the Cow Creek application.  
 18 MR. SUAREZ: So on the agenda, A would  
 19 correlate to number 3 on the report. Is that what  
 20 you're saying?  
 21 MR. HOLLINGER: Yes.  
 22 MR. SUAREZ: And as we go through  
 23 each, these of these on the agenda should correlate  
 24 to something within the report. Correct?  
 25 MR. HOLLINGER: Yes. Well, some of

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1 them are not listed under 10 as they are itemized  
 2 here.  
 3 MR. SUAREZ: Okay.  
 4 MR. HOLLINGER: The reference to three  
 5 is a lot clearer.  
 6 MR. GODINES: Well, Mr. Chairman, I  
 7 think that given that there's some question about a  
 8 part of this report, I think that we should hold off  
 9 on holding off the entire report until --  
 10 MR. SUAREZ: I think that's where I'm  
 11 going.  
 12 MR. GODINES: Otherwise, once this  
 13 becomes an accepted document, then it's subject to  
 14 any type of review, but since it's not finalized or  
 15 these decisions aren't made, we should hold off on --  
 16 MS. DORMAN: Well, and, I mean, that's  
 17 completely up to the board, but if you can  
 18 authorize -- for example, if you want to go ahead and  
 19 authorize design of the water supply, repumping, and  
 20 transmission facilities, you can do that. I mean,  
 21 you can authorize some pieces of the report but not  
 22 all, or you can table or defer the entire report  
 23 until your next meeting. It just depends.  
 24 You know, in that case, design -- for  
 25 example, design of the water supply, repumping, and

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1 transmission facilities would not proceed until you  
 2 meet again and authorize it. So in some ways you  
 3 need for your engineer or your developer to speak to  
 4 you about the timeliness of it because it's perfectly  
 5 fine for you to pick and choose what you authorize  
 6 about.  
 7 MR. GODINES: Well, I guess what I --  
 8 what I would like to do is make sure that the  
 9 district's engineers have a chance to meet with the  
 10 developer's engineers to make sure that there's not  
 11 overlap on some of these items, and so if the board  
 12 authorizes some of these items and they are covered  
 13 under a separate agreement, I think they should know  
 14 what -- where there's gaps and where there's lapse  
 15 and --  
 16 MR. HERNANDEZ: And that's where the  
 17 \_\_\_\_\_  
 18 MS. DORMAN: So, Mr. Engineer, you  
 19 agree with that?  
 20 MR. HOLLINGER: Yes.  
 21 MS. DORMAN: It would help you to meet  
 22 with the developer's engineers.  
 23 MR. SUAREZ: I think that if we're  
 24 going to err, we err on the side of caution. Okay?  
 25 Therefore, I make a motion that we table discussion