

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB 25 PM 4:11

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 25, 2008

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

Re: Petition of Roman Forest Consolidated MUD for Approval to Levy an Operation and Maintenance Standby Fee in Montgomery County, Texas, TCEQ Internal Control No. 03152007-D06; TCEQ Docket No. 2007-1068-DIS

Dear Ms. Castañuela:

Please find enclosed the Executive Director's Response to Hearing Requests.

Sincerely,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

contested case hearing. The second letter, dated June 22, 2007, from Mohammed Ashraf requested that the ED's approval of the application be overturned. ED staff composed a memorandum, dated September 18, 2007, summarizing its findings and recommendations. A copy of the memorandum is attached to this Response. The ED has not issued an order in this case.

II. LEGAL AUTHORITIES

The District's Petition is subject to the TCEQ rules governing requests for contested case hearings found in title 30, chapter 55, subchapter G of the Texas Administrative Code.² Under section 55.251(a), an affected person may request a contested case hearing. The request must be in writing and filed with the chief clerk within the time period specified in the notice.³ The request must also substantially comply with the requirements found in section 55.251(c). A document that comments on an application but does not request a hearing is treated as public comment.⁴

To be an affected person, a person must have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the petition.⁵ An interest common to members of the general public is not a personal justiciable interest.⁶ Section 55.256(c) lists other factors that shall be considered when determining if someone is an affected party. If someone is an affected person, then their hearing request shall be granted if it complies with the section 55.251 requirements, is timely filed, and is pursuant to a right to hearing authorized by law.⁷

² 30 TEX. ADMIN. CODE § 55.250 (West 2007).

³ *Id.* § 55.251(b), (d).

⁴ *Id.* § 55.251(e).

⁵ *Id.* § 55.256(a).

⁶ *Id.*

⁷ *Id.* § 55.255(b).

III. ANALYSIS

A. The Albrights' Letter

1. Summary of the letter

In their letter, the Albrights stated that standby fees are a hardship on property owners who receive no benefit from the District. They believe their property does not cost the District anything with respect to service. They also stressed the difficulty of retirees making ends meet without having to pay something for nothing. They provided their mailing address, the District's name, and stated, "We request a contested case hearing."

2. The requirements in section 55.255(b) have been met.

Under section 55.251(a), the Albrights may request a contested case hearing if they are affected persons. Looking at the definition of an affected person,⁸ the Albrights meet the definition. The Albrights' letter implies that the proposed standby fee will be imposed on their property and that this will cause them undue hardship, but they never specifically state that they own undeveloped property in the District. However, the fact that they own property located in the District can be inferred from the comment about how their property costs the District nothing with regard to service. Assuming that the Albrights own property in the District, they have a personal justiciable interest related to an economic interest affected by the application that is not common to members of the general public. As the owners of undeveloped property in the District, they will have to pay the standby fee. Therefore, the Albrights have demonstrated that they are affected persons.

The Albrights' request for a hearing is also pursuant to a right to hearing authorized by law. Under title 30, section 293.145(d) of the Texas Administrative Code, an affected person can request a public hearing during the thirty days following the final publication of notice of

⁸ *Id.* § 55.256(a).

application. Therefore, the Albrights' letter fulfills this requirement. Looking at all the hearing request requirements, the Albrights' letter complies with section 55.251. It was timely filed, and it is pursuant to a right to hearing authorized by law. Therefore, the section 55.255(b) requirements have been met, and the Albrights' hearing request should be granted.

B. The Ashraf Letter Is a Motion to Overturn, Not a Hearing Request.

1. Summary of the letter

In his letter, Mr. Ashraf stated that the proposed standby fee will cause property values to depreciate. High taxes in the District have already caused land values to depreciate, making it difficult to sell lots. He provided his mailing address, telephone number, and the District's name and stated that he is requesting that the ED's approval of the District's application be overturned.

2. The requirements in section 55.251 have not been met.

Mr. Ashraf's letter does not request a hearing as required by section 55.251(c)(3). In the heading and the body of the letter, he requests that the ED's approval of the District's application be overturned. The language in Mr. Ashraf's letter is the type of language typically found in a motion to overturn (MTO),⁹ not a hearing request. In addition, Mr. Ashraf's letter does not meet the requirements found in sections 55.251(c)(2) or 55.256. He discusses the potential affects of the standby fee on the properties in the District and their values, but he never states that he owns undeveloped property in the District. Without stating that he owns property in the District, Mr. Ashraf has not shown that he has a personal justiciable interest affected by the application, which would make him an affected person. By not meeting the requirements in section 55.251(c)(2) and (3), Mr. Ashraf's letter does not substantially comply with the section 55.251(c) requirements and does not show that Mr. Ashraf is an affected person.

⁹ See *id.* § 50.139 (describing the MTO procedures).

3. The letter cannot be applied as a request for reconsideration.

Requests for reconsideration are regulated under title 30, chapter 55, subchapter F of the Texas Administrative Code. As stated in section 55.200, subchapter F only applies to applications filed under chapter 26, 27, or 32 of the Texas Water Code or chapter 361 or 382 of the Texas Health and Safety Code. Standby fee applications are filed under chapter 49 of the Texas Water Code. Therefore, a request for reconsideration cannot be filed in a standby fee case, and Mr. Ashraf's letter cannot be applied to this case as a request for reconsideration.

4. The letter is a motion to overturn.

As stated above, Mr. Ashraf's letter contains language that typically is found in a motion to overturn. Any person can file a motion to overturn.¹⁰ The only requirement is that the motion must be filed no later than twenty-three days after the date the TCEQ mails the ED's order.¹¹ As Mr. Ashraf's letter does not violate this requirement, he has filed an acceptable motion to overturn, and it should be processed as such if the ED approves the standby fee application. The ED also notes that Mr. Ashraf will receive notice of the preliminary hearing if the Albright's hearing request is granted and, therefore, will have the opportunity to request party status if he wishes to oppose the application.

IV. CONCLUSION

The ED recommends that the Commission grant Francine and James Albright's request for a contested case hearing. Mohammed Ashraf's letter falls short of the hearing request requirements. The ED recommends that his letter be considered to be an MTO.

¹⁰ *Id.* § 50.139(a).

¹¹ *Id.* § 50.139(b).

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

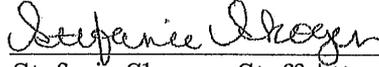
Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

By Stefanie Skogen
Stefanie Skogen, Staff Attorney
State Bar of Texas No. 24046858
P.O. Box 13087, MC-173
Austin, Texas 78711
Phone: (512) 239-0575
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I certify that on February 25, 2008, a copy of the foregoing document was sent by first class, agency mail, and/or facsimile to the persons on the attached Mailing List.



Stefanie Skogen, Staff Attorney
Environmental Law Division

Mailing List

**Roman Forest Consolidated MUD
TCEQ Docket No. 2007-1068-DIS**

**REPRESENTING ROMAN FOREST
CONSOLIDATED MUD:**

Alan P. Petrov
Johnson Radcliffe Petrov & Bobbitt PLLC
1001 McKinney Street, Suite 1000
Houston, Texas 77002-6424
Phone: (713) 237-1221
Fax: (713) 237-1313

REQUESTERS:

Francise and James Albright
863 Bonita Street
Bayou Vista, Texas 77563

INTERESTED PERSON:

Mohammed Ashraf
14214 Ashmore Reef Court
Sugar Land, Texas 77478
Phone: (281) 242-3144

OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-4000
Fax: (512) 239-4007

**ALTERNATIVE DISPUTE
RESOLUTION:**

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

**REPRESENTING THE OFFICE OF
PUBLIC INTEREST COUNSEL:**

Blas J. Coy, Jr.
Texas Commission on Environmental Quality
Office of Public Interest Counsel, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Fax: (512) 239-6377

OFFICE OF THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Fax: (512) 239-3311

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality Date: September 18, 2007

Thru: ^{9/20} Todd Chenoweth, Director, Water Supply Division
^{DK} Doug Holcomb, P.E., Manager, Utilities and Districts Section
^{RC} Robert Cummins, P.E., Leader, Districts Review Team

From: ^{RN} Districts Review Team

Subject: Roman Forest Consolidated Municipal Utility District of Montgomery County; Application for Approval to Levy Operation and Maintenance Standby Fees; Pursuant to Texas Water Code Section 49.231. DT-FEE.
TCEQ Internal Control No. 03152007-D06 (TC)
CN: 600654966 RN: 101211969

A. GENERAL INFORMATION

The above referenced application was received on March 15, 2007. The District is requesting Commission approval to levy an operation and maintenance (O&M) standby fee in the amount of \$216 per year per equivalent single-family connection (ESFC) for a three year period against all undeveloped property in the District which have available water and/or wastewater facilities and services which are being operated and maintained by the District.

According to information received by staff, there are 388 undeveloped lots in the District to which no water and wastewater facilities and services have been made and for which water or wastewater facilities and services are available, water supply or wastewater treatment plant capacity sufficient to serve the property is available, or major water supply lines or wastewater collection lines with capacity sufficient to serve the property are available.

Existing Standby Fees

The Commission previously approved annual O&M standby fees for the District from 1995 through 2006 varying from \$138 to \$294 per ESFC. For years 2004 - 2006, the approved fee was \$216 per ESFC. The District has indicated that conditions which warranted previously approved standby fees still support the need for O&M standby fees.

Existing Rates and Taxes

The District levied a debt service tax rate of \$0.40 per \$100 assessed valuation for 2006. The District's voters have not authorized a maintenance tax. The District adopted a rate order on March 22, 2007 which established residential water and wastewater rates as follows:

Water: 0-4,000 gallons	= \$20.00 (minimum monthly charge)
4,001-10,000 gallons	= \$1.50 per 1,000 gallons
10,001-20,000 gallons	= \$2.00 per 1,000 gallons
All over 20,000 gallons	= \$3.00 per 1,000 gallons

Wastewater:

Flat rate	= \$20.00 per month
-----------	---------------------

Based on this rate order, the monthly rate for 10,000 gallons of water and wastewater is \$49.00 per ESFC. The District's average water usage per ESFC is 8,300 gallons per month. The District's May 31, 2007 operating budget is shown to be at a deficit without standby fee revenue.

B. STANDBY FEES FOR OPERATIONS AND MAINTENANCE

Conclusion on Eligibility

The District's projected O&M budget for the year ending May 31, 2007, indicates a deficit of \$101,702 without standby fee revenue or expenses. The District's current rate for 10,000 gallons of water and wastewater is \$49.00 per ESFC. According to the information provided, the general operating fund had a balance of \$190,420 at the beginning of the May 31, 2007 fiscal year, and based on the projected annual deficit would have a negative balance in three years. Therefore, the District meets the criteria of 30 TEX. ADMIN. CODE (TAC) Section 293.143(b) and is eligible to seek Commission approval to levy standby fees to supplement its operation and maintenance account.

Determination of Recommended Standby Fee Amount

The projected average annual deficit for the May 31, 2007 fiscal year is \$101,702 based on budgeted revenues of \$360,400 (after deducting standby fees and penalty and interest), and \$462,102 of operating expenses after deducting one time expenses. A three-month reserve, in accordance with 30 TAC §293.143(d)(1)(D), would equal \$115,526 $\{(\$462,102/12) \times 3\}$. Since the fund balance of \$190,420 at the beginning of the fiscal year is greater than the 3 month reserve, the \$74,894 $(\$190,420 - \$115,526)$ difference spread over a three year period, or \$24,965 per year, would allow a reduction in the projected deficit from \$101,702 to \$76,737. In accordance with 30 TAC §293.143(d), staff has determined that the maximum allowable fee is \$220 per ESFC per year, based on an operating fund deficit of \$76,737 divided by 388 undeveloped ESFCs and a 90% collection factor. Since the requested fee of \$216 is less than the maximum allowable fee, a standby fee of \$216 per ESFC per year is the recommended fee for 2007, 2008, 2009.

C. SPECIAL CONSIDERATIONS

Comment Letters

A letter was received from James and Francine Albright. The letter indicates that the fee is contested because their property does not use any services from the District. However, the legitimacy of the protest is unclear because the letter does not reference the correct Internal Control Number for this application.

A second comment letter was received from Mohammed Ashraf. This letter appears to be a comment letter, as well as an early Motion to Overturn. Since there was no hearing request language in the letter, the letter is not considered by staff to be a request for a hearing.

D. CONCLUSION

The recommendations are made under the authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

E. RECOMMENDATIONS

1. Approve an annual operations and maintenance standby fee of \$216 per ESFC per year for the years 2007, 2008, and 2009 against all undeveloped lots which have water, and/or wastewater facilities and services which are being operated and maintained by the District, as shown on the attached standby fee map.
2. Direct the District that all funds collected from the standby fee levy shall be used to supplement the operation and maintenance account.
3. Advise the District that any increase in the amounts of the approved standby fee, or assessment of such fees to any additional tracts not indicated herein, will require Commission approval.
4. Advise the District that the fees approved herein may be imposed for monthly, quarterly, or annual billing periods, but should not be assessed prior to January 1, 2007.

F. ADDITIONAL INFORMATION

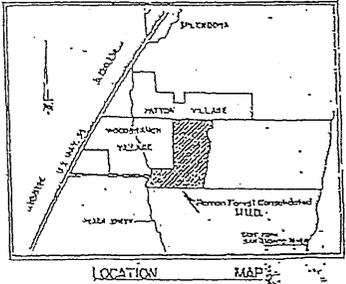
The District's representatives are:

Attorney: Mr. Alan P. Petrov – Johnson Radcliffe Petrov & Bobbitt PLLC
Fiscal Agent: Mr. Bill Blich – SAMCO Capital Markets.



Greg Charles
Districts Review Team

Attachment: Standby Fee Levy Map



TRACT CORNER TO BE CORNER OF
 200 AC. TRACT, N. 100.00' W. 171.00' E. 171.00' S. 171.00' E.

N85°D'42"E

POINT OF BEGINNING
 2 1/2" IRON PIPE 2' TO 2 1/2" DIAMETER
 IN A 200 AC. TRACT, N. 100.00' W. 171.00' E. 171.00' S. 171.00' E.

804.563 ACRES
 OF THE
 PRYOR BRYAN SURVEY, ABSTRACT 76
 MONTGOMERY COUNTY, TEXAS

N32°00'23"W 89.57'
 N33°25'23"W 211.17'
 N33°35'23"W 302.00'
 N32°24'23"W 86.34'
 N03°49'20"E 128.11'
 N23°54'04"E 125.33'
 N03°23'24"W 97.63'
 N04°01'30"E 303.00'
 N13°23'45"E 63.00'
 N53°04'10"E 178.94'
 N03°16'38"E 131.87'
 N02°14'19"E 119.33'
 N07°02'15"W 59.31'
 N04°14'30"E 81.40'

N88°04'03"W 341.02'

S68°38'26"W 3465.92'
 S00°05'00"E 53.55'

4590.00'
 SOUTH 1220.00'
 WEST 300.00'
 S27°00'12"W 814.45'
 S18°25'00"E 1310.00'
 S0°55'41"E 720.00'
 S88°30'00"W 235.00'
 S0°55'41"E 1469.57'
 S11°01'00"W 1884.83'



PLAT OF 804.563 ACRE TRACT
 FOR
 POKAN FOREST CONSOLIDATED
 MUNICIPAL UTILITY DISTRICT
 MONTGOMERY COUNTY, TEXAS

LEONARD W. SHOEMAKER
 & ASSOCIATES
 HOUSTON, TEXAS

CONSULTING ENGINEERS AND PLANNERS

SCALE: 1" = 400'
 DATE: 10/1/88
 SHEET: 1