

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Agenda Coordinator
Office of the Chief Clerk

Date: August 22, 2008

Thru: Alex A. (Skip) Ferris, P.E.,
Leader, Districts Review Team

From: Justin Taack
Districts Review Team

Subject: Docket No. 2007-1895-DIS. Polk County Fresh Water Supply District No. 2;
Application for Approval to Levy Uniform Operation and Maintenance Standby
Fees; Pursuant to Texas Water Code Section 49.231.
TCEQ Internal Control No. 07132006-D07
CN: 600661276 - RN: 101219517

Backup for Agenda Item.

Docket No. 2007-1895-DIS

Commission Agenda Date - September 10, 2008

Original + 11 copies of Backup for Agenda Item:

- Commission Order
- Mailing List
- Memorandum
- Standby Fee Map
- Executive Summary

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DOCKET NO. 2007-1895-DIS

AN ORDER AUTHORIZING POLK COUNTY FRESH WATER SUPPLY DISTRICT NO. 2 TO ADOPT AND IMPOSE A STANDBY FEE

An application by Polk County Fresh Water Supply District No. 2 (the "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (the "Commission") for consideration of approval pursuant to TEX. WATER CODE (TWC) SECTIONS (§§) 5.122 and 49.231. The District requests approval to adopt and impose an operations and maintenance standby fee of \$24 per equivalent single-family connection (ESFC) on unimproved property in the District. The Commission has jurisdiction to consider this matter and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation:

FINDINGS OF FACT

1. The application of the District requesting authority to adopt and impose an operations and maintenance standby fee was filed with the Commission and the statutory filing fee was paid.
2. Notice of this application was published in the Polk County Enterprise, a newspaper of general circulation in Polk County, Texas, once a week for two consecutive weeks, on May 3, 2007, and May 10, 2007, the first publication thereof being more than thirty days prior to the date of consideration of this application.
3. Notice of this application was mailed to each owner of unimproved property within the District to be assessed a standby fee by certified mail, return receipt requested, more than thirty (30) days prior to the date of consideration of this application. No landowners of record submitted a written request to be informed of any hearings.
4. The District's projected budget for the fiscal year ending July 31, 2006 indicates an operating fund deficit of approximately \$60,647 without standby fee revenue and wastewater revenue based on a rate of \$27 for 10,000 gallons of usage.
5. The unimproved property subject to the standby fee is shown in the Utilities and Districts Section memorandum dated July 19, 2007, a copy of which is attached hereto and incorporated herein by reference.

6. The District's current service rate for 10,000 gallons of wastewater is \$26.02 per month.
7. The standby fee will be applied to supplement the District's operation and maintenance account.
8. The Executive Director has investigated the financial condition of the District, including the District's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates.
9. The Utilities and Districts Section memorandum, considered by the Commission, is true and correct and demonstrates that the adoption and imposition of a standby fee by the District, for operation and maintenance, on all developable but unimproved acreage in the District (as described in the Utilities and Districts Section memorandum) which has available water, wastewater and/or drainage facilities and services by the District, is necessary to maintain the financial integrity and stability of the District. The Utilities and Districts Section memorandum further demonstrates that an operation and maintenance standby fee assessed in the amount of \$24 per ESFC per year on the unimproved property in the District, will fairly allocate the costs of District facilities and services among property owners in the District.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider and grant this application pursuant to TWC § 49.231.
2. The application of the District conforms in all respects to TWC § 49.231 and the Commission's order is in proper and legal form, and the purposes thereof are lawful. In reviewing this application, the Commission has considered, among other things, the Utilities and Districts Section memorandum, the necessity for the standby fee to maintain the financial integrity and stability of the District, and the fair allocation of the costs of District facilities among property owners in the District.
3. The application of Polk County Fresh Water Supply District No. 2 for authority to adopt and impose a standby fee on unimproved property in the District should be granted as recommended in the Utilities and Districts Section memorandum.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AS FOLLOWS:

1. The District may adopt and impose a standby fee for operation and maintenance for a period of time not to exceed three (3) years from the date of issuance of this Order, on all developable, but unimproved property in the District that has available water, wastewater and/or drainage facilities and services by the District as identified in Findings of Fact No. 5 and described in the Utilities and Districts Section memorandum, in the amount of \$24 per ESFC per year for operations and maintenance.

2. The proceeds of the standby fee authorized for operations and maintenance shall be applied to the District's operation and maintenance account. The Commission's approval for the adoption and imposition of a standby fee may be renewed for additional periods of not more than three (3) years each as provided by TWC § 49.231(h). Any increase in the amounts of the approved standby fee or assessment of such fees to any additional tracts not identified in the Utilities and Districts Section memorandum will require Commission approval. The District may impose the standby fee approved herein by monthly, quarterly, or annual billing periods but may not assess in arrears beyond January 1, 2007.
3. The District may, as authorized by TWC § 49.231, exercise any of the rights and privileges associated with the imposition of standby fees.
4. The governing board of the District shall, within thirty (30) days from the date of this Order, cause a certified copy of this Order approving the standby fee to be recorded in the office of the County Clerk of each county in which a portion of the District lies.
5. The governing board of the District shall, within seven (7) days from the date of the issuance of this Order levying a standby fee, file with the Commission's Executive Director and the County Clerk of each county in which a portion of the District lies an update of the information, required by TWC § 49.452.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

For the Commission

MAILING LIST

Polk County Fresh Water Supply District No. 2
TCEQ Internal Control No. 07132006-D07

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Justin Taack, Technical Manager, Utilities and Districts Section, MC-152
Komal Petel, Utilities & Districts Section, Water Supply Division, MC-153
Blas Coy, Office of the Public Interest Counsel, MC-103

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Michael D. Cowan, Division Director
Texas Commission on Environmental Quality

Date: July 19, 2007

Thru: ^{RC}~~for~~ Doug Holcomb, P.E., Manager, Utilities and Districts Section
^{RC} Robert Cummins, P.E., Leader, Districts Review Team

From: Districts Review Team

Subject: Polk County Fresh Water Supply District No. 2; Application for Approval to Levy Uniform Operation and Maintenance Standby Fees; Pursuant to Texas Water Code Section 49.231. DT-FEE.
TCEQ Internal Control No. 07132006-D07 (TC)
CN: 600661276 RN: 101219517

A. GENERAL INFORMATION

The above referenced application was received on July 14, 2006. The District is requesting Commission approval to levy uniform operation and maintenance (O&M) standby fees in the amount of \$24 per year per equivalent single-family connection (ESFC) for a three-year period against all vacant lots (1,932) in the District which have available water, wastewater, and/or drainage facilities and services which are being operated and maintained by the District.

Existing Standby Fees

The District's rate order dated November 17, 2005, effective January 1, 2006, outlines a \$2 per unimproved lot (ESFC) per month operation and maintenance standby fee.

Existing Rates and Taxes

The District levied a maintenance tax rate of \$0.48 per \$100 assessed valuation (AV) for 2005, and the District does not levy a debt service tax. The District's rate order dated November 17, 2005, effective January 1, 2006, establishes a residential wastewater rate of \$26.02 per month.

Based on this rate order, the flat monthly rate for 10,000 gallons of wastewater is \$26.02 per month. After adjusting the utility rates to meet a minimum of \$27.00 per month for 10,000 gallons usage, the District would operate at a deficit.

B. STANDBY FEES FOR OPERATIONS AND MAINTENANCE

Conclusion on Eligibility

The District's projected budget for the year ending December 31, 2006, indicates a deficit of \$60,647 without standby fee revenue. The District's current rate for 10,000 gallons of wastewater use is \$26.02 per month and is adjusted to \$27.00 per month for calculating the standby fee. According to information obtained from the District's audit, the District's operating fund had a balance of \$172,372 as of January 1, 2006, 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 annual deficit is \$60,647 for 2006 based on adjusted rates and \$1,415,459 of operating expenses, which includes \$58,575 in a capital improvement program, \$225,000 for debt service payments, and \$127,000 for one-time capital improvements. Since the District maintains a debt service reserve as prescribed by bond covenants, the operating reserve is based on operating expenses of \$996,884 (\$1,415,459 less \$225,000 for debt service payments less \$193,575 for non-reoccurring capital expenses). A three-month reserve, in accordance with 30 TAC Section 293.143(d)(1)(D), would equal \$249,221 $\{(\$996,884/12) \times 3\}$. Since the District's adjusted fund balance of \$45,372 (\$172,372 less \$127,000 for 2006 capital expenses) is less than a three month reserve, the difference of \$203,849 should be allocated over the three years standby fee period (\$67,950 per year) to increase the fund balance to a three month reserve. The adjusted fund balance allocates the non-reoccurring 2006 capital expenses against the fund balance and not as an annual item.

In accordance with 30 TAC Section 293.143(d), staff has determined that the maximum allowable annual fee is \$67,950. Based on a 90% collection rate in accordance with 30 TAC Section 293.143(d)(1)(A), the maximum total allowable fee is \$39 $(\$67,950/1,932/90\%)$. Since the requested fee of \$24 is less than the maximum allowable fee, a standby fee of \$24 per ESFC per year is the recommended fee for 2007, 2008, 2009.

C. RECOMMENDATIONS

1. Approve an annual operations and maintenance standby fee of \$24 per ESFC per year against all unimproved lots (1,932) which have water, wastewater, and/or drainage facilities and services available for calendar years 2007, 2008, 2009.
2. Direct the District that all funds collected from the standby fee levy shall be used to supplement the operation and maintenance account.

Michael D. Cowan, Division Director

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July 19, 2007

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 in arrears beyond January 1, 2007.

D. ADDITIONAL INFORMATION

The District's representatives are:

Attorney: Ms. Julianne Bremer Kugle – Coats, Rose, Yale, Ryman & Lee, P.C.

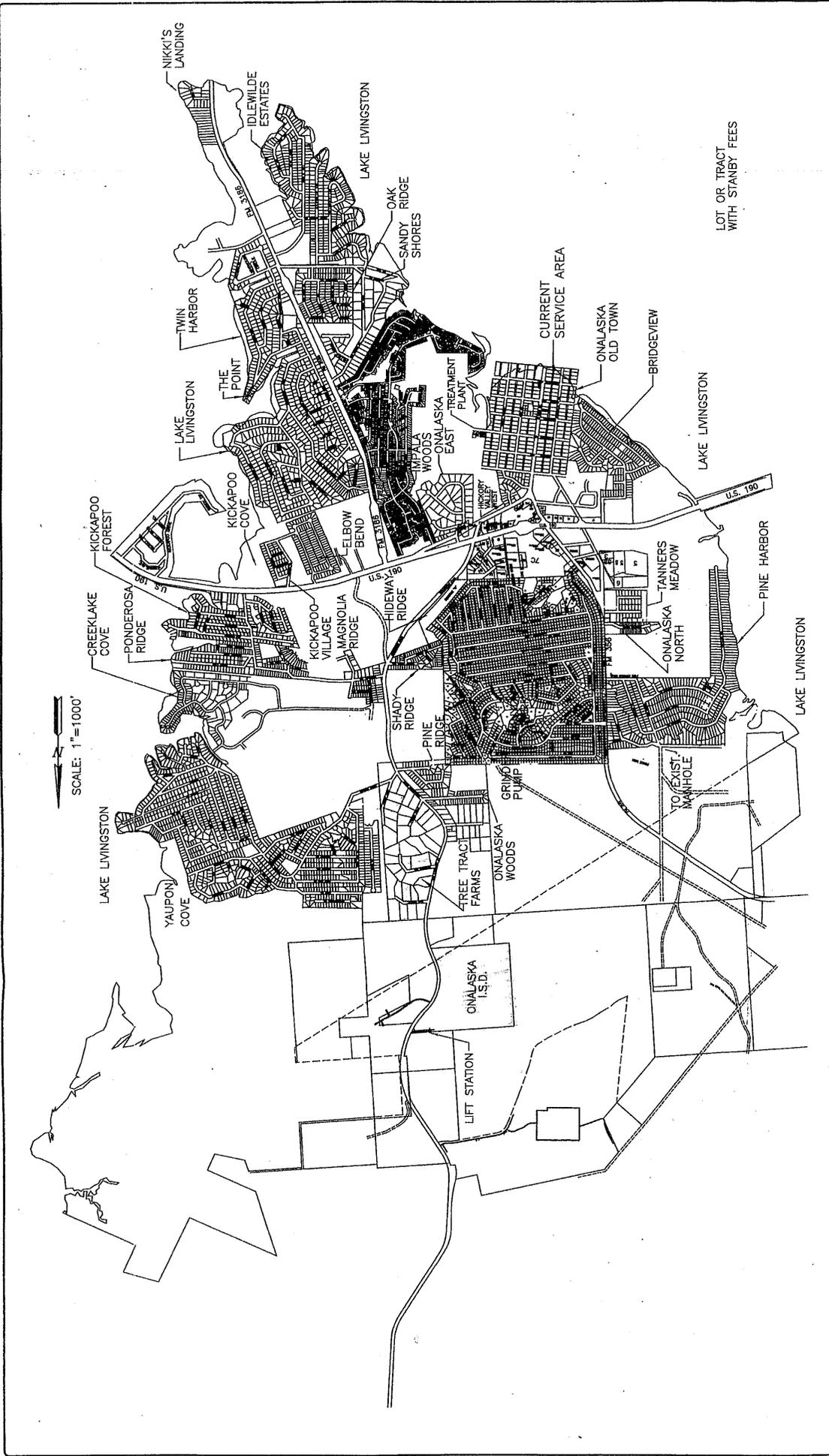
Fiscal Agent: Mr. Bill Blich – Samco Capital Markets

A handwritten signature in black ink, appearing to read "Justin Taack". The signature is written in a cursive, flowing style with large loops.

Justin Taack

Districts Review Team

Attachment: Standby Fee Levy Map



SELLER: []	DATE: []
BUYER: []	DATE: []
PROJECT NO.:	

SANITARY STANDBY SEWER COLLECTION SYSTEM MAP

POLK COUNTY FRESH WATER SUPPLY DISTRICT NO. TWO

PROJECT NO.	SCALE
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OWNER: []	DATE: []
DESIGNED BY: []	DATE: []
DRAWN BY: []	DATE: []
CHECKED BY: []	DATE: []
PROJECT NO.:	



NO.	REVISION	BY	DATE

LOT OR TRACT WITH STANBY FEES

SHEET NO.

SHEET NO.

SHEET NO.

SCALE

MARK

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality **Date:** August 22, 2008

Thru:  Doug Holcomb, P.E., Manager, Utilities and Districts Section
Alex A. (Skip) Ferris, P.E., Leader, Districts Review Team

From: Districts Review Team

Subject: Docket No. 2007-1895-DIS. Polk County Fresh Water Supply District No. 2; Application for Approval to Levy Uniform Operation and Maintenance Standby Fees; Pursuant to Texas Water Code Section 49.231.
TCEQ Internal Control No. 07132006-D07 (TC)
CN: 600661276 RN: 101219517

DESCRIPTION OF APPLICATION

Petitioner: Polk County Fresh Water Supply District No. 2 (the "District")

Request: Authorization to levy a standby fee

Type: Standby Fee

Authority: Texas Water Code Section 49.231

STAFF RECOMMENDATION

Approve an annual operations and maintenance standby fee of \$24, as requested.

TECHNICAL INFORMATION

General: Polk County Fresh Water Supply District No. 2 has collected a Commission approved standby fee since 2002.

RESPONSES TO THE APPLICATION

The Commission received three letters regarding the above referenced matter; one has been withdrawn.

CONTACT

Justin Taack, Technical Manager, Districts Review Team – 239-1122