

TCEQ DOCKET NO. 2009-0205-DIS  
TCEQ INTERNAL CONTROL NO. 06182008-D04

|                          |   |                       |
|--------------------------|---|-----------------------|
| APPLICATION FOR CREATION | § | BEFORE THE            |
| OF ROCKWALL COUNTY WATER | § |                       |
| CONTROL AND IMPROVEMENT  | § | TEXAS COMMISSION ON   |
| DISTRICT NO. 1           | § |                       |
|                          | § | ENVIRONMENTAL QUALITY |

**APPLICANT’S RESPONSE TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, FM-548 & High Plains Trail-1237, LLLP (“Applicant”), and files this response to the hearing request made by the Rockwall County Commissioners Court (the “County”) regarding the application to create Rockwall County Water Control and Improvement District No. 1. For the reasons set out below, Applicant respectfully urges the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) to deny the County’s hearing request.

**I. BACKGROUND**

Applicant filed the application to create Rockwall County Water Control and Improvement District No. 1 (the “District”) on June 18, 2008. The application was declared administratively complete June 25, 2008. The proposed District contains approximately 616.211 acres and is located in Rockwall County, approximately two miles north of the intersection of F.M. 548 and State Highway 205. Subsequent to the filing of the application, the land within the District was included in the extraterritorial jurisdiction of the City of McLendon-Chisholm.

Applicant has complied with the consent provisions of Texas Local Government Code, Section 42.042 with respect to the City of McLendon-Chisholm.

As required by Texas Water Code, Section 49.011(b), and Section 293.12(b)(1) of the TCEQ rules, 30 Texas Administrative Code, the Notice of District Petition was published by Applicant in the *Rockwall County Herald-Banner* on December 19 and 26, 2008. The Notice was also posted on the bulletin board used for posting legal notices at the Rockwall County Courthouse on January 15, 2009. *See* 30 Tex. Admin. Code § 293.12(b)(2). The Rockwall County Commissioners Court filed a hearing request with the Commission on August 28, 2008. No other hearing requests were filed regarding this application.

## **II. ROCKWALL COUNTY HAS NOT SHOWN THAT IT IS AN AFFECTED PERSON**

The County's hearing request does not identify any specific interest of the County that is affected by this district creation application; therefore, the County's hearing request should be denied. Under Section 55.255(b)(2) of the TCEQ rules, a hearing request made by an "affected person" may be granted if it: (1) complies with Section 55.251, including "identify[ing] the person's personal justiciable interest affected by the application," (2) is timely filed, and (3) "is pursuant to a right to hearing authorized by law." An "affected person" is defined as "one who has a *personal* justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 Tex. Admin. Code § 55.256(a) (emphasis added). A local government entity *may* be considered an affected person, but does not automatically have standing with respect to a particular application. *Id.* § 55.256(b). Applicant would note that unlike Texas Water Code Section 54.0161, concerning review of a municipal utility district creation by the county commissioners court, Chapter 51 of the Water Code contains no provision

concerning the participation of the county in a TCEQ proceeding to create a water control and improvement district.

Because the District at issue here is proposed to have water, wastewater, and drainage powers, the Commission has jurisdiction to create the District under Section 51.333 of the Water Code. The criteria the Commission must consider in determining whether to grant an application for creation of a water control and improvement district are whether:

- (1) organization of the district as requested is feasible and practicable;
- (2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;
- (3) there is a public necessity or need for the district; and
- (4) the creation of the district would further the public welfare.

Tex. Water Code § 51.021(a).

In its hearing request, the County fails to identify any specific interest of the County that would be affected by Applicant's district creation application, and in fact, the County fails even to identify any specific concern at all regarding the application. The County states only that it opposes the creation and requests a hearing. As such, the County's request does not meet the requirements of the TCEQ rules and must therefore be denied.<sup>1</sup>

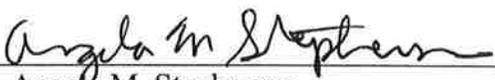
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<sup>1</sup> The County also "requests to review any and all information relating to the proposed District that the court deems necessary" and "that the opinion of the Rockwall County Commissioners Court be considered by the Texas Commission on Environmental Quality." Although the County does not explicitly reference Section 54.0161 of the Water Code, these statements appear to be based on the provisions of that section. Again, Section 54.0161 applies only to an application for creation of a municipal utility district under Chapter 54 and therefore has relevance to an application for creation of a water control and improvement district under Chapter 51.

WHEREFORE, PREMISES CONSIDERED, FM-548 & High Plains Trail-1237, LLLP hereby respectfully urges the Commission to deny the Rockwall County Commissioners Court's hearing request and grant the application to create Rockwall County Water Control and Improvement District No. 1.

Respectfully submitted,

COATS, ROSE, YALE, RYMAN & LEE, P.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing on this 29<sup>th</sup> day of June, 2012 on the following:

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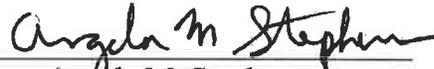
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VIA OVERNIGHT DELIVERY

  
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