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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 2, 2012

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

**RE: ROCKWALL COUNTY WCID NO. 1
TCEQ DOCKET NO. 2009-0205-DIS**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



DOCKET NO. 2009-0205-DIS

**ROCKWALL COUNTY WATER § BEFORE THE
CONTROL AND IMPROVEMENT §
DISTRICT NO. 1 § TEXAS COMMISSION ON
INTERNAL CONTROL §
NO. 06182008-D04 § ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing request in the above-referenced matter.

I. Background

In June 2008, TCEQ received a petition for creation of Rockwall County Water Control and Improvement District (WCID) No. 1. The petition was declared administratively complete on June 25, 2008. Notice of the petition was published December 19 and 26, 2008 in the *Rockwall County Herald-Banner*. The public comment period closed January 26, 2009.

TCEQ timely received a hearing request from the Rockwall County Commissioners Court, signed by Rockwall County Judge Chris Florance and Commissioners Jerry Wimpee, Lorie Grinnan, Bruce Beaty, and J. David Magness. For the reasons stated herein, OPIC recommends the hearing request be denied.

II. Applicable Law

Under Title 30 of the Texas Administrative Code (TAC) § 55.251(a)(4), “affected persons” may request a contested case hearing. Section 55.256(a) defines an affected person as “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” Section 55.256(a) further states, “An interest common to members of the general public does not qualify as a personal justiciable interest.”

Regarding a governmental hearing requestor, § 55.256(b) states, “[G]overnmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.” To determine whether a requestor is an affected person, section 55.256(c) states that all relevant factors should be considered, including, for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Texas Water Code (TWC) Chapter 51 applies to the creation of a WCID. Rockwall County WCID No. 1 wants to provide sewer service, and that is allowed under TWC §51.331. However, under TWC § 51.333, a petition which includes sewer service must be approved by the TCEQ instead of the county commissioners court. The land proposed to be included in WCID No. 1 is entirely within Rockwall County. As such, TWC §51.021(a) applies and states that the TCEQ shall grant a petition requesting creation of a WCID if it appears that:

- (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.

Finally, 30 TAC § 55.255(b) states that a hearing request shall be granted if the request is made by an affected person and complies with the form requirements for a hearing request, is timely filed, and is pursuant to a right to hearing authorized by law.

III. Analysis of Hearing Request

As stated in the hearing request, the Commissioners Court of Rockwall County is opposed to the creation of Rockwall County WCID No. 1. The Commissioners Court requests to review all information related to the proposed district and asks that the petitioners for creation of the district submit all relevant information requested by the Court. The Commissioners Court also requests that its opinion be considered by TCEQ.

However, the hearing request provides no reasons for the County's opposition and contains no discussion of the County's statutory authority over or interest in issues relevant to this petition. Under Texas Water Code § 51.021(a), the issues relevant to the creation of a WCID include: (1) whether organization of the district as requested is feasible and practicable; (2) whether the land to be included and the residents of the proposed district will be benefited by the creation of the district; (3) whether a public necessity or need for the district exists; and (4) whether the creation of the district would further the public welfare. Rockwall County's hearing request addresses none of those issues.

Though Rockwall County does not cite TWC § 54.0161, the hearing request appears to rely on this statute. Section 54.0161 concerns county review of the creation of a municipal utility district (MUD) and is found in Chapter 54 of the Texas Water

Code. Section 54.0161(a) states that the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Subsection (a) also states that petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done. Subsection (b) states that in the event of a review, the commissioners court shall submit to the Commission, at least 10 days before Agenda, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners think would assist the Commission in making a final determination on the petition. Finally, subsection (c) states that when deciding on a petition for creation of a MUD, the Commission shall consider the written opinion submitted by the county commissioners. However, the petition at issue is for the creation of a WCID under Chapter 51, not a MUD under Chapter 54. Therefore, §54.0161 does not apply in this matter.

Rockwall County could qualify as an affected person in this matter if the County addressed the issues which are relevant to creation of a WCID, but the County has failed to address those issues. Without further information, OPIC must find that Rockwall County does not qualify as an affected person under TCEQ rules.

IV. Conclusion

Having found that Rockwall County does not currently qualify as an affected person, OPIC must respectfully recommend the Commission deny the hearing request submitted by the Rockwall County Commissioners Court.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

Garrett Arthur
Assistant Public Interest Counsel
State Bar No. 24006771
P.O. Box 13087, MC 103
Austin, Texas 78711
(512) 239-5757
(512) 239-6377 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2012, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

MAILING LIST
ROCKWALL COUNTY WCID NO. 1
TCEQ DOCKET NO. 2009-0205-DIS

FOR THE APPLICANT:

Timothy G. Green
Angela M. Stepherson
Coats, Rose, Yale, Ryman & Lee, P.C.
5420 LBJ Freeway, Suite 1300
Dallas, Texas 75240-6222
Tel: 972/982-8450 Fax: 972/982-8451

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Kayla Murray, Staff 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

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

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

FOR THE CHIEF CLERK:

Bridget Bohac
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

REQUESTERS:

Bruce Beaty
Rockwall County Commissioner
101 East Rusk Street, Suite 202
Rockwall, Texas 75087-3783

Chris Florance
Rockwall County Judge
101 East Rusk Street, Suite 202
Rockwall, Texas 75087-3783

Lorie Grinnan
Rockwall County Commissioner
101 East Rusk Street, Suite 202
Rockwall, Texas 75087-3783

J. David Magness
Rockwall County Commissioner
101 East Rusk Street, Suite 202
Rockwall, Texas 75087-3783

Jerry Wimpee
Rockwall County Commissioner
101 East Rusk Street, Suite 202
Rockwall, Texas 75087-3783

