

TCEQ DOCKET NO. 2009-1573-DIS

PETITION FOR CREATION OF	§	BEFORE THE
COLLIN COUNTY WATER	§	
CONTROL AND IMPROVEMENT	§	TEXAS COMMISSION ON
DISTRICT NO. 3	§	
IN COLLIN COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") files the Executive Director's Response to Hearing Request by City of Wylie concerning the application by Lavon 593 Land Investment Partners, L.P. ("Applicant") for creation of a water control and improvement district in Collin County, Texas. For the reasons set forth below, the Executive Director recommends that the Commission **grant** the hearing request.

**I. BACKGROUND and PROCEDURAL HISTORY**

On November 3, 2008, developer Lavon 593 Land Investment Partners, L.P. filed an application for creation of Collin County Water Control and Improvement District No. 3 (Collin Co. WCID 3 or "District").

The proposed district contains land totaling approximately 592.744 acres and is projected to serve 7,203 residents including single-family and commercial development. The proposed District is partially within the Wylie Northeast Special Utility District (SUD) which holds the certificate of convenience and necessity (CCN) to provide water. Additionally, a small portion of the District is within the Seis Lagos Utility District (UD) which holds the CCN for wastewater. By August 12, 2009 agreement between the proposed District's developer and UD, the UD intends to release the portion of its wastewater CCN within the proposed District's area. The remaining portion of the tract is not within any water or wastewater CCNs. The proposed District will finance facilities and the SUD will provide retail water and wastewater services to the District. Currently, there is no other source capable of providing service to the proposed District that has the capacity to serve the proposed District. The UD wastewater treatment facility is over capacity with no plans for future expansion; therefore, a separate wastewater treatment plant will be built within the District's boundaries.

This application was declared administratively complete on November 11, 2008. The Chief Clerk mailed the Notice of District Petition on June 18, 2009. The Notice of District Petition was published in the *McKinney Courier-Gazette*, a newspaper of general circulation in Collin County, Texas, once a week for two consecutive weeks on June 28 and July 5, 2009. The last day to request a contested case hearing was August 5, 2009.

The proposed district boundaries would overlap the extra-territorial jurisdictions (ETJs) of three municipalities: City of Wylie, City of Lucas, and Town of St. Paul. Pursuant to Section 42.042 of the Texas Local Government Code and 30 TAC § 293.11, the Applicant is required to obtain written consent from each municipality in the following manner:

1. The applicant must deliver to each municipality a written request for consent for the creation of the district.
2. If any municipality does not consent to creation of the district within 90 days after the date it received the written request for its consent, the applicant may petition the municipality to provide the services to the area proposed to be provided by the district.
3. If the municipality fails to make a contract with the applicant to provide services to the area within 120 days after the date it receives the petition, that failure constitutes the municipality's consent to the creation of the proposed district. Consent is only an authorization to initiate proceedings to create the district.

If a municipality fails or refuses to consent, the applicant may petition TCEQ for the creation of the district. The Executive Director's staff verifies that all of the steps required by the Local Government Code have been taken.

In this case, the Executive Director's staff initially verified that the request for consent and petition for services were delivered as required to the City of Lucas and the Town of St. Paul. This finding is reflected on page 2 of the Technical Memorandum dated September 29, 2009, under the heading "City Consent" (attached hereto as Attachment A). At the time the memo was drafted, staff had not yet confirmed delivery of the request for consent or petition for service to the City of Wylie. On November 12, 2009, Applicant provided additional information proving that it had accomplished delivery to Wylie as required under the Local Government Code.

The City of Lucas submitted a hearing request but later withdrew the request. The Town of St. Paul has failed or refused to give its consent to the creation within the time limits prescribed by the Local Government Code Section 42.042, but has not requested a hearing. The City of Wylie has refused to consent and has requested a hearing. On October 10, 2008, Wylie received the Applicant's written request for consent to create the district. On February 3, 2009, Wylie received the applicant's petition for service to the area. According to Applicant, Wylie did not respond to either the request for consent or the petition for service.

## II. CREATION OF A WATER CONTROL AND IMPROVEMENT DISTRICT

A Water Control and Improvement District (WCID) may be created under Chapter 51 of the Texas Water Code. TEX. WATER CODE (TWC) § 51.011. A WCID may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district. TWC § 51.012. The requirements for a petition requesting creation of a WCID are set forth in sections 51.013 and 51.014 of the Water Code and sections 293.11(a) and (c) of the Commission's rules.

Notice of a petition for creation of a WCID must be published and mailed as provided in section 49.011 of the Water Code and section 293.12 of the Commission's rules. The Commission may act on a creation application without holding a hearing if no timely hearing request meeting the requirements in the Commission's rules is received. *See* TWC § 49.011(c); The Commission may grant a petition for creation of a WCID if it finds that the criteria in section 51.021 of the Water Code are met. If the Commission grants the petition, it must also appoint temporary directors to serve on the WCID's board until permanent directors are elected. *Id.* § 51.026.

As discussed in the attached technical memorandum, staff in the Utilities & Districts Section, Water Supply Division, reviewed Applicant's petition and the based on the information available at this time, the Executive Director's current recommendation is that the Commission grant the petition and appoint the individuals listed in the staff's technical memorandum as temporary directors.

## III. STANDARD FOR HEARING REQUEST

The application was declared administratively complete after September 1, 1999, and does not fall under any of the statutory provisions listed in Section 55.250 of the Commission's rules; therefore, as provided in that rule section, the application is subject to Chapter 55, Subchapter G. Under that subchapter, a request for a contested case hearing made by an "affected person" will be granted if the request:

- (A) complies with the requirements of § 55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);
- (B) is timely filed with the chief clerk; and
- (C) is pursuant to a right to hearing authorized by law.

30 TAC § 55.255(b)(2).

An "affected person" is one with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC §55.256(a). An

interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* In evaluating whether a person requesting a hearing is an "affected person," the Commission will weigh all relevant factors, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the Chief Clerk within the time period specified in the notice. 30 TAC § 55.251(b), (d). Additionally, a hearing request must substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

30 TAC § 55.251(c)(1)–(4).

#### IV. ANALYSIS OF HEARING REQUEST

The last day to request a contested case hearing was August 5, 2009. On August 10, 2009, TCEQ received a letter from attorney Art Rodriguez requesting a contested case hearing on behalf of his client, the City of Wylie (Attachment B, hereto).

Upon investigation of the timeliness of the filing of the hearing request, the Executive Director discovered that the envelope in which the hearing request was mailed was addressed incorrectly (see Attachment C). Because the City of Wylie qualifies as an affected person, the Executive Director recommends that the commission exercise its authority under 30 TAC Section 55.251(f)(2) to extend the time allowed for filing the City of Wylie's hearing request and grant the hearing request.

In its hearing request, Wylie claimed its interests are adversely affected because the petition is seeking to create a district within a portion of the City's extraterritorial jurisdiction (ETJ) to which the City does not consent, the City maintains a water and sewer utility, and the City has the reasonable ability to service the property within the proposed district. Further, Wylie claims the proposed district may construct a new wastewater treatment plant in an area where one already exists, which is contrary to regionalization policy. Third, Wylie states that it does not believe there has been adequate investigation and evaluation of the ability of others to provide service to the area. Finally, Wylie asserts its concern that the proposed district will negatively impact water quality.

The City of Wylie has demonstrated that it meets the criteria of an "affected person" under section 55.256 because it is a governmental entity with interest in the issues relevant to the application due to the overlap of the proposed district boundaries with its ETJ, which necessitates City consent. Additionally, Wylie is affected because it provides similar service in the area and claims the ability to serve the area, which are factors to be considered by rule in determining whether to grant a petition to create a district.

However, under section 55.255(b)(2) of the commission's rules, a hearing request will only be granted if it is filed with the chief clerk in a timely manner. The rules further require that a request for a contested case hearing by an affected person be filed by United States mail, facsimile, or hand delivery with the Chief Clerk within the time period specified in the notice (30 TAC § 55.251(b), (d)). In this case, the deadline for filing a hearing request was August 5, 2009. Wylie's hearing request was not received until August 10, 2009. The Commission has the authority, 30 TAC Section 55.251(f)(2), to extend the time for filing. The Executive Director recommends that the Commission exercise this authority in this case.

### V. DURATION FOR THE CONTESTED CASE HEARING

If the Commission refers the matter to SOAH for a contested case hearing, the Executive Director recommends that the projected duration for any contested case hearing between preliminary hearing on the matter and presentation of a proposal for decision before the Commission, should be **nine (9)** months.

### VI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The proposed district boundary overlaps the extraterritorial jurisdiction of the City of Wylie and is therefore required by law to obtain Wylie's consent to its creation. Wylie has failed or refused to consent and has instead requested a hearing. Due to an apparent clerical error, Wylie's hearing request was not filed by the deadline. Nonetheless, the Executive Director recommends that the Commission exercise its authority under 30 TAC Section 55.251(f)(2) to extend the time allowed for filing, find that the City of Wylie is an affected person and grant its request for a contested case hearing, with a hearing duration of nine months.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery, Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Robert Martinez, Director  
Environmental Law Division

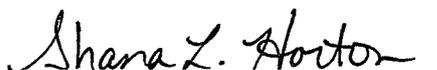


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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of December 2009, a true and correct copy of the **Executive Director's Response to Hearing Request** was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent by first class mail, agency mail and/or facsimile to all persons on the attached mailing list.



Shana L. Horton  
Staff Attorney

**MAILING LIST**  
**COLLIN COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 3**  
**TCEQ DOCKET NO. 2009-1573-DIS**

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# Attachment A

# Texas Commission on Environmental Quality

## TECHNICAL MEMORANDUM

**To:** Todd Chenoweth, Director  
Water Supply Division

**Date:** September 29, 2009

**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 Number 2009-1573-DIS; Petition by Lavon 593 Land Investment Partners, L.P., for the Creation of Collin County Water Control and Improvement District No. 3; Pursuant to Texas Water Code Chapters 49 and 51.  
TCEQ Internal Control Number: 11032008-D01(TC)  
CN: 603421306 RN: 105645188

### **A. GENERAL INFORMATION**

The Commission received a petition within the application requesting approval for the creation of Collin County Water Control and Improvement District No. 3 (the "District"). The petition was signed by Michael N. Maberry, president of Hanover Services Group, Inc., general partner of Lavon 593 GP Partners, Ltd., general partner of Lavon 593 Land Investment Partners, L.P., (Petitioner). According to the petition, the Petitioner is the owner of a majority in value of the land proposed in the proposed District, and that there is one lien holder, The First National Bank of Jacksboro, on the property to be included in the proposed District. By separate affidavit, the lien holder has indicated consent to the creation of the proposed District.

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 51 of the Texas Water Code.

#### **Location and Access**

The proposed District would contain approximately 592.744 acres of land in Collin County, approximately 8 miles east of the intersection of Farm-to-Market Road 2514 (Parker Road) and U.S. Highway 75, and approximately 23 miles from the City of Dallas. Access to the proposed District will be from Farm-to-Market Road 2514 (Parker Road). The petition states that the proposed District is not located within the limits of any incorporated city, town or village. Portions of the proposed District are within the extraterritorial jurisdiction (ETJ) of the City of Lucas, the City of Wylie and the Town of St. Paul, and no portion of the proposed District is within the ETJ of any other city, town, or village.

Metes and Bounds Description

The proposed District contains a 592.744 acre tract. The metes and bounds description for the tract of land for the proposed District has been checked by TCEQ staff and has been found to form an acceptable closure.

City Consent

The Cities of St. Paul, Lucas and Wylie have not granted its consent to the petition for creation of the proposed District. Pursuant to requirements of Local Government Code Section 42.042, evidence has been provided showing submittal for consent and request for water and wastewater service as follows:

	<u>City of St. Paul</u>	<u>City of Lucas</u>	<u>City of Wylie</u>
Submitted for consent:	Received 1/23/08	Received 1/18/08	Letter dated 10/1/08, but no evidence received.
Petition for service:	Received 5/19/08	Received 5/16/08	Petition for service dated 1/30/09, but no evidence received.

Statements of Filing Petition

Evidence was provided showing that a copy of the petition has been filed with the Collin County Clerks office and the TCEQ's Dallas/Fort Worth Regional Office.

Type of Project

The proposed District will be considered a "developer project" as defined by 30 Tex. Admin. Code (TAC) Section 293.44(a). Therefore, developer cost participation in accordance with 30 TAC Section 293.47 will be required.

Developer Qualifications

Information provided indicates that Hanover Property Company will be the developer for the proposed District. Application material indicates that Hanover Property Company projects include residential and commercial developments. Additionally, application materials indicates that Hanover Property Company has constructed more than 5,000 homes and has experience in developing master planned communities in the Dallas/Fort Worth area.

Appraisal District Certificate

The Commission has received a December 30, 2008 certificate from the Collin Central Appraisal District which indicates that the Petitioners own 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 temporary directors for the following:

Rusty Coffee  
Tommy Thomas

Peter S. Crow  
Jeffery P. Weyandt

Kristen Mazza

Each of the above persons named is qualified, as required by 30 TAC Section 293.32(a), to serve as a temporary director of the proposed District since each: (1) is at least 18 years old; (2) is a resident of the State of Texas; and (3) either owns land subject to taxation within the proposed District, or is a qualified voter within the District.

Notice Requirements

Proper notice of the application was published in the *McKinney Courier-Gazette*, a newspaper regularly published or circulated in Collin County, the county where the district is proposed to be located, on June 28, 2009 and July 5, 2009, and posted in Collin County on a bulletin board used for posting legal notices, on June 30, 2009. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied.

**B. ENGINEERING ANALYSIS**

The preliminary engineering report provided indicates the following:

Availability of Comparable Service

The proposed District is partially within the Wylie Northeast Special Utility District (SUD) which holds the certificate of convenience and necessity (CCN) to provide water. Additionally, a small portion of the District is within the Seis Lagos Utility District (UD) which holds the CCN for wastewater. By August 12, 2009 agreement between the proposed District's developer and UD, the UD intends to release the portion of its wastewater CCN within the proposed District's area. The remaining portion of the tract is not within any water or wastewater CCNs. The proposed District will finance facilities and the SUD will provide retail water and wastewater services to the District. Currently there are no other sources capable of providing service to the proposed District that has the capacity to serve the proposed District. The UD wastewater treatment facility is over capacity with no plans for future expansion; therefore, a separate wastewater treatment plant will be built within the District's boundaries.

### Water Supply

The proposed District is projected to serve 7,203 residents which will include single-family and commercial development. The ultimate average daily demand is estimated to be 0.88 MGD with a maximum daily and peak hour demand of 1.76 MGD and 4.4 MGD. The SUD will supply water to the proposed District and will require a capital improvement fee of \$2,45.00 per lot.

### Water Distribution

The water distribution system of the proposed District will consist of 88,500 linear feet of water distribution lines varying from 8-12 inches in diameter, with flushing valves and fire hydrants. The water distribution system will be looped to provide alternate service routes during emergencies and maintenance periods. All water utilities to serve the proposed District will be designed in accordance with criteria established by the TCEQ, the SUD, the Town of St. Paul, the City of Lucas, and Collin County.

### Wastewater Treatment

The proposed District is projected to serve 7,203 residents (2,104 equivalent single family connections (ESFCs)). The average flow is 0.75 MGD and the peak flow is 2.5 MGD.

### Wastewater Collection

The wastewater collection system at full development for the proposed District will consist of approximately 88,500 linear feet of 8-12 inch gravity line. In addition, the proposed collection system will also consist of two lift stations, and force mains to pump to gravity lines. All wastewater utilities to serve the proposed District will be designed in accordance with criteria established by the TCEQ, the Town of St. Paul, the City of Lucas, and Collin County.

### Drainage

Drainage for the proposed District will be collected by curb inlets, approximately 53,100 linear feet of stormwater pipe ranging from 18 inches to 4-10'x5' box, and transported through existing courses to Lavon Lake.

### Topography

The proposed District has moderate slopes from the west to east towards Lake Lavon. Elevations range from 582 feet to 508 feet mean sea level.

### Floodplain

Materials provided indicate that 587 acres of the proposed District is located within Zone X and the remaining 6 acres is located in Zone A (Federal Emergency Management Agency Flood Insurance Rate Map Nos. 48085CO460G and 48085CO470G). The existing 6 acres located in

Zone A will be reduced to 5 acres once the proposed District is developed. A flood study will be prepared and approved by Collin County prior to the flood plain being reclaimed. A Letter of Map Revision will be prepared, submitted and approved by FEMA.

Impact on Natural Resources

Creation of the proposed District will have no adverse effect on land elevation, subsidence, groundwater levels, recharge capability, natural runoff rates and drainage, or water quality.

**C. SUMMARY OF COSTS**

<u>Construction Costs</u>	<u>Amount</u>	<u>District's</u> <sup>(1)</sup>
		<u>Share</u>
A. Developer Contribution Items		
1. Water	\$5,623,067	\$3,936,147
2. Wastewater	5,287,509	3,701,256
3. Drainage	8,917,387	6,242,171
4. Contingencies (4.6% of items 1 – 3)	913,732	639,612
5. Engineering (13.9% of items 1 – 4)	<u>2,878,254</u>	<u>2,014,778</u>
Total Developer Contribution Items	\$23,619,949	\$16,533,964
B. District Items		
1. Wylie SUD Water Connection Fee		\$5,042,100 <sup>(2)</sup>
2. Wastewater Treatment and Infrastructure		8,976,400 <sup>(3)</sup>
3. Contingency (4.6% of item 2)		413,659
4. Engineering (13.9% of items 2 and 3)		<u>1,303,026</u>
Total District Items		<u>\$ 15,735,185</u>
Total Construction Costs (70.6 % of BIR)		\$ 32,269,149
<u>Non-Construction Costs</u>		
A. Legal Fees (2.5%)		\$1,142,500
B. Fiscal Agent Fees (2%)		914,000
C. Interest Costs		
1. Capitalized Interest (24 months @ 5.75%)		5,255,500
2. Developer Interest (24 months @ 5.75%)		3,710,952
D. Bond Discount (3%)		1,371,000
E. Creation Costs		100,000
F. Operating Expenses		325,649
G. Bond Issuance Costs		217,000
H. Bond Application Report Costs		280,000
I. TCEQ Bond Issuance Fee (0.25%)		<u>114,250</u>
Total Non-Construction Costs		<u>\$13,430,851</u>
<b>TOTAL BOND ISSUE REQUIREMENT</b>		<b>\$45,700,000</b>

Notes: (1) Assumes 70% funding of anticipated developer contribution items.

(2) Represents 2,058 ESFCs at \$2,450 per ESFC.

- (3) These items were presented as district items at 100%; however, pursuant to existing rules, the \$7,500,000 estimated for wastewater treatment plant costs is 100% but the lift station and force main costs are subject to the 30% developer contribution requirement.

Eligibility of costs for District funding and the 30% developer contribution requirement will be determined in accordance with Commission rules in effect at the time bond applications are reviewed. It is noted that estimated costs for storm crossings under roads and over natural waterways are currently not reimbursable items.

#### **D. ECONOMIC ANALYSIS**

##### Land Use

The land use for the proposed District is projected as follows:

<u>Development</u>	<u>Acres</u>	<u>ESFCs</u>
Single-Family Residential	459.6	1,715
Multi-Family Residential	24.5	343
Commercial	6.4	40
Recreation Center	8.1	6
Floodplain/Open Space	<u>94.1</u>	<u>0</u>
Total	592.7	2,104

##### Market Study

A market study, prepared by Residential Strategies Inc., has been submitted in support of the creation of the proposed District. The market study, prepared on September 2008, indicates multi family homes to be located on 30x90 lots with a price range of \$150,000 and single family homes located on 50x120 lots with a price of \$173,125, on 60x120 lots with a price of \$205,000, on 70x130 lots with a price of \$230,000, and on 80x140 lots with a price of \$262,500. The market study indicates that the proposed District is expected to build 102 homes beginning in 2010, 117 homes in 2011, 159 homes in 2012, 185 homes in 2013 and 191 homes in 2014.

##### Project Financing

The estimated total assessed valuation of the proposed District at completion is as follows:

<u>Land Use</u>	<u>Number of Units Planned</u>	<u>Average Unit Value</u>	<u>Total Value at Build-Out</u>
Single Family Residential	1,715 homes	\$216,363	\$371,062,500
Town Home Residential	343 homes	\$150,000	\$51,450,000
Commercial	6.4 acres	\$130,000	<u>\$832,000</u>
	Total Assessed Valuation		\$423,344,500

September 29, 2009

Considering an estimated bond issue requirement of \$45,700,000 (assuming 70% financing), a coupon bond interest rate of 5.75%, and a 25-year bond life, the annual debt service requirement would be approximately \$3,490,482. Assuming a 90% collection rate and an ultimate assessed valuation of \$423,344,500, tax rate of \$0.92 per \$100 assessed valuation would be necessary to meet the annual debt service requirements. The engineering report also indicates a operation and maintenance tax of \$0.08, resulting in a proposed District total tax rate of \$1.00.

The total year 2007 overlapping tax rates on land within the proposed District are shown in the following table:

<u>Taxing Jurisdiction</u>	<u>Tax per \$100 Valuation</u>
District	\$ 1.00 <sup>(1)</sup>
Wylie ISD	\$ 1.39
Collin County	\$ 0.24
Collin County Community College	<u>\$ 0.09</u>
Total tax per \$100 valuation	\$ 2.72

Note: (1) Includes \$0.92 for debt service and \$0.08 for operation and maintenance.

Based on the proposed District's combined projected tax rate of \$1.00 and the year 2007 overlapping tax rates on land within the proposed District, the project is considered economically feasible.

#### Water and Wastewater Rates

The proposed District plans to receive its retail water service from the SUD. Retail water rates for the proposed District are expected to be the same as the SUD's in-district retail rates and are estimated as follows:

Base rate	\$25.00
Usage rate per 1,000 gallons (1 to 5,000 gallons)	\$3.25
Usage rate per 1,000 gallons (5,001 – 10,000 gallons)	\$3.75

The proposed District plans to receive its retail wastewater service from the SUD. Retail wastewater rates for the proposed District are expected to be as follows:

Base rate (0 – 2,000 gallons)	\$25.00
Usage rate per 1,000 gallons (2,001 to 6,000 gallons)	\$3.00
Usage rate per 1,000 gallons 6,001 to 10,000 gallons)	\$4.00

Based on the above rates, the monthly fee for 10,000 gallons of water and wastewater service would be \$113.00 (\$60.00 for water and \$53.00 for wastewater).

Comparative Water District Tax Rates

The combined projected tax rate of \$1.00 for the proposed District and the \$2.72 overlapping tax rate is comparable to other districts in the area. Based on the requirements of 30 TAC Section 293.59, this project is economically feasible.

**E. SPECIAL CONSIDERATIONS**

By letter dated July 27, 2009, City of Wylie (Received August 10, 2009), and by letter dated August 4, 2009, City of Lucas (Received August 6, 2009) indicated that a contested case hearing is requested on this proposed application for creation.

**F. 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.
2. Based on a review of the preliminary engineering report, market study, the proposed District's water, wastewater, and drainage facilities, a combined projected tax rate of \$1.00, the proposed District obtaining a 5.75% bond coupon interest rate, and other supporting data, the proposed District is considered feasible under the feasibility limits prescribed by 30 TAC Section 293.59.
3. The recommendations are made under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

**G. RECOMMENDATIONS**

Conditioned on the receipt of documentation from the City of Wylie that it received an October 1, 2008 letter requesting consent and a January 30, 2009 letter requesting water and wastewater service, the following recommendations are offered:

1. Grant the petition for the creation of Collin County Water Control and Improvement District No. 3.
2. The order granting the petition should include the following statements:

“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:

Rusty Coffee

Peter Crow

Kristen Mazza

Tommy Thomas

Jeffery P. Weyandt

#### **H. ADDITIONAL INFORMATION**

The petitioner’s professional representatives are as follows:

Attorney: Ms. Angela M. Stepherson – Coats, Rose, Yale, Ryman & Lee, P.C.

Engineer: Mr. Nathan Thompson, P.E. – Jacobs

Market Analyst: Residential Strategies, Inc.

Ruben Soto, Jr.

Districts Review Team

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AN ORDER GRANTING THE PETITION FOR CREATION OF COLLIN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 AND APPOINTING TEMPORARY DIRECTORS

Docket Number 2009-1573-DIS

A petition by the Lavon 593 Land Investment Partners, L.P. (hereafter "Petitioners") was presented to the Executive Director of the Texas Commission on Environmental Quality (hereafter "Commission") for consideration of approval of the creation of Collin County Water Control and Improvement District No. 3 (hereafter "District") pursuant to Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE Chapters 49 and 51.

The Commission, after having considered the petition, application material, and memorandum from the Executive Director dated September 29, 2009, (hereafter "Memorandum"), attached as Exhibit "B," finds that the petition for creation should be approved.

The Commission finds that the creation of the proposed District as set out in the application is feasible, practicable, necessary, would be a benefit to the land to be included in the proposed District, and would further the public welfare.

The Commission further finds that the proposed District and its system and subsequent development within the proposed District will have no adverse impact on land elevation, subsidence, groundwater level within the region, recharge capability of a groundwater source, natural runoff rates and drainage, water quality, or total tax assessments on all land located within the proposed District.

All of the land and property proposed may properly be included within the proposed District.

All statutory and regulatory requirements for creation of Collin County Water Control and Improvement District No. 3 have been fulfilled in accordance with TEX. WATER CODE § 51.021 and 30 TEX. ADMIN. CODE §§ 293.11–293.12.

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

1. The petition for the creation of Collin County Water Control and Improvement District No. 3 is hereby granted.
2. The District is created under the terms and conditions of Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE Chapter 51.

3. The District shall have, and shall be subject to, all of the rights, duties, powers, privileges, authority, and functions conferred and imposed by the Commission and the general laws of the State of Texas relating to water control and improvement districts.

4. The District shall be composed of the area situated wholly within Collin County, Texas, described by metes and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes.

5. The Memorandum dated September 29, 2009, attached as Exhibit "B," is hereby incorporated as part of this Order.

6. The persons listed in Recommendation No. 3 of the Memorandum are hereby named and appointed as temporary directors and shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the District, and each bond and oath shall be filed with the District and retained in its records.

7. 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.

8. The Chief Clerk of the Commission shall forward a copy of this Order to all affected persons.

9. 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:

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For the Commission

# Attachment B

**R&R**  
RUSSELL & RODRIGUEZ, L.L.P.  
ATTORNEYS AT LAW

1633 WILLIAMS DRIVE  
BUILDING 2, SUITE 200  
GEORGETOWN, TEXAS 78628

PHONE (512) 930-1317  
FAX (866) 929-1641  
WWW.TXADMINLAW.COM

Email: arodriguez@txadminlaw.com

July 27, 2009

DIS  
68764

**Via Facsimile and U.S. First Class Mail**

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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 AUG 10 AM 10:31  
CHIEF CLERK'S OFFICE

Re: *Petition from Lavon 593 Land Investment Partners, L.P.  
for Creation of Collin County Water Control and  
Improvement District No. 3*

**To Whom It May Concern:**

The City of Wylie, Texas ("City") is in receipt of the notification of the above-referenced application and requests a hearing on the application. This law firm represents the City in regard to the above referenced matter. In compliance with the notice, the City makes the following statements:

1. The City of Wylie may be notified of any developments in this case by providing notice to:

Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
1633 Williams Drive  
Building 2, Suite 200  
Georgetown, Texas 78628  
(512) 930-1317

2. Applicant information: *Petition from Lavon 593 Land Investment Partners, L.P. for Creation of Collin County Water Control and Improvement District No. 3*. The TCEQ Control Number is 11032008—D01.
3. The City requests a contested case hearing on the application.

MW

Office of the Chief Clerk  
July 27, 2009

4. The City is adversely affected because the petition is seeking to create a water control and improvement district within a portion of the City's extraterritorial jurisdiction ("ETJ") and the City does not consent to its creation. The City maintains a water and sewer utility. The City's utility has the reasonable ability to serve the property within the proposed district.

The proposed district may construct a wastewater treatment facility adjacent to the lake and this is contrary to the Commission's long standing efforts for regionalization. There is currently an existing plant owned and operated by the North Texas Municipal Water District, a recognized regional provider that can be utilized for wastewater treatment.

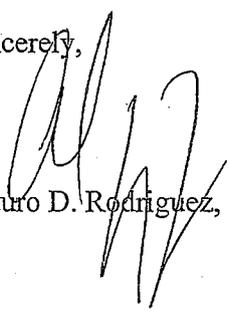
The City does not believe that an adequate investigation and evaluation of the availability of comparable services from other providers or systems, including regional utility providers, has been conducted prior to seeking the creation of the proposed district.

Additionally, the City is concerned that the proposed district will have a negative impact on water quality. The City has not determined if there is a complete justification for creation of the proposed district with sufficient evidence that the project is feasible, practicable, necessary, will benefit all of the land and its residents, and will further the public welfare. The land is located within a desirable area of the county with lakefront or near lakefront property. The City is interested in ensuring that the proposed project can meet these stringent requirements.

5. The proposed district boundaries are located within the City's ETJ. A map showing the extent of the City's ETJ boundaries is attached hereto as Exhibit A.

Thank you for your attention to this matter.

Sincerely,



Arturo D. Rodriguez, Jr.

cc: Ms. Mindy Manson  
Mr. Michael Sferra

# Attachment C

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 AUG 10 AM 10:31

CHIEF CLERKS OFFICE



**R&R**

RUSSELL & RODRIGUEZ, L.L.P.  
ATTORNEYS AT LAW  
1633 Williams Drive  
Building 2, Suite 200  
Georgetown, Texas 78628

**RECEIVED**

AUG 10 2009

TCEQ MAIL CENTER  
JR

**TO:**

Office of the Chief Clerk  
MC-105  
Texas Commission on Environmental Quality  
Post Office Box 13085  
Austin, Texas 787 11-3085

