TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Texas Commission on Environmental Quality

Commissioners Docket No. 2009-1832-DIS;
Internal Control No. 06242009-D01
Backbone Creek Municipal Utility District No. 1

2010 MAR -2 PM 1: 58

CHIEF CLERKS OFFICE

Applicant's Response to 2 Letters supporting "Requester" Status

Only 2 Letters are involved:

One Letter dated September 1, 2009 signed by Nancy J Floyd of behalf of Ben Redler in his capacity as Timber Ridge POA president (received by TCEQ 9-4-09) ["Redler Letter"]. Ms. Floyd shows no authority to sign for Mr. Redler in his corporate capacity.

The other Letter is undated but is signed by Gabriele Steffen (received by TCEQ 9-22-09) ["Steffen Letter"].

Both Letters have a copy list of the same 12 residences located in the greater Fairland, Texas area. These 12 are not all located in the Timber Ridge subdivision. Those same 12 addresses are listed as the parties "Requesters" by the TCEQ.

Failures of the 2 Letters to support a contested case hearing.

1) **No justiciable interest.** No issue within the authority of the TCEQ has been raised.

a) Requesters seek a finding from the TCEQ of no adverse effect on future groundwater uses. This is not an interest protected or recognized by any law or rule.

b) The protection of groundwater users in Burnet County is the exclusive jurisdiction of the Central Texas Groundwater District. The TCEQ is not involved in groundwater regulation. Requesters wish to prevent Applicant's engaging in historic groundwater use. Applicant's predecessors and neighbors have utilized the same water feature over the past 55 years for the same purpose, irrigation or supporting mining. The District would further develop this historic use. Requesters ask the TCEQ to confiscate this historic groundwater use.

c) Requesters did not respond to the Engineer's TAC Ch.293B Narrative (Tab 5 of the Application). The Letters do not dispute the Engineer's findings that the proposed District and its systems will have no effect on groundwater levels in the District and its region and will have no effect on the recharge capacity of any groundwater resource.

d) Requesters have ignored the Central Texas Groundwater District's records that none

of the District Registered wells of the "Requesters" are completed in the same aquifer as Applicant's quarry. The Requesters have not responded to Applicant's invitations to review the science.

Consequently, there is nothing for a contested hearing to cure. Respondents have not raised an issue within the Commission's authority.

2) **Not "Affected Persons"** The Letters are not from "affected persons" under 30 TAC Subchapter §55.256. There is no personal justiciable interest. The concerns about Requesters' property rights being taxed outside the District are baseless. There is no annexation power for a MUD. The Timber Ridge neighbors are no different from any other member of the public located outside of the District. No requester has a well producing from the same aquifer as Applicant.

3) Failures under 30 TAC Ch. 55, Sub. G Rule §55.251.

a) No personal justiciable interest is identified.

b) Only one phone number is provided on the Steffen Letter. All other Requesters failed to provide a phone number.

c) Only 1 Requester actually signed a Letter, Ms. Steffen. All other Requesters failed to sign in the capacities listed as Requesters.

d) No true distances from the Requester to the activity are provided. The Steffen Letter provides no distance. The Redler Letter falsely claims of being within "a few hundred feet." The Cultural Features Map and Existing Conditions Map clearly show the closest Requester well-house over 1,000 feet away from the closest point of Applicant's 8 acre water feature; the next 2 closest are 2,000 feet away; most Requesters are 3,000 to 5,000 feet away (off the map).

e) The closest neighbors are not contesting the Application.

f) There is not an unconditional statement that a contested case hearing is requested.

4) Failures under Ch. 55, Sub. G Rule §55.252 & §55.251(c)(1) (Group Request).

a) §55.252 (2) is not met. The recorded governing documents of the "entity" do not include water issues. There is no water-related purpose to the Timber Ridge governing documents.

b) §55.252 (3) is not met. To assert groundwater rights, the entity must have

some control over groundwater rights. Here the individuals hold the groundwater rights.

c) §55.251(c)(1) is not met for the association; no single contact is designated.

Applicant's Diligent Attempts to Address Requesters' Opposition

The Redler Letter is virtually identical to a July 22, 2009 letter allegedly from the same individuals to the Burnet County Commissioner's Court. The same misuse of "hydraulically" appears in both. In response to first Redler Letter, Applicant's representative wrote the Requesters who were asked either (1) to support for their claim that 3 different aquifers (with different static water levels in each) are connected, or (2) to allow Applicant to monitor their wells for testing. None responded with evidence or authority to monitor. However, 2 were kind enough to meet and admit that they had no evidence and that Mr. Redler (their leader) was guilty of hyperbole and speculation in connection with the groundwater claims.

After a few of the Requesters visited with the Groundwater District, Applicant met with the Groundwater District. Requesters who have registered their wells with the District have not claimed to be completed in the same granite aquifer as Applicant. A review of the available driller's logs likewise show none of the Requesters wells completed in the same granite aquifer. Requesters' wells produce from either the Hickory (Cambrian age) aquifer or the gravel alluvium (granite gravel) (Quaternary age) perched aquifer, both of which overlay, and are bounded by, the impermeable granite (Precambrian age) bedrock.

During investigations with the Groundwater District, which has regulatory authority with jurisdiction over the groundwater use, Applicant learned that Mr Redler (of the Redler Letter) drilled 3 dry holes this past June before drilling a marginal well into a different aquifer. Envy of Applicant's water appears to explain Mr. Redler's unreasoned and baseless opposition to this application and the refusal to rely on science.

Requesters' "Evidence" Proves No Effect on Groundwater Use

Assuming as true Requesters' statements that the static groundwater of the Requesters runs 22 to 40 feet subsurface. The Requesters' ground level elevations run from 975 feet to 1020 feet. Subtracting the 22 to 40 feet water depth representation, the static water elevations would be 953 feet to 980 feet. The differences in static water level among Requesters shows they are in different aquifers.

Applicants' water source is completely different. At the same time as the Letters, the static water level was 933 feet, 20 to 60 feet below Requesters. Water does not run uphill.

The Requesters' total well depths are said to run 50 to 80 feet. That means the range of elevations at the bottom of Requesters' wells runs 925 to 960 feet. In contrast, Applicants' bottom completion is below 900 feet, at the base of the granite quarry. This is 25 to 60 feet

below Requesters. Solid granite sides case the quarry wall. Water does not flow uphill or through the impermeable granite.

Historic pumping by Applicant's predecessors and neighbors from the water feature had no reported effect on the neighbors' wells. There is no connection of the different aquifers, confirming the Groundwater District's preliminary determination. This determination will be monitored and regulated by the Groundwater District in the future.

Conclusion

Requesters' have no "justiciable interest" and are not "affected persons." Additionally, the Letters fail to comply with 30 TAC Ch. 55, Sub. G Rule §55.251 and §55.252 . Requesters seek a finding from the TCEQ of no adverse effect on future groundwater uses. This is not an interest protected or recognized by any law or rule. There is nothing for a contested case to decide. There is no substance to their fears, and their "evidence" proves no substance.

Andy Carson
7232 Co. Rd. 120
Marble Falls, TX 78654
830-792-9951 *phone*, 830-693-2916 *fax*
SBN 03901200 Applicant's counsel

Certificate of Service

I certify that a true copy of the foregoing document was served on the Chief Clerk (original plus 7 copies), the Executive Director (both Counsel and Staff), the Public Interest Counsel, and all "Requesters" (persons filing a hearing request as designated by the Chief Clerk) in accordance with the TCEQ Rules by U.S Mail this 1st day of March, 2010.

Andy Carson

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Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2010 MAR -2 PM 2:01

CHIEF CLERKS OFFICE

Commissioners Docket No. 2009-1832-DIS;
Internal Control No. 06242009-D01
Backbone Creek Municipal Utility District No. 1

Applicant's Response to "Interested Persons" Letter

The letter on the Burnet County Judge's letterhead was included with the Notice of Commissioners' Action. This is a response to that Letter.

The County Commissioners' letter is an excellent example of what can happen when a County with no prior experience with a MUD by Rule (and little with MUD by Statute) fails to follow the TCEQ's recommendation to utilize the procedures of TWC §54.0161 or to address the issues of TWC §54.021. There are only 4 active MUDs in Burnet County, and they all were formed by special statute.

The Commissioners failed to conduct a Review. No Review was ever noticed in compliance with Open Records law. They failed to contact the Applicant's engineer or the Applicant to obtain information or clarification. They failed to restrict themselves to germane issues, (as provided in TWC §54.021 and by analogy from TWC §51.021; §53.019 7 §53.014; §55.026 to .028; §56.016 to .020; etc.).

The Interested Persons' Proof of Necessity of Proposed District

The Commissioners letter does prove one matter: that the conservation and development of this water resource makes this District necessary. The Commissioners recognize that the water from this District will be needed by "nearby cities, neighborhoods, and/or industries." This District will develop a water resource of general public benefit to Burnet County, in addition to benefitting the lands within the District.

Interested Persons' errors regarding land titles and prior litigation:

Allegations were made by the Commissioners' Letter based on a telephone call from Commissioner Neve to Mrs. Louise Williams. The attached letter from Mrs. Williams shows that all the Commissioners allegations concerning ownership of the lands in the district and the prior lawsuit are false. She proves the Commissioners completely misunderstood the status and affect of the prior lawsuit (which principally dealt with granite rights in lands outside the proposed District). Most importantly it shows that she, the nearest neighbor and one most affected by the District, does not oppose the District. Applicants remain confident that Mrs. Williams will eventually join the District.

The Commissioners never requested any clarification of the land title matters from Applicants. The Application's Exhibit A-1 is completely accurate, and was confirmed by the

Tax Assessor in Exhibit B. The Commission Staff confirmed this title issue.

Apparently the Commissioners did not actually review or understand the legal descriptions of the lands included in the Application. It is certain that they ignored the certification of the Tax Assessor contained in the Application. It is also certain that they chose not to obtain clarification from competent real estate counsel. Had the correct review procedure been followed, these reckless (at best) or intentionally false (at worst) allegations could have been addressed.

Likewise, the statements about a prior lawsuit, involving granite rights in lands outside the District, show that the County Commissioners' "investigation" was made without competent real estate counsel. That lawsuit was final over 15 years ago. The release of the monetary portion of the judgment has been filed in the County Records for over 15 years. The portion of the prior lawsuit involving land titles was final 20 years ago. Only one totally unfamiliar with land titles and uninformed by competent real estate counsel could come to the erroneous conclusion that land titles were at issue or were being litigated. Again, the proper review process would have provided the opportunity to correct these inexcusable mistakes.

Conclusion

The "Interested Parties" have no "justiciable interest" and are not "affected persons." They did not request a contested case hearing. By rejecting a statutory Review as directed by TCEQ, they engaged in speculation without consulting Applicant or competent real estate counsel. They repeat the Requesters' desire that the TCEQ find no adverse effect on future groundwater uses. This is not an interest protected or recognized by any law or rule. There is nothing for a contested case to decide.

The statements about land titles and prior litigation are false. The sole source (hearsay from Commissioner Neve based on his call to Louise Williams) is false as proved by Louise Williams' letter (attached).

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SBN 03901200 Applicant's counsel

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Andy Carson

FLYING W ENTERPRISES

1204 West Sunset Street
San Saba, Texas 76877
(325) 372-5503

September 5, 2009

Mr. Andy Carson
Cactus Canyon Quarries, Inc.
7232 CR 120
Marble Falls, Texas 7865

Re: Backbone Creek MUD No. 1

Dear Andy:

This letter is written to address certain issues reportedly raised during a meeting of the Burnet County Commissioners Court which appeared in the *River Cities Daily Tribune* on September 3. Several weeks ago I did speak with Commissioner Neve, but I suspect those remarks were used out of context by the reporter for the newspaper. As far as I know there is no misunderstanding between us regarding our lands, nor have I up to this date authorized anyone to lodge a protest to or request a hearing of your application on my behalf.

You and I have discussed the matter of the waters in the old Sneed Quarry location on our joint and separate property interests in the area of the MUD for many years. You graciously provided me with drafts of your proposed TCEQ application last fall and again earlier this year. At that time, all of my Fairland property was included within your proposed MUD boundaries. However, my problem in working with you on that matter was timing: it has been necessary for me to focus on a long standing, unrelated lawsuit (in which a former business associate had declared bankruptcy) before I spend the time necessary to consider the ramifications of a water district. [We are still without a judgment from that pending lawsuit.] It is my understanding that you removed my property (with the exception of a portion of my land under which you possess granite rights) from your current application to the TCEQ.

To be clear, any litigation in which we were previously involved has long since been resolved; and I am not informed enough to oppose your making the referenced application to the TCEQ. I remain interested in the possibility of voluntarily joining the MUD and shall continue to explore the matter when time allows. I have no reason to dispute either the Property Description marked Exhibit A-1 or the Burnet County Tax Assessor's Certification attached as Exhibit B; and I hope that this letter will help you put those issues to rest.

Cordially,

Louise C. Williams