

Burnet County Judge

Donna Klaeger

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



2009 SEP 22 PM 3:15

CHIEF CLERKS OFFICE

220 South Pierce Burnet, Texas 78611

(512) 756-5400 Fax (512) 715-5217

countyjudge@burnetcountytexas.org

September 1, 2009

Mr. Alex A. Ferris
Leader Districts Review Team
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

DIS
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RE: CN: 603507492; RN:105766794; TCEQ Internal Control #06242009 - 1001
Petition for Creation of Backbone Creek MUD #1

Sir:

This letter serves as the written opinion of the Burnet County Commissioners Court in regards to the above cited petition. It is Burnet County's recommendation that this petition be denied for several reasons.

The first concern regards the proposed MUD purpose as cited in the petition. Specifically, the petition says it is to be created, "for any purpose, including but not limited to, irrigation water to agricultural lands," as well as "all those purposes which are granted, permitted, and authorized by Article XVI, Section 59 of the Texas Constitution, by Chapter 54 of the Texas Water Code, and by any other provisions of the Texas codes and statutes applicable to municipal utility districts."

In response, it is important to note that Burnet County has learned through its review of the petition that the petitioner, Mr. Andy Carson, has no plans to develop this property in the future. Mr. Carson has stated to the Commissioners Court that he believed that the creation of a MUD was the best way he could protect his water rights from the ground water district rules that are to be set by the Burnet County Water Conservation District. This explanation is not provided in the petition. Instead, the primary purpose of the proposed district cited is to provide irrigation water to agricultural land. If true, why is the creation of a MUD necessary when Mr. Carson is already allowed to irrigate his own property via current Texas law?

Burnet County has also learned that Mr. Carson has had discussions with various members of the community. He has expressed a desire to sell water under the proposed MUD jurisdiction for transport to industrial needs outside of the district. This statement, coupled with the statement that a MUD is the best option to protect water rights, leads Burnet County to suspect that the more accurate purpose of the district is to gain

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independent control of surface and ground water for its sale outside of the district. If true, a concern about the power of eminent domain granted to a MUD arises. If selling water to nearby cities, neighborhoods, and/or industries occurs, the creation of water lines outside of the district to the contracting entities may be necessary; thus, eminent domain laws could come into effect.

The engineering narrative for the proposed district claims that the water will be used to maintain crops within the district. It also states that an irrigation system is necessary to maintain a viable crop in the district and that the proposed work will provide water for irrigation within the district. In contrast, the "Affidavits In Support of Request for Consideration of Appointment as Directors of Backbone Creek Municipal Utility District No. 1" signed by Kathy McDonald, Richard Hoepfner, Alison Gallaway, and Andy Carson all indicate that the principal function of the district is to provide non-potable water for any purpose. Also, a letter from Mr. Andy Carson to the Burnet County Commissioners Court dated June 22, 2009 that was hand delivered along with a copy of the petition specifically states, "only non-potable water is involved (irrigation purposes initially)."

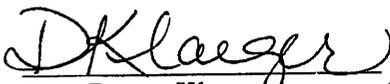
The creation of this district may also draw upon the water in nearby neighborhoods. These persons also rely on groundwater for their needs. There is a fear that the removal of large quantities of groundwater in the proposed district may lead to water deficits because they share the same recharge zone. Many of the current water wells in the neighboring area indicate that static water levels are about twenty-five feet, while granite bedrock is located at fifty feet. With the petitioner requesting the capability of removing water at a rate of three hundred gallons per minute, the fear of ground water depletion is realistic. The neighboring residents also fear that the petitioner, through the MUD, may end up selling their own groundwater back to them at a higher rate that it currently costs to pump. Thus far, the petitioner has not provided any environmental impact studies to allay any of these fears. This is why Burnet County feels it is important that TCEQ require impact studies if it considers approval of the petition.

Last, there is a dispute in regards to a pond that is located in the proposed district. An eight acre groundwater pond that was once a granite jetty stone quarry is located in the district. The petitioner claims 100% ownership of the land in the entire proposed district per the petition. However, Burnet County was contacted by Mrs. Louise Williams. She indicated that she owns two thirds of the land under the pond in question and the water rights on this land. She was very upset that she was not given notice of the petition. She claims that Mr. Carson owns the mining rights to her property; but, she owns the surface and water rights.

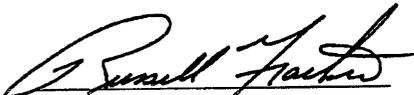
Burnet County has done some investigation of Ms. Williams claims. A prior lawsuit exists between Cactus Canyon Quarries of Texas, Inc., Andy Carson trustee, and Mr. Joe R. Williams. The documents in this suit indicate that Cactus Quarries has mineral rights only to a portion of the quarry that is now a pond. Mr. Williams and his heirs appear to own the land and the water rights. All Burnet County can conclude is that there appears to be a dispute.

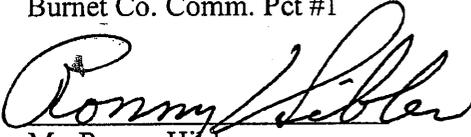
Ms. Williams has told Burnet County that she does not support the petition. Until there is a clear explanation as to who owns this portion of land and the water rights, it would be unwise to allow the creation of the district. The petition states that the creation of the district will clear up owner's rights. Burnet County does not believe that a MUD is a proper avenue to settle a civil dispute.

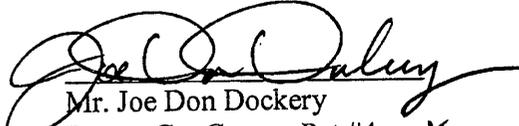
In conclusion, The Burnet County Commissioners Court does not support the petition for the creation of Backbone Creek Municipal Utility District No. 1. Many questions exist in regards to the purpose of the district; the neighbors have concerns about drawing large amounts of groundwater from the area and the eminent domain potential; and there appears to be a landowner within the proposed district who does not support the petition. If there are any questions regarding this opinion, please contact Hon. Donna Klaeger, Burnet County Judge.


Hon. Donna Klaeger ✓
Burnet County Judge


Mr. Bill Neve ✓
Burnet Co. Comm. Pct #1


Mr. Russell Graeter ✓
Burnet Co. Comm. Pct #2


Mr. Ronny Hibler ✓
Burnet Co. Comm. Pct #3


Mr. Joe Don Dockery ✓
Burnet Co. Comm. Pct #4

Attachments

Xc: Mr. Andy Carson
Mrs. Louise Williams
Timber Ridge POA
Ms. Kathy McDonald,
Mr. Richard Hoepfner
Ms. Alison Gallaway,

Andy Carson

*xc: Eddie Arredondo
Bill Neve*

7232 Co. Rd. 120
Marble Falls, Texas 78654
(830) 798-9951

217 La Rue Lane
Corpus Christi, Texas 78411
(830) 693-2916 (fax)

June 22, 2009

Commissioners Court of Burnet County, Texas
C/O Herb Darling,
Director Burnet County Environmental Services
Courthouse, 220 S. Pierce St.
Burnet, TX 78611-3136

Via Hand Delivery

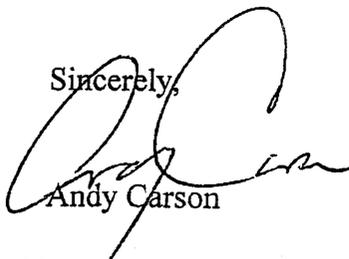
Re: TX Water Code §54.0161 Review of Creation by County;
Backbone Creek Municipal Utility District No. 1

Dear Mr. Darling:

Judge Klaeger's office asked that I submit to you the Petition for the Creation of the Backbone Creek Municipal Utility District No. 1. Texas Water Code §54.0161 allows the Commissioners Court to review the Petition for Creation. To expedite that decision as to whether or not to review, I enclose the complete Petition to you as the Commissioners' agent in this regard.

By executing below you only acknowledge receipt of this letter and the Petition. I remain available to answer any questions that you or the Commissioners may have. This district is "non-substantial," no indebtedness is anticipated being created. Only non-potable water is involved (irrigation purposes initially).

Sincerely,



Andy Carson

Enclosures: Petition for Creation of Backbone Creek Municipal Utility District No. 1 with all attachments

Receipt acknowledged: _____, June ____, 2009

CC cover letter only: Honorable Judge Donna Klaeger, County Judge Burnet County, TX, by hand delivery

Receipt of cover letter acknowledged: _____, June ____, 2009

GHS

Gabriele Steffen
Volker Steffen
100 Big Oak Ln. ~ Marble Falls, Texas 78654

Texas Commission on Environmental Quality
Attn: Chief Clerk
MC-105
PO Box 13087
Austin, TX 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 SEP 22 PM 3:15
CHIEF CLERKS OFFICE

Re: Petition for Creation of Backbone Creek MUD 1. . We protest the formation of this MUD
CN: 603507492
RN: 105766794

Chief Clerk Texas Commission on Environmental Quality

It is concerning us very much that a landowner adjacent to our neighborhood Marble Falls, Timber Ridge POA is seeking to form a private MUD (to be named the Backbone Creek MUD) and possibly would sell substantial quantities of water to commercial entities from a surface feature on his property (an inactive quarry hole filled with water).

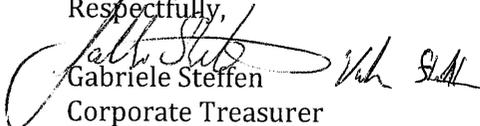
Many of our wells in Timber Ridge Marble Falls Texas are very shallow - from fifty to eighty feet deep with upper water static level at twenty-two to forty feet. The quarry lake in question is approximately the same level as our wells.

If this MUD application will be granted we are frightened that our water wells will dry out and also endanger our Wildlife, Trees and Plants. The Timber Ridge POA has 76 water wells. We maintain agriculture and we need to have our water supply protected.

Please have the Texas Commission on Environmental Quality require the Backbone Creek MUD applicant undertake necessary studies to prove that the water aquifer in our residential area would be unaffected in quantity or quality by any actions such as pumping (selling) water.

Also I attached attached an application from: Commissioner's Court to the Texas Commission on Environmental Quality regarding the petition to create the Backbone Creek MUD

Respectfully,


Gabriele Steffen
Corporate Treasurer

(830) 693-4743 or E-mail mail@vgdynamic.com

This is a list of our closed neighbors:

Ben Redler, 500 Timber Ridge Road, Marble Falls, Texas 78654-7800
Janice McGill, 1150 Timber Ridge Road, Marble Falls, Texas 78654-7800
Nancy J. Floyd, 515 Timber Ridge Road, Marble Falls, Texas 78654-7800
Ray & Rhanda Boatwright, 301 Timber Ridge Road, Marble Falls, Texas 78654-7800
Jim & Debra Gallagher, 1170 Timber Ridge Road, Marble Falls, Texas 78654-7800
Joe D. Gonzalez, 300 Timber Ridge Road, Marble Falls, Texas 78654-7800
Volker & Gabriele Steffen, 100 Big Oak Lane, Marble Falls, Texas 78654-7800
Steven Rodgers, 701 Timber Ridge Road, Marble Falls, Texas 78654-7800
Jack Bandy, 6876 Co Rd 120, Marble Falls, Texas 78654-7800
Ron Saidikowski, 1762 Timber Ridge Road, Marble Falls, Texas 78654-7800
Jim & Elizabeth Gee, 1200 Timber Ridge Road, Marble Falls, Texas 78654-7800
Bob Gilbertson, 125 Shady Lane, Marble Falls, Texas 78654-7800