Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 19, 2010

TO: Persons on Attached Mailing List

RE: **Docket No. 2009-1832-DIS, Internal Control No. 06242009-D01, Backbone Creek Municipal Utility District 1;** Requests filed regarding the creation of a Municipal Utility District.

The above-referenced application and all timely filed requests filed on the application will be considered by the Commissioners of the Texas Commission on Environmental Quality during the public meeting on **March 30, 2010**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with Commission rules, copies of the request(s) have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. They may file written responses to these requests on or before 5:00 p.m. on **March 5, 2010**. Persons who filed requests (requesters) may file a written reply to responses on or before 5:00 p.m. on **March 19, 2010**. All responses and replies must be filed with the Chief Clerk of the TCEQ, and sent on the same day to all individuals on the attached mailing list. Responses and replies may be filed with the Chief Clerk electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The mailing address of the Chief Clerk's Office is: Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 (Fax 512/239-3311). The procedures for evaluating hearing requests and for filing and serving responses and replies are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter G (§§55.250-55.256) and 30 TAC §§1.10-1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h).

The Commissioners will not take oral argument or public comment on this matter, but may wish to ask questions of the applicant, hearing requesters, or staff. The Commissioners will make their decision based on the requests, written responses to the requests, any written replies to those responses, and any response to questions.

Copies of all requests have also been referred to the Alternative Dispute Resolution Office, where they will be evaluated to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand public participation and the processing of requests. Individual members of the public may seek further information concerning the application, public participation, the processing of requests, copies of Commission rules, or the attachment, by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela, Chief Clerk

ATTACHMENT

Public Participation in TCEQ Proceedings

The Commission encourages public participation. The Commission's Office of Public Assistance (OPA) provides individual members of the public information on applications, and on Commission procedures. OPA may respond to your inquiries in writing and provide you with information. OPA may be reached, toll free, at 1-800-687-4040.

The formal way for public participation is through the contested case hearing. The law allows for holding contested case hearings on certain types of applications; the remainder of this document provides an overview of the processing of requests for a contested case hearing. It describes the requirements for a hearing request and how the Commission processes hearing requests.

A hearing request must:

(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;
(3) request a contested case hearing;
(4) provide any other information specified in the public notice of application;
(5) be timely filed with the Chief Clerk, as set out in the public notice; and
(6) be pursuant to a right to hearing authorized by law.

The three Commissioners determine the validity of hearing requests, and vote to approve or deny the hearing requests during a public meeting, which are usually held every other Wednesday in Austin. Leading up to the meeting, the following occurs:

(1) the written hearing requests are distributed to the Executive Director, the Public Interest Counsel, and the Applicant; these persons may file a response to the hearing requests 23 days before the meeting;
(2) the hearing requester may then file a reply to the responses nine days before the meeting; this is the hearing requester's opportunity to correct any deficiencies in the hearing request that have been identified by TCEQ staff or the applicant. The hearing requester should be sure to submit any information (for example, maps or diagrams showing the requestor's location relative to the applicant's proposed activities) by this deadline he or she wishes the Commissioners to consider; and
(3) the Commissioners read the hearing requests, the responses to the hearing requests, and the replies, before the public meeting. Then during the public meeting the Commissioners discuss the application and the hearing requests, and vote to grant or deny the hearing requests.

If the Commissioners deny the hearing requests then they often will proceed and vote to approve or deny the application. If the Commissioners grant the hearing requests they will refer the application to the State Office of Administrative Hearings (SOAH), which will conduct a contested case hearing. A SOAH judge will then submit a recommendation to the Commission to approve or deny the application.

The Commission's evaluation of a hearing request is based on Texas Water Code Chapter 5, which provides the Commission need not grant a hearing request if the requester does not have a personal justiciable interest. The

Commission's rules on processing hearing requests are at 30 Texas Administrative Code, Chapter 55. The "personal justiciable interest" requirement means that a hearing requester must be impacted personally, not just as a member of the general public, by the Commission's decision on the application. Also, the hearing requester's interest must be "justiciable," meaning the Commission will grant hearing requests only if the requester complains of matters within the Commission's authority. So a hearing request complaining of other matters outside the Commission's authority would be denied.

The Alternative Dispute Resolution Office may contact hearing requesters to learn if they would participate in informal discussions with the applicant and a mediator. The Public Interest Counsel may also provide information on the processing of hearing requests.

By necessity this document gives a very general description of Commission procedures. Call the Office of Public Assistance to get answers about your specific questions. Again, the telephone number is 1-800-687-4040.

MAILING LIST
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DOCKET NO. 2009-1832-DIS; INTERNAL CONTROL NO. 06242009-D01

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