

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners of the Texas
Commission on Environmental Quality

Date: February 5, 2010

Thru: Doug Holcomb, P.E., Acting Manager, Utilities and Districts Section
Alex A. (Skip) Ferris, P.E., Leader, Districts Review Team

From: Ruben Soto, Districts Review Team

Subject: Docket No. 2009-1832-DIS; Petition by Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner, and Kathy McDonald for the Creation of Backbone Creek Municipal Utility District No. 1; Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control Number: 06242009-D01
CN: 603507492 RN: 105766794

DESCRIPTION OF APPLICATION

Petitioners: Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner, and Kathy McDonald

Application Type: Creation of Backbone Creek MUD No. 1

Authority: Texas Water Code Chapters 49 and 54

STAFF RECOMMENDATIONS

Grant the petition for the creation of Backbone Creek MUD No. 1.

TECHNICAL INFORMATION

General: The Commission received a petition requesting approval for the creation of Backbone Creek MUD No. 1 (the "District"). The proposed District would contain approximately 103 acres of land in Burnet County, approximately five miles north of the City of Marble Falls, and wholly located within Burnet County. None of the land to be included in the proposed District is within the corporate boundaries or extraterritorial jurisdiction of any city, town, or village in Texas.

ANTICIPATED RESPONSE

The Timber Ridge Property Owners Association of Marble Falls submitted a hearing request.

CONTACT

Skip Ferris, Team Leader, Districts Review Team, 239- 6355
Ruben Soto, Technical Manager, Districts Review Team, 239-4571
James Aldredge, TCEQ Staff Attorney, 239-2496

Prepared by: Ruben Soto, Jr. February 5, 2010
Districts Review Team Date

PETITION FOR CREATION OF
BACKBONE CREEK MUNICIPAL UTILITY DISTRICT NO. 1

STATE OF TEXAS §
 §
COUNTY OF BURNET §

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The undersigned (collectively referred as the "Petitioners"), hold title to all (100%) of the properties and "Tracts" described and defined in Exhibit A-1 attached hereto. The values of said Tracts, as indicated by the tax rolls of Burnet County, Texas, are summarized and attached as Exhibit B. Petitioners acting pursuant to the provisions of Chapter 54, Texas Water Code, as amended, respectfully petitions the Commissioners of the Texas Commission on Environmental Quality ("TCEQ") for the creation of a municipal utility district, and would respectfully show the following:

I. Name of the Proposed District

The name of the proposed District will be "BACKBONE CREEK MUNICIPAL UTILITY DISTRICT NO. 1" (herein the "District"). There is no other conservation or reclamation district in Burnet County, Texas, with the same name.

II. Attachments

Exhibit A-1: District Map and Description with closure calculations, all prepared under Engineer's Seal;

Exhibit B Schedule of Ownership & Tax Values of District Tracts 1-4 with Certification by Title Counsel and Chief Appraiser of Burnet central Appraisal District; Preliminary Engineering and Creation Report for Backbone Creek Municipal Utility District No. 1 ("Engineer's Report") containing and certifying:

Vicinity Map;

Property Description (Exhibit A-1) with closure calculation.

Engineering Narrative for TAC Ch. 293;

Conceptual Construction Cost Estimates;

Cultural Features Map;

Existing Conditions Map.

III. Areas and Boundaries of the District; Voting; Initial Directors

The District will contain an area of 103.017 acres of land situated within Burnet County, Texas. The area proposed to be within the District consists of 4 Tracts. The entire District is described by metes and bounds and by plat in Exhibit A-1 hereto. The District may be divided into Sub-Districts, or new lands may be included as Sub-Districts. Each Sub-District may be granted the exclusive right to elect at least one Director, with remaining Directors allocated either to other Sub-Districts or being elected at large. The undersigned agree that the right to elect one or more Directors may be taken from the original District and be allocated to new Sub-Districts, with the original District considered a Sub-District. Voting for the original District will be allocated as follows:

each person permitted to live in the District will have one vote, and there will be one vote for each full acre of land in the original District. If other lands are added to the District, the voting rights for that land will be established as a condition of joinder. As of this Petition, one person is permitted and resides in the District. The initial Directors will be the 4 signatories (or corporate representative) and that single permitted resident.

IV. Constitutional and Statutory Authority

The District shall be created and organized under the terms and provisions of Article XVI, Section 59, of the Texas Constitution and Chapter 54, Texas Water Code, together with all amendments and additions thereto.

V. City Consent Not Required; Commissioners have this Petition

None of the land to be included in the proposed District is within the corporate boundaries or extraterritorial jurisdiction of any city, town, or village in Texas. All of the territory proposed to be included may be properly included in the District. The County Commissioners have been given this Petition and attachments for review. No review or comment is anticipated.

VI. Land Ownership

Petitioners collectively hold title to all (100%) of the Tracts of land described in Exhibit A-1, all of which are within the proposed District. Exhibit B, Schedule of Ownership & Tax Values is prepared from the Official Records of Burnet County and of the Burnet Central Appraisal District. Exhibit B is certified by an attorney based upon title examination and by the Chief Appraiser.

VII. Lienholders

Petitioners and title counsel certify that there are no liens on the Tracts described in Exhibit A-1.

VIII. Purposes of the District

The primary purpose ("Principle Function") of the District is to provide nonpotable water for any purpose, including, but not limited to, irrigation water to agricultural lands. To help accomplish and supplement this Principle Function, the District may provide for:

- (a) control, storage, and distribution of storm water;
- (b) reclamation and irrigation of arid, semi-arid, and other land needing irrigation;
- (c) reclamation and drainage of overflowed land and other land needing drainage;
- (d) conservation and development of water;
- (e) control, abatement, and change of any shortage or harmful excess of water;
- (f) fire suppression water for neighborhoods adjacent to the District;
- (g) dust and pollution control water for commercial enterprises in, adjacent to, or near the District;
- (h) protection, preservation, and restoration of the purity and sanitary condition of water within the State; and
- (i) preservation of natural resources of the State.

Further, it is a policy of the District, which will support the Primary Function and yield the District a significant public benefit, to encourage and hold conservation easements and to participate in preservation programs. Additionally, the purposes of the District will include 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.

IX. General Nature of the District and Necessity for the District

The general nature of the "Work" to be done by the District is the design, construction, acquisition, maintenance, repair, replacement, and operation of water systems for non-potable water, in furtherance of the Principle Function. In furtherance of the Principle Function, the District may, as Work: design, construct, repair, replace, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, enterprises, and appliances helpful or necessary to promote the Principle Function. Possible District activities, include, without limitation, (a) providing additional drainage for the District in order to control, abate and amend local storm waters or other harmful excesses of waters, and to recharge local aquifers; (b) providing reclamation and irrigation of land needing irrigation; (c) conserving and developing nonpotable water; (d) protecting, preserving, and restoring the purity of water; and (e) protecting and preserving natural resources, all as more particularly described in the Engineer's Report attached hereto. The District may also acquire, own, develop, construct, improve, manage, maintain, and operate conservation easements for (a) preserving and protecting the natural habitat of fish, wildlife, or plants, and (b) preserving open space, as may be consistent with any of the purposes for which the District is created.

There is, for the following reasons, a necessity for the improvements above described. The territory to be included in the District will be developed for agricultural and existing commercial or industrial purposes. The water resources within the District are owned by multiple owners, and the District will provide for efficient common management. There is not available

within the area proposed to be included in the District an adequate water system for non-potable water for irrigation or commercial/industrial purposes, or facilities (a) to provide additional drainage for the District, (b) to control, abate and amend local storm waters or other harmful excesses of waters and further including without limitation recharging the local aquifer; (c) for reclamation and irrigation of land needing irrigation; (d) for conservation and development of water; (e) for protection, preservation, and restoration of the purity of water; (f) for conservation and development of natural resources of the state, including, without limitation, (i) preservation and protection of the natural habitat of fish, wildlife, or plants, (ii) the preservation of open space, or (iii) provision of adequate parks and/or conservation easements.

The conservation of natural resources (principally non-potable water) and the health and welfare of the present and future inhabitants of the District, (and of the areas adjacent thereto) require a District to purchase, design, construct, repair, replace, acquire, own, maintain, repair, improve, extend and operate facilities, plants, equipment, easements, enterprises, and appliances convenient or advisable for the purposes expressed herein. These matters require the District in order to become a reality.

X. Engineering Narrative and Feasibility; Taxes and Water Rates; No Developer

Non-Substantial District Excused from Water Code § 49.052

Attached hereto under Exhibit C is the Engineering Narrative covering applicable provisions of TAC Chapter 293.

As explained in the Engineering Narrative, the proposed improvements are feasible and practicable. There is an ample supply of nonpotable water available, and the terrain of the territory to be included in the proposed District is such that a water system for non-potable water

for irrigation, commercial, or industrial purposes can be constructed at a reasonable cost. Users of the water ("Users") will pay for all capital improvements ("User Pay") and cover all District operating expenses through take-or-pay contracts the District does not anticipate taking on debt. **Accordingly, the District should not be considered "substantial"**. Compliance with Section 49.052 of the Texas Water Code is excused by subsection (f) thereof. There is no developer of any property within the District as defined in Section 54.238 of the Texas Water Code.

The User-Pay status of all capital improvements means that no taxes are necessary. The User-Paid water rates will pay the District a sufficient guaranteed amount to pay for costs of administration and governance, plus an amount to reflect a reasonable return on the District's investments. The Initial Project will allow the User to recoup its investment over 25 years at a reasonable return on investment.

XI. Estimated Cost of the Initial Project

A preliminary investigation has been made to determine the cost of the Initial Project. Based on the Engineer's Conceptual Cost Estimate, Petitioners estimate that the cost of the Initial Project will be approximately \$513,000. All of this sum will be paid by the Users as a precondition for use.

WHEREFORE, Petitioners respectfully pray that this petition be deemed properly filed, as provided by law; that all interested persons be notified of the procedures for requesting a public hearing on this petition as required by 30 Tex. Admin. Code § 293.12; that this petition be set for consideration at a date to be fixed in keeping with provisions of Chapter 54, Texas Water Code, and the rules of the TCEQ; that, if necessary, a hearing

be held and notice thereof be given as provided in Chapter 54, Texas Water Code, and the rules of the TCEQ; that this petition be in all things granted; that the District be created and five directors thereof appointed (5 Affidavits supporting appointment delivered with this petition to the TCEQ) to serve until their successors are duly elected and qualified; and that such other orders, acts, procedure and relief be granted as are proper and necessary and appropriate to the creation and organization of the District, as the TCEQ shall deem proper and necessary.

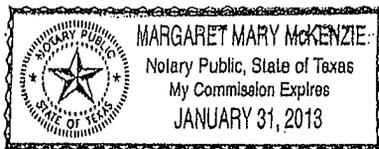
Executed to be effective the 19th day of June, 2009 in multiple counterparts, all of which shall be considered as an original to the same extent and effect as though all the parties had executed such counterpart, and the parties agree that the individual signature and acknowledgment pages may be aggregated and attached to and inserted into a single counterpart original for all purposes, including recordation.

Cactus Canyon Quarries, Inc.

By: [Signature]
Andy Carson, President

STATE OF TEXAS
COUNTY OF BURNET

§
§
Before me, Andy Carson, Notary Public, on this day personally appeared Andy Carson, known to me or proved to me through Customer .e Bank [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 22nd day of June, 2009.



[SEAL]

Margaret Mary McKenzie
Notary Public, State of Texas
My Commission Expires: 1/31/2013
Margaret Mary McKenzie
(Printed/Typed Name of Notary)

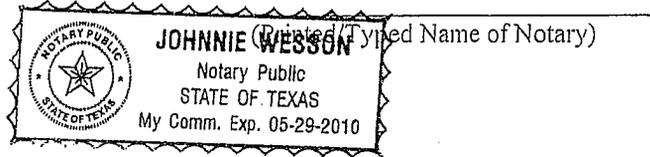
Sandra L. Carl
Sandra L. Carl

STATE OF TEXAS
COUNTY OF Tarrant

§
§
Before me, Johnnie Wesson, Notary Public, on this day personally appeared Sandra L. Carl, known to me or proved to me through drivers license [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 5th day of June, 2009.

Johnnie Wesson
Notary Public, State of _____
My Commission Expires: _____

[SEAL]



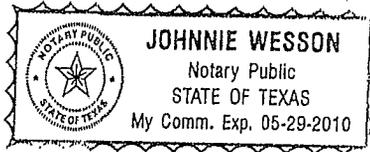
Richard Hoepfner
Richard Hoepfner

STATE OF TEXAS
COUNTY OF Tarrant

§
§
Before me, Johnnie Wesson, Notary Public, on this day personally appeared Richard Hoepfner, known to me or proved to me through drivers license [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 5th day of June, 2009.

Johnnie Wesson
Notary Public, State of _____
My Commission Expires: _____

[SEAL]

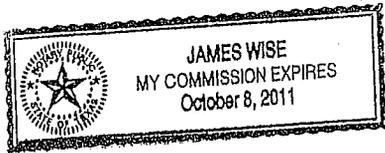


(Printed/Typed Name of Notary)

Kathleen Carson McDonald
Kathy McDonald

STATE OF TEXAS §
COUNTY OF McLennan §

Before me, James Wise, Notary Public, on this day personally appeared Kathy McDonald, known to me or proved to me through Texas Drivers License [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this 06th day of June, 2009.



[SEAL]

[Signature]
Notary Public, State of Texas
My Commission Expires: October 08, 2011

James Wise
(Printed/Typed Name of Notary)

EXHIBIT A

PROPERTY DESCRIPTION
BACKBONE CREEK MUNICIPAL UTILITY
DISTRICT NO. 1 – ENTIRE DISTRICT

BEING 103.017 ACRES LOCATED IN THE JEFFERSON BARTON SURVEY NO. 104, AND THE WILLIAM ENGLS SURVEY NO. 35 AND BEING ALL OF "TRACT 1", A CALLED 53.491 ACRE TRACT DESCRIBED AS TRACT ONE IN A GENERAL WARRANTY DEED RECORDED VOLUME 318; PAGE 448 OF THE DEED RECORDS, BURNET COUNTY, TEXAS; ALL OF "TRACT 2", A CALLED 15.4 ACRE TRACT DESCRIBED AS TRACT 2 IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN VOLUME 1265, PAGE 643 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS; "TRACT 3", ALL OF A CALLED 17.309 ACRE TRACT DESCRIBED AS TRACT 3 IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN VOLUME 1265, PAGE 643 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, "TRACT 4", GRANITE RIGHTS IN A CALLED 17.56 ACRE TRACT (A PORTION OF "TRACT A" AND "TRACT B", VOLUME 334, PAGE 477 AND VOLUME 328, PAGE 809, BURNET COUNTY DEED RECORDS, RESPECTIVELY) OF RECORD IN VOLUME 1265, PAGE 643 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY TEXAS, SAID 103.017 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS WITH ALL BEARINGS REFERENCED TO THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE, NAD 83, ALL COORDINATES SHOWN ARE GRID COORDINATES, ALL DISTANCE ARE CALCULATED AS SURFACE MEASURED DISTANCES, THE SCALE FACTOR IS 1.00014:

BEGINNING at a ½-inch iron rod found (North: 10205198.57, East: 2936758.19) marking the southeast corner of said "Tract 1" and being on the northerly line of an existing railroad right of way (ownership unknown);

THENCE, with the said northerly railroad right of way line being the southerly line of said "Tract 1", S 82°43'56" W, 1267.43 to a ½-inch iron rod (North: 10205038.26 East: 2935501.12) at the southwest corner said "Tract 1", same being the southeast corner of said "Tract 2";

THENCE, continuing with said northerly railroad right of way, S 82°45'29" W, 670.81 feet to the southeast corner of said "Tract A", same being the southwest corner of said "Tract 2", (North: 10204953.70, East: 2934835.76) and being the southwest corner of the District;

THENCE, with the easterly line of said "Tract A", same being the westerly line of said "Tract 2" the following two (2) courses and distances:

1. N 13°41'19" W, 609.71 feet (North: 10205546.01, East: 2934691.49) to a ½-inch iron rod and;
2. N 23°12'12" E, 233.36 feet to the southern most corner of said "Tract 4"; (North: 10205760.46, East: 2934783.42);

PROPERTY DESCRIPTION
BACKBONE CREEK MUNICIPAL UTILITY
DISTRICT NO. 1 – ENTIRE DISTRICT

THENCE, crossing said "Tract A" and "Tract B" with the southerly line of "Tract 4" the following two (2) courses and distances:

1. N 61°35'29" W, 1,368.79 feet (North: 10206411.58, East: 2933579.63) to a ½-inch iron rod;
2. N 80°46'41" E, 278.53 feet (North: 10206456.21, East: 2933854.53) to the northwester corner of said "Tract A", same being the southwest corner of said "Tract 3" same being on the easterly line of said "Tract B";

THENCE with the easterly line of said "Tract B" and the westerly line of said "Tract 3" N 06°34'09" W, 952.14 feet (North: 10207401.97, East: 2933745.62) to a 5/8-inch iron rod found at the northeast corner of said "Tract B" and the northwest corner of said "Tract 3" and being the northwest corner of the District;

THENCE, with the north line said "Tract 3", N 79°53'47" E, 710.51 feet (North: 10207526.60, East: 2934445.01) to a fence corner post at the northeast corner of said "Tract 3" and the most northerly corner of the District;

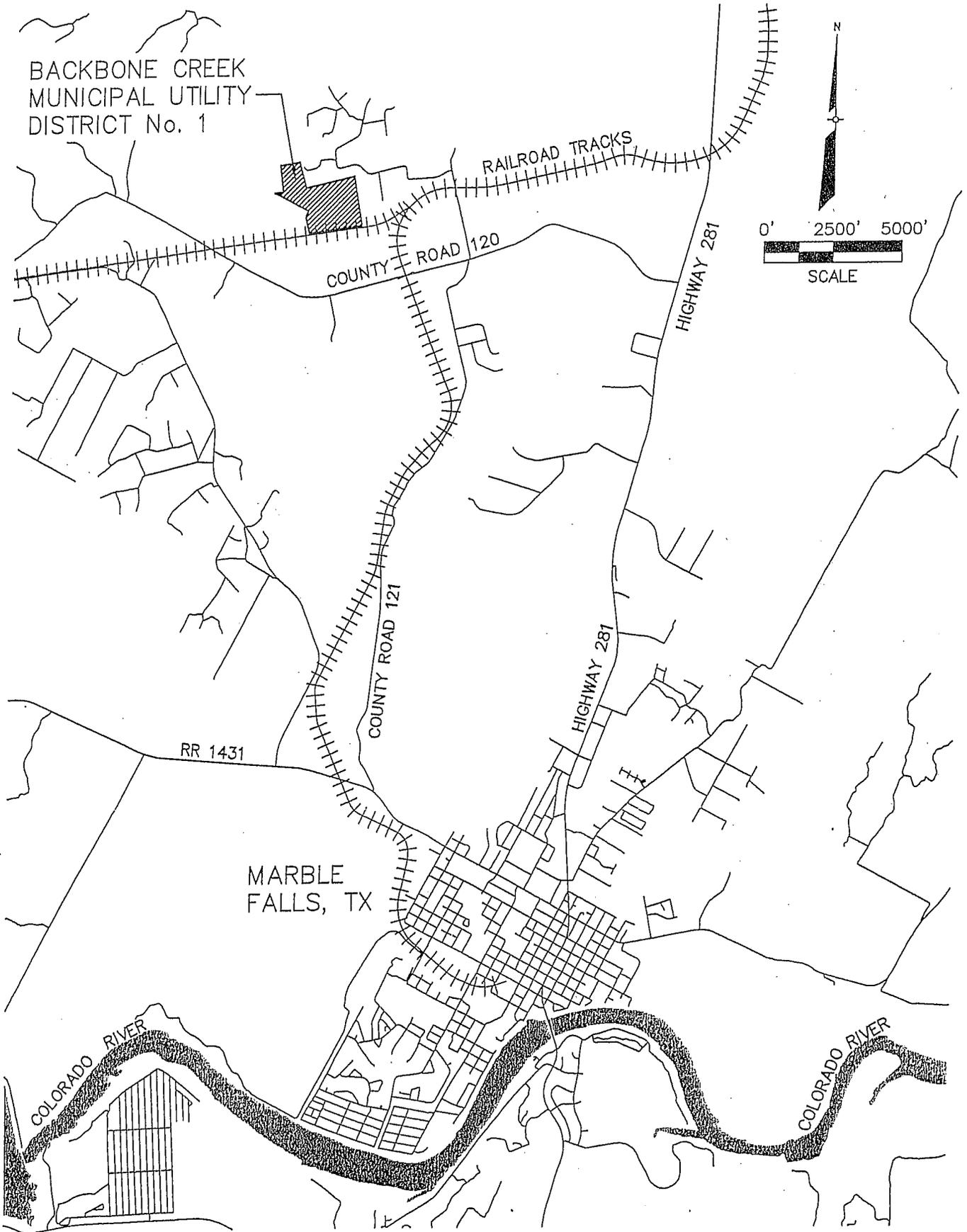
THENCE, with the east line of said "Tract 3", S 15°11'48" E, 941.99 feet (North: 10206617.69, East: 2934691.91) to Live Oak tree with wire running through it for an interior corner of the District;

THENCE, S 52°23'04" E, 32.57 feet (North: 10206597.81, East: 2934717.71) to a fence corner post on the northerly line of said "Tract 4" for an interior corner of the District;

THENCE, with the northerly line of the aforementioned "Tract 4", N 77°13'20" E, passing the northwest corner of said "Tract 1" at 398.5 feet in all, 1787.07 feet (North: 10206993.00, East: 2936460.27) to a fence corner post at the northeast corner of "Tract 1" and the northeast corner of the District;

THENCE, with the east line of "Tract 1", S 09°25'35" E, 1819.24 feet to the POINT OF BEGINNING and containing 103.017 ACRES of land, more or less.

BACKBONE CREEK
MUNICIPAL UTILITY
DISTRICT No. 1



Q: \Civil\4537\000\000\cadd\EXHIBITS\CC-Vicinity.dwg Apr 17, 2009 - 1:52pm
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BACKBONE CREEK
MUNICIPAL UTILITY DISTRICT No. 1

VICINITY MAP - EXHIBIT "B"

King
ENGINEERING ASSOCIATES, INC.
2211 SOUTH IH 35
SUITE 200
AUSTIN, TEXAS 78741
PHONE 512 • 462 • 4921
FAX 512 • 462 • 1372

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 13, 2009

Mr. Andy Carson
Backbone Creek MUD 1
7232 County Road 120
Marble Falls, Texas 78654

Re: Publication of Notice of District Petition regarding creation of
Backbone Creek Municipal Utility District No. 1
TCEQ Internal Control No. 06242009-D01

Dear Mr. Carson:

Enclosed is a copy of the notice for the above petition. Please carefully review the notice for accuracy prior to publication and distribution. Contact Ruben Soto in the District Administration Office at 512/239-4571 if the notice is found to be in error.

This full notice, including Exhibits A and B, must be published in accordance with 30 Texas Administrative Code Section 293.12, at your client's expense, in a newspaper (or newspapers) regularly published or circulated in the county or counties in which the proposed district is to be located. Publication shall be once a week for two consecutive weeks. The 30-day comment period will begin on the day after the date of the **second** publication.

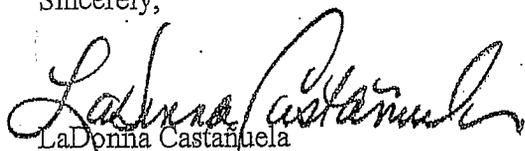
In addition, pursuant to 30 Texas Administrative Code 293.12, you are required to post the enclosed notice, including Exhibits A and B "...on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located." This notice should be posted so that it is available to the public no later than the date of your second newspaper publication.

After notice has been published and posted in accordance with 293.12, please provide proof of these actions to the Chief Clerks Office (Mail Code 105). The proof for newspaper publication shall be the original TCEQ affidavit of publication completed and notarized by the newspaper and an original tear sheet from the newspaper. The proof of posting can be in the form of an affidavit signed by a representative for the proposed district, stating all facts of the posting action.

The Chief Clerk's Office should receive all affidavits no later than 14 days after the second publication of the notice in the newspaper.

If you have any questions regarding these publication requirements, please contact Irma Salazar in this office at 512/239-1328.

Sincerely,


LaDonna Castañuela
Chief Clerk

LDC/is

Enclosures

cc: To all on attached mailing list.

TCEQ-OFFICE OF THE CHIEF CLERK
MC-105 Attn: Notice Team
PO Box 13087
Austin TX 78711-3087

Backbone Creek MUD No. 1
TCEQ IC No. 06242009-D01 CID # 69511
Notice of District Petition – Creation

AFFIDAVIT OF PUBLICATION

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared .

_____, who being by me duly sworn,
(name of newspaper representative)

deposes and says that (s)he is the _____
(title of newspaper representative)

of the _____; that said newspaper is regularly
(name of newspaper)

published or circulated in _____ County/Countries,
(name of county or counties)

Texas; that the attached notice was published in said newspaper on the following dates:

(date or dates of publication)

Newspaper Representative's Signature

Subscribed and sworn to before me this the _____ day of _____,
20_____, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

(Seal)

Print or Type Name of Notary Public

My Commission Expires _____

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF DISTRICT PETITION

TCEQ Internal Control No. 06242009-D01

PETITION. A petition from Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner, and Kathy McDonald (Petitioners) for creation of Backbone Creek Municipal Utility District No. 1 (District) was filed with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states the following: (1) the Petitioners are the holder of title to all of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will consist of four tracts and will contain approximately 103.017 acres located within Burnet County, Texas; and (4) no portion of land within the proposed District is within the corporate boundaries or extraterritorial jurisdiction of any city, town or village in Texas.

The territory to be included in the proposed District is set forth in a metes and bounds description designated as Exhibit "A" and is depicted in the vicinity map designated as Exhibit "B", both of which are attached to this document.

The petition further states that the proposed District will be created primarily for the purpose to provide nonpotable water, including but not limited to irrigation water to agricultural lands. The proposed District may provide; (1) control, storage, and distribution of storm water; (2) reclamation and irrigation of arid, semi-arid, and other land needing irrigation; (3) reclamation and drainage of overflowed land and other land needing drainage; (4) conservation and development of water; (5) control, abatement, and change of any shortage or harmful excess of water; (6) fire suppression water for neighborhoods adjacent to the proposed District; (7) dust and pollution control water for commercial enterprises in, adjacent to, or near the proposed District; (8) protection, preservation, and restoration of the purity and sanitary condition of water within the State; (9) preservation of natural resources of the State; and (10) exercise any other power and provide any services now or hereafter allowed by law, including but not limited to TEXAS WATER CODE Chapters 49 and 54 and to be consistent with the purposes for which the District is created as more particularly described in an engineer's report filed simultaneously with the filing of the petition.

According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$513,000.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting to determine whether a contested case hearing will be held. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 512-239-0200. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Issued: August 13, 2009

MAILING LIST

Backbone Creek Municipal Utility District No. 1
TCEQ Internal Control No. 06242009-D01

Andy Carson, President
Backbone Creek MUD 1
7332 County Road 120
Marble Falls, Texas 78654

Aaron Googins, P.E.
King Engineering Associates, Inc.
2211 South IH35, Suite 200
Austin, Texas 78741

Patty Reeh, Regional Director
TCEQ Region 11
2800 South IH35, Suite 100
Austin, Texas 78704-5700

Janet Parker, County Clerk
Burnet County
220 South Peirce Street
Burnet, Texas 78611

Capital Area Council of Governments
6800 Burleson Road
Austin, Texas 78744

Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Todd Galiga, Senior Attorney, Environmental Law Division, MC-173
Alex A. (Skip) Ferris, Utilities & Districts Section, Water Supply Division, MC-152
Komal Patel, Utilities & Districts Section, Water Supply Division, MC-153
Blas Coy, Office of the Public Interest Counsel, MC-103

From: Irma Salazar
To: Ruben Soto
CC: Charlene Smith; Ferris, Skip
Date: 9/2/2009 3:16 PM
Subject: Backbone Creek MUD 1 / IC# 06242009-D01

We have received proof of newspaper publication for the above referenced, evidencing publication on August 19 and August 26, 2009 in the *Burnet Citizens Gazette*. The affidavit states said newspaper is regularly published or circulated in Burnet County, Texas.

In addition, we have received the Affidavit of Posting, evidencing that the notice together with Exhibits A & B, were posted on August 26, 2009 on the bulletin board used for posting of legal notices at the Burnet County Courthouse.

Based on the above information, the comment period ends at the close of business on September 25, 2009.

The documents are being prepared for filing and will be available for viewing by requesting the file at the front desk of OCC within the next few days.

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Todd Chenoweth, Director
Water Supply Division

Date: December 28, 2009

Thru: ~~AA~~ Doug Holcomb, P.E., Manager, Utilities and Districts Section
~~AA~~ Alex A. (Skip) Ferris, P.E., Leader, Districts Review Team

From: Districts Review Team

Subject: Petition by Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner, and Kathy McDonald for the Creation of Backbone Creek Municipal Utility District No. 1; Pursuant to Texas Water Code Chapters 49 and 54.
TCEQ Internal Control Number: 06242009-D01 (TC)
CN: 603507492 RN: 105766794

A. GENERAL INFORMATION

The Commission received a petition within the application requesting approval for the creation of Backbone Creek Municipal Utility District No. 1 (the "District"). The petition was signed by Andy Carson, president of Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner and Kathy McDonald (Petitioners). According to the petition, the Petitioners are the owners of a majority in value of the land proposed in the proposed District. According to the petition, the Petitioners state that there are no lien holders on the property to be included in the proposed District.

The proposed municipality utility district (MUD) is to be created and organized according to the terms and provisions of Article XVI, Section 59 of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

Location and Access

The proposed District is located approximately five miles north of Marble Falls and two miles west of the intersection of State Highway 281 and County Road 120, just north of existing railroad tracts. Access to the proposed District is from County Road 120 to unnamed roads that cross the railroad tracks. The petition states that the proposed District is not located within the corporate boundaries or extraterritorial jurisdiction of any city, town, or village in Texas.

Metes and Bounds Description

The proposed District contains one tract of land totaling 103.017 acres. The metes and bounds description for the tract of land for the proposed District have been checked by TCEQ staff and has been found to form an acceptable closure.

City Consent

The petition states that the none of the land to be included in the proposed District is located within the corporate boundaries or extraterritorial jurisdiction of any city, town, or village in Texas; therefore, city consent is not required.

Statements of Filing Petition

Evidence was provided showing that a copy of the petition has been filed with the Burnet County and the TCEQ's Austin Regional Office.

Type of Project

According to the engineering report no substantial development is planned within the proposed District; therefore, a market study and developer's financial statement have not been provided (see Texas Administrative Code Section 293.11(a)(6)). Application material indicates that the proposed District plans to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

Developer Qualifications

There will be no development of any property within the proposed District; therefore, no developer qualification information is necessary for the proposed District.

Appraisal District Certificate

By certificate dated June 18, 2009, the Burnet Central Appraisal District indicates that the Petitioners own 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:

Sandra L. Carl
Alison Gallaway

Kathy McDonald
Andy Carson

Richard Hoepfner

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. It is noted that four of the five proposed directors signed the petition for creation and pursuant to Texas Water Code 49.052(f) are eligible to serve since the primary purpose is to provide irrigation water. Board members should periodically review Texas Water Code 49.052 to insure that they remain qualified.

Notice Requirements

Proper notice of the application was published on August 19, 2009 and August 26, 2009 in the *Burnet Citizens Gazette*, a newspaper regularly published or circulated in Burnet County, the county where the District is proposed to be located, and posted in Burnet County on August 26, 2009, on a bulletin board used for posting legal notices. 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

There is no water available to the site from any water supply entity.

Water Supply and Water Distribution Improvements

No potable water plants are planned. The proposed District intends to construct a raw water pump to draw water from an inactive stone quarry and pump to a storage tank. Booster pumps and approximately 2,500 linear feet of line will be constructed to deliver the water for irrigation purposes.

Wastewater Treatment and Wastewater Collection Improvements

No wastewater plants or a collection system are planned.

Drainage Improvements

No drainage collection system is planned. However, according to the engineering report, the majority of runoff from an existing stone processing facility is conveyed through sumps to the pond or to Backbone Creek.

Topography

The existing elevations through the proposed District range from approximately 1010 feet above mean sea level (MSL) to approximately 960 above MSL. The land generally slopes from the

north to the south. The proposed District is covered with native vegetation, and includes dirt roads and an 8-acre pond.

Floodplain

A map provided dated January 19, 2009, indicates that portions of tracts 1, 2, and 4 within the proposed District along Backbone Creek are located within the 100-year flood plain.

Impact on Natural Resources

The preliminary engineering report includes that the 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>Total Cost</u>
A. Developer Contribution Items – None	
B. District Items	
1. Water Lines – Irrigation	\$112,750
2. Site Work	5,845
3. Erosion Control	30,712
4. Electrical	24,000
5. Miscellaneous	254,250 (1)
6. Contingencies (20% of Items 1-5)	<u>85,512</u>
Total District Items	\$513,069
TOTAL CONSTRUCTION COSTS	\$513,069
<u>Non-Construction Costs – None.</u>	<u>\$0</u>
TOTAL REQUIREMENT	\$513,069

Note: (1) Includes raw water pump, storage tank, booster pump, and controls.

D. ECONOMIC ANALYSIS

Land Use

According to the engineering report, the proposed improvements (irrigation system) are not considered to be substantial, and there are no equivalent single family connections (ESFCs) planned. The proposed District's existing land use is not expected to change.

Market Study

A market study is not needed. No development is planned for the proposed District.

Project Financing

The proposed District plans to fund the cost of improvements thru revenue received from users and not the levy of a tax. The 2008 taxing entities and tax rates on land are shown in the following table:

<u>Taxing Jurisdiction</u>	<u>Tax per \$100 Valuation</u>
Mable Falls ISD	\$1.26
Burnet County	\$0.33
Central Texas Groundwater Conservation District	\$0.01
Special Road and Bridge	<u>\$0.04</u>
Total tax per \$100 valuation	\$1.64

Based on the Burnet Central Appraisal District 2008 tax statement provided, the total assessed valuation of the portion of the proposed District owned by Cactus Canyon Quarries is \$877,550.

Water and Wastewater Rates

The proposed District will not receive retail water and wastewater service from any city, town, or village, and does not intend to provide these services; therefore, there will be no monthly fee for water and wastewater service.

Comparative Water District Tax Rates

The proposed District does not plan to incur tax debt or levy a maintenance tax; therefore, the proposed District has no comparable tax rates to another district.

E. SPECIAL CONSIDERATIONS

Twelve hearing requests have been received each indicating 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 the irrigation system and to provide non-potable water service to future users.
2. The recommendations are made under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

G. RECOMMENDATIONS

1. Grant the petition for the creation of Backbone Creek Municipal Utility District No. 1 of Burnet County.

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:

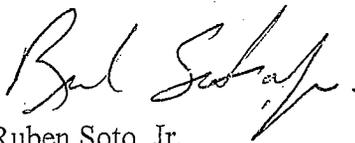
Sandra L. Carl
Alison Gallaway

Kathy McDonald
Andy Carson

Richard Hoepfner

H. ADDITIONAL INFORMATION

The engineer for the proposed District is Aaron Googins, P.E. – King Engineering Associates, Inc.



Ruben Soto, Jr.
Districts Review Team

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER GRANTING THE PETITION FOR CREATION OF BACKBONE CREEK MUNICIPAL UTILITY DISTRICT NO. 1 OF BURNET COUNTY AND APPOINTING TEMPORARY DIRECTORS

A petition by Cactus Canyon Quarries, Inc., Sandra L. Carl, Richard Hoepfner, and Kathy McDonald (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 Backbone Creek Municipal Utility District No. 1 of Burnet County (hereafter "District") pursuant to Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE Chapters 49 and 54.

The Commission, after having considered the petition, application material, and memorandum from the Executive Director dated December 28, 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, and would be a benefit to the land to be included in the proposed District.

The Commission further finds that the proposed District and its system 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 Backbone Creek Municipal Utility District No. 1 have been fulfilled in accordance with TEX. WATER CODE § 54.021 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 Backbone Creek Municipal Utility District No. 1 of Burnet County 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 54.

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 municipal utility districts.

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

5. The Memorandum dated December 28, 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:

For the Commission

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

December 28, 2009

RECEIVED
TCEQ WATER SUPPLY
2009 DEC 30 AM 7:47

Mr. Andy Carson
7332 County Road 120
Marble Falls, Texas 78654

Re: Petition by Cactus Canyon Quarries, Inc., for Creation of Backbone Creek Municipal Utility District No. 1 of Burnet County; Pursuant to Texas Water Code Chapters 49 and 54. TCEQ Internal Control No. 06242009-D01 (TC)
CN: 603507492 RN: 105766794

Dear Mr. Carson:

Enclosed are (1) a copy of the Utilities and Districts Section's signed memorandum that constitutes the official Commission staff report on the referenced application and (2) a copy of the draft Commission order for your review. Assuming no protests are filed and after we receive your consent we will finalize the order approving your application and submit it to the Executive Director for signature.

The Executive Director is authorized to sign the order on behalf of the Commission in accordance with Section 5.122 of the Texas Water Code and the Commission's rules. Since it will take 3 to 14 working days from the date of posting of the application on the Executive Director's Agenda to have an order signed after we receive your signed consent form, assuming no protests, we ask that you please e-mail the executed consent form within 5 working days to technical manager Ruben Soto at <rsoto@tceq.state.tx.us> and cc the undersigned at <aferris@tceq.state.tx.us>. Please do not send additional copies via mail or fax. After the Executive Director signs the order, the Chief Clerk's office will provide you with a signed copy.

If you request amendments to the staff memorandum and/or draft order because of changes to your application or because you provide more information, additional time will be required to review the requested changes and modify the staff memorandum and/or draft order. This could result in significant delays for obtaining approval of your application.

Mr. Andy Carson
Page 2
December 28, 2009

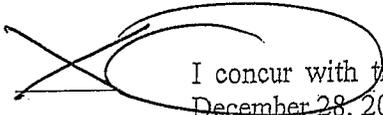
If you have any questions, please contact Ruben Soto at (512) 239-4571 or by e-mail at <rsoto@tceq.state.tx.us>.

Sincerely,



Alex A. (Skip) Ferris, P.E., Leader
Districts Review Team
Texas Commission on Environmental Quality

AF/RS

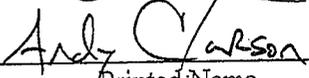


I concur with the recommendations contained in the staff memorandum dated December 28, 2009, and the associated draft order.

_____ I intend to respond to the recommendations contained in the staff memorandum dated December 28, 2009, and the associated draft order.

Signed  _____

Date: 12-28-09



Printed Name

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.

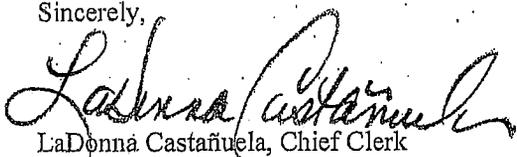
In accordance with Commission rules, copies of the request(s) have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. They may file written responses to these requests on or before 5:00 p.m. on **March 5, 2010**. Persons who filed requests (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

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
BACKBONE CREEK MUNICIPAL UTILITY DISTRICT NO. 1
DOCKET NO. 2009-1832-DIS; INTERNAL CONTROL NO. 06242009-D01

FOR THE APPLICANT:

Andy Carson, President
Backbone Creek MUD No. 1
7232 County Road 120
Marble Falls, Texas 78654
Tel: (830) 798-9951
Fax: (830) 693-2916

Aaron Googins, P.E.
King Engineering Associates, Inc.
2211 South IH 35, Suite 200
Austin, Texas 78741
Tel: (512) 462-4921
Fax: (512) 462-1372

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior 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

Ruben Soto, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4571
Fax: (512) 239-2214

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR ALTERNATIVE DISPUTE
RESOLUTION

Mr. 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:

Ms. LaDonna Castañuela
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:

Jack Bandy
6876 County Road 120
Marble Falls, Texas 78654-7914

Ray & Rhanda Boatwright
301 Timber Ridge Road
Marble Falls, Texas 78654-7845

Nancy J & Terry Floyd
515 Timber Ridge Road
Marble Falls, Texas 78654-7800

Debra & Jim Gallagher
1170 Timber Ridge Road
Marble Falls, Texas 78654-7837

Elizabeth & Jim Gee
1200 Timber Ridge Road
Marble Falls, Texas 78654-7882

Bill Neve
220 S Pierce St
Burnet, Texas 78611-2200

Bob Gilbertson
125 Shady Lane
Marble Falls, Texas 78654-7812

Joe D González
300 Timber Ridge Road
Marble Falls, Texas 78654-7844

Janice McGill
1150 Timber Ridge Road
Marble Falls, Texas 78654-7837

Ben Redler
500 Timber Ridge Road
Marble Falls, Texas 78654-7800

Steven Rodgers
701 Timber Ridge Road
Marble Falls, Texas 78654-7836

Ron Saidikowski
1762 Timber Ridge Road
Marble Falls, Texas 78654-7847

Gabriele & Voker Steffen
100 Big Oak Lane
Marble Falls, Texas 78654-7809

INTERESTED PERSON(S)

Joe Don Dockery
220 S Pierce Street
Burnet, Texas 78611-2200

Russell Graeter
220 S Pierce St
Burnet, Texas 78611-2200

Ronny Hilber
220 S Pierce St
Burnet, Texas 78611-2200

Donna Klaeger
220 S Pierce St
Burnet, Texas 78611-2200

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

September 1, 2009

2009 SEP -4 PM 2:56

CHIEF CLERKS OFFICE

Timber Ridge P.O.A., Inc.
P.O. Box 65
Marble Falls, Texas 78654

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

CID
69511

Dear Sirs:

It has recently come to our attention that a landowner adjacent to our neighborhood is seeking to form a private MUD-to be named the Backbone Creek MUD; reference TCEQ Internal Control # 06242009-and that he desires to sell substantial quantities of water off-site from a surface feature on his property (an inactive quarry hole filled with water). This water is hydraulically related to the water that is under our own land and we believe its source also recharges our existing residential wells, as we are only a few hundred feet from his quarry hole.

Several of the closest neighbors to the location of the proposed MUD attended a meeting to discuss the situation as it could affect us. We all asked the question: Could we be left without water or forced to buy our own water back from this MUD if the owner sells irrigation water piped off-site, pumping the lake down and so affecting the groundwater levels as to make our present wells inoperable? And what will prevent others from doing the same thing, a very real "who can pump the water out fastest & make the most money until the water runs out" sort of scenario? Many of our wells are very shallow - from fifty to eighty feet with water levels from twenty-two to forty feet. The quarry lake's level is within these same parameters as our shallow wells and there are other active quarry sites presently operating well below thirty feet in our immediate area that put pressure on the same groundwater supplies. This further begs the question; What if the proposed MUD later decides it needs to make costly "improvements" to serve this forced constituency (its affected neighbors, including us) and lays claim to our land for pipeline right-of-ways, even taxing us to pay for the lines and pumps, etc. and charging us as our water supplier?

As Burnet County, Texas, constituents and taxpayers, we the Timber Ridge Subdivision POA, would ask that the TCEQ require the Backbone Creek MUD applicant to undertake the engineering studies necessary to prove to our collective satisfaction that the water

MUD

table in the neighboring residential area would be unaffected in quantity or quality by any such actions as pumping (selling) water to commercial off-site users BEFORE the Commissioners take any action to approve the MUD application. Please accept this letter as a request for a contested case hearing should the MUD application referenced herein be considered by TCEQ.

We feel that any less than thorough and impartial research would be irresponsible and put many families at serious risk during this time of extreme drought.

We would also ask that we be informed by U.S. mail in the event of any further hearings or other proceedings concerning this matter, and that we be allowed to give input to the TCEQ concerning any neighboring MUD proposals. Our contact information is listed below with the names of all attendees. We have all reviewed and do agree upon this letter's contents.

Thank you.

Respectfully,

*Ben Redler, president Timber Ridge POA Inc
by Nancy J. Floyd*

- ✓ Ben Redler, 500 Timber Ridge Road, Marble Falls, Texas 78654-7800
- ✓ Janice McGill, 1150 Timber Ridge Road, Marble Falls, Texas 78654-7800
- ✓ Terry & 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

CERTIFIED MAIL



7008 3230 0001 3874 9902

U.S. POSTAGE PAID
 MARBLE FALLS, TX
 78654
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\$5.54
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1000 78711

*Timber Ridge Potting
 P.O. Box 65
 Marble Falls, TX 78654*

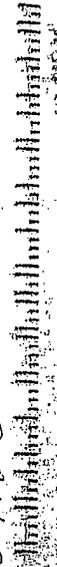
*Office of the Chief Clerk
 Texas Commission on Environmental Quality
 MC105
 Texas Commission on Environmental Quality
 P.O. Box 13087
 Austin, TX 78711-3087*

**RETURN RECEIPT
 REQUESTED**

RECEIVED

SEP 04 2009

TCEQ MAIL CENTER
 JR



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

2010 FEB 31 PM 2:09

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.

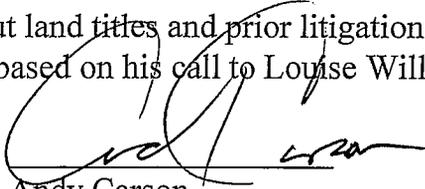
Apparently the Commissioners did not actually review or understand the legal descriptions of the lands included in the Application. It is certain that they ignored the certification of the Tax Assessor contained in the Application. It is also certain that they chose not to obtain clarification from competent 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

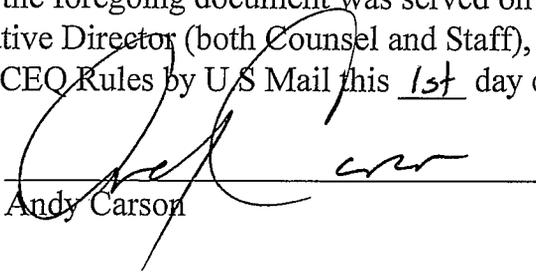
The "Interested Parties" have no "justiciable interest" and are not "affected persons." They did not request a contested case hearing. By rejecting a statutory Review as directed by TCEQ, they engaged in speculation without consulting Applicant or competent real estate counsel. They repeat the Requesters' 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).


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), and the Public Interest Counsel, in accordance with the TCEQ Rules by U S Mail this 1st day of March, 2010.


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

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

2010 FEB 31 PM 2:09

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.

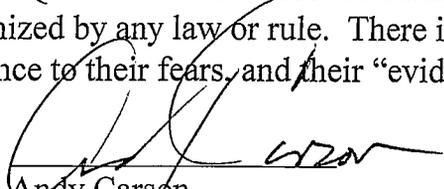
The Requesters' total well depths are said to run 50 to 80 feet. That means the range of elevations at the bottom of Requesters' wells runs 925 to 960 feet. In contrast, Applicants' bottom completion is below 900 feet, at the base of the granite quarry. This is 25 to 60 feet

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

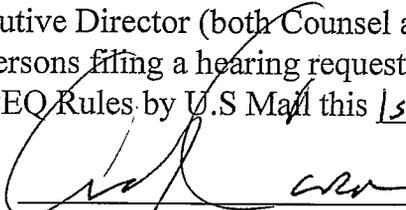
Marble Falls, TX 78654

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

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 6, 2009

CERTIFIED MAIL

The Honorable Donna Klaeger
Burnet County Judge
County Courthouse
220 South Pierce
Burnet, Texas 78611

Re: Petition for Creation of Backbone Creek Municipal Utility District No. 1
TCEQ Internal Control No. 06242009-D01
CN: 603507492 RN: 105766794

Dear Judge Klaeger:

Information filed with the subject application indicates that all of the land within the proposed District is located outside the corporate limits or extraterritorial jurisdiction of any city, town or village; therefore, the provisions of Section 54.0161 of the Texas Water Code are applicable to this project.

In compliance with the above cited statute, notification is hereby given, that the referenced application has been filed with the Texas Commission on Environmental Quality. The commissioners' court is requested to submit a written opinion stating whether or not the county would recommend the creation of the proposed District and stating its findings, conclusions or other information to the Commission within 30 days of the date shown on the return receipt for this correspondence. The Commission will not render a final decision on the application until after the receipt of the commissioners' court comments or expiration of the 30-day submission period, whichever is earlier.

To assist in obtaining information on this project necessary for commissioners' court consideration, you can contact the engineering firm for the proposed District at:

Mr. Aaron Googins P.E.
King Engineering Associates, Inc.
2211 South IH35, Suite 200
Austin, Texas 78741
(512) 462-4921

If you have any additional questions, please contact Ruben Soto, Districts Review Team, at (512) 239-4571.

Sincerely,

A handwritten signature in cursive script that reads "Skip Ferris".

Alex A. (Skip) Ferris, Leader
Districts Review Team

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

Ruben Soto - Re: Backbone Creek MUD 1 - Creation Application

From: Warren Samuelson
To: Soto, Ruben
Date: 8/5/2009 12:27 PM
Subject: Re: Backbone Creek MUD 1 - Creation Application

Ruben:

There are no dam safety issues associated with this proposed MUD.

Warren

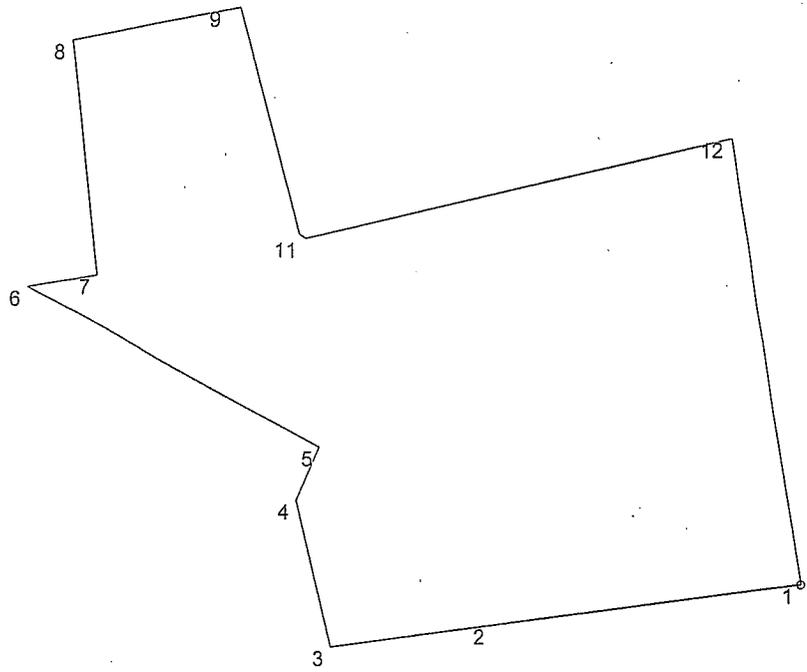
>>> Ruben Soto 8/4/2009 10:21 AM >>>
Hi Warren,

Please advise on whether there are any issues with the above proposed district.

Thank you,

Ruben Soto, Jr.
Engineer Specialist
Water Districts Review Team,
Utilities & Districts Section,
Water Supply Division
Phone: (512) 239-4571
Fax: (512) 239-6190

Backbone Creek MUD 03.17 acres
Gap = 0.015 (0.00%)
103.02 acres [4,487,434.00 sq ft]
Sarah Eason 08/06/2009



Scale = 1: 776 (Feet)

- 1 S 82° 43' 56" W 1267.43
- 2 S 82° 45' 29" W 670.81
- 3 N 13° 41' 19" W 609.71
- 4 N 23° 12' 12" E 233.36
- 5 N 61° 35' 29" W 1368.79
- 6 N 80° 46' 41" E 278.53
- 7 N 06° 34' 09" W 952.14

- 8 N 79° 53' 47" E 710.51
- 9 S 15° 11' 48" E 941.99
- 10 S 52° 23' 04" E 32.57
- 11 N 77° 13' 20" E 1787.07
- 12 S 09° 25' 35" E 1819.24
- 13 Back to pob