

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST**

Date of Request: December 1, 2009

Agenda Date:

Person to Contact Regarding Changes to this Request:

Skip Ferris – 239-6355; Prabin Basnet – 239-0881

CAPTION: Docket No. 2009-1866-DIS. Consideration of an application by Polk County Fresh Water Supply District No. 2 for Approval of Standby Fee. The District's application requests approval of the levy of a uniform annual standby fee to supplement operations and maintenance account pursuant to Texas Water Code, Sections 49.231. The Commission will consider the application and the hearing requests that have been filed on the application. (TCEQ Internal Control No. 05142009-D01; (Skip Ferris, Gregory Merrell)

Chief Clerk Must Send Notice of Application/Hearing: No

Type of Matter: Standby Fee

Counties: Polk

Uncontested: No

Contested: Yes

Prepared by: Prabin Basnet December 1, 2009
Districts Review Team Date

2009 DEC - 3 AM 8:42
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

MAILING LIST

Polk County Fresh Water Supply District No. 2
TCEQ Internal Control No. 05142009-D01

Julianne Bremer Kugle
Coats, Rose, Yale, Ryman & Lee
3 East Greenway Plaza - Suite 2000
Houston, Texas 77046-0307

Mr. Billy Sims
KSA, Inc.
P.O Box 151508
Lufkin, Texas 75915

Mr. Bill Blich
SAMCO Capital Markets, Inc.
11111 Katy Freeway – Suite 820
Houston, Texas 77079-2118

Georgie Volz
TCEQ Region 10
3870 Eastex Fwy.
Beaumont, Texas 77703-1830

Loanne Boudreaux, President
Idlewilde Property Owners association
P.O. Box 508
Onalaska, Texas 77360

Malcom David Wyatt
3115 Sycamore Springs Drive
Kingswood, Texas 77339

Carl Henry
H&H Eastex Motor Sports
13667 Highway 190
Onalaska, Texas 77360

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

Todd Galiga, Senior Attorney, Environmental Law Division, MC-173
Jose L. Caso, Staff Attorney, Environmental Law Division, MC-173
Prabin Basnet, Technical Manager, Utilities and Districts Section, MC-152
Komal Petel, Utilities & Districts Section, Water Supply Division, MC-153
Blas Coy, Office of the Public Interest Counsel, MC-103

CHIEF CLERKS OFFICE

2009 DEC - 3 AM 8: 43

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality **Date:** December 1, 2009

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

From: Districts Review Team

Subject: Docket No. 2009-1866-DIS. Polk County Fresh Water Supply District No. 2;
Application for Approval to Levy Uniform Operation and Maintenance Standby Fees;
Pursuant to Texas Water Code Section 49.231.
TCEQ Internal Control No. 05142009-D01 (TC)
CN: 600661276 RN: 101219517

CHIEF CLERK'S OFFICE
2009 DEC - 3 AM 8:44
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

DESCRIPTION OF APPLICATION

Petitioner: Polk County Fresh Water Supply District No. 2 (the "District")

Request: Authorization to levy a standby fee

Type: Standby Fee

Authority: Texas Water Code Section 49.231

STAFF RECOMMENDATION

Approve an annual operations and maintenance standby fee of \$24 per lot per year, as requested.

TECHNICAL INFORMATION

General: Polk County Fresh Water Supply District No. 2 has collected a Commission approved standby fee since 2001.

RESPONSES TO THE APPLICATION

The Commission received three protest letters regarding the above referenced matter.

CONTACT

Prabin Basnet, Technical Manager, Districts Review Team – 239-0881
Gregory Merrell, Staff Attorney, Environmental Law Division – 239-0669

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

November 19, 2009

Ms. Julianne Kugle
Coats, Rose, Yale, Ryman, & Lee, PC
3 Greenway Plaza – Suite 2000
Houston, Texas 77046

Re: Docket No. 2009-1866-DIS; Polk County Fresh Water Supply District No. 2; Application for Approval to Levy Uniform Operation and Maintenance Standby Fees; Pursuant to Texas Water Code Section 49.231.
TCEQ Internal Control No. 05142009-D01 (TC)
CN: 600661276 RN: 101219517

Dear Ms. Kugle:

Enclosed is a copy of the Utilities and Districts Section's memorandum that forms the official Commission staff report on the caption application.

As required by 30 TAC Section 281.22, the application and staff report will be forwarded to the Commission's Chief Clerk for filing and setting of hearing. After the Chief Clerk schedules the time, date, and location for the hearing on this application, you will be formally notified. You should plan to attend the hearing to ensure that your interests are properly represented. If a representative does not appear, the item may be denied or continued to another agenda.

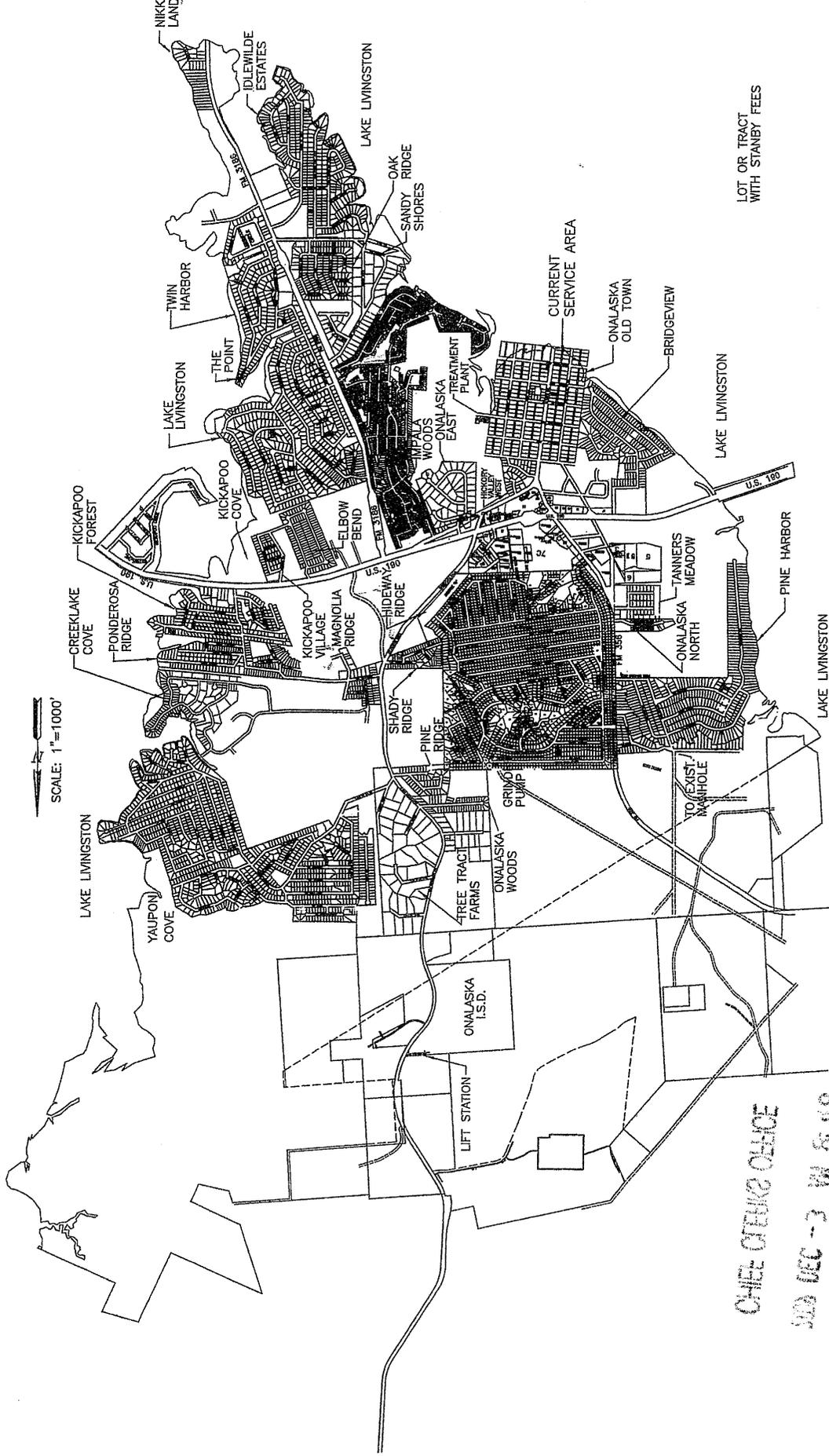
Please review the enclosed memorandum carefully. Any responses to the staff's memorandum, or any revisions to previously submitted application materials, must be fully explained in writing and received by the Chief Clerk by ten (10) working days before the scheduled hearing date. Any response or supplemental information received after that time may result in postponement of the hearing.

If you require additional time to prepare a response to the staff's memorandum or supplemental information regarding the application, contact the Chief Clerk at (512) 239-3300 concerning the scheduling or rescheduling of the public hearing. If the Commission's staff requires additional time to review any supplemental material following its original report, you will be formally notified of any resultant change in the hearing date. Please use the Docket Number in the caption when referring to this item in any correspondence.

Sincerely,

Handwritten signature of Alex A. (Skip) Ferris in black ink.

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



CHIEF ENGINEER OFFICE
 300 DEC - 3 11 5 19

LOT OR TRACT
 WITH STANBY FEES

updated 04/09

MARK	REVISION	BY	DATE

807 W. LUTHER AVE., SUITE 200
 LAUREL, MO 64501-5028
 PHONE: 781-542-5200
 FAX: 781-542-5201
 WWW: WWW.ENRMO.COM

DRAWN BY:	
CHECKED BY:	
DATE:	
PROJECT NO.:	
SCALE:	

POLK COUNTY
FRESH WATER SUPPLY
DISTRICT NO. TWO

SANITARY STANDBY SEWER
COLLECTION SYSTEM MAP

VERTICAL SCALE:	
HORIZONTAL SCALE:	
DATE:	
PROJECT NO.:	
SCALE:	

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: Texas Commission on Environmental Quality **Date:** November 19, 2009

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

From: Districts Review Team

Subject: Docket No. 2009-1866-DIS. Polk County Fresh Water Supply District No. 2; Application for Approval to Levy Uniform Operation and Maintenance Standby Fees; Pursuant to Texas Water Code Section 49.231. DT-FEE.
TCEQ Internal Control No. 05142009-D01 (TC)
CN: 600661276 RN: 101219517

CHIEF CLERKS OFFICE
2009 DEC -3 AM 8:46
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

A. GENERAL INFORMATION

The above referenced application was received on May 14, 2009. The District is requesting Commission approval to levy uniform operation and maintenance (O&M) standby fees in the amount of \$24 per year per equivalent single-family connection (ESFC) for a three-year period against all vacant lots (1,809) in the District which have available wastewater facilities and services which are being operated and maintained by the District.

Existing Standby Fees

The District's rate order dated November 25, 2008, effective January 1, 2009, outlines a \$2 per unimproved lot (ESFC) per month operation and maintenance standby fee. By orders dated September 24, 2002, August 29, 2005, and September 16, 2008, the Commission approved a standby fee for the District of \$24 per year per lot for the years 2001-2009.

Existing Rates and Taxes

The District levied a maintenance tax rate of \$0.40 per \$100 assessed valuation (AV) for 2008, and the District does not levy a debt service tax. The District's rate order dated November 25, 2008, effective January 1, 2009, establishes a residential wastewater rate of \$28.36 per month.

Based on this rate order, the flat monthly rate for 10,000 gallons of wastewater is \$28.36 per month.

B. STANDBY FEES FOR OPERATIONS AND MAINTENANCE

Conclusion on Eligibility

The District's projected budget for the year ending December 31, 2010, indicates a deficit of \$238,543 without standby fee revenue. The District's current rate for 10,000 gallons of wastewater use is \$28.36 per month. According to information obtained from the District's financial advisor, the District's operating fund is projected to have a balance of \$206,042 as of December 31, 2009, and based on the projected annual deficit, would have a negative balance in three years. Therefore, the District meets the criteria of 30 TEX. ADMIN. CODE (TAC) Section 293.143(b) and is eligible to seek Commission approval to levy standby fees to supplement its operation and maintenance account.

Determination of Recommended Standby Fee Amount

The projected annual deficit of \$238,543 for 2010 is based on net revenue of \$1,673,020 (\$1,744,020 less \$88,000 plus \$17,00 in interest), less net operating expense of \$1,421,396 (\$1,616,396 plus \$305,000 in bond payment, less \$500,000 in depreciation), less \$490,167 (\$1,470,500/3) for one time capital costs spread over three years. A three-month reserve, in accordance with 30 TAC Section 293.143(d)(1)(D), would equal \$355,349 $\{(\$1,421,396/12) \times 3\}$. Since the District's fund balance of \$206,042 projected as of December 31, 2009 is less than a three month reserve, the difference of \$149,307 should be allocated over the three years standby fee period (\$49,769 per year) to increase the fund balance to a three month reserve.

Based on annual deficit and three month reserve, the requested annual standby fee of \$24 per ESFC is considered eligible in accordance with 30 TAC Section 293.143(d).

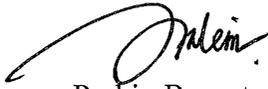
C. RECOMMENDATIONS

1. Approve an annual operations and maintenance standby fee of \$24 per ESFC per year against all unimproved lots (1,809) which have wastewater facilities and services available for calendar years 2010, 2011, 2012.
2. Direct the District that all funds collected from the standby fee levy shall be used to supplement the operation and maintenance account.
3. Advise the District that any increase in the amounts of the approved standby fee, or assessment of such fees to any additional tracts not indicated herein, will require Commission approval.
4. Advise the District that the fees approved herein may be imposed for monthly, quarterly, or annual billing periods, but should not be assessed in arrears beyond January 1, 2010.

D. ADDITIONAL INFORMATION

The District's representatives are:

Attorney: Ms. Julianne Bremer Kugle – Coats Rose Yale Ryman & Lee, P.C.
Fiscal Agent: Mr. Bill Blich – Samco Capital Markets



Prabin Basnet
Districts Review Team

Attachment: Standby Fee Levy Map

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER AUTHORIZING POLK COUNTY FRESH WATER SUPPLY DISTRICT NO. 2 TO ADOPT AND IMPOSE A STANDBY FEE

An application by Polk County Fresh Water Supply District No. 2 (the "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (the "Commission") for consideration of approval pursuant to TEX. WATER CODE §§ 5.122 and 49.231. The District requests approval to adopt and impose an operations and maintenance standby fee of \$24 per equivalent single-family connection (ESFC) on unimproved property in the District. The Commission has jurisdiction to consider this matter and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation:

FINDINGS OF FACT

1. The application of the District requesting authority to adopt and impose an operations and maintenance standby fee was filed with the Commission and the statutory filing fee was paid.
2. Notice of this application was published in the Polk County Enterprise, a newspaper of general circulation in Polk County, Texas, once a week for two consecutive weeks, on September 27, 2009, and October 4, 2009, the first publication thereof being more than thirty days prior to the date of consideration of this application.
3. Notice of this application was mailed to each owner of unimproved property within the District to be assessed a standby fee by certified mail, return receipt requested, more than thirty (30) days prior to the date of consideration of this application.
4. The District's projected budget for the year ending December 31, 2010 indicates an operating fund deficit of approximately \$238,543 without standby fee revenue and wastewater revenue based on a rate of \$28.36 for 10,000 gallons of usage.
5. The unimproved property subject to the standby fee is shown in the Utilities and Districts Section memorandum dated November 19, 2009, a copy of which is attached hereto and incorporated herein by reference.
6. The District's current service rate for 10,000 gallons of wastewater is \$28.36 per month.
7. The standby fee will be applied to supplement the District's operation and maintenance account.

8. The Executive Director has investigated the financial condition of the District, including the District's assets, liabilities, sources of revenue, level of utility service rates, and level of debt service and maintenance tax rates.
9. The Utilities and Districts Section memorandum, considered by the Commission, is true and correct and demonstrates that the adoption and imposition of a standby fee by the District, for operation and maintenance, on all developable but unimproved acreage in the District (as described in the Utilities and Districts Section memorandum) which has available wastewater facilities and services by the District, is necessary to maintain the financial integrity and stability of the District. The Utilities and Districts Section memorandum further demonstrates that an operation and maintenance standby fee assessed in the amount of \$24 per ESFC per year on the unimproved property in the District, will fairly allocate the costs of District facilities and services among property owners in the District.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider and grant this application pursuant to TEX. WATER CODE § 49.231.
2. The application of the District conforms in all respects to TEX. WATER CODE § 49.231 and the Commission's order is in proper and legal form, and the purposes thereof are lawful. In reviewing this application, the Commission has considered, among other things, the Utilities and Districts Section memorandum, the necessity for the standby fee to maintain the financial integrity and stability of the District, and the fair allocation of the costs of District facilities among property owners in the District.
3. The application of Polk County Fresh Water Supply District No. 2 for authority to adopt and impose a standby fee on unimproved property in the District should be granted as recommended in the Utilities and Districts Section memorandum.

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

1. The District may adopt and impose a standby fee for a period of time not to exceed three (3) years from the date of issuance of this Order, on all developable, but unimproved property in the District that has available wastewater facilities and services by the District as identified in Findings of Fact No. 5 and described in the Utilities and Districts Section memorandum, in the amount of \$24 per ESFC per year for operations and maintenance.
2. The proceeds of the standby fee authorized for operations and maintenance shall be applied to the District's operation and maintenance account. The Commission's approval for the adoption and imposition of a standby fee may be renewed for additional periods of not more than three (3) years each as provided by TEX. WATER CODE § 49.231(h). Any increase in the amounts of the approved standby fee or assessment of such fees to any additional tracts not

identified in the Utilities and Districts Section memorandum will require Commission approval. The District may impose the standby fee approved herein by monthly, quarterly, or annual billing periods but may not assess in arrears beyond January 1, 2010.

3. The District may, as authorized by TEX. WATER CODE § 49.231, exercise any of the rights and privileges associated with the imposition of standby fees.
4. The governing board of the District shall, within thirty (30) days from the date of this Order, cause a certified copy of this Order approving the standby fee to be recorded in the office of the County Clerk of each county in which a portion of the District lies.
5. The governing board of the District shall, within seven (7) days from the date of the issuance of this Order levying a standby fee, file with the Commission's Executive Director and the County Clerk of each county in which a portion of the District lies an update of the information, required by TEX. WATER CODE § 49.452.
6. 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