

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*

August 20, 2010

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Petition of Roman Forest Consolidated MUD for Approval to Levy an Operation and Maintenance Standby Fee in Montgomery County, Texas, TCEQ Internal Control No. 08262009-DO1  
TCEQ Docket No. 2009-1872-DIS

Dear Ms. Castañuela:

Enclosed for filing please find an original and seven (7) copies of the of the Executive Director's Response to Hearing Requests.

Sincerely,

A handwritten signature in black ink that reads "Dinniah C. Tadema".

Dinniah C. Tadema, Staff Attorney  
Office of Legal Services, Environmental Law Division

Enclosures

cc: Mailing List

TCEQ DOCKET NO. 2009-1872-DIS

PETITION OF ROMAN FOREST	§	BEFORE THE
CONSOLIDATED MUNICIPAL	§	
UTILITY DISTRICT FOR APPROVAL	§	
TO LEVY OPERATION AND	§	TEXAS COMMISSION ON
MAINTENANCE STANDBY FEES IN	§	
MONTGOMERY COUNTY, TEXAS,	§	
INTERNAL CONTROL NO. 08262009-	§	ENVIRONMENTAL QUALITY
D01	§	

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

NOW COMES the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files this response to two protest letters filed in response to Roman Forest Consolidated Municipal Utility District's (District's) petition to levy an operation and maintenance standby fee. The Petition was filed pursuant to section 49.231 of the Texas Water Code and title 30, section 293.141 of the Texas Administrative Code, seeking to levy an annual operation and maintenance standby fee of \$216. In response to the letters, the ED shows the following:

**I. BACKGROUND**

On August 26, 2009, the District filed its petition to levy an operation and maintenance standby fee in the amount of \$216 per year. The District received approval to charge this amount for 2004 through 2009, and is seeking to continue charging this amount for 2010 through 2012. The District mailed notice of its petition on October 12, 2009, and published the notice on October 9 and October 16, 2009. According to the notice, hearing requests were required to be filed within 30 days after the newspaper publication of the notice. In response to the notice, the TCEQ received two letters. One letter, dated October 28, 2009, from Mohammed Ashraf states that he is requesting a contested case hearing. The second letter, postmarked November 10, 2009, from Francisco Mora, Jr. also requests a contested case hearing. ED staff composed a

memorandum, dated February 26, 2010, summarizing its findings and recommendations. A copy of the memorandum is attached to this Response. The ED has not issued an order in this case.

## **II. LEGAL AUTHORITIES**

The District's petition is subject to the TCEQ rules governing requests for contested case hearings found in title 30, chapter 55, subchapter G of the Texas Administrative Code.<sup>1</sup> Under section 55.251(a), an affected person may request a contested case hearing. The request must be in writing and filed with the chief clerk within the time period specified in the notice.<sup>2</sup> The request must also substantially comply with the requirements found in section 55.251(c). A document that comments on an application but does not request a hearing is treated as public comment.<sup>3</sup>

To be an affected person, a person must have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the petition.<sup>4</sup> An interest common to members of the general public is not a personal justiciable interest.<sup>5</sup> Section 55.256(c) lists other factors that shall be considered when determining if someone is an affected party. If someone is an affected person, then their hearing request shall be granted if it complies with the section 55.251 requirements, is timely filed, and is pursuant to a right to hearing authorized by law.<sup>6</sup>

## **III. ANALYSIS**

### **A. Mr. Ashraf's Letter**

#### **1. Summary of the letter**

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<sup>1</sup> 30 TEX. ADMIN. CODE § 55.250 (West 2007).

<sup>2</sup> *Id.* § 55.251(b), (d).

<sup>3</sup> *Id.* § 55.251(e).

<sup>4</sup> *Id.* § 55.256(a).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 55.255(b).

In his letter, Mr. Ashraf states that he “request[s] a contested case hearing” because the proposed standby fee will cause property values to depreciate and property to be foreclosed upon. Mr. Ashraf also states that high taxes in the District have already caused land values to depreciate, making it difficult to sell lots. Mr. Ashraf provides his name, a mailing address, and the TCEQ Internal Control Number associated with this case. Mr. Ashraf also states that he is the owner of Lots 21 and 27 in Roman Forest Section 2, Block 17.

2. The requirements in section 55.255(b) have been met.

Under section 55.251(a), Mr. Ashraf may request a contested case hearing if he is an affected person. Looking at the definition of an affected person,<sup>7</sup> Mr. Ashraf meets the definition. Mr. Ashraf’s letter implies that the proposed standby fee will be imposed on two lots that he owns, but he does not specifically provide a written statement explaining the location of his property in the District. Mr. Ashraf states that he owns Lots 21 and 27 in Roman Forest Section 2, Block 17. The fact that he owns unimproved property in the District can be inferred from what he states in the letter. Specifically, Mr. Ashraf states that “Roman Forest already has high taxes” and that additional taxes will only make it more difficult to sell lots. In addition, it is unlikely that the District would have mailed Mr. Ashraf the proposed standby fee rates notice if he did not own property in the District. Assuming that Mr. Ashraf owns unimproved property in the District, he has a personal justiciable interest related to an economic interest affected by the application that is not common to members of the general public. As the owner of unimproved property in the District, he will have to pay the standby fee. Therefore, if Mr. Ashraf owns unimproved property in the District, then Mr. Ashraf is an affected person.

Mr. Ashraf’s request for a hearing is also pursuant to a right to hearing authorized by law. Under title 30, section 293.145(d) of the Texas Administrative Code, an affected person can

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<sup>7</sup> 30 TEX. ADMIN. CODE § 55.256(a).

request a public hearing during the thirty days following the final publication of notice of application. Final publication of notice of the standby fee occurred on October 16, 2009, and Mr. Ashraf's letter was received by the TCEQ on November 4, 2009; therefore, Mr. Ashraf's letter was filed before the thirty-day deadline and fulfills this requirement. Looking at all the hearing request requirements, his letter complies with most of section 55.251. It was timely filed, and it is pursuant to a right to hearing authorized by law. Therefore, section 55.255(b) requirements have been met, and his hearing request should be granted.

## **B. Mr. Mora's Letter**

### 1. Summary of the letter

In his letter, Mr. Mora states he is requesting a contested case hearing because he will be affected by the standby fee. He states that he does not use the connections nor does he plan to develop or use the connections on his property. Mr. Mora provides his name, address, the name of the District, and the TCEQ Internal Control number. Mr. Mora also states that he owns lot 5 in Roman Forest Section 2, Block 18.

### 2. The requirements in section 55.255(b) have been met.

Under section 55.251(a), Mr. Mora may request a contested case hearing if he is an affected person. Looking at the definition of an affected person,<sup>8</sup> Mr. Mora meets the definition. Mr. Mora's letter implies that he will be affected by the standby fee because he owns unimproved land within the District, but he does not specifically provide a written statement explaining the location of his property within the District. Mr. Mora states that he owns Lot 5, in Roman Forest Section 2, Block 18. The fact that he owns unimproved property in the District can be inferred from what Mr. Mora states in his letter. Specifically, Mr. Mora states that he owns land within the District, but that he will not be using the connections now or in the future.

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<sup>8</sup> *Id.* § 55.256(a).

In addition, it is unlikely that the District would have mailed Mr. Mora the proposed standby fee rates notice if he did not own property in the District. Assuming that Mr. Mora owns unimproved property in the District, he has a personal justiciable interest related to an economic interest affected by the application that is not common to members of the general public. As the owner of unimproved property in the District, he will have to pay the standby fee. Therefore, Mr. Mora is an affected person.

Mr. Mora's request for a hearing is also pursuant to a right to hearing authorized by law. Under title 30, section 293.145(d) of the Texas Administrative Code, an affected person can request a public hearing during the thirty days following the final publication of notice of the application. Final publication of notice of the standby fee occurred on October 16, 2009, and, and Mr. Mora's letter was received by the TCEQ on November 12, 2009; therefore, Mr. Mora's letter was filed before the thirty-day deadline and fulfills this requirement. Looking at all the hearing request requirements, his letter complies with most of section 55.251. It was timely filed, and it is pursuant to a right to hearing authorized by law. Therefore, the section 55.255(b) requirements have been met, and his hearing request should be granted.

**IV. CONCLUSION**

The ED recommends that the Commission grant Mohammed Ashraf and Francisco Mora Jr.'s requests for a contested case hearing.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Mark Vickery, Executive Director

Robert Martinez, Director  
Environmental Law Division

By 

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**CERTIFICATE OF SERVICE**

I certify that on August 20, 2010, the Original and 7 copies of the Executive Director's Response to Hearing Requests was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk and was sent by first class mail, agency mail, and/or facsimile to the persons on the attached Mailing List.

A handwritten signature in black ink, appearing to read "Dinniah C. Tadema", written over a horizontal line.

Dinniah C. Tadema  
Staff Attorney  
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Texas Commission on Environmental Quality

## Mailing List

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