

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

August 13, 2010

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

**RE: ROMAN FOREST CONSOLIDATED MUNICIPAL UTILITY DISTRICT
TCEQ DOCKET NO. 2009-1872-DIS**

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

Scott A. Humphrey
Scott A. Humphrey, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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TCEQ DOCKET NO. 2009-1872-DIS

APPLICATION OF ROMAN FOREST	§	BEFORE THE TEXAS
CONSOLIDATED MUNICIPAL	§	COMMISSION ON
UTILITY DISTRICT TO LEVY	§	ENVIRONMENTAL
STANDBY FEE	§	QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on
Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests
concerning the above-referenced matter.

I. Background

Roman Forest Consolidated Municipal Utility District of Montgomery County
(Roman Forest or District) has applied to the TCEQ for authority to levy an operations
and maintenance standby fee in the amount of \$216.00 per equivalent single family
connection (ESFC) per year for a three-year period on undeveloped property with
available water and/or wastewater facilities within the District. The application was filed
pursuant to Chapter 49 of the Texas Water Code, 30 Tex. Admin. Code (TAC) Ch. 293
and the procedural rules of the TCEQ.

The standby fee is a personal obligation of the person owning the undeveloped
property on January 1 of the year for which the fee is assessed. A person is not relieved
of his pro-rated share of the standby fee obligation on transfer of title to the property. On
January 1 of each year, a lien is attached to the undeveloped property to secure payment

of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District.

The purpose of a standby fee is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available.

Roman Forest filed the application on August 26, 2009, and the Executive Director (ED) of the TCEQ declared the application administratively complete on September 1, 2009. Notice of the application was published on October 9 and October 16, 2009 in the *Conroe Courier*. The comment period ended on November 16, 2009.

The TCEQ received timely hearing requests from Mohammed Ashraf and Francisco Mora, Jr. OPIC recommends the Commission grant both hearing requests and refer the matter to the State Office of Administrative Hearings.

II. Requirements of Applicable Law

Under 30 TAC § 293.145(d):

The commission may act on an application without holding a public hearing, if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing.

This application is filed under Chapter 49 of the Texas Water Code and was declared administratively complete on September 1, 2009. Therefore, the hearing requests associated with this application are evaluated under Subchapter G of Chapter 55 of the Commission's rules.

A hearing request concerning the approval of a standby fee is governed by 30

TAC § 55.251, which specifies that:

(c) A hearing request must substantially comply with the following:

- (1) Give the name, address, and daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

In order to grant an individual's request for a contested case hearing, the Commission must find that the request is made in writing and by an affected person. 30 TAC § 55.251(b). An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC § 55.256(a). This justiciable interest does not include an interest common to the general public. *Id.* Section 55.256(c) of 30 TAC provides relevant factors that will be considered in determining whether or not a person is affected. These factors include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

III. Hearing Requests; Affected Person Analysis

Mr. Ashraf is requesting a contested case hearing on the District's proposed standby fee because he believes if the tax is implemented, it will cause the property value to depreciate and he may be forced to go to foreclosure. He states the taxes are already too high, and as a result he is unable to sell his lots. He also identifies the two lots he owns.

OPIC is persuaded that Mr. Ashraf is an affected person entitled to a contested case hearing. His letter indicates he owns lots in the District and is unable to sell them. OPIC concludes that he will be subject to the standby fee and is, therefore, an affected person entitled to a contested case hearing.

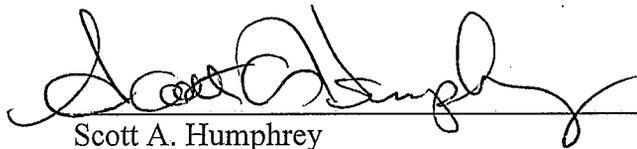
Mr. Mora states he will also be affected by the fee because he owns land in the district. He has no need for the connections, and he does not intend to improve his land within the next three years. He also describes the lot he owns in the District.

OPIC is convinced that Mr. Mora is also an affected person entitled to a contested case hearing. His letter indicates he owns a lot in the District, and it remains undeveloped. OPIC concludes he will be subject to the standby fee and is, therefore, an affected person entitled to a contested case hearing.

IV. Conclusion

For the reasons set forth above, the OPIC recommends that the Commission find that Mohammad Ashraf and Francisco Mora, Jr. are affected persons entitled to a contested case hearing. OPIC recommends the Commission refer this matter to SOAH.

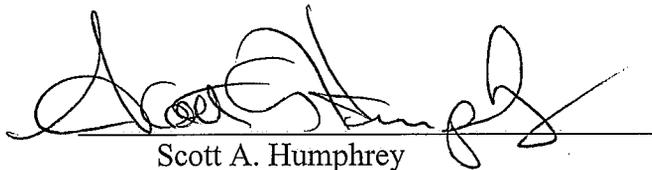
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2010, the original and seven copies of the foregoing were served upon the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, other electronic transmission, Inter-Agency Mail or by deposit in the U.S. Mail.



Scott A. Humphrey

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TCEQ DOCKET NO. 2009-1872-DIS

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