

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



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 14, 2011

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: LANCASTER MUD NO. 1
TCEQ DOCKET NO. 2010-1851-DIS**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2010-1851-DIS

**IN THE MATTER OF THE
ANNEXATION PETITION FILED
BY LANCASTER MUD NO. 1**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUEST FOR HEARING**

To the Honorable 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 Request for Hearing in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Background

Lancaster Municipal District No. 1 (District) has filed a petition with the TCEQ for the annexation of 107.760 and 109.711 acres (the Property), located in Dallas and Ellis Counties, into the District. The petition states that Gary J. Baker and Deborra L. Baker hold title to the Property and are owners of a majority in value of the land to be included in the District. The Property is located within the extraterritorial jurisdiction of the City of Lancaster (the City).

Pursuant to Texas Water Code §54.016 and §42.0425, the District petitioned the City for consent to include the Property into the District. Resolution No. 2008-03-23 dated March 10, 2008 denied the request to consent to the addition of the Property. On June 6, 2008, the Property owners submitted to the City a Petition for Water and Wastewater Service, which was denied by Resolution No. 2008-07-63. Pursuant to

Texas Water Code §54.016(d), property owners then filed an application with the Commission for annexation of the Property into the District.

B. Procedural Background

TCEQ received this application on September 25, 2008. On October 8, 2008, the Executive Director (ED) declared the application administratively complete. The ED determined that the notice provisions of 30 TAC § 293.12 should apply, requiring publication of notice once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located, and posting of notice 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.

The Notice of Notice of Annexation Petition was published on February 8 and February 15, 2009 in the *Waxahachie Daily Light*, a newspaper regularly published and generally circulated in Ellis County; and on February 5 and February 12, 2009 in the *Daily Commercial Record*, a newspaper regularly published and generally circulated in Dallas County. The public comment and hearing request period ended on March 17, 2009.

TCEQ received timely comments and a request for a contested case hearing from the City of Lancaster on February 12, 2009. OPIC recommends granting the City's hearing request.

II. Applicable Law

No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city shall be included in a district unless the city grants its written

consent, by resolution or ordinance, to the inclusion of the land within the district.
Texas Water Code § 54.016(a).

If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district within 90 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district. Texas Water Code § 54.016(b)

If the governing body of the city and a majority of the electors or the owner or owners of 50 percent or more of the land to be included in the district fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition, the failure constitutes authorization to initiate proceedings to include the land within the district. Texas Water Code § 54.016(c)

If the city fails or refuses to grant permission for the inclusion of land in a district or to execute a mutually agreeable contract providing for the water or sanitary sewer service requested, the applicant may petition the commission for creation of the district or inclusion of the land in a district. The commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. Texas Water Code § 54.016(d)

This petition was filed under Chapter 54 of the Texas Water Code and declared administratively complete on October 8, 2008. Therefore, the hearing request associated with this petition is evaluated under Subchapter G of Chapter 55 of the Commission's rules.

Hearing requests concerning annexation of property by a Municipal Utility District are 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 file 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.

Section 55.256(b) of 30 TAC provides that, "Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons."

III. Hearing Request

The City of Lancaster submitted a hearing request on February 12, 2009 stating its objection to the annexation of the proposed area into the District. The District already provides water service to 327 acres of land in the extraterritorial jurisdiction (ETJ) of the City under a water supply contract entered into between the City and the District. Because the 217 acres the District is seeking to annex is also within the ETJ of the City, the District will require an increased supply of water under its contract which the City states it cannot supply. Furthermore, residents currently being provided water services by the District have allegedly experienced poor water quality and delivery of service.

Because the property proposed for annexation is within the ETJ of the City, the City is an affected person under applicable law and entitled to a hearing.

IV. Conclusion

OPIC recommends granting the hearing request by City of Lancaster and referring the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: Eli Martinez
Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6363 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2011 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was filed with 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, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Eli Martinez
Eli Martinez

**MAILING LIST
LANCASTER MUD NO. 1
TCEQ DOCKET NO. 2010-1851-DIS**

FOR THE APPLICANT:

Julianne Kugle
Sanford Kuhl Kugle Parker Hagan L.L.P.
3 Greenway Plz. Ste 2000
800 First City Tower
Houston, Texas 77046-0307
Tel: (713) 653-7339
Fax: (713) 651-0220

Bryan Powell
Jacobs Inc.
7950 Elmbrook Dr. Ste. 250
Dallas, Texas 75247-4925

FOR THE EXECUTIVE DIRECTOR

via electronic mail:
Todd Galiga, 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

Kim Grona, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division, MC-153
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-2173
Fax: (512) 239-2214

FOR OFFICE OF PUBLIC ASSISTANCE

via electronic mail:
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 ALTERNATIVE DISPUTE
RESOLUTION**

via electronic mail:
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:

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:

Kimberly R. Lafferty
500 N. Akard St.
1800 Lincoln Plaza
Dallas, Texas 75201-3302

Jim Mathews, Attorney
Mathews & Freeland L.L.P.
P.O. Box 1568
Austin, Texas 78767-1568