

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 12, 2024

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Geoffrey Kirshbaum
Harrison Malley
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VIA EFILE TEXAS

RE: Petition by Pitt Creek Ranch LLC for the Creation of Lampasas County Municipal Utility District No. 1; SOAH Docket No. 582-23-16963; TCEQ Docket No. 2022-1653-DIS

Dear Parties:

On July 9, 2024, the undersigned administrative law judge (ALJ) issued the Proposal for Decision (PFD) in this case. On July 29, 2024, the Pitt Creek Ranch LLC (Applicant), the Association of Concerned Landowners of Lampasas County (Protestants), and the Executive Director (ED) of the Texas Commission on Environmental Quality timely filed exceptions. On August 8, 2024, the Applicant and Protestants replied to exceptions. The Office of Public Interest Counsel did not file any exceptions or replies. The exceptions largely raise issues that were fully considered and addressed in the PFD.

Most of the exceptions are adequately addressed by the adversarial replies. The ALJ provides the following for further clarity.

Benefit. The Applicant and the ED except to the finding that the Applicant has not meet its burden to show necessity, arguing, in the ED’s words, that “the conclusion that the district is not necessary but would nonetheless be a benefit creates an irreconcilable contradiction.”¹ As addressed on pages 34-35 of the PFD, the benefit criterion appears to avoid taxing landowners that are not served by the district. This is supported by *benefit* being the only of the criterion under Texas Water Code section 54.021 for which the Commission may redefine the district’s boundaries.² This in contrast to necessity, or need, which would appear to address demand and availability of alternatives, as discussed on pages 22-34 of the PFD. The ALJ views these are separate criteria.

Galilee Partners. In reply brief, the Applicant argues for the first time that the precedent in *Galilee Partners* is distinguishable because it involved an application for a water control and improvement district under Chapter 51 of the Water Code and not a municipal utility district under Chapter 54. The ALJ does not find any appreciable difference between the requirement to show that this is “a public necessity or need” under Chapter 51 and the requirement to show “necessity” under Chapter 54, as the Applicant argues.³ Indeed, other district types under the Commission’s jurisdiction include substantially similar creation criteria.⁴

Tax Rates. The Applicant excepts to finding of fact no. 25 as unsupported.⁵ The ALJ agrees in part. This finding should be revised as follows:

25. When a higher interest rate is paired with increased construction costs, the result is that a higher debt service will be spread across fewer owners with lower valuations, requiring a much higher tax rate, potentially

¹ Executive Director’s Exceptions to the Proposal for Decision at 5.

² TWC § 54.021(c) (“If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district’s boundaries accordingly.”).

³ Compare TWC § 51.021(a)(1)-(3) with §54.021(a).

⁴ See TWC §§ 55.028 (water improvement district) (“feasible, practicable, and necessary, and would be a public benefit and a benefit to the land included in the district”), 65.020(a) (special utility district) (“feasible and practicable and is necessary and would be a benefit to all or any part of the land proposed to be included in the district”).

⁵ Applicant Exceptions to the Proposal for Decision at 8-9.

~~double or triple that proposed~~, to realize the income required to retire the bonds.

Water Rates. The ED appears to except to considering Corix's rates when addressing the reasonableness of water rates:

The ALJ's conclusions as to water rates in this case are derived from calculations of a decision from the Public Utility Commission in June of this year, which occurred more than three months after the evidentiary record for this hearing closed. TCEQ's rules under 30 TAC § 293.11 establish what documents are required to be included as part of a district creation petition. The proposed Corix water rates were considered reasonable based on all available information at that time the petition was submitted to TCEQ. [citing ED Ex. 1 at 7] It is unreasonable for the ED's regulatory responsibilities in reviewing petition materials to extend beyond the time in which petition materials are received. Without timely notice or disclosure, the existence of additional information relevant to the creation becomes impractical in the context of a regulatory review.⁶

The Applicant, by contrast, argues that the Commission "may, and should," take judicial notice of the final order in Public Utility Commission of Texas (PUC) Docket No. 53815, issued in June of 2024.⁷

As the Applicant explains, "the projected water rates within the District should be based on the Corix tariff for CCN No. 13227 filed in and now approved in [PUC] Docket No. 53815."⁸ The Applicant further explains "the Preliminary Engineering Report incorrectly states that the residential water rates of the proposed District are expected to be comparable to the water rates of the City of Lampasas. This misstatement was corrected in the prefiled direct testimony of Ken Heroy, the

⁶ ED Exceptions to the PFD at 3.

⁷ Applicant's Exceptions to the Proposal for Decision at 12.

⁸ Applicant's Exceptions to the Proposal for Decision at 10.

engineering consultant who supervised and compiled the application.”⁹ This is discussed on page 16 of the PFD. Ken Heroy’s testimony regarding Corix’s rates was admitted without objection from ED. The ED has not demonstrated in any way how it is unreasonable or impractical to consider “petition materials [] beyond the time in which petition materials are received.” Indeed, considering post-application—updated or corrected—information is routine at other agencies. The ALJ concludes that the Applicant properly submitted corrected information regarding water rates and it is properly considered in this proceeding.

The Applicant, however, excepts to the PFD finding that it failed to meet its burden of proof regarding the reasonableness of water rates. The Applicant argues that because the proposed district lies within the certificated area of Corix, and thereby legally subject to Corix’s rates, there are no “reasonable . . . water rates” to consider. However, Texas Water Code section 54.021(b)(2) requires the Commission to consider whether the projected water rates are reasonable. While the Applicant did submit evidence on the water rates to which district residents would be subject, it provided no evidence that those rates would be reasonable.

Instead, the Applicant argues that Corix’s rates should be considered reasonable as a matter of law because under another regulatory system, namely, Chapter 13 of the Water Code, the PUC found Corix’s rates to be just and reasonable under Texas Water Code section 13.182(a). The PFD rejects this argument on page 21. Under the regulatory scheme set out in Chapter 13 of the Water Code, whether a utility’s rates are just and reasonable is determined without regard to competitive rates. Rather, the regulation is the substitute for competition.¹⁰ By contrast, feasibility—which the reasonableness of the water rates informs—is specifically defined as to encompass competing rates:

Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness *while maintaining*

⁹ Applicant’s Exceptions to the Proposal for Decision at 10.

¹⁰ TWC § 13.00(b)(3).

competitive utility rates. Utility rates that do not exceed the rates of the largest city in the geographic area in which the district is located are conclusively deemed to be competitive.¹¹

Indeed, the Corix rates exceed the City of Lampasas rates by a significant margin, even based on Ken Heroy's testimony which calculated an equivalent 10,000 gallons to cost \$69.50 in the city and \$180.29 in the district.

Had the legislature intended to answer the question of whether water and sewer rates are reasonable under section 54.021(b)(2) by reference to Chapter 13 of the Water Code, it would have done so.¹²

With the above clarifications and revisions, the ALJ recommends that the PFD be adopted as filed.



Christiaan Siano,
Administrative Law Judge

CC: Service List

¹¹ 30 Tex. Admin. Code § 293.59(b) (emphasis added).

¹² Legislative intent is expressed by the words of the statutes it enacts. This “ensures that ordinary citizens are able to rely on the language of a statute to mean what it says.” *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011).