

**TCEQ Docket No. 2022-1653-DIS
TCEQ Internal Control No. D-07062022-010**

PETITION BY PITT CREEK RANCH LLC FOR CREATION OF LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**PITT CREEK RANCH LLC’S RESPONSE TO
REQUESTS FOR A CONTESTED CASE HEARING**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

I. Introduction

Pitt Creek Ranch LLC, (“Petitioner”) files this response to the requests for a contested case hearing filed by Richard Andrews, Billy Bates and Tasha Bates, John R. Bean and Sheila Bean on behalf of Tilford Bean Ranch, LLC, WCM Ranch, L.L.C., Dr. Karley Anne Goen, Burton William Rawson Goen, Morgan Goen Kaldis, Suzanne Smith Rush, Ronnie Smith and Sharon Smith, Virginia Hodges on behalf of Mark Nash Family Limited Partnership, Janet Machen, Craig A Meengs and Stacey L Meengs, Mary Joyce Taylor and Randel C. Taylor, Granvil D. Treece and Judith Gail Treece, Thomas F. Virr on behalf of CCR-NIX, LLC, and Jane Tull Watson and Thomas M Watson III (the foregoing landowners are collectively referred to as the “Individual Protestants”), and Paul Wilborn on behalf of Lampasas County WCID No. 1 (the “WCID”). The Individual Protestants and the WCID may be collectively referred to as the “Protestants”.

Petitioner filed a petition and application with the Texas Commission on Environmental Quality (the “TCEQ” or “Commission”) for the creation of Lampasas County Municipal Utility District No. 1 (the “District”). Petitioner is the owner of approximately 2931.97 acres of land in Lampasas County, Texas. The Petitioner’s land is entirely within the unincorporated area of Lampasas County outside the extraterritorial jurisdiction of any city or town.

As explained in the engineering report included in Petitioner’s application(Attachment L), the District will be responsible for financing the water system, drainage system and the internal roads. Wastewater treatment will be provided through on-site septic systems, and therefore will not be financed by the District. The District will receive retail water service from Corix Utilities via a 10-inch off-site waterline that will connect to the District’s internal water distribution system. The District will have an on-site water plant within its boundaries to insure proper disinfection and

pressurization of the water provided by Corix Utilities. Storm water runoff within the District will be collected in roadway ditches and then conveyed to flumes or water crossings, and will ultimately outfall into Pitt Creek. Design of the drainage system will be based on the requirements of Lampasas County. The District will use bonds to finance the roads that are planned to be constructed within the District.

II. Applicable Law

Section 54.021, Texas Water Code establishes the criteria that govern the Commission's decision on an application for creation of a municipal utility district. Section 54.021 provides in part:

54.021(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

Section 5.115, Texas Water Code and Commission Rule 30 TAC §55.203 establish the criteria that govern the Commission's determination of whether a person is affected by an application and whether to refer the application for a contested case hearing:

Sec. 5.115. PERSONS AFFECTED IN COMMISSION HEARINGS; NOTICE OF APPLICATION. (a) For the purpose of an administrative hearing held by or for the commission involving a contested case, "affected person," or "person affected," or "person who may be affected" means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.

III. The Individual Protestants Are Not Affected Persons

Groundwater

The Individual Protestants have raised various concerns relating to groundwater, including claims that the application does not adequately address the use of groundwater and claims that the District will draw down groundwater and eliminate their water source.

The Preliminary Engineering Report for the Creation of Lampasas County Municipal Utility District No. 1 (Attachment L of the Application) provides as follows:

SECTION 2 — PROJECT DESCRIPTION, page 6 of 17

Water Supply and Distribution System

The proposed District intends to receive retail water service from Corix Utilities via an off-site waterline (10-inch) which will connect to the District's internal water supply system. The District also plans to have an on-site water plant within its boundaries.

The application does not propose that the District will drill and operate wells. The application does not propose that the District will produce groundwater to supply a public water system. In contrast, one of the primary functions proposed for the District is to finance and construct offsite water transmission facilities to bring a supply of potable water from Corix Utilities to the District. Thus, the creation and operation of the District will have no effect on groundwater.

The application defines the project and facilities proposed to be constructed by the District. Because the application does not describe a District project for producing and using groundwater, there is no disputed issue of fact or law regarding groundwater. At best, the Individual Protestants' concern for preserving groundwater is an interest common to the members of the general public. Concerns that are common to the general public are not a basis for designating any of the Individual Protestants as affected persons who are entitled to a contested case hearing.

The Individual Protestants have also expressed concerns that future residents of the District may drill water wells for their personal and domestic use. This speculation by the Individual Protestants regarding the actions of future residents is not relevant in any manner to the creation or operation of the District. The Commission does not have any jurisdiction regarding whether an individual landowner in Lampasas County drills a well for personal and domestic use. Thus, these speculative concerns do not present a justiciable interest that is within the Commission's authority.

Speculative concerns regarding future wells drilled for use by persons other than the District are not a basis for designating any of the Individual Protestants as affected persons who are entitled to a contested case hearing. Furthermore, the Saratoga Underground Water Conservation District has adopted rules that govern persons or entities that drill water wells in Lampasas County. The Saratoga Underground Water Conservation District has jurisdiction regarding the drilling of water wells within Lampasas County. Thus, the speculative concerns and issues that the Individual Protestants have raised regarding groundwater are not relevant or material to the Commission's decision on the application.

Light Pollution

Jane Tull Watson and Thomas M Watson III (collectively, the "Watsons"), and WCM Ranch, L.L.C., Dr. Karley Anne Goen, Burton William Rawson Goen, Morgan Goen Kaldis, and Suzanne Smith Rush (collectively, the "WCM Ranch Group") have raised a concern regarding light pollution, light trespass, and dark skies. Light pollution, light trespass, and dark skies are not included in the criteria listed in Water Code Section 54.021(b) for determining whether a district should be created. The Commission does not have any jurisdiction regarding light pollution, light trespass, and dark skies. Thus, concerns regarding light pollution, light trespass, and dark skies do not present a justiciable interest that is within the Commission's authority. As such, concerns regarding light pollution, light trespass, and dark skies are not a basis for designating any of the Individual Protestants as affected persons who are entitled to a contested case hearing. The concerns and issues that some Individual Protestants have raised regarding light pollution, light trespass, and dark skies are not relevant or material to the Commission's decision on the application.

Native Wildlife, Waterfowl Migration, and Hunting Revenues

The WCM Ranch Group has raised concerns regarding the effect of the District on native wildlife, waterfowl migration, and hunting revenues. Native wildlife, waterfowl migration, and hunting revenues are not included in the criteria listed in Water Code Section 54.021(b) for determining whether a district should be created. Concerns regarding native wildlife, waterfowl migration, and hunting revenue do not present a justiciable interest that is within the Commission's authority. As such, concerns regarding native wildlife, waterfowl migration, and hunting revenue

are not a basis for designating any of the Individual Protestants as affected persons who are entitled to a contested case hearing. The concerns and issues that some Individual Protestants have raised regarding native wildlife, waterfowl migration, and hunting revenues are not relevant or material to the Commission's decision on the application.

Construction and Easements on Existing Roads, Vehicle Traffic, and Population Growth

The WCM Ranch Group has raised concerns regarding the effect of the District on construction and easements on existing roads, vehicle traffic, and population growth. Construction and easements on existing roads, vehicle traffic, and population growth are not included in the criteria listed in Water Code Section 54.021(b) for determining whether a district should be created. The Individual Protestants' concerns relating to construction and easements on existing roads, vehicle traffic, and population growth are interests common to the members of the general public. Concerns that are common to the general public are not a basis for designating any of the Individual Protestants as affected persons who are entitled to a contested case hearing. Furthermore, construction, easements, and traffic on county roads is a matter within the jurisdiction of the Lampasas County Commissioners Court. Construction and easements on existing roads, vehicle traffic, and population growth do not present a justiciable interest that is within the Commission's authority. The concerns and issues that some Individual Protestants have raised regarding construction and easements on existing roads, vehicle traffic, and population growth are not relevant or material to the Commission's decision on the application

IV. There Are No Disputed Issues Regarding Water Quality

The WCM Ranch Group has raised a concern regarding whether development within the District will have an effect on the water quality within Pitt Creek. The application specifically addresses water quality and compliance with storm water regulations. The Preliminary Engineering Report for the Creation of Lampasas County Municipal Utility District No. 1 (Attachment L of the Application) provides as follows:

SECTION 2 — PROJECT DESCRIPTION, page 7 of 17

Wastewater Collection and Treatment System

The proposed District will not have a public wastewater collection system. Each lot within the District will have its own on-site septic tank for wastewater treatment. The District will not finance a wastewater collection system.

Storm Sewer and Drainage System

Storm water runoff within the District will be collected in roadway ditches then conveyed to flumes or water crossings which will convey the flows to tributaries of Pitt Creek, or directly into Pitt Creek depending on location. All storm water will ultimately outfall into Pitt Creek.

Design of the drainage system will be based on requirements of the County.

Section 5, Page 14 of 17:

Effect of District Activity on Water Quality

All construction within the District will include erosion control measures which comply with the Storm Water Pollution Prevention Plans (SWPPP) overseen by TCEQ. Therefore, the proposed District should have minimal effect on water quality.

There is no disputed issue regarding water quality. The District will not operate or finance a public wastewater system, and thus will not obtain a domestic wastewater discharge permit. The Commission has issued a general permit for storm water discharges from construction sites under Section 26.040 of the Texas Water Code and rule 30 TAC Chapter 205. The application acknowledges that construction must include erosion control measures under a storm water pollution prevention plan consistent with this governing law. Water quality protection will be obtained by the Commission's order to approve the creation of the District in accordance with Petitioner's application. Thus, a contested case hearing is not needed to resolve any issue with regard to water quality.

V. No Disputed Issues Are Raised by the WCID

The WCID has requested a contested case hearing based on an easement that it holds for maintaining a floodwater detention pool on a portion of the land within the boundaries of the District. The existence and applicability of the easement held by the WCID is not disputed by the Petitioner. In fact, the application expressly references the lake operated by the WCID to detain flood water. In its protest letter, the WCID requests (1) that no building improvements should be located within the floodwater detention pool area, and (2) that appropriately engineered on-site runoff retention be incorporated into the development, and that the resulting plans be reviewed and approved by NRCS dam safety engineering staff. The application and the proposed project are consistent with both of the requests by the WCID. The Preliminary Engineering Report for the Creation of Lampasas County Municipal Utility District No. 1 (Attachment L of the Application) provides as follows:

Section 2, Page 8 of 17:

DAM SAFETY ANALYSIS

The TCEQ Dam Safety program has reviewed the location of the District and indicated that there are no dams associated with the District. Therefore, no dam safety analysis will be necessary for the District. However, there is a lake, named Sulphur Creek Watershed Site 2 (TX00982), within the District, and therefore, the District will avoid planning any development within the easements of the referenced lake.

Section 2, Page 7 of 17:

Storm Sewer and Drainage System

Storm water runoff within the District will be collected in roadway ditches then conveyed to flumes or water crossings which will convey the flows to tributaries of Pitt Creek, or directly into Pitt Creek depending on location. All storm water will ultimately outfall into Pitt Creek. Design of the drainage system will be based on requirements of the County.

Section 5, Page 14 of 17:

Effect of District Activity on Natural Runoff Rates and Drainage

Runoff from the District will be collected in open ditches before outfalling into Pitt Creek. Development of the District may increase the natural runoff rates minimally when compared to the present undeveloped state of the land; however, detention ponds will be added if required to mitigate any effect on downstream runoff rates.

The issues raised in the hearing request submitted by the WCID are not disputed. The relief sought by the WCID will be obtained by the Commission's order to approve the creation of the District in accordance with Petitioner's application. A contested case hearing is not required to satisfy the requests submitted by the WCID. Furthermore, drainage within subdivisions and construction within flood plains are matters within the jurisdiction of the Lampasas County Commissioners Court, and are not relevant or material to the Commission's decision on the application.

VI. Conclusion and Prayer

Petitioner respectfully requests that the Commission find that Individual Protestants do not meet the requirements of an affected person that has a personable justiciable interest in the petition or the application with regard to groundwater because the application does not provide for the District to use groundwater. Petitioner further requests that the Commission deny the requests for a contested case hearing submitted by the Individual Protestants with respect to groundwater.

Petitioner respectfully requests that the Commission find that Individual Protestants do not meet the requirements of an affected person that has a personable justiciable interest in the petition or the application with regard to light pollution, native wildlife, waterfowl migration, hunting revenues, construction and easements on existing roads, vehicle traffic, and population growth because these matters do not present a justiciable interest that is within the Commission's authority. Petitioner further requests that the Commission deny the requests for a contested case hearing submitted by the Individual Protestants with respect to light pollution, native wildlife, waterfowl migration, hunting revenues, construction and easements on existing roads, vehicle traffic, and population growth.

Petitioner respectfully requests the Commission find that there are no disputed questions of fact or law regarding the petition or the application with regard to water quality because the District will not operate wastewater treatment facilities and the Commission's general permit for storm water discharges from construction sites will govern construction of District facilities.

Petitioner respectfully requests the Commission find (1) that there are no disputed questions of fact or law regarding the petition or the application with regard to the issues raised by the WCID, and (2) that granting Petitioner's petition and approving the application to create the Lampasas County Municipal Utility District No. 1 resolves the issues raised by the WCID. Petitioner further requests that the WCID's request for a contested case hearing be denied.

Wherefore, premises considered, Petitioner, Pitt Creek Ranch LLC, respectfully requests that the Commission enter an order approving its petition and application and authorizing the creation of Lampasas County Municipal Utility District No. 1.

Respectfully submitted,



Richard Hamala

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ATTORNEY FOR PITT CREEK RANCH LLC

CERTIFICATE OF SERVICE

I certify that on December 19, 2022, a true and correct copy of Pitt Creek Ranch, LLC's Response to Requests for Contested Case Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached service list via hand delivery, electronic delivery, or by deposit in the U.S. Mail.

Richard Hamala
Richard Hamala

SERVICE LIST
LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1
DOCKET NO. 2022-1653-DIS; INTERNAL CONTROL NO. D-07062022-010

<p><u>FOR THE EXECUTIVE DIRECTOR</u> via electronic mail: Harrison “Cole” Malley, Staff Attorney Texas Commission on Environmental Quality Environmental Law Division, MC-173 P.O. Box 13087 Austin, Texas 78711 Tel: (512) 239-0600 Fax: (512) 239-0606 harrison.malley@tceq.texas.gov</p>	<p><u>FOR ALTERNATIVE DISPUTE RESOLUTION</u> via electronic mail: Kyle Lucas Texas Commission on Environmental Quality Alternative Dispute Resolution, MC-222 P.O. Box 13087 Austin, Texas 78711 Tel: (512) 239-0687 Fax: (512) 239-4015 kyle.lucas@tceq.texas.gov</p>
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<p>Ryan Vise, Deputy Director Texas Commission on Environmental Quality External Relations Division, MC-108 P.O. Box 13087 Austin, Texas 78711 Tel: (512) 239-4000 Fax: (512) 239-5678 pep@tceq.texas.gov</p>	<p><u>INTERESTED PERSON(S):</u> Randall Hoyer Lampasas County Judge 501 E 4th Street, Ste. 103 Lampasas, TX 76550-2957 randy.hoyer@co.lampasas.tx.us</p>
<p><u>FOR PUBLIC INTEREST COUNSEL</u> via electronic mail: Garrett T. Arthur, Public Interest Counsel Texas Commission on Environmental Quality Public Interest Counsel, MC-103 P.O. Box 13087 Austin, Texas 78711 Tel: (512) 239-6363 Fax: (512) 239-6377 garrett.arthur@tceq.texas.gov</p>	

SERVICE LIST
LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1
DOCKET NO. 2022-1653-DIS; INTERNAL CONTROL NO. D-07062022-010

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