

**SOAH DOCKET NO. 582-23-16963
TCEQ DOCKET NO. 2022-1653-DIS**

**APPLICATION FOR CREATION § BEFORE THE STATE OFFICE
OF LAMPASAS COUNTY § OF
MUNICIPAL UTILITY DISTRICT § ADMINISTRATIVE HEARINGS
NO. 1**

**APPLICANT’S REPLY TO THE ASSOCIATION OF CONCERNED LANDOWNERS OF
LAMPASAS COUNTY’S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant, Pitt Creek Ranch LLC submits this Reply to the Exceptions to the Proposal for Decision (“PFD”) filed in this case by Protestant, Association of Concerned Landowners of Lampasas County (“Protestant”).

I. MARKET STUDY EVIDENCE

In its pleading entitled “Exceptions,” rather than noting exceptions to the PFD, Protestant continues to misrepresent Applicant’s market study and related evidence supporting the creation of Lampasas County Municipal Utility District No. 1 (the “District”). Protestant’s salient misrepresentations are highlighted below:

Protestant’s Misrepresentation	Applicant’s Evidence
The property within the District will be used for “ small-lot ” homes.	Upon completion, the 2,932-acre Lampasas County MUD will include 421 residential lots featuring between 2.0 and 100.0 acres each. ¹ The Preliminary Concept Plan for the land in the District includes 53 lots having an area of 2 to 4 acres, 358 lots having an area of 5 to 10 acres , 6 lots having an area of 10 to 27 acres, and 4 lots having more than 100 acres. ²
Residents of the District would commute significant distances to Austin, San Antonio, Dallas, and Abilene.	Via US-190, US-281, and SH 183, the Subject Property is within a three-hour drive of Austin, San Antonio, Dallas-Ft. Worth, and Abilene. This regional accessibility should allow the Subject

¹ App. Ex. 15 at p. 5.

² App. Ex. 4 (Corrected) p. 44, Preliminary Concept Plan.

Protestant’s Misrepresentation	Applicant’s Evidence
	Property to be attractive an array of home buyers (ideal for attracting out of market buyers). ³
Applicant’s market study found unreasonably high anticipated property values.	Applicant’s market study projects home values ranging from \$400,000 to \$2,000,000 over an absorption period of 12 to 23 years. ⁴

Protestant’s “Exceptions” recite the testimony of Protestant witness Richard Petree, which improperly characterizes the relevant market for homes within the proposed District as being limited to homes in the area of the proposed District. In contrast to Protestant’s limited scope of inquiry, Applicant’s market study included a competitive market area analysis for Lampasas County and a general area analysis for the Killeen-Temple Metropolitan Statistical Area, consistent with the Commission’s published “Suggested Outline for Market Study Report,” which is Appendix No. 1 to Developer’s Bond Application Report Format guidance document.⁵

The only market study evidence in the record is Applicant’s market study. Protestant’s witness Richard Petree admitted that he was not trained to perform a market study.⁶ Mr. Petree’s unsupported anecdotal testimony, relied on by the Protestant and the Administrative Law Judge (“ALJ”), does not constitute a market study. In contrast to Mr. Petree’s unsupported opinion that homes in the area of the proposed district are only built on “medium to large ranches,” Applicant’s market study contains maps compiled from market research depicting 1-acre+ lot listings and closings and a significant number of single-family home closings both in the area between the City of Lampasas and the proposed District, and in the portion of Lampasas County that is west and north of the proposed district.⁷

³ App. Ex. 15 at p. 5 and p. 57.

⁴ App. Ex. 15 at p. 9.

⁵ TCEQ Publication RG 178, June 2006.

⁶ Tr. at 116:25-117:15 (Petree Cross) (Feb. 21, 2024).

⁷ App. Ex. 15 at pp. 47, 48.

II. PROTESTANT MISCONSTRUES THE NECESSITY CRITERIA IN CHAPTER 54 OF THE TEXAS WATER CODE

Texas Water Code Sections 54.020 and 54.021 require the Commission to consider evidence and make a determination regarding whether a proposed district's **project is necessary and would be a benefit** to all or any part of the land proposed to be included in the district. In the context of Sections 54.020 and 54.021, the "project" is referring to the facilities and improvements that will be constructed and financed by or on behalf of the district. In this case, the project proposed for Lampasas County Municipal Utility District No. 1 (the "District") consists of the water supply facilities, drainage facilities, and roads that are described in Applicant's Preliminary Engineering Report.⁸ The project is necessary to provide water service, drainage services, and roadway access within the District. The Applicant's engineering witness, Paul Schroeder, confirmed that the "(1) water distribution lines, valves, and a water plant for storage and pressurization; (2) storm drainage systems and potentially detention basins; and (3) paved road facilities that are planned to be constructed by the Applicant on behalf of the District are necessary for developing residential subdivisions within the land."⁹ The ALJ found that the Applicant met its burden of proof to show that the District's project would be a benefit to the land to be included within the District.¹⁰ Thus, Applicant's uncontroverted evidence and the ALJ's finding of benefit to the land support a determination by the Commission that the District's project is necessary.

Applicant concurs with the exceptions filed by the Executive Director which explain that "from a regulatory perspective, the conclusion that the district is not necessary but would nonetheless be a benefit creates an irreconcilable contradiction."¹¹ The necessity for the District is supported by the Executive Director's witness James Walker, who testified that he reviewed the application documents, which included Applicant's market study, and determined that the proposed District is necessary and a benefit to the land to be included in the proposed District.¹²

In opposing creation of the District, the Protestant and the ALJ have relied on the Commission's decision in *Application of Galilee Partners, L.P., for Creation of Maypearl Water Control and Improvement District No. 1 of Ellis County, Texas* ("Galilee Partners").¹³ In *Galilee*

⁸ App. Ex. 4 (Corrected).

⁹ App. Ex. 2 at p.7, ll. 13-17.

¹⁰ PFD at. 36.

¹¹ Executive Director's Exceptions to the Proposal for Decision at p. 5.

¹² ED. Ex. 1, p. 6, ll. 10-19.

¹³ TCEQ Docket No. 2005-1686-DIS, SOAH Docket No. 582-07-2163.

Partners, the Commission denied without prejudice an application for creation of a water control and improvement district (“WCID”) based on a determination that the proposed WCID was not necessary. The *Galilee Partners* application involving the proposed creation of a WCID was governed by Chapter 51 of the Texas Water Code, instead of Chapter 54 of the Water Code. With regard to an application to create a WCID, Chapter 51 of the Texas Water Code contains a different standard with regard to the issue of necessity, as compared to Chapter 54 of the Water Code:

Sec. 51.020. SINGLE-COUNTY DISTRICT: TESTIMONY AT HEARING.

- (a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show **that the district:**
 - (1) **is or is not necessary;**

Sec. 51.021. SINGLE-COUNTY DISTRICT: GRANTING OR REFUSING PETITION.

- (a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:
 - (1) organization of the district as requested is feasible and practicable;
 - (2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;
 - (3) **there is a public necessity or need for the district;**

The final order in *Galilee Partners* included a conclusion of law stating:

- 7. Based on the above Findings of Fact, **there is not a public necessity or need for the proposed District** as required by § 51.021(a)(3) of the Water Code.¹⁴

The *Galilee Partners* decision was clearly based on Chapter 51 of the Texas Water Code. In contrast, in the pending case, the Applicant is requesting the creation of a municipal utility district under Chapter 54 of the Texas Water Code. The wording of Section 51.021 and Section 54.021 are

¹⁴ *Galilee Partners, L.P. v. Tex. Comm’n on Env’tl. Quality*, TCEQ Docket No. 2005-1686-DIS, SOAH Docket No. 582-07-2163, Order at p. 5 (April 27, 2009) (emphasis added).

significantly different. The WCID statute, Section 51.021, focuses on the necessity for the district. In contrast, the municipal utility district statute, Section 54.021, focuses on the necessity for the proposed project, which is a more specific and limited technical inquiry concerning the facilities that are planned to be constructed by or on behalf of the district. Because of this difference in statutory wording, a determination and decision by the Commission under Section 51.021 of the Water Code, the WCID statute at issue in *Galilee Partners*, is not controlling or applicable to the creation of a municipal utility district under Chapter 54 of the Water Code.

III. PROJECTED CONSTRUCTION COSTS

In its “Exceptions,” Protestant supports the ALJ conclusion regarding construction costs and urges the Commission to determine the reasonableness of construction costs based on the cost levels existing more than a year after the Application was submitted. Protestant urges an unworkable standard for evaluating the *tentative* itemized cost *estimates* that are required by Commission rules to be included in a creation application. In the PFD, the ALJ acknowledges that the construction costs submitted by Applicant as part of the Application were reasonable at the time the application was filed in July 2022.¹⁵ However, the Protestant is urging the Commission to adopt the ALJ’s finding that there is no evidence that construction costs remain reasonable under current cost projections. Considering such evidence represents a stark departure from applicable law, TCEQ rules, TCEQ precedent, and TCEQ policy as reflected in the TCEQ Executive Director’s direct evidence and the PFD itself.

As part of a MUD creation application, the TCEQ rules require an applicant to submit a preliminary engineering report that includes *tentative* itemized cost *estimates* of the proposed capital improvements and an itemized cost summary for the anticipated bond issue requirement.¹⁶ This is consistent with Texas Water Code (“TWC”) § 54.015(2) which requires municipal utility district application petitions to “state . . . the cost of the project as *then estimated* by those filing the petition.”¹⁷ Here, the cost information included in the Application is precisely that—as *then estimated*, at the time the Application was filed.

¹⁵ PFD at p. 18.

¹⁶ 30 TAC § 293.11(d)(1)(E) and (5); *see also* *Petition for the Creation of Ellis Ranch Municipal Utility District No. 1*, TCEQ Docket No. 2022-1157-DIS; SOAH Docket No. 582-23-11658, Order at 8, Explanation of Changes. Para. 1 (July 16, 2024).

¹⁷ TWC § 54.015(2) (emphasis added).

Applicant concurs with the exceptions filed by the Executive Director which explain that considering post-application cost information is inconsistent with applicable statutes and the Commission's rules.¹⁸ The Executive Director further explains that providing certainty as to regulatory expectations requires costs to be assessed at the time the application is submitted.¹⁹ Considering varying post-application cost information is inconsistent with the Executive Director's obligations to timely review and make recommendations regarding filed applications.²⁰ The Commission should implement the exceptions filed by the Executive Director and reject all portions of the PFD that require cost estimates to be updated during the pendency of a contested case hearing.

IV. PROJECTED TAX RATES

In its "Exceptions", Protestant cites the PFD at page 15 to support a conclusion by the ALJ that the tax rate proposed by the Applicant is not reasonable in light of anticipated interest rates for municipal bonds. There is no such conclusion by the ALJ stated on page 15 of the PFD. However, on page 20 of the PFD, the ALJ did conclude that the Applicant failed to meet its burden of proof to show reasonable projected tax rates because there was no calculation of tax rates based on the Protestant's cost projections formulated after the application was filed.²¹ Applicant reiterates that the tentative itemized cost estimates for capital improvements that are proposed to be constructed by or on behalf of the District are required to be estimated at the time the application is filed, not later.²² Thus, there is no legal basis for the ALJ to impose a requirement for a projected tax rate to be calculated based on updated cost estimates and Applicant excepts to the ALJ's recommended findings and conclusions on projected tax rates for the same reasons previously discussed with respect to the construction cost estimate issue.

V. TRANSCRIPT COSTS

The Commission should reject Protestant's exception to the ALJ's recommendation that Protestant should pay a share of transcript costs. During the hearing on the merits, Protestant offered testimony from one of its members, Mr. Thomas M. Watson III. In his testimony, Mr. Watson noted his concern that subsequent development by future property owners within the District will utilize

¹⁸ Executive Director's Exceptions to the Proposal for Decision at p. 2.

¹⁹ *Id.* at p. 3.

²⁰ *Id.* at p. 4.

²¹ PFD at 20.

²² TWC § 54.015(2); TAC § 293.11(d)(1)(E) and (5); *see also* *Petition for the Creation of Ellis Ranch Municipal Utility District No. 1*, TCEQ Docket No. 2022-1157-DIS; SOAH Docket No. 582-23-11658, Order at 8, Explanation of Changes. Para. 1 (July 16, 2024).

groundwater and affect groundwater level, subsidence, and recharge capability.²³ Mr. Watson's concern relates to future property owners and does not relate to the District or the District's project. Protestant's other witnesses, Mr. Trey Taylor and Mr. Richard Petree, did not offer any testimony or other evidence regarding impacts or adverse effects within the Commission's jurisdiction that Protestant's members will suffer as result of the project that is proposed to be undertaken by the District. In particular, the Protestant did not submit any evidence of an effect by District's project on the groundwater of the Protestant's members.

In December 2022, the Applicant filed its objections to the granting of party status to members of the Protestant based on their contention that the District's project will have an adverse effect on groundwater.²⁴ In the PFD, the ALJ found that the Applicant met its burden to show that the proposed development will not have an unreasonable effect on the groundwater level in the region or on the recharge capability of groundwater in the area.²⁵ The hearing on the merits has concluded, and the Protestant has failed to show that any of its members have a personal justiciable interest within the Commission's jurisdiction that is adversely affected by the District or the District's project. The evidence now shows Protestant's members were not entitled to party status from the beginning of this proceeding. The Commission should consider the fact that Protestant has cited the transcript in its briefing and arguments, and Protestant has thus benefitted from the preparation of the transcript. Thus, requiring Protestant to pay an equal 50% share of the transcript costs is, at a minimum, a fair and reasonable result.

VI. CONCLUSION

The Applicant has met its burden of proof to establish that the proposed project is feasible and practical and is necessary and would benefit the land to be included in the proposed district. The Application for creation of the District should be approved. The Applicant respectfully requests that the Commission grant Applicant's exceptions to the ALJ's Proposal for Decision and proposed finding of fact and conclusions of law, and adopt Applicant's proposed findings of fact, conclusions of law, and ordering paragraphs previously filed herein, and approve the creation of the District.

²³ CLLC Ex. 1, p. 3, ll. 1-3.

²⁴ Pitt Creek Ranch LLC's Response to Requests for a Contested Case Hearing, filed December 19, 2022, TCEQ Docket No. 2022-1653-DIS, TCEQ Internal Control No. D-07062022-010.

²⁵ PFD at pp. 39-40.

In the alternative, in the unlikely event that the Commission determines that Applicant's Application should be evaluated based on cost and market information arising after the application was filed in 2022, or related projected tax estimates, the Applicant respectfully requests that its Application be remanded to the Executive Director and/or SOAH to provide Applicant an opportunity to revise and supplement its Application based on cost and market information available as of a date certain specified by the Commission. Applicant respectfully requests such other any further relief to which it may be entitled.

Respectfully submitted,

/s/ Richard Hamala

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CERTIFICATE OF SERVICE

I certify that on August 8, 2024, a true and correct copy of this pleading was emailed to the persons listed below:

/s/ Richard Hamala
Richard Hamala

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