

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 9, 2024

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Harrison Malley
Jennifer Jamison
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Paul Wilborn

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:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**PETITION BY PITT CREEK RANCH LLC FOR THE CREATION OF
LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT No. 1**

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**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**PETITION BY PITT CREEK RANCH LLC
FOR THE CREATION OF
LAMPASAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1**

PROPOSAL FOR DECISION

Pitt Creek Ranch LLC (Petitioner) petitioned the Texas Commission on Environmental Quality (Commission) for the creation of a municipal utility district. The district would cover approximately 3,000 acres in Lampasas County, seven miles from the City of Lampasas and 36 miles from the City of Killeen.

The Executive Director (ED) of the Commission recommends that the petition be granted. The Office of Public Interest Counsel (OPIC) and the Association of Concerned Landowners of Lampasas County (Protestant) argue that the petition should be denied.

Based on the evidence presented and the applicable law, the administrative law judge (ALJ) concludes that Petitioner did not meet its burden of proving the district's creation meets all applicable requirements. Specifically, Petitioner failed to prove that the project is feasible or necessary. Therefore, the ALJ recommends that the Commission deny the petition.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law.

Petitioner filed a petition for creation of the Lampasas County Municipal District No. 1 on July 6, 2022.¹ On July 12, the application was declared administratively complete.² On November 23, the application was declared technically complete and the ED recommended granting the petition.³ On January 30, 2023, the Commission referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.⁴ On May 23, a preliminary hearing convened. The administrative record was admitted for the limited purpose of establishing jurisdiction and Petitioner, ED, OPIC, Protestant, and Lampasas Water Control and Improvement District (WCID) No. 1 were named

¹ App. Exs. 8 (petition), 21 (acknowledgement of receipt), 25 (application).

² App. Ex. 21 (admin. complete letter, July 12, 2022); Tex. Water Code § 49.011(a).

³ ED Ex. 3 (memo).

⁴ Interim Order (Jan. 30, 2023).

as parties.⁵ Lampasas WCID No. 1, which operates the Sulphur Creek Site 2 reservoir downstream of the proposed district,⁶ subsequently withdrew as a party after reaching a settlement with Petitioner.⁷

A hearing on the merits was held January 20-21, 2024. Petitioner, the ED, OPIC, and Protestant appeared. The record closed on May 10, with submission of written closing arguments.⁸

II. APPLICABLE LAW

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of article XVI, section 59 of the Texas Constitution, and chapters 49 and 54 of the Texas Water Code, as implemented by chapter 293 of title 30 of the Texas Administrative Code.⁹ To be granted, the petition must be complete¹⁰ and the project must be feasible and practicable, necessary, and a benefit to the land to be included within a district.¹¹ In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider the following factors:

⁵ SOAH Order No. 1 (May 25, 2023).

⁶ App. Ex. 2 (Schroeder Dir.) at 9.

⁷ SOAH Order No. 5 (Sept. 5, 2023).

⁸ SOAH Order No. 7 (Feb. 28, 2024).

⁹ Citations to the regulations in 30 Texas Administrative Code chapter 293 are referred to in the text as “Rule ____.”

¹⁰ Tex. Water Code §§ 54.014-.015; 30 Tex. Admin. Code § 293.11(a), (d).

¹¹ Tex. Water Code § 54.021(a).

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.¹²

Commission rules require the petitioner to address these items in a preliminary engineering report.¹³

The purposes of a MUD include water distribution, wastewater collection, and providing drainage facilities.¹⁴ The petition may also request road powers.¹⁵ When such a request is made, the application must provide information required by 30 Texas Administrative Code section (Rule) 293.202:

- (7) a preliminary layout showing the proposed location for all road facilities to be constructed, acquired, or improved by the district;
- (8) a cost analysis and detailed cost estimate of the proposed road facilities to be designed, acquired, constructed, operated,

¹² Tex. Water Code § 54.021(b).

¹³ 30 Tex. Admin. Code § 293.11(d)(5).

¹⁴ Tex. Water Code § 54.012.

¹⁵ Tex. Water Code § 54.234(a).

maintained, or improved by the district with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement;

- (9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district[.]¹⁶

If the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall deny the petition.¹⁷

City consent is required if land in the district falls within the corporate limits or the extraterritorial jurisdiction of a city.¹⁸ Where, as here, no portion of the proposed district is within the corporate limits or extraterritorial jurisdiction of a city, no city consent is required.¹⁹ Where all of the proposed district is to be located outside the corporate limits of a municipality, the county commissioners court must be notified of the propose creation. The commissioners court may then submit a written opinion, which the Commission shall consider in determining whether the district should be created.²⁰

¹⁶ Where a MUD application includes a request for road powers, Rule 293.11(d)(11) requires the application to include information meeting the requirements of Rule 293.202(b), which in turn requires the information listed in subsection (a)(7)-(9).

¹⁷ Tex. Water Code § 54.021(d).

¹⁸ Tex. Water Code § 54.016(a); Tex. Loc. Gov't Code § 42.042(a).

¹⁹ ED Ex. 3 (memo) at 17.

²⁰ Tex. Water Code § 54.0161.

When a petition is contested, the petitioner has the burden of proof by a preponderance of the evidence.²¹

III. SUFFICIENCY OF THE PETITION

If the Commission determines that a hearing is necessary, the Commission shall “accept evidence on the sufficiency of the petition and whether the project is 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.”²²

No party disputes that the application contained the contents required by Texas Water Code sections 54.014-.015, and Rule 293.11,²³ except that Protestant argues that the petition did not include certain information relating to road powers. Although raised as a substantive challenge, the ALJ construes these contentions to dispute the sufficiency of the application, and therefore address them here.

Protestant asserts that the application fails to include information required by Rule 293.202. Protestant bases this assertion on its argument that the roadway costs are not reasonable (discussed later) and that the application lacks the level of detail required when road powers are sought. ED witness Walker found the application technically complete and concluded that the request for road powers appeared to be

²¹ 30 Tex. Admin. Code § 80.17(a).

²² Tex. Water Code § 54.020(a).

²³ Petitioner Initial Brief at 4-5; ED Initial Brief at 4-5; Protestant Initial Brief at 2-3; OPIC Initial Brief at 5-6.

financially feasible.²⁴ Petitioner contends that it provided the requisite information. OPIC did not take a position on this issue.

A review of the application shows that it included (within a preliminary engineering report) a preliminary layout showing the proposed location for all road facilities to be constructed by the district,²⁵ a cost estimate of the proposed road facilities,²⁶ and a statement of the bond amounts estimated to be necessary to finance the road improvements.²⁷

The ALJ concludes that the application contains the required information. Titled *Application Requirements for Commission Approval*, Rule 293.202 addresses only the contents of the application, not the quality of the information required by Texas Water Code section 54.021. Subsection (a)(9) requires only that a narrative statement “demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.” Petitioner has provided this. The probative value of that statement is examined in the discussion addressing whether the projected construction costs are reasonable, as discussed later. The ALJ concludes that the road powers request meets the requirements of Texas Water Code section 54.234 and Rules 293.11(d)(11) and 293.202. Therefore, the petition is sufficient.

²⁴ ED Ex. 1 (Walker Dir.) at 12: 8-13; ED. Ex. 3 (memo) at 8.

²⁵ App. Ex. 4 (prelim. eng. report) at 7, 44 (Exhibit 6).

²⁶ App. Ex. 4 (prelim. eng. report) at 56 (Exhibit 10).

²⁷ App. Ex. 4 (prelim. eng. report) at 10-12.

IV. DISCUSSION

Petitioner had 24 exhibits admitted into evidence and presented the testimony of Paul Schroeder, P.E., with Vickrey & Associates, LLC; Kenneth Heroy, P.E., President of Jones-Heroy & Associates, Inc.; Bryan Glasshagel, Vice President of Zonda Advisory, who prepared the market study; John Barganski, director of Specialized Public Finance, Inc., financial advisor; David Cavalier, real estate broker; and Prem Kalidindi, President of Pitt Creek Manager, LLC, manager of Petitioner. Protestant had 10 exhibits admitted and presented the testimony of Thomas Watson, area landowner; Trey Taylor, P.E., Operations Manager at MRB Group, engineering and infrastructure consultant; and Richard Petree, who provides appraisal services. The ED had four exhibits admitted and presented the testimony of James Walker, a member of the District Creation Review Team at the Commission.

A. PROJECT DESCRIPTION

The land for the proposed district consists of undeveloped farm and ranch land with minimal trees.²⁸ The proposed development within the district will consist of 421 single-family residential lots of between two to 100 acres on approximately 3,000 acres.²⁹ The proposed district is located approximately seven miles west of downtown of the City of Lampasas, and 36 miles west of the City of Killeen. Access

²⁸ App. Ex. 4 (prelim. eng. report) at 5-6.

²⁹ App. Ex. 4 (prelim. eng. report) at 5-6; App. Ex. 13 (Glasshagel Dir.) at 4; App. Ex. 15 (market study) at 4-5; App. Ex. 2 (Schroeder Dir.) at 4, 8; App. Ex. 18 (Cavalier Dir.) at 4; App. Ex. 20 (Kalidindi Dir.) at 2, 4.

to the district will be provided by County Road (CR) 1139 to the north and CR 1255 to the south.³⁰

Petitioner seeks to create a district over this land to finance water distribution, drainage infrastructure, and road construction.³¹ Petitioner engaged Jones-Heroy Associates, Inc., who prepared the preliminary engineering report together with Vickrey & Associates, LLC.³² Vickrey also prepared a Mini Natural Resource Conservation Service (NRCS) Study as a part of the settlement with Lampasas WCID No. 1.³³

B. WHETHER THE PROJECT IS FEASIBLE, PRACTICABLE, AND NECESSARY AND WOULD BE A BENEFIT TO THE LAND INCLUDED IN THE PROPOSED DISTRICT

To grant the petition, the Commission must make findings that the project is (1) feasible and practicable, (2) necessary, and (3) would be a benefit to the land to be included in the district.³⁴ In making these findings, the Commission is required to consider several factors.³⁵ Because these factors inform the broader inquiries, the ALJ addresses them in conjunction with the element to which they most logically relate: the availability of comparable services is addressed as a part of the inquiry into

³⁰ App. Ex. 4 (prelim. eng. report) at 5.

³¹ App. Ex. 2 (Schroeder Dir.) at 4, 6; App. Ex. 4 (prelim. eng. report) at 5-6; App. Ex. 6 (Heroy Dir.) at 9.

³² App. Ex. 4 (prelim. eng. report).

³³ App. Ex. 2 (Schroeder Dir.) at 9-10; App. Ex. 5 (Mini-NRCS Report).

³⁴ Tex. Water Code § 54.021(a).

³⁵ Tex. Water Code § 54.021(b).

whether the project is necessary; and the reasonableness of the construction costs, tax rates, and water and sewer rates is addressed as part of the inquiry into whether the project is feasible and practicable. The district's effect on the land is considered separately.

1. Feasibility and Practicability

Although similar, the feasibility and practicability of the project are considered separately.

a) Practicability

Improvements proposed for the district include (1) an internal water distribution system, with an onsite water plant and a pipeline connection to potable water supply facilities owned by Corix Utilities, (2) a drainage system, and (3) roads.³⁶ Petitioner witnesses Heroy and Schroeder testified that, given the characteristics of the land in the district, these improvements are practicable.³⁷ No party disputes this. The ALJ therefore finds that the project is practicable.

b) Feasibility

Relevant to the feasibility of the project is the reasonableness of projected construction costs, tax rates, and water and sewer rates.³⁸ Also addressed in this inquiry is “whether or not the district and its system and subsequent development

³⁶ App. Ex. 4 (prelim. eng. report) at 6-7; App. Ex. 2 (Schroeder Dir.) at 7.

³⁷ App. Ex. 6 (Heroy Dir.) at 11; App. Ex. 2 (Schroeder Dir.) at 8.

³⁸ Tex. Water Code § 54.021(b)(2).

within the district will have an unreasonable effect on the ... total tax assessments on all land located within a district.”³⁹ This information bears on the expected bond issue that will be made to cover the projected costs, because the combined projected tax rate must not exceed \$1.00 per \$100 assessed valuation.⁴⁰

ED witness Walker testified that tax rates, construction costs, and water and sewer rates are reasonable compared to other taxing authorities in the general area of the proposed district.⁴¹

i. Projected Construction Costs

Petitioner projected the total construction costs to be \$51.5 million, (\$26.8 million for water and drainage and \$24.7 million for road improvements).⁴² Schroeder and Heroy testified that these estimates were reasonable when the application was submitted.⁴³

Protestant witness Trey Taylor did not dispute the accuracy of the construction cost estimates at the time the application was filed.⁴⁴ Rather, he testified

³⁹ Tex. Water Code § 54.021(b)(3)(G).

⁴⁰ 30 Tex. Admin. Code § 293.59(k)(3)(C); App. Ex. 16 (Barganski Dir.) at 24; App. Ex. 24 (Barganski Reb.) at 5; ED Ex. 1 (Walker Dir.) at 10.

⁴¹ ED Ex. 1 (Walker Dir.) at 10.

⁴² App. Ex. 4 (prelim. eng. report) at 9-10, 52-56; App. Ex. 8 (petition) at 3.

⁴³ App. Ex. 2 (Schroeder Dir.) at 8; App. Ex. 6 (Heroy Dir.) at 11, 17.

⁴⁴ Tr. at 156-160 (Taylor Cross).

that the construction costs are greatly underestimated in light of more current costs.⁴⁵

Petitioner estimated the 4-inch and 6-inch piping would cost \$35 and \$55 per linear foot, but, according to Taylor, that cost is now closer to \$60-\$65 per foot.⁴⁶ Petitioner estimated the water plant cost to be \$1 million,⁴⁷ while Taylor estimates that cost as now being closer to \$2.9 million.⁴⁸ The water treatment plant cost is based on the assumption that each of the 421 units would consist of 3.5 people using 100 gallons of water per person per day, or 350 gallons of water per day.⁴⁹ Taylor does not challenge this assumption.⁵⁰ With respect to road construction, Taylor testified that hot-mix asphalt is currently priced at approximately \$275 per placed ton, or approximately 3 times higher than the cost estimated in the preliminary engineering report.⁵¹ In sum, Taylor estimated the total water and drainage bond issue requirement to be \$30 million and the road improvement bond issue requirement to be \$52 million for a total of \$82 million.⁵²

⁴⁵ CLLC Ex. 2 (Taylor Dir.) at 3.

⁴⁶ CLLC Ex. 2 (Taylor Dir.) at 3.

⁴⁷ App. Ex. 4 (prelim. eng. report) at 53

⁴⁸ CLLC Ex. 2 (Taylor Dir.) at 3-4; CLLC Ex. 4.

⁴⁹ App. Ex. 4 (prelim. eng. report) at 5.

⁵⁰ CLLC Ex. 2 (Taylor Dir.) at 4.

⁵¹ CLLC Ex. 2 (Taylor Dir.) at 3.

⁵² CLLC Ex. 2 (Taylor Dir.) at 5-6; CLLC Ex. 6 (updated financial info) at 2.

ED witness Walker relied solely on the information in the application and did not opine on the reasonableness of the updated cost estimates.⁵³ OPIC argues that the projected construction costs offered by Petitioner are unreasonable in light of updated costs.⁵⁴

Petitioner's witnesses do not dispute the accuracy of these increases. Heroy conceded that construction costs have increased since the application was filed and Schroeder agreed that a 75% increase in some costs would not be unusual.⁵⁵ Rather, Petitioner argues that the cost increases do not render the original estimates unreasonable.⁵⁶

ii. Projected Tax Rates

The projected tax rate is based on the projected bond issue requirements. The bond issue requirement is the total estimated principal amount of bonds to be issued to pay estimated construction and non-construction costs of a district.⁵⁷ As noted above, these costs were estimated to total \$51.5 million.⁵⁸

To arrive at the projected tax rate, Petitioner used a market study (discussed later) to estimate total assessed valuation of all property within the district at full

⁵³ Tr. at 175 (Walker Cross).

⁵⁴ OPIC Initial Brief at 14.

⁵⁵ Tr. at 20-22 (Schroeder Cross), 38 (Heroy Cross).

⁵⁶ Petitioner Reply Brief at 14.

⁵⁷ App. Ex. 16 (Barganski Dir.) at 7.

⁵⁸ App. Ex. 4 (prelim. eng. report) at 9-10.

development to be \$357,850,000, based on the number of lots (421) multiplied by an average assessed value of \$850,000.⁵⁹ Thus, the district would need a debt service tax rate of \$0.8813 per \$100 of assessed value (\$0.4586 for utilities and \$0.4227 for roads), with a 4% interest rate, over 28 years to retire this bond issue requirement.⁶⁰ Adding a projected operation and maintenance tax of \$0.05 per \$100 of assessed valuation brings the total projected combined tax rate to \$0.9313 per \$100 of assessed valuation.⁶¹ Based on these projected tax rates, Heroy and Barganski opined that the district is economically feasible.⁶²

Barganski further testified that the projected tax rate of \$0.9313 per \$100 of assessed valuation is reasonable and comparable to other new districts in Central Texas.⁶³ In 2021, other taxing authorities within the area had tax rates between \$0.8315 and \$0.95 per \$100 of assessed valuation.⁶⁴ For the same reasons, ED witness Walker agreed that the project is feasible.⁶⁵

Protestant and OPIC contend that the district is not financially feasible. Apart from the increased construction costs discussed above, Taylor opined that the 4.0% interest rate is most likely unattainable in the current interest rate environment for

⁵⁹ App. Ex. 4 (prelim. eng. report) at 11-12, Table No. 6; App. Ex. 15 (market study) at 9.

⁶⁰ App. Ex. 4 (prelim. eng. report) at 11.

⁶¹ App. Ex. 6 (Heroy Dir.) at 12; App. Ex. 4 (prelim. eng. report) at 12; App. Ex. 16 (Barganski Dir.) at 23.

⁶² App. Ex. 6 (Heroy Dir.) at 13; App. Ex. 16 (Barganski Dir.) at 21, 23-24.

⁶³ App. Ex. 16 (Barganski Dir.) at 26; *see also* App. Ex. 6 (Heroy Dir.) at 17-18 (similar).

⁶⁴ App. Ex. 4 (prelim. eng. report) at 11, Table 5.

⁶⁵ ED Ex. 1 (Walker Dir.) at 3; ED Ex. 3 (memo) at 24.

municipal bonds.⁶⁶ Barganski agreed that interest rates for municipal bonds have increased but only “in the range of 4% to 5%.”⁶⁷ Cavalier testified that if interest rates increase, the amount of bonds that can be issued decreases.⁶⁸ Moreover, Schroeder admitted that given the construction cost increases, the total bond issue requirement would be more in today’s market.⁶⁹

After adding the projected tax rate of \$0.9313 to other existing taxes to which district residents would be subject, the total tax assessment amounts to \$2.83660 per \$100 of assessed value.⁷⁰ This is based on 2021 tax rates and includes the projected tax rates for the proposed district, discussed above, and the other taxing authorities: Lampasas County, Road & Bridge, and Lampasas Independent School District.

Heroy testified that the total tax assessments within the proposed district are reasonable.⁷¹ The total projected overlapping tax rate within the district is comparable to what is common in other districts in Central Texas.⁷² Heroy testified that the goal is to keep the total overlapping tax rate within a district below \$3.00 per

⁶⁶ CLLC Ex. 2 (Taylor Dir.) at 6. Protestant witness Richard Petree also testified regarding the reasonableness of the projected tax rates but proved unfamiliar with the Commission’s rules regarding the economic feasibility of the project. Tr. at 126-29, 132, 133-34; 135-37 (Petree Cross). Accordingly, Petree’s testimony regarding projected tax rates is not considered.

⁶⁷ App. Ex. 16 (Barganski Dir.) at 22.

⁶⁸ Tr. at 80 (Cavalier Cross).

⁶⁹ Tr. at 22 (Schroeder Cross).

⁷⁰ App. Ex. 4 (prelim. eng. report) at 15.

⁷¹ App. Ex. 6 (Heroy Dir.) at 12, 16-17.

⁷² App. Ex. 6 (Heroy Dir.) at 12.

\$100 valuation, and here total projected overlapping tax rates in the proposed district total \$2.8366 per \$100 valuation.⁷³

iii. Projected Water and Sewer Rates

The preliminary engineering report acknowledged that the land within the proposed district is within the certificate of convenience and necessity (CCN) of Corix Utilities (Texas), Inc., and that the district would receive retail water service from Corix,⁷⁴ but nevertheless, based the projected water rates on the residential water rates of the City of Lampasas, concluding that with a minimum base rate of \$25.00, and the \$0.45 charge per 1,000 gallons, the average monthly bill for 10,000 gallons would be \$69.50.⁷⁵

After the application was filed, however, Petitioner determined that projected water rates should be based on the rates charged by Corix. Under these rates, the same amount of water would cost \$180.29 per month for 10,000 gallons for a 5/8-inch meter.⁷⁶ Heroy calculated this amount based on the following rates, considered approved on May 28, 2023 in PUC Docket No. 53815.⁷⁷

⁷³ App. Ex. 6 (Heroy Dir.) at 12.

⁷⁴ App. Ex. 4 (prelim. eng. report) at 6, 13-14.

⁷⁵ App. Ex. 4 (prelim. eng. report) at 12. ED staff witness Walker's technical memo attributes this amount to Corix, not the City of Lampasas. ED Ex. 3 (memo) at 8.

⁷⁶ App. Ex. 6 (Heroy Dir.) at 17-18. There was no evidence that a 5/8-inch meter or that 10,000 gallons per month would be adequate to serve the proposed lot sizes.

⁷⁷ App. Ex. 6 (Heroy Dir.) at 18. Both Petitioner and Protestant reference Corix's rates in PUC Docket No. 53815, therefore, the ALJ takes official notice of that docket, specifically, Corix's May 26, 2023 filing, PUC interchange Item No. 652, under CCN No. 13227 applicable to Lampasas County. 30 Tex. Admin. Code § 80.127(e); Tex. R. Evid. 201. The present ALJ approved the referenced rates in that docket.

Meter Size	Minimum Charge	Gallonage Charge (per 1,000 gallons)
5/8 inch	\$79.49	\$8.40 up to 5,000
3/4 inch	\$119.23	\$11.76 – 5,001-15,000
1 inch	\$198.72	\$16.80–greater than 15,000

The tariff for CCN No. 13227 reflects the above rate schedule, as part of the Lometa system, as applicable to Lampasas County. Protestant notes that tariff also shows a purchase pass-through fee of \$1.61 per 1,000 gallons, a \$2.55 rate case surcharge for Docket No. 50557, and a regulatory assessment of 1.0% of the monthly bill. The ALJ notes that those rates were not final, but were considered approved by operation of law.⁷⁸

ED witness Walker testified that the projected water and sewer rates were reasonable.⁷⁹ However, this testimony appears to rely on the original City of Lampasas rates, not the updated Corix rates.⁸⁰

Protestant argues that the actual monthly bill from Corix, when accounting for the additional fees and surcharges, will be over 2.5 times higher than the City of

⁷⁸ The final rates were approved on June 13, 2024. *Application of Corix Utilities (Texas) Inc. for Authority to Change Rates*, Docket No. 53815, Order at 13, Ordering Paragraph No. 5 (June 13, 2024). Final tariffs must be filed in PUC Docket No. 56477.

⁷⁹ ED Ex. 1 (Walker Dir.) at 1.

⁸⁰ See ED Ex. 1 (Walker Dir.) at 10; ED Ex. 3 (memo) at 8.

Lampasas rates listed in application, and that the estimate provided in the application is unreasonable.

As for sewer rates, each lot within the district will have its own on-site septic tank for wastewater treatment, however the on-site septic systems will not be financed by the district.⁸¹ There is no evidence on how or by whom the onsite septic systems would be financed.

c) Analysis

The preponderance of the evidence shows that the projected construction costs were reasonable at the time the application was filed in 2022, but were no longer representative at the time of the hearing. The parties dispute the relevancy of more recent information.

Section 54.021 itself contains no limitation on considering the information as of the time the application is filed.⁸² In reply briefing, Petitioner argues that the Water Code does impose such a limitation, reasoning that section 54.014 states that “a petition requesting creation shall be filed with the commission,” while section 54.015(2) states that the petition shall include “the cost of the project as then estimated by those filing the petition.” Petitioner reads this language to require the

⁸¹ App. Ex. 4 (prelim. eng. report) at 6-7.

⁸² See *Tex. Indus. Energy Consumers v. Pub. Util. Comm’n of Tex.*, No. 03-17-00490-CV, 2021 WL 3518884, at *4 (Tex. App.—Austin Aug. 11, 2021, pet. denied) (noting that the best indication of legislative intent is the plain language of the statute).

costs be estimated as of and at the time the petition is filed.⁸³ However, those sections address the content of the petition, not the probative value of that information.

In a recent decision, *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, the Commission found the proposed construction costs to be reasonable despite having increased by approximately 35% since the preparation of the preliminary engineer report. This case is cited by both Petitioner and the ED for proposition that the Commission does not consider post-application updates. However, this precedent shows that the Commission did consider post-application costs but nevertheless found them reasonable in light of increased lot valuation. Specifically, the Commission made the following findings:

24. Since preparation of the preliminary engineering report, construction costs have increased approximately 35 percent.
25. Since the preliminary engineering report was issued, the valuation of the lots has increased, which mitigates the cost increase of the facilities.

29. The proposed construction costs are reasonable.⁸⁴

The ALJ concludes that the Commission may consider post-application costs in evaluating the feasibility of a district creation.

The evidence shows that project would cost approximately \$30 million more than originally estimated based on increased on construction costs alone. The total

⁸³ Petitioner Reply Brief at 19.

⁸⁴ *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, TCEQ Docket No. 2022-0532-DIS; SOAH Docket No. 582-22-07138, Order at 3, Finding of Fact No. 24, 25, 29 (Nov. 6, 2023).

projected construction costs were \$51.5 million at the time the application was filed and \$82 million at the time Protestant's testimony was filed, an approximately 60% increase, or nearly twice the increase found to be reasonable in the *Highland Lakes* decision noted above. There is no evidence that construction costs remain reasonable under current cost projections. The ALJ concludes that Petitioner failed to meet its burden of proof to show that projected construction costs are reasonable.

Regarding the projected tax rates, the parties point to no other metric for feasibility except Rule 293.59 under which the Commission determines the feasibility for purposes of issuing bonds. Under this rule, the combined projected tax rate in Lampasas County is limited to \$1.00 per \$100 assessed valuation.⁸⁵ Although the evidence establishes that municipal bond interest rates are higher than the 4% assumed in the application, it is not clear how much higher. Taylor did not say how much higher; Barganski put the amount at between 4-5%. It is not clear that this increase would have a material impact on the amount of bonds that can be issued. However, the undisputed evidence shows that construction costs are rising and that the total bond issue requirement would be more in today's market.⁸⁶ Therefore, although the application projects a tax rate of \$0.9313 per \$100 of valuation is within the Commission's bond feasibility parameters, no party analyzed the projected calculations based on the updated cost projections. Accordingly, the ALJ concludes that Petitioner failed to meet its burden of proof to show reasonable projected tax rates.

⁸⁵ App. Ex. 16 (Barganski Dir.) at 24; 30 Tex. Admin. Code § 293.59(b) and (k)(3).

⁸⁶ Tr. at 22 (Schroeder Cross).

Regarding water rates, the ALJ finds Petitioner’s evidence insufficient. Heroy, the only witness to testify on water rates, did not testify that Corix’s rates are reasonable. Instead, Petitioner argues that the rates are reasonable as a matter of law because the PUC is required to ensure that are just and reasonable.⁸⁷ Specifically, the Water Code requires the PUC to “ensure that every rate . . . shall be just and reasonable.”⁸⁸ However, “just and reasonable” is a term of art within the utility industry.⁸⁹ Petitioner has cited no authority for the proposition that utility rates found to be just and reasonable by the PUC shall be considered reasonable as a matter of law for purposes of creating a district.⁹⁰ Corix’s rates are over 2.5 times higher than those of the City of Lampasas. There is no evidence that these utility rates are reasonable under Water Code section 54.021. The ALJ finds that Petitioner failed to meet its burden of proof with respect to show to show the reasonableness of projected water rates.

In conclusion, the ALJ finds that Petitioner failed to meet its burden to show that the projected construction costs are reasonable, rendering the projected bond

⁸⁷ Petitioner Initial Brief at 29.

⁸⁸ Texas Water Code § 13.182(a).

⁸⁹ See, e.g., *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944); *Gary Lawson, Delegation and Original Meaning*, 88 Va. L. Rev. 327, 386 (2002) (“But the phrase ‘just and reasonable rates’ has a long history and can be used as a term of art with a specific meaning.”).

⁹⁰ Feasibility for purposes of issuing district bonds is based on whether the district can maintain competitive utility rates. 30 Tex. Admin. Code § 293.59(b) (“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 competitive utility rates.”). The PUC’s reasonableness determination does not address whether rates are competitive, only whether they are just and reasonable for the particular utility. Tex. Water Code § 13.183(a).

issue requirements unreliable. Therefore, the ALJ further concludes that Petitioner failed to show whether the district and its system and subsequent development within the district will have an unreasonable effect on the total tax assessments on all land located within a district.

Because Petitioner failed to establish that the projected construction costs, tax rates, and water rates are reasonable, the ALJ concludes that Petitioner failed to meet its burden of proof to show that the project is feasible.

2. Necessity

In determining whether a project is necessary, the Commission shall consider the availability of comparable service from other systems, including, but not limited to, water districts, municipalities, and regional authorities.⁹¹ To this end, a creation application shall contain an investigation and evaluation of the availability of comparable service from other systems, including, but not limited to, water districts, municipalities, and regional authorities.⁹² As the ED states, “[t]he purpose of this assessment speaks directly to the necessity of the district.”⁹³

As noted above, Petitioner plans to install infrastructure for water supply, drainage, and roads.⁹⁴ Schroeder and Prem Kalidindi testified that these

⁹¹ Tex. Water Code § 54.021(b)(1).

⁹² 30 Tex. Admin. Code § 293.11(d)(5)(G).

⁹³ ED Initial Brief at 9.

⁹⁴ App. Ex. 6 (Heroy Dir.) at 9; App. Ex. 8 (petition) at 2.

improvements are necessary for developing residential subdivisions within the land, to ensure orderly development of the land and the protection of public health and safety.⁹⁵ ED witness Walker agreed.⁹⁶

Additionally, the assessment of need looks to whether there is a market for the product the developer proposes to sell.⁹⁷ Thus, if substantial development is proposed, the petitioner must show demand with a market study.⁹⁸ The ALJ addresses this first.

a) Demand

The market study was developed by Bryan Glasshagel of Zonda Advisory. Its purpose was “to provide future projections of new housing absorption and an independent market demand analysis at the Subject Property.”⁹⁹ Glasshagel testified that Zonda reviewed the development plans for the proposed property, and projected lot prices, home prices, and sales/absorption figures for the properties within the proposed district. This he based on new and existing housing market

⁹⁵ App. Ex. 2 (Schroeder Dir.) at 7; App. Ex. 4 (prelim. eng. report) at 4; App. Ex. 20 (Kalidindi Dir.) at 3; App. Ex. 6 (Heroy Dir.) at 17.

⁹⁶ ED Ex. 1 (Walker Dir.) at 6; ED Initial Brief at 8.

⁹⁷ See *Galilee Partners, L.P. v. Tex. Comm’n on Env’tl. Quality*, No. 11-12-00033-CV, 2014 WL 358287, at *4 (Tex. App.—Eastland Jan. 14, 2014, no pet.) (“Without the need for the proposed development, there is no need for utility services, no need for a governing body, and no need for the District.”) (quoting the Commission’s final order).

⁹⁸ 30 Tex. Admin. Code § 293.11(a)(6).

⁹⁹ App. Ex. 15 (market study) at 4.

trends, economic trends, and demographic trends in Lampasas County (and the broader Killeen-Temple Metropolitan Statistical Area).¹⁰⁰

According to the study, “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 Property to be attractive an array of home buyers (ideal for attracting out of market buyers).”¹⁰¹ The study acknowledges “limited new home activity occurring in the Lampasas County [Competitive Market Area] (47 single-family permits issued in 2021).”¹⁰² The market study projected lot prices to range from \$125,000 to \$960,000, and value of homes to range from \$400,000 to \$2,000,000 once constructed.¹⁰³

The market study further projected that the 421 proposed lots would be sold at the rate of 18 to 36 lots per year, requiring 12 to 23 years for the proposed lots to be fully sold.¹⁰⁴ ED witness Walker reviewed the market study and had no concerns about the underlying conclusions or assertions.¹⁰⁵

The market study predicts that the district will appeal predominantly to “a mix of growing and maturing families and some pre-retirement/retirement

¹⁰⁰ App. Ex. 13 (Glasshagel Dir.) at 4.

¹⁰¹ App. Ex. 15 (market study) at 5.

¹⁰² App. Ex. 15 (market study) at 5.

¹⁰³ App. Ex. 13 (Glasshagel Dir.) at 4.

¹⁰⁴ App. Ex. 15 (market study) at 9; App. Ex. 13 (Glasshagel Dir.) at 4.

¹⁰⁵ ED Ex. 1 (Walker Dir.) at 11; ED Ex. 3 (memo) at 7.

households” as well as “a sizable number of second home buyers from outside the local area.”¹⁰⁶ Glasshagel admitted, however, that the housing market has changed since the market study was completed in 2022:

Across other markets in Texas, the significant increase in mortgage rates has resulted in weaker housing market conditions, price reductions, lower affordability levels, and lower levels of new home starts.¹⁰⁷

Glasshagel further cautioned that lot and home prices will likely need to be reassessed to account for changes in mortgage rates and market conditions.¹⁰⁸ Glasshagel conceded that as interest rates increase, as has occurred over the past 18 months, demand decreases.¹⁰⁹ Nevertheless, because of the cyclical nature of mortgage interest rates and the housing markets, Glasshagel believed that the projection that Lampasas County would issue an average of 65 single family housing permits per year between 2022 and 2026 was reasonable.¹¹⁰ Glasshagel has no prior experience in the Lampasas County market.¹¹¹

Protestant witness Richard Petree, former chief appraiser for Lampasas County and current consultant to the Lampasas County Appraisal District, testified that the market study actually verifies that “the project is not financially viable in its

¹⁰⁶ App. Ex. 15 (market study) at 20.

¹⁰⁷ App. Ex. 13 (Glasshagel Dir.) at 5.

¹⁰⁸ App. Ex. 13 (Glasshagel Dir.) at 5.

¹⁰⁹ Tr. at 53 (Glasshagel Clarifying).

¹¹⁰ Tr. at 54 (Glasshagel Cross); App. Ex. 15 (market study) at 19.

¹¹¹ Tr. at 48 (Glasshagel Cross).

proposed rural location far from urban centers and their amenities.”¹¹² The investment in infrastructure of streets, curb and gutters, and water lines, refunded to the developer by sale of municipal bonds which the unit buyers must ultimately repay, presents high cost and risk to those buyers.¹¹³

Petree asserted that the market study unrealistically assumed that lot purchasers would be willing to regularly travel to Austin, San Antonio, Dallas-Fort Worth, and Abilene.¹¹⁴ Petree testified that he has not, at any time, seen home buyers willing to purchase homes west or north of Lampasas when they intend to regularly commute to these distant cities.¹¹⁵

Moreover, the project depends on selling 18-36 lots per year for \$125,000 to \$960,000, when there were only 83 land sales in Lampasas County in 2022, 66 of which occurred closer to metropolitan areas than the proposed district, and only 12 of which occurred away from metro areas.¹¹⁶ As such, Petree opined that “it is not realistic that Pitt Creek will be able to sell 18 lots annually, the minimum projected in the study.”¹¹⁷

¹¹² CLLC Ex. 7 (Petree Dir.) at 2-3.

¹¹³ CLLC Ex. 7 (Petree Dir.) at 3.

¹¹⁴ CLLC Ex. 7 (Petree Dir.) at 3-4.

¹¹⁵ CLLC Ex. 7 (Petree Dir.) at 4.

¹¹⁶ CLLC Ex. 7 (Petree Dir.) at 5-6.

¹¹⁷ CLLC Ex. 7 (Petree Dir.) at 6.

Petree further testified that many homes in Lampasas County are typically built on medium to large ranches and used for recreation as second homes, retirement homes, and many buyers are retired military personnel using the services of Fort Hood (now Fort Cavazos).¹¹⁸

Regarding the proximity to larger cities and associated conveniences, Petree points to the principle of substitution, whereby a buyer will pay no more for a property than the cost of an equally desirable (and comparable) alternative property.¹¹⁹ Thus, if a buyer can purchase a lot of similar size with a shorter drive to schools, shopping, and other activities, the buyer will typically choose the property with a shorter drive unless the price of the more distant property is less.¹²⁰ This principle of substitution favors a market in the eastern part of the county, more accessible to urban areas, over one that is seven miles west of Lampasas.¹²¹ Petree argued the proposed price of the properties in Pitt Creek Ranch exceeds the asking prices of most other nearby subdivision lots much closer to the metropolitan area of Bell County available at an equal or lower price, and as such, potential buyers will be unlikely to purchase a lot in the district at the prices projected given the availability of those alternate residential lots.¹²²

¹¹⁸ CLLC Ex. 7 (Petree Dir.) at 4.

¹¹⁹ CLLC Ex. 7 (Petree Dir.) at 4-5.

¹²⁰ CLLC Ex. 7 (Petree Dir.) at 4.

¹²¹ Tr. at 121-22 (Petree Cross).

¹²² CLLC Ex. 7 (Petree Dir.) at 5.

Finally, Petree testified that there is not sufficient demand for high-end housing to support the average assessed home value of \$850,000 assumed by the study, when the 2021 Lampasas County median household income was \$66,506 and the median property value was \$174,300.¹²³ Petree testified that with this limited income, “the buyer for upper-end housing must come from outside the county, but would likely choose lower priced property nearer to urban amenities than Pitt Creek.”¹²⁴

OPIC contends that the market study is unreliable given the current housing market.

Petitioner counters that Petree’s analysis that buyers would seek houses closer to urban areas did not account for remote working conditions or gas savings due to electric vehicles.¹²⁵

b) Availability of Comparable Services

All of the land proposed to be included in the proposed district is located in the certificated area of Corix, specifically, CCN No. 13227.¹²⁶ The holder of a CCN is required to serve the certified area, to the exclusion of other service providers.¹²⁷

¹²³ CLLC Ex. 7 (Petree Dir.) at 11.

¹²⁴ CLLC Ex. 7 (Petree Dir.) at 11-13.

¹²⁵ Tr. at 122 (Petree Cross).

¹²⁶ App. Ex. 2 (Schroeder Dir.) at 6; App. Ex. 4 (prelim. eng. report) at 13; App. Ex. 6 (Heroy Dir.) at 8.

¹²⁷ Tex. Water Code §§ 13.139(a), .250, .252.

Schroeder testified that Petitioner has negotiated with Corix to obtain a water supply agreement, and expects an agreement that “the Applicant or the MUD will construct the public water facilities to serve the development and Corix will act as the retail water service provider.”¹²⁸ The district will own and operate the water supply facilities until the facilities are transferred to Corix.¹²⁹

Thus, the district will receive retail water service from Corix using the water supply facilities constructed by Petitioner and financed by the district.¹³⁰ No part of the land proposed to be included in the district is within any certificated service area for sewer service.¹³¹ Each lot within the district will use an on-site septic system for wastewater treatment. Thus, the district will not provide wastewater facilities or wastewater services.¹³² No entity provides drainage services or roads within the boundaries of the proposed district.¹³³

ED witness Walker testified that there is “no comparable water service available in the area.”¹³⁴ The ED argues that because “there is no available water

¹²⁸ App. Ex. 2 (Schroeder Dir.) at 6-7.

¹²⁹ App. Ex. 20 (Kalidindi Dir.) at 5-6.

¹³⁰ App. Ex. 4 (prelim. eng. report) at 6, 13; App. Ex. 2 (Schroeder Dir.) at 6-7; App. Ex. 6 (Heroy Dir.) at 9.

¹³¹ App. Ex. 2 (Schroeder Dir.) at 6; App. Ex. 6 (Heroy Dir.) at 8.

¹³² App. Ex. 4 (prelim. eng. report) at 7, 13.

¹³³ App. Ex. 6 (Heroy Dir.) at 9-10.

¹³⁴ ED Ex. 1 (Walker Dir.) at 5.

service in the area of the district, it is both necessary and a benefit to the district that proposed improvements which would provide water should therefore be allowed.”¹³⁵

Protestant argues that because Corix has the exclusive right to provide water service within the area, it would be “inconsistent to find that water service by the District is necessary when Corix already is by law fully capable and legally obligated to provide water service to the land encompassed within the District.”¹³⁶ Similarly, OPIC argues that the district itself is not necessary because Corix has not conditioned its service on the creation of a district.¹³⁷

Petitioner responds that, because the water delivery infrastructure does not exist, Corix is not fully capable of providing service to the proposed 421-lot residential subdivision. Corix is allowed to place that responsibility on developers via developer capital investment in aid of construction (CIAC).¹³⁸

The estimated cost to provide water service within the district is closer to \$11 million.¹³⁹ Heroy explained that “Corix is willing to provide water supply and retail water service if the Applicant and the MUD will fund the construction of the public water infrastructure.”¹⁴⁰ The extension policy in Corix’s tariff requires developers

¹³⁵ ED Initial Brief at 9.

¹³⁶ CLLC Initial Brief at 5.

¹³⁷ Tr. at 24 (Schroeder Cross).

¹³⁸ See 16 Tex. Admin. Code § 24.163(c).

¹³⁹ App. Ex. 4 (prelim. eng. report) at 53.

¹⁴⁰ App. Ex. 6 (Heroy Dir.) at 10.

to provide developer CIAC to receive new subdivision service.¹⁴¹ Petitioner witness Schroeder explained that funding the cost of installing the water facilities needed for Corix to provide water service to the proposed development was the initial reason for seeking to have Petitioner’s land included within the proposed district.¹⁴²

Petitioner witness Barganski explained that the district allows improvements to be funded over time through an annual tax levy rather than the sales price of lots and homes, which would render many lots and homes unaffordable to prospective purchasers.¹⁴³ No one testified, however, to how the cost of installing an onsite septic system might impact sales.

In its reply brief, Petitioner emphasizes that the Commission shall grant the petition if “the project is . . . necessary.”¹⁴⁴ The *project* includes the water facilities needed for Corix to provide water service to the proposed development.

¹⁴¹ Corix Utilities (Texas) Inc., Water Utility Tariff, Public Utility Commission of Texas Docket No. 53815 (eff. May 28, 2023) CCN No. 13227, at 19, section 3.03.

¹⁴² App. Ex. 2 (Schroeder Dir.) at 3–4.

¹⁴³ App. Ex. 16 (Barganski Dir.) at 17–18.

¹⁴⁴ Tex. Water Code § 54.021(a).

c) Analysis

First, the ALJ addresses demand. “Without the need for the proposed development, there is no need for utility services, no need for a governing body, and no need for the District.”¹⁴⁵

The evidence shows that the market study, when prepared, did not accurately reflect the Lampasas County market. Although Glasshagel, who conceded that he had no prior experience with Lampasas County, speculated that Lampasas County would issue an average of 65 single family housing permits per year between 2022 and 2026, this is not supported by the record. There were only 83 land sales in Lampasas County in 2022, 66 of which occurred closer to metropolitan areas than the proposed district, and only 12 occurred away from metro areas. The preponderance of evidence shows that it is not realistic that Pitt Creek will be able to sell 18 lots annually for between \$125,000 to \$960,000, when the 2021 Lampasas County median household income was \$66,506 and the median property value was \$174,300.¹⁴⁶

The preponderance of the credible evidence further shows that potential buyers of upper-end housing from outside the county would likely choose lower-priced property nearer to urban amenities in the eastern part of the county, over land in the

¹⁴⁵ See *Galilee Partners, L.P.* 2014 WL 358287, at *4 (quoting the Commission’s final order); *Application of Galilee Partners, L.P., for Creation of Maypearl Water Control and Improvement District No. 1 of Ellis Cnty., Texas*, 2008 WL 5979883, TCEQ Docket No. 2005-1686-DIS, Proposal for Decision at *10 (“[The ED notes that without residents in the subdivision, the bonds will not be paid. In other words, if there is no need for the underlying subdivision, there is no need for the utility services, no need for the governing body, and no need for the district.”).

¹⁴⁶ CLLC Ex. 7 (Petree Dir.) at 11.

proposed district that is seven miles west of Lampasas.¹⁴⁷ The market study did not address the impact of Corix’s rates, discussed above, or the cost an onsite sewer system would have on the housing market within the district. Although remote work opportunities and fuel savings due to electric vehicles may make rural life more attractive, there is no evidence of any market trends to support that. The preponderance of credible evidence shows that the market study is not reliable and that the market will not support an average home price of \$850,000 in Lampasas County. The ALJ finds that Petitioner has failed to show a realistic market demand for the proposed development.

Additionally, recent developments have further degraded the value of the market study.¹⁴⁸ The undisputed evidence shows that “the significant increase in mortgage rates has resulted in weaker housing market conditions, price reductions, lower affordability levels, and lower levels of new home starts.”¹⁴⁹ Glasshagel himself conceded that lot and home prices will need to be reassessed to account for changes in mortgage rates and market conditions.¹⁵⁰

¹⁴⁷ Tr. at 121-22 (Petree Cross).

¹⁴⁸ The Commission considered post-application changes in market conditions in the *Application of Galilee Partners, L.P., for Creation of Maypearl Water Control and Improvement District No. 1 of Ellis County, Texas*. The application was filed in 2005. By the time the case went to hearing in 2008, the ED changed his recommendation based on “the collapse of the subprime mortgage industry and the concomitant housing bust that occurred after Galilee filed its application but before the hearing.” *Galilee Partners*, 2014 WL 358287, at *3. The ALJ agreed and recommended denying the application. *Application of Galilee Partners*, 2008 WL 5979883, Proposal for Decision at *17. The Commission adopted the proposal for decision, which was affirmed on appeal. *Galilee Partners*, 2014 WL 358287, at *5.

¹⁴⁹ App. Ex. 13 (Glasshagel Dir.) at 5.

¹⁵⁰ App. Ex. 13 (Glasshagel Dir.) at 5.

Regarding comparable service, the evidence shows that Petitioner intends for the district to establish water, drainage, and road services. No one disputes that there is no comparable drainage and road services, and no one currently provides water services. Protestant and OPIC argue that Corix is by law providing service to the area because it is the CCN holder. However, as Petitioner points out, the law allows the CCN holder to require the developer to fund the infrastructure, and there is no credible evidence that Corix would absorb a \$11 million investment without contribution from the developer, and it is not required to. As proposed, the district would make that investment possible, recovering that cost in taxes over many years, rather than the utility recovering it from rates. Absent that funding mechanism, Corix would not provide service to the district. The ALJ finds no other comparable water services available in the area.

Although the ALJ finds no comparable water services are available in the area, Petitioner has failed to show a market demand for the project. Therefore, the ALJ finds that Petitioner has failed to show the project is necessary.

3. Benefit

In deciding whether the petition should be granted, the Commission must consider whether the project would be a benefit to the land to be included within the district.¹⁵¹ While there is no clear guidance as to what is meant by *benefit to the land*, a review of applicable case law would suggest that this criterion is meant to address whether all of the land will be served by the purposes for which the district is created

¹⁵¹ Tex. Water Code § 54.021.

and, potentially, its residents will be taxed.¹⁵² This to protect against taxing those who will not be served by the district.¹⁵³

Barganski explained that the district would allow the funding of significant infrastructure improvements to be paid over time, rather than in the sale price of the lots or homes, and would create a “governmental entity with stable funding sources to assume responsibility for funding the construction, operation, maintenance, repair and replacement of District facilities and services.”¹⁵⁴ “Long-term financing makes large-scale capital improvements more affordable just as home mortgages promote home ownership by allowing the cost of a home to be financed over time.”¹⁵⁵ Barganski elaborated:

Another economic benefit of District financing is that it more equitably allocates the cost of District facilities. Specifically, the actual beneficiaries of the facilities pay for the cost of the facilities. If the facility costs had to be recovered through the lot sales price, then only the initial purchasers of property would pay the cost of improvements even though subsequent buyers would receive the benefits of those facilities.¹⁵⁶

¹⁵² See, e.g., *Rutledge v. State*, 7 S.W.2d 1071, 1074 (1928) (intimating that any land not protected by the levee improvement district could be excluded).

¹⁵³ Tex. Water Code § 54.021(c) (providing that the Commission shall exclude any land not benefited from the district).

¹⁵⁴ App. Ex. 16 (Barganski Dir.) at 16–17.

¹⁵⁵ App. Ex. 16 (Barganski Dir.) at 17.

¹⁵⁶ App. Ex. 16 (Barganski Dir.) at 17–18. Kalidindi provided similar testimony. App. Ex. 20 (Kalidindi Dir.) at 5–6.

Walker, relying on the information submitted by Petitioner, concluded that the district is a benefit to the land to be included.¹⁵⁷

The evidence shows that all of the land within the district will be served by the purposes for which the district is created and potential residents will be taxed. The ALJ finds that Petitioner has met its burden to show that the project would be a benefit to the land to be included in the district.

4. Effect of District on the Land

The Commission is required to consider whether the district and its system and subsequent development within the district will have an unreasonable effect on land elevation; subsidence; groundwater level within the region; recharge capability of a groundwater source; natural run-off rates and drainage; and water quality.¹⁵⁸ Petitioner offered testimony that the district would not.¹⁵⁹ ED witness Walker testified that no unreasonable impacts were anticipated regarding the criteria set forth in the statute.¹⁶⁰

The evidence with respect to effects on land elevation or water quality is undisputed. Accordingly, those matters are addressed only in the findings of fact and conclusion of law. Protestant contests whether the district would have an

¹⁵⁷ ED Ex. 1 (Walker Dir.) at 6.

¹⁵⁸ Tex. Water Code § 54.021(b)(3)(A)-(F).

¹⁵⁹ App. Ex. 4 (prelim. eng. report) at 14; App. Ex. 6 (Heroy Dir.) at 16.

¹⁶⁰ ED Ex. 1 (Walker Dir.) at 5; ED Ex. 3 (memo) at 19-21.

unreasonable effect on subsidence, groundwater levels within the region, recharge capabilities, and natural run off.

a) Subsidence

The preliminary engineering report explains that because the district will receive its water from Corix, the proposed district will have no effect on subsidence.¹⁶¹ Heroy testified that the proposed district does not plan to operate any groundwater wells.¹⁶²

Protestant argues that Corix may be forced to use groundwater to meet demands and nothing prevents purchasers of units in the district from installing wells to access groundwater.

Petitioner responds that the Saratoga Underground Water Conservation District controls subsidence caused by withdrawal of groundwater¹⁶³ and that Protestant presents speculation, not evidence. The ALJ agrees. The preponderance of the evidence shows that the district and its system and subsequent development within the district will not have an unreasonable effect on subsidence.

¹⁶¹ App. Ex. 4 (prelim. eng. report) at 14.

¹⁶² App. Ex. 6 (Heroy Dir.) at 15.

¹⁶³ Tex. Spec. Dist. Loc. Laws Code § 8884.101; Tex. Water Code § 36.101(a).

b) Groundwater Level and Recharge

Similarly, because the district will obtain all of its water service from Corix, the district should have little to no effect on groundwater levels in the region or the aquifer recharge.¹⁶⁴ In his testimony, Heroy clarifies that the creation and operation of the district will have no unreasonable effect on the groundwater levels within the region of the district because Corix will deliver surface water from outside the proposed district.¹⁶⁵ Additionally, all stormwater from the land within the proposed district will continue to flow into Pitt Creek and the Sulphur Creek Site 2 reservoir. Thus, development within the district is not expected to have any unreasonable effect on the aquifer recharge capability of any groundwater source.¹⁶⁶ Finally, the Mini NRCS Report projects that the post-development conditions within the district will result in less than 11% impervious cover.¹⁶⁷

Protestant asserts that Petitioner underestimated the design and funding for water supply from Corix because it provides for personal use only at 100 gallons per person per day.¹⁶⁸ This, Protestant argues, is not sufficient to support additional amenities such as livestock or wildlife water, swimming pools, landscaping, fountains, or gardens that would be desired in homes of the proposed value and could require additional thousands of gallons of water per unit daily. When multiplied

¹⁶⁴ App. Ex. 4 (prelim. eng. report) at 14.

¹⁶⁵ App. Ex. 6 (Heroy Dir.) at 15-16.

¹⁶⁶ App. Ex. 6 (Heroy Dir.) at 15-16.

¹⁶⁷ App. Ex. 5 (Mini NRCS Report) at 1.

¹⁶⁸ App. Ex. 4 (prelim. eng. report) at 5.

across 421 units, this water use has potential to demand water in addition to what can be provided by Corix's proposed system, where the only other adequate source is groundwater. Furthermore, Protestant argues that future residents will be able to drill their own wells and draw-down is a particular concern, because the proposed district is located near the highest elevation in western Lampasas County, according to the letter submitted by the Lampasas County Judge Hoyer.¹⁶⁹

OPIC argues that the possibility of negative effects to groundwater due to numerous homeowners opting to dig water wells is largely speculative. In reply, Petitioner points to a recent decision in which the Commission concluded that a district would not have an unreasonable effect on groundwater levels or recharge capacity notwithstanding a 70% level of impervious cover,¹⁷⁰ whereas here, the level of impervious cover is only 11%.

The ALJ agrees that Protestant's concerns regarding private well use are speculative. Petitioner intends to serve the district with surface water from outside the district. Although the ALJ agrees that the 100 gallons per person per day assumption is unsupported, there is no evidence that the district would have any effect on groundwater levels in the region, much less an unreasonable one. Similarly, Petitioner expects an impervious cover of no more than 11%. The ALJ finds that Petitioner met its burden to show that the proposed development will not have an

¹⁶⁹ CLLC Ex. 9 (Hoyer letter) at 2.

¹⁷⁰ *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, TCEQ Docket No. 2022-0532-DIS; SOAH Docket No. 582-22-07138, Final Order at 4, Finding of Fact Nos. 36, 36a, and 37 (Nov. 6, 2023).

unreasonable effect on the groundwater level in the region or on the recharge capability of groundwater in the area.

c) Natural Run-Off and Drainage

Commission rules require a preliminary engineering report to include “an evaluation” of the effect the proposed district will have on natural run-off rates and drainage.¹⁷¹ The preliminary engineering report explains:

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.¹⁷²

Heroy explained that the proposed internal drainage system and drainage improvements will comply with Lampasas County design requirements and generally acceptable engineering practices for the design of stormwater systems in Lampasas County, including construction of detention ponds to mitigate increased stormwater runoff rates, if necessary. Lampasas County must approve all drainage plans prior to construction. Therefore, the proposed district will not have an unreasonable effect on natural runoff rates or drainage.¹⁷³

¹⁷¹ 30 Tex. Admin. Code § 293.11(d)(5)(H)(v).

¹⁷² App. Ex. 4 (prelim. eng. report) at 14.

¹⁷³ App. Ex 6 (Heroy Dir.) at 16.

Schroeder testified that development within the district will increase in stormwater runoff by approximately 2%.¹⁷⁴ Schroeder testified that this is a negligible increase in flow to the Sulphur Creek Site 2 reservoir.¹⁷⁵ Schroeder testified that Petitioner has agreed that the platted areas within the district will not increase the peak runoff for the reservoir's 100-year peak flow. Any detention facilities necessary to control runoff will be based on the planned study.¹⁷⁶ These conditions of the settlement with Lampasas County WCID No. 1 further ensure that the proposed district will not have an unreasonable effect on natural runoff rates or drainage.

Protestant argues that Petitioner has not demonstrated that the proposed district and subsequent development will not have an unreasonable effect on natural run-off rates and drainage. The Mini NRCS Report assumes a density of seven acres per lot, concluding that the effect on drainage the reservoir “is expected to be minimal.”³¹ The seven-acres-per-lot estimate was based on an average over the entire proposed district.¹⁷⁷ However, Schroeder conceded that low-density average would be higher by removing the four 100-acre lots.¹⁷⁸ Schroeder further admitted that a higher density of tracts would increase runoff and therefore have a greater impact on the reservoir.¹⁷⁹ Therefore, Protestant argues, approval of the requested district will have harmful impacts upon natural drainage patterns in the area.

¹⁷⁴ App. Ex. 2 (Schroeder Dir.) at 10; App. Ex. 5 (Mini NRCS Report).

¹⁷⁵ App. Ex. 2 (Schroeder Dir.) at 10.

¹⁷⁶ App. Ex. 2 (Schroeder Dir.) at 9–10.

¹⁷⁷ Tr. at 26 (Schroeder Cross).

¹⁷⁸ Tr. at 26 (Schroeder Cross).

¹⁷⁹ Tr. at 27 (Schroeder Cross).

In its reply brief, Petitioner argues that Protestant did not present any evidence of how the “actual density” is calculated or affects stormwater flows into the reservoir downstream.

The preponderance of the credible evidence shows that the district and its system and subsequent development within the district will not have an unreasonable effect on the natural run-off rates and drainage. Even if the density is realistically greater than seven acres per lot when excluding the 100-acre lots, there is no showing that even 421 one-acre lots would have a material impact on recharge or run-off. Additionally, as noted above, Petitioner has committed to not increasing the peak runoff for the 100-year peak flow for the Sulphur Creek Site 2 reservoir.

The ALJ finds that the district and its system and subsequent development within the district will not have an unreasonable effect on land elevation, subsidence, groundwater level within the region, recharge capability of a groundwater source, natural run-off rates and drainage, or water quality.

C. TRANSCRIPT COSTS

The Commission may assess reporting and transcription costs to one or more of the parties participating in a proceeding, and when doing so, must consider the following factors:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;

- the relative benefits of the various parties of having a transcript;. . . [and]
- any other factor which is relevant to a just and reasonable assessment of costs.¹⁸⁰

The Commission will not assess reporting or transcription costs against the ED or OPIC because they are statutory parties who are precluded by law from appealing the Commission's decision.¹⁸¹

Petitioner proposes that transcript costs be shared equally with the Protestant. Protestant requests that the transcript costs be assessed to Petitioner, as it is the entity that would benefit from the creation of the district, and the transcript serves to meet its burden of proof. ED and OPIC take no position on cost apportionment.

With respect to the factors in Rule 80.23(d)(1), the ALJ finds that no party requested the transcript, because it was required by SOAH. Protestant is a group of private individuals reliant upon personal resources to cover expenses incurred in association with the hearing process, but have engaged legal counsel to participate in this matter. Petitioner is a company owning nearly 3,000 acres in the proposed district. All parties fully participated in the hearing and benefitted from the transcript. By participating in the hearing, Protestant pointed out deficiencies in the petition. Based on these factors, the ALJ recommends that the Commission assess the transcription costs as follows: 80% to Petitioner and 20% to Protestant.

¹⁸⁰ 30 Tex. Admin. Code § 80.23(d)(1).

¹⁸¹ 30 Tex. Admin. Code § 80.23(d)(2); *see* Tex. Water Code §§ 5.228, .273, .275, .356.

V. CONCLUSION

The ALJ concludes that Petitioner did not meet its burden of proving the petition meets all applicable requirements. Specifically, Petitioner failed to show that the project is feasible and necessary. Therefore, the ALJ recommends that the Commission deny the petition for creation of Lampasas County Municipal Utility District No. 1.

Signed July 9, 2024



Christiaan Siano

Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER DENYING PETITION BY PITT CREEK RANCH
LLC FOR THE CREATION OF LAMPASAS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 1
SOAH DOCKET No. 582-23-16963.TCEQ; TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY No. 2022-1653-DIS**

On _____, the Texas Commission on Environmental Quality (Commission) considered the petition for creation of Lampasas County Lakes Municipal Utility District No. 1. A Proposal for Decision (PFD) was issued by Christiaan Siano, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) and considered by the Commission.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

General and Procedural Findings

1. On July 6, 2022, Pitt Creek Ranch, LLC (Petitioner) filed a petition with the Texas Commission on Environmental Quality (Commission) for the creation of Lampasas County Municipal Utility District No. 1 (District).

2. On July 12, 2022, the Commission's Executive Director declared the petition administratively complete.
3. On July 18, 2022, Petitioner sent notice of the proposed district creation to the Commissioners Court of Lampasas County.
4. On September 9, 2022, notice of the petition was posted in the Lampasas County Courthouse, the place where legal notices in Lampasas County are posted.
5. On September 9, and September 16, 2022, notice of the petition was published in the *Lampasas Dispatch Record*, a newspaper regularly published or circulated in Lampasas County, the county in which the district is proposed to be located.
6. Timely hearing requests were submitted by numerous parties.
7. On January 25, 2023, the Commission referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
8. On May 23, 2023, SOAH ALJ Christiaan Siano held a preliminary hearing in this matter, at which time, the Commission Executive Director (ED), the Office of Public Interest Counsel (OPIC), Lampasas County Water Control and Improvement District (WCID) No. 1, and the Association of Concerned Landowners of Lampasas County (Protestant) were named as parties. The administrative record was admitted into evidence for the limited purposes of establishing jurisdiction.
9. On September 1, 2023, Lampasas County WCID No. 1 withdrew from the proceeding based on a settlement with Petitioner.
10. The hearing on the merits was held February 20-21, 2024, before Christiaan Siano by videoconference. Petitioner was represented by attorneys Geoffrey Kirshbaum and Richard Hamala. Protestant was represented by attorney Eric Allmon. The ED was represented by attorney Harrison Malley. OPIC was represented by attorney Jennifer Jameson. The record closed after submission of written closing arguments on May 10, 2024.

Project Description

11. The proposed District consists of 2,931.97 acres of land located in Lampasas County (the Property). The proposed District does not lie within the corporate limits or within the extraterritorial jurisdiction of any city or town.
12. The proposed District is located approximately 7 miles west of downtown of the City of Lampasas, Texas, and 36 miles west of the City of Killeen, Texas. Access to the District will be provided by CR 1139 to the north and CR 1255 to the south. The proposed District is bounded by CR 1255 to the south.
13. The petition states that the proposed District will: (1) design, construct, acquire, maintain, and own a waterworks system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; (4) acquire, own, develop, construct, improve, manage, maintain, and operate roads; and (5) design, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.
14. The majority of the 421 proposed lots will be approximately 2 to 8 acres in size; four lots will be at or over 100 acres.

Sufficiency of the Petition

15. The petition for creation of the District that was filed with the Commission was signed and filed by Petitioner.
16. Petitioner holds title to a majority in value of land to be included within the proposed District.
17. The petition requests authority for the District to provide roads.
18. Petitioner provided a preliminary layout of all of the roads planned to be constructed within the District and a cost estimate of the proposed road facilities.

19. Petitioner provided a narrative statement that analyzed the effect of the proposed facilities upon the district's financial condition and demonstrated that the proposed construction, acquisition, and improvement is financially and economically feasible for the district.

Feasibility and Practicability

Reasonableness of Projected Construction Costs, Tax Rates, and Water and Sewer Rates

20. Since the petition was submitted in 2022, construction costs have significantly increased.
21. The costs for 4-inch and 6-inch piping used for water construction were estimated at \$35 and \$55 per linear foot, whereas costs are currently closer to \$60 to \$64 per foot. Constructing a water plant to serve the 421 connections would cost approximately \$2.9 million, versus the \$1.0 million noted in the cost estimates contained in the petition. Hot Mix Asphalt concrete is currently priced at approximately \$275 per placed ton, which is approximately 3 times higher than the cost estimate contained in the Preliminary Engineering Report.
22. Road construction costs have more than doubled since the petition was filed, increasing the road facilities bond issue requirement from the \$24.7 million estimated in the petition to over \$52 million.
23. Projected construction costs offered by Petitioner are unreasonable under current market conditions.
24. Petitioner projects an interest rate of 4%. In today's market, MUD bonds are unlikely to attract an interest rate of 4%.
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 double or triple that proposed, to realize the income required to retire the bonds.
26. The petition projects an average monthly water bill of \$69.50 based on a water use of 10,000 gallons per month. This bill is based on City of Lampasas rates.

27. The Property is within Corix Utilities (Texas) Inc.'s water Certificate of Convenience and Necessity (CCN) No. 13227 service area.
28. Under Corix's rates considered approved on May 28, 2023 in PUC Docket No. 53815, 10,000 gallons per month with a 5/8-inch meter would cost over \$184.67.
29. Residents of the District will be required to install onsite septic systems at their own expense.
30. The projected tax rate of \$0.9313 per \$100 valuation, comprised of \$0.8813 for debt and \$0.05 for operation and maintenance, is not reliable in light of increased construction costs.
31. The proposed tax rate is reasonable compared to other taxing authorities in the area.
32. Petitioner has not demonstrated that the projected construction costs, tax rates, and water and sewer rates are reasonable.

Need

33. The lots will be targeted toward both primary and secondary homebuyers.
34. Homes in Lampasas County are typically built on medium-to-large ranches and used for recreation as second homes.
35. The market study assumed that purchasers of the lots would be willing to regularly travel to Austin, San Antonio, Dallas-Fort Worth, and Abilene.
36. Petitioner predicted average assessed value of homes for the District is \$850,000, significantly higher than the median property value in the County of \$174,300 as of 2021.
37. The median household income in Lampasas County in 2021 was \$66,506.
38. Lampasas County land sales data from 2022 reveals that nearly 80% of sales occurred closer to metropolitan areas than the District.

39. The 421 lots proposed to be developed within the District are anticipated to be sold to builders and end-user landowners at the rate of 18 to 36 lots per year.
40. Potential buyers of upper end housing from outside the county would likely choose lower-priced property nearer to urban amenities in the eastern part of the county, over land in the proposed district that is seven miles west of Lampasas.
41. The significant increase in mortgage rates has resulted in weaker housing market conditions, price reductions, lower affordability levels, and lower levels of new home starts.
42. Lot and home prices will need to be reassessed to account for changes in mortgage rates and market conditions.
43. Petitioner has not demonstrated that the project is necessary.

Availability of Comparable Services from Other Systems

44. There are no water or sewer service facilities currently available to serve the Property to be included in the proposed District.
45. Corix will provide retail water utility service to residents of the District using facilities contributed by the proposed District, but Corix has not agreed to serve the Property without contributed facilities.
46. The Property is not located within the wastewater CCN of any entity.
47. The District will not construct or operate wastewater facilities. Each lot within the District will have its own onsite sewer system for wastewater treatment.

Benefit to the Land

48. The project will benefit all of the land proposed to be included in the District.

Effects of the District on Land

Land Elevation and Subsidence

49. The District, the systems, and subsequent development will not have an unreasonable effect on land elevation and subsidence.

Effect on Groundwater Levels and Recharge Within the Region

50. The District will receive retail water service from Corix.
51. The District will not operate wells.
52. The District will be developed into large, single-family lots having an area of not less than 1.8 acres each.
53. The District will be comprised of approximately 89% pervious cover at full buildout.
54. The proposed development's resulting impervious cover from large, single-family residential lots will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development.
55. The District, the District's systems, and subsequent development will not have an unreasonable effect on groundwater level within the region or the recharge capability of a groundwater source.

Effect on Natural Run-off Rates and Drainage

56. The storm water runoff within the District will be collected in open ditches and will drain and outfall to Pitt Creek.
57. Development within the District will result in an increase in storm water flows of approximately 2%.
58. All storm drainage improvements will be designed and constructed in accordance with applicable ordinances and rules adopted by Lampasas County.
59. Petitioner has agreed to install detention facilities, as needed, so that development within the District will not increase the 100-year peak flow as seen at the Sulphur Creek Site 2 reservoir on Pitt Creek downstream of the Property.

60. The proposed District, the District's systems, and subsequent development within the proposed District, will not have an unreasonable effect on natural run-off rates and drainage.

Water Quality

61. Wastewater will be treated by on-site sewage facilities that must be permitted and operated in accordance with regulations adopted and enforced by the Commission and Lampasas County.
62. The District's stormwater facilities will be constructed and operated in compliance with state and local requirements.
63. Sufficient evidence was presented to establish that the District will not have an unreasonable effect on water quality and no evidence was presented challenging this conclusion.

Transcript Costs

64. No party requested the transcript because SOAH required a transcript.
65. All parties fully participated in the hearing and benefitted from the transcript.
66. Petitioner presented testimony from five expert witnesses, and one fact witness.
67. Protestant presented testimony from two expert witnesses, and one fact witness.
68. Members of Protestant are reliant upon personal resources to cover expenses incurred in association with the hearing process.
69. Protestant efficiently participated in the hearing on the merits.
70. Transcript costs should be allocated 20% to Protestant and 80% to the Petitioner.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code chs. 49, 54; Texas Constitution, article XVI, section 59.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Petitioner and the Commission have satisfied all applicable public notice requirements. Tex. Water Code § 49.011; 30 Tex. Admin. Code § 293.12.
4. Petitioner carries the burden of proof by a preponderance of the evidence to show that the Commission should approve the application. 30 Tex. Admin. Code § 80.17(a).
5. Petitioner satisfied the requirements related to availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1); 30 Tex. Admin. Code § 293.11(d)(5)(G).
6. The District and the systems and subsequent development will not have an unreasonable effect on land elevation, subsidence, groundwater level within the region, recharge within the region, natural run-off rates and drainage, water quality, or total tax assessments on all land located within the district. Tex. Water Code § 54.021(b)(3).
7. Petitioner's request for road powers meets all applicable requirements. Tex. Water Code § 54.234; 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a), (b).
8. If the Commission finds that the petition conforms to the requirements of Texas Water Code section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the Commission shall find so by its order and grant the petition. Tex. Water Code § 54.021(a).
9. 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 the availability of comparable service from other systems; the reasonableness of projected construction costs, tax rates, and water and sewer

rates; and whether the district and its system and subsequent development within the district will have an unreasonable effect on land elevation, subsidence, groundwater level within the region, recharge capability of a groundwater source, natural run-off rates and drainage, water quality, and total tax assessments on all land located within a district. Tex. Water Code § 54.021(b).

10. If the Commission finds that the petition does not conform to the requirements of Texas Water Code section 54.015 or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall so find by its order and deny the petition. Tex. Water Code § 54.021(d).
11. Petitioner failed to meet its burden of proof to show that the project is feasible. Tex. Water Code § 54.021.
12. Petitioner failed to meet its burden of proof to show that the project is necessary. Tex. Water Code § 54.021.
13. The petition should be denied.
14. No transcript costs may be assessed against the Commission ED or OPIC because the Commission's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).
15. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
16. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is: 80% to Petitioner and 20% to Protestant.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Petition for Creation of Lampasas County Municipal Utility District No. 1 is denied.
2. The transcript costs are allocated 80% to the Petitioner and 20% to Protestant.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
4. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Jon Niermann, Chairman for the Commission