

APPLICATION FOR THE CREATION § BEFORE THE STATE OFFICE
OF SHANKLE ROAD MUNICIPAL § OF
UTILITY DISTRICT OF ELLIS COUNTY § ADMINISTRATIVE HEARINGS

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**SOAH DOCKET NO. 582-23-26772
TCEQ DOCKET NO. 2022-0566-DIS**

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2024, a copy of the foregoing Applicant's Corrections to Exceptions to the Proposal for Decision was served on all person listed either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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In this matter, the TCEQ Executive Director (“ED”) agrees that the Applicant met its burden to demonstrate that the proposed development is feasible, practicable, necessary, and would benefit the land to be included in the District.³ In making this determination, Texas Water Code section 54.021(b)(2) requires the Commission to consider the reasonableness of projected construction costs, as well as tax rates, and water and sewer rates. As stated in the ED’s prefiled testimony, the ED found that the proposed District’s tax rates, construction costs, and water and wastewater rates appear reasonable compared to other taxing authorities in the area.⁴ The PFD, indeed, recognized that tax rates and water and sewer rates are reasonable. Applicant’s engineer, Mr. Yash Farah, further testified that the cost estimates for the water, sewer, storm facilities, and roads were “reasonable estimates as of approximately 2022 and were based on comparable districts.”⁵ The County’s municipal engineer testified regarding higher construction costs, which existed as of 2024 on which the PFD is based. This is not the standard for MUD creations. The Commissions standard requires consideration of estimates that are similar to other districts costs in the area to establish reasonableness, notwithstanding Protestants’ cost discrepancies.⁶

As such, the Commission should amend the PFD to find that Applicant satisfied its burden of proof on all issues and grant the Petition to create the MUD as requested.

II. BACKGROUND AND PROCEDURAL STATUS

On August 10, 2022, Applicant filed its Petition for creation of Shankle Road Municipal Utility District of Ellis County with the TCEQ. The MUD would encompass approximately

³ The Office of Public Interest Council only expressed concerns regarding the water delivery system, which was found feasible.

⁴ ED-JW at 0009:1-8

⁵ Farah Prefiled Testimony at 0010:6-8

⁶ An Order Granting Petition for Creation of Ellis Ranch Municipal Utility District No. 1, TCEQ Docket No. 2022-1157-DIS; SOAH Docket No. 582-23-11658; dated July 16, 2024, pp.8-9, l. 1; *see also* App. Ex. 8 at 12; App. Ex. 12 (Farah Direct) at 10.

181.5664 acres that are not located within any corporate limits or extraterritorial jurisdiction of any city or town. A preliminary hearing was held for this matter on October 18, 2023. State Office of Administrative Hearings Administrative Law Judges Rebecca S. Smith and Sarah E. Starnes (“ALJs”) conducted a contested case hearing on May 15, 2024.

On September 6, 2024, the ALJs issued the PFD, which found that Applicant met its burden of proof in all necessary respects with the exception of construction costs. Nevertheless, the PFD erroneously recommended denial of the Petition on the single ground of unreasonable construction costs, due to a discrepancy between estimated costs by the Applicant and Protestants and Applicant’s reliance on comparable district costs in the area.⁷ However, this does not render the Applicant’s construction costs unreasonable.⁸ Therefore, the Applicant has met its burden.

III. APPLICABLE LAW

In considering whether to grant a petition to create a MUD to finance, in part, the construction of water, sewer, drainage, and roadway infrastructure, the Commission must consider the following criteria:

- (a) If the commission finds that the petition conforms to the requirements of 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 so find by its order and grant the petition.
- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:
 - (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
 - (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
 - (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;

⁷ PFD at p. 46.

⁸ An Order Granting Petition for Creation of Ellis Ranch Municipal Utility District No. 1, TCEQ Docket No. 2022-1157-DIS; SOAH Docket No. 582-23-11658; dated July 16, 2024, pp.8-9, l. 1.

- (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.
- (c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.
 - (d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code 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.
 - (e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested a hearing under Section 49.011.⁹

IV. REASONABLENESS OF PROJECTED CONSTRUCTION COSTS

A. Burden of Proof

Applicant has the burden of proof by a preponderance of the evidence.¹⁰ For a fact to be proved by a preponderance of the evidence, the greater weight of credible evidence presented in the case must support a finding that the fact is more likely true than not true.¹¹ Here, the Applicant has met his burden with regard to his estimated costs using comparable costs from other districts. The discrepancies testified to by Mr. Gary Hendricks does not rebut Applicant's proof.

B. Standard for Projected Construction Costs

Applicant excepts to the ALJs' conclusion the Applicant's estimated construction costs are not reasonable.¹² An application for the creation of a municipal utility district is only required to estimate the costs for full development of the utility infrastructure.¹³ The Preliminary Engineering

⁹ TWC § 54.021 (emphasis added).

¹⁰ 30 T.A.C. §80.17(a).

¹¹ See McDuff v. Brumley, No. 07-17-00248, 2022 Tex. App. LEXIS 5658*22 (Tex. App. – Amarillo August 8, 2022, pet. denied).

¹² PFD at pp. 43-47; proposed Findings of Fact Nos. 11, 14-16.

¹³ See 30 T.A.C. §293.11(d)(1).

Report submitted by an applicant is required to include “*tentative itemized cost estimates of the proposed capital improvements* and itemized cost summary for anticipated bond issue requirement.”¹⁴ Applicant has met this requirement.¹⁵ The Preliminary Engineering Report submitted with the application contains the tentative itemized cost estimates for the full development of the utility infrastructure in the overall District Cost Summary.¹⁶

V. EXCEPTIONS TO THE PFD

A. The Project is Feasible Based on Costs and Projected Revenue.

There is sufficient evidence that Applicant’s construction costs are reasonable. The Applicant and Protestants’ engineer agreed on the costs of roads, drainage and water and sewer lines. They disagreed with respect to the costs of the wastewater treatment plant, the water treatment plant, and wells. With respect to the wastewater treatment plant and water treatment plant, the Applicant provided or referenced actual estimates. The Protestants’ engineer provided no estimates and just referenced “construction cost data from BHC’s internal database”¹⁷ Even though the PFD asserts Applicant did not receive a bid, Applicant arrived at the construction estimates through an actual bid for a sewer plant from an actual, bona fide contractor based on \$601,000 for 100,000 gallons per day.¹⁸ TCEQs rule allows of 225 gallons per day (using 75 gallons per person and 3 people per house), a 100,000 gallons per day plant serves 444 houses.¹⁹ To serve the entire project of approximately 810 houses, 2 units of 100,000 gallons per day is more than sufficient.²⁰

¹⁴ See 30 T.A.C. §293.11(d)(5)(E) (Emphasis added).

¹⁵ Farah redirect pp. 99-102

¹⁶ App. Ex. 8.

¹⁷ Protestant’s Ex. No. 4, p. 8, l. 21

¹⁸ App. Ex. 21

¹⁹ App. Ex. 8 (Table 2, p. 17; Table 3, p.18)

²⁰ *Id.*

In the present case, even if the inflated cost figures of the Protestants' engineer are used instead of the cost figures of Applicant, the project is still feasible as expected revenues are greater than expected costs. Mr. Hendricks' construction cost estimates and reduced number of lots of 692 of Protestant's engineer, the revenue from the sale of lots comes to \$41,520,000.²¹ When the maximum bond proceeds of \$18,435,000 (per Protestants' engineer's number) are added to the revenue from lot sales of \$41,520,000, total revenue equals \$59,955,000. This very substantially exceeds the (inflated) total construction costs of Protestants' engineer of \$44,508,000.

Both the Protestants and the PFD simply ignore the fact that both revenue and costs are reasonableness factors. Indeed, Mr. Hendricks admitted that he never analyzed the revenue and compared it to costs.²² As such, Mr. Hendricks feasibility analysis is inadequate to determine the reasonableness of construction costs and ultimate feasibility. When the proper analysis is done, even using Protestant's inflated costs, the project remains feasible, practicable, necessary and is a benefit to the land in the District.

B. Construction Cost Discrepancies are not Grounds to Deny a MUD creation.

If the Commission finds that the petition conforms to the requirements 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* so find by its order and grant the petition. This TCEQ mandate should not be subject to judicial interpretation. Costs are only one factor to consider with regard to feasibility but are not an independent basis for denying MUD creation. The provided costs are only projected costs, which often change. The purpose of MUD creation is to allow reimbursement of infrastructure costs, water, wastewater, drainage and

²¹ Hendricks Prefiled at VII.

²² Hearing Transcript, pg. 148

roads. If costs are above those allowed for reimbursement, the Applicant remains responsible for those costs.

There is no specific criteria for the reasonableness of construction costs contained in the Texas Water Code. While Texas Water Code section 54.021 (b) imposes a statutory duty for the Commission to consider the reasonableness of construction costs, this consideration of such costs is to determine “if the project is feasible and practical and it is necessary and would be a benefit to the land included in the district.”²³ The **only four** criteria for the proposed MUD to satisfy are feasibility, practicality, necessity, and being beneficial. There is **not** an independent fifth criteria of reasonableness of construction costs.

Mr. Hendricks offered a conclusory opinion with regard to costs pertaining to water, wastewater, drainage and roads. Mr. Hendricks ignored how construction costs might differ in a private sector residential development, such as a MUD, as opposed to a public sector municipality, where differences often exist to the timing, phasing, and market for development.

The District’s projected cost estimates total \$26,200,665 for water, wastewater, drainage, and road improvements.²⁴ These are the only components that are available to a developer for reimbursement through a MUD. Here, water and wastewater lines were found feasible, drainage was found reasonable, and there were no contests to road creation. The discrepancy articulated by Mr. Hendricks and recognized in the PFD related to the wastewater plant, the wells, and water treatment plant. However, this is insufficient to find construction costs unreasonable and deny the District’s creation.²⁵

²³ T.W.C. § 54.021(b)

²⁴ PFD at p. 36.

²⁵ An Order Granting Petition for Creation of Ellis Ranch Municipal Utility District No. 1, TCEQ Docket No. 2022-1157-DIS; SOAH Docket No. 582-23-11658; dated July 16, 2024, pp.8-9, l. 1.

Rather, Applicant has met its burden as follows: Applicant has shown that its tax rate, \$1.00 per \$100 valuation, is similar compared to other taxing authorities in the area, which are proven to be reasonable. As in all MUD creations, the developer will pay all upfront costs of capital improvements and can only be reimbursed to the extent available under the \$1.00 per \$100 valuation maximum tax rate set by TCEQ rules.²⁶ Bonds are evaluated by TCEQ before issuance, at which time the developer's reimbursement for any cost overruns may be limited to satisfy the tax rate cap.²⁷ Here, the Petition assumes the issuance of bonds to reimburse the developer 100%, the Applicant can only recoup costs through the tax rate up to the tax rate cap of \$1.00 per \$100 assessed value.²⁸ The projected tax rate of \$1.00 per \$100 valuation is sufficient to fund a reasonable assessment of costs, with an overlapping tax rate of approximate (\$2.25 per \$100.00) which is favorable to other districts and developments in the market. Water and sewer rates were also found reasonable.²⁹

VI. REVISIONS TO THE PROPOSED ORDER

For these reasons, Applicant respectfully requests that the Proposed Order be amended by deleting in Findings of Fact Nos. 19 – 22 in the PFD, and by substituting the following language per PFD 23 and 50.

23: “Applicant’s projected construction costs are reasonable.”:

50: “The project is feasible, practicable, necessary, and will benefit all of the land to be included in the district.”

Applicant also requests that the following language be substituted into the PFDs Conclusions of Law, Nos. 11, 14, 15, and 16:

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

11. “Applicant met his burden of proof regarding reasonableness of construction costs, projected tax rates, and water and sewer rates. Tex. Water Code § 54.021(b)(1).”

14. “Applicant met his burden that the project is feasible, practicable, necessary, and would be a benefit to the land included in the District.”

15. “Applicant ~~did not meet~~ met his burden of proof to show that the project and District are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021; 30 Tex. Admin. Code § 293.11(d) (5) (J).

16. “Applicant's Petition should be ~~denied~~ granted.”

VII. 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 PDF is internally inconsistent for having found the water, wastewater, and road facilities to be feasible, and yet still maintaining the MUD should be denied for unreasonable construction costs. Moreover, the PDF’s analysis of reasonability of construction costs is flawed as it does not review costs in relation to revenue. Even using the Protestants’ engineer’s inflated costs, the project remains quite feasible as revenues substantially exceed the costs alleged by Protestants. Accordingly, the Applicant respectfully requests that the Commission grant their exceptions to the ALJs’ PFD and proposed findings of fact and conclusions of law, and adopt Applicant’s proposed findings of fact and conclusions of law attached hereto, and approve the creation of the District. Applicant respectfully requests such other and further relief to which it may be entitled.

VIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Texas Commission on Environmental Quality amend the Proposal for Decision consistent with the Applicant’s recommendation.

Date: September 26, 2024

COATS | ROSE

By:



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Natalie B. Scott

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER ~~DENYING~~ GRANTING PETITION FOR CREATION OF SHANKLE ROAD MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY; TCEQ DOCKET NO. 2023-0566-DIS, SOAH DOCKET NO. 582-23-26772

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the petition for creation of Shankle Road Municipal Utility District of Ellis County. A Proposal for Decision (PFD) was issued by Rebecca Smith and Sarah Starnes, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH), and considered by the Commission.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

Procedural History

1. On April 26, 2022, Steve Selinger (Applicant) filed a Petition with the Texas Commission on Environmental Quality (TCEQ or Commission) for the creation of the Shankle Road Municipal Utility District of Ellis County (District).
2. The Petition was declared administratively complete on August 23, 2022.
3. On December 4 and December 11, 2022, notices of the Petition were published in the *Ennis News*, a newspaper regularly published or circulated in Ellis County, the county in which the district is proposed to be located.
3. On December 11, 2022, the Ellis County Clerk's Office posted notice of the Petition on the bulletin board used for posting legal notices in Ellis County.
4. The Commission received timely hearing requests filed by numerous parties and, at an open meeting on July 19, 2023, determined that a number of them were affected persons and referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

5. On October 18, 2023, the Administrative Law Judges (ALJs) held a preliminary hearing in this matter, at which time the jurisdictional exhibits were admitted into evidence. Applicant, the ED, and OPIC were named as parties, along with Ellis County, CAECM, and a number of individual protesting parties who agreed to be aligned with CAECM.
6. On May 9, 2024, a final prehearing conference was held at which the ALJs ruled on objections to prefiled evidence and addressed hearing procedures.
7. The hearing on the merits was held May 15, 2024, before ALJs Rebecca Smith and Sarah Starnes in SOAH's hybrid hearing room in Austin, Texas, which has capabilities for persons to attend in person and by videoconference. Applicant was represented by attorneys Natalie Scott and Kevin Bartz; Ellis County was represented by attorneys Emily Rogers and Kimberly Kelley; CAECM was represented by attorneys Eric Allmon, David Frederick, and Lauren Alexander; the ED was represented by attorneys Fernando Salazar Martinez and Kayla Murry; and OPIC was represented by attorney Jennifer Jamison.
8. The record closed on July 16, 2024, after submission of written closing arguments.

Sufficiency of Petition

9. The proposed municipal utility district (MUD) is for a planned residential development on the Shankle Road Tract, owned wholly by Applicant and comprising approximately 181.5664 acres in Ellis County, located east of Interstate Highway (IH) 45 and north of farm-to-market road 660. The proposed District is not within the corporate limits or extra-territorial jurisdiction (ETJ) of any city, town, or village.
11. As currently planned, the District would serve approximately 2800 residents in 811 single family homes. Lots will range from 40 to 50 feet wide to 115 feet deep, and new homes would be priced between \$235,000 to \$310,000, a price range that is more affordable than new-housing costs in other communities closer to Dallas and Fort Worth.
12. While the District would serve approximately 181.5664 acres, only 114.86 acres would be developed as single-family residential lots. The rest of property includes 4.18 acres that cannot be developed due to gas easements; 9.03 acres allocated to open spaces and parks; and 53.50 acres of right-of-way.
13. The Petition addressed the components required by Texas Water Code sections 54.014 and .015, and included the information required by the Commission's rule at 30 Texas Administrative Code 293.11(a) and (d).

Availability of Comparable Service from Other Systems

14. Approximately 200 feet on the western boundary of the District falls within the certificate of convenience and necessity (CCN) of East Garrett Water Supply Corp. (East Garrett).

15. East Garrett has a 2-inch water main on one side of Shankle Road, and a 4-inch water main across the street.
16. In preliminary discussions with Applicant, East Garrett expressed reservations about providing water to the District, but did not definitely refuse to provide service.
17. Applicant remains open to having East Garrett supply water if a suitable agreement can be reached. Otherwise, Applicant plans to rely on groundwater wells for the District's water supply.

Reasonableness of Projected Construction Costs

18. In the preliminary engineering report, Applicant estimated the District's total construction costs will be \$22,980,665.64, including \$1,706,374.36 for the water distribution system; \$1,878,912.22 for the wastewater system; and \$6,104,297.20 for a storm drainage system.
- ~~19. Applicant's initial estimate did not include the expense for the eighteen groundwater wells he anticipated drilling; a 200,000-gallon storage tank required for the water supply system; or the wastewater treatment plant that would be constructed.~~
- ~~20. As part of its evidence in this hearing, and nearly two years after the Petition and preliminary engineering report were submitted, Applicant added the following to his estimated construction costs: \$1,570,000 for eighteen wells; \$400,000 for a 200,000-gallon storage tank; and \$1,250,000 for a wastewater treatment plant.~~
- ~~21. There is no evidence showing how Applicant arrived at any of these estimates or how they compare to other residential developments.~~
- ~~22. In estimating construction costs, Applicant did not take into consideration regulations that may significantly raise the costs of drilling groundwater wells or building a wastewater treatment plant, and limit the placement of those facilities.~~
23. ~~Insufficient evidence was submitted to establish that Applicant's projected construction costs are reasonable.~~

Reasonableness of Projected Tax Rates and Water and Sewer Rates

24. The proposed District will have an ad valorem tax rate of \$1.00 per \$100 valuation—with \$0.30 for operation and maintenance, and \$0.70 for debt service.
25. The developer will pay all up-front utility costs and can only be reimbursed in the amount allowed by a MUD tax rate of \$1.00 per \$100 assessed value.

26. The District's total overlapping tax rate will be approximately \$2.25 per \$100. This compares favorably to the overlapping tax rates in other districts and residential developments in the market.
27. The District's proposed tax rates are reasonable.
28. The District will have projected a water rate of \$8.00 per 1000 gallons and a wastewater treatment rate of \$6.16 per 1000 gallons, which is competitive with other area developments.
29. The proposed water and sewer rates are reasonable.

Effect on Land Elevation and Subsidence

30. Development of the District is not expected to cause any changes in land elevation other than that normally associated with lot construction, underground utility systems, drainage facilities, and paving.
31. No mass movement of earth or significant changes to elevations or drainage divides are anticipated during construction of this project.
32. Subsidence is not prevalent, anticipated, or reasonably a predictable concern in the area.
33. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on land elevation or subsidence.

Effect on Groundwater Levels and Groundwater Recharge Capability

34. The District will have more green space than what is typical in a residential development, with at least 9.03 acres of park area planned.
35. The impervious cover from the single-family residential lots planned in the District will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other typical single-family development.
36. The Commission does not regulate groundwater and does not consider the source of a proposed MUD 's water supply in evaluating how groundwater levels and recharge capability may be impacted.
37. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source.

Effect on Natural Run-off Rates and Drainage

38. Property adjacent to and nearby the Shankle Road tract is already prone to flooding after heavy rains, when stormwater flows downstream from Applicant's property.
39. The District will have a storm water collection system designed with street curbs, gutters, and an underground pipe system that will convey runoff to detention ponds. There are three detention facilities planned to reduce flows from the new development to properties downstream.
40. The system will be designed to carry the runoff from a 100-year storm, in compliance with the applicable design criteria established by Ellis County, and will be constructed and operated in compliance with all federal, state, and local requirements.
41. The system will maintain post-development flows at or below pre-development conditions and maintain velocities at or below non-erosive levels.
42. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on natural run-off rates and drainage.

Effect on Water Quality

43. The District will construct a sanitary sewer collection system, including a wastewater treatment plant.
44. Applicant has filed a petition with the Commission for a Texas Pollutant Discharge Elimination System (TPDES) permit that is pending in a separate SOAH proceeding.
45. The District's stormwater collection, conveyance, and detention facilities will be constructed, operated, and maintained in compliance with all federal, state, and local requirements.
46. The Commission has a separate permitting process for wastewater treatment plants and does not regulate those matters as part of the MUD-approval process.
47. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments

48. The petition for creation of the District contemplates a District tax rate of \$1 per \$100 valuation, which falls within the limits set by the Commission in its economic feasibility rules and is the tax rate cap for this development.

49. The District, and the systems and subsequent development within the District, will not have an unreasonable effect on total tax assessments on all land located within the proposed district.

Complete Justification for Creation of the District

50. ~~Because Applicant has not shown the reasonableness of his projected construction costs, he has not shown that the~~ The project is feasible, practicable, necessary, and will benefit all of the land to be included in the district.

Request for Road Powers

51. The Petition requests the Commission to grant the District the authority to provide roads.
52. Applicant provided a preliminary layout as to the major thoroughfares and a cost estimate of the proposed road facilities.
53. Applicant established that the funding of the road improvements is financially and economically feasible.

Allocation of Transcript Costs

54. The transcript was ordered by the ALJs, not requested by either party.
55. No party has claimed a financial inability to pay transcript costs.
56. The parties all participated in the hearing, and all benefitted equally from having the transcript.
57. Through requesting and participating in the hearing, Protestants identified meaningful deficiencies in Applicant's Petition, and incurred significant litigation expenses in doing so.
58. Unlike Applicant, Protestants do not stand to profit from the creation of this MUD and are seeking only to maintain the status quo.

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 hearing, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.

3. Applicant and TCEQ have satisfied all applicable public notice requirements. Tex. Water Code § 49.011; 30 Tex. Admin. Code § 293.12.
4. Applicant carries the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(a).
5. Applicant was not required to satisfy the requirements applicable when a MUD is proposed to be located within the limits or ETJ of a city. Tex. Water Code § 54.016.
6. Applicant's Petition conforms to the requirements of Texas Water Code § 54.015 and is otherwise administratively sufficient. Tex. Water Code §§ 54.015, .021; 30 Tex. Admin. Code §§ 293.11(a), (d).
7. 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).
8. If the Commission finds 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).
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, ground water 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. Applicant met his burden of proof regarding the availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1).
11. Applicant met his burden of proof regarding reasonableness of construction costs, projected tax rates, and water and sewer rates. Tex. Water Code § 54.021(b)(1).
12. Applicant met his burden of proving that the District, its systems, and subsequent development will not have an unreasonable effect on land elevation, subsidence, groundwater levels and recharge capability 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).
13. Applicant'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).

14. ~~Applicant did not meet his burden of proof regarding the reasonableness of projected construction costs. Tex. Water Code § 54.021(b)(1).~~
15. Applicant ~~did not meet~~ met his burden of proof to show that the project and District are feasible, practicable, and necessary and would be a benefit to the land included in the District. Tex. Water Code § 54.021; 30 Tex. Admin. Code § 293.11(d) (5) (J).
16. Applicant's Petition should be ~~denied~~ granted.
17. No transcript costs may be assessed against the 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).
18. 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).
19. Considering the factors in 30 Texas Administrative Code section 80.23(d) (1), an appropriate allocation of transcript costs is 70 percent to Applicant, 15 percent to Ellis County, and 15 percent to CAECM.

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 by Steve Selinger for creation of the Shankle Road Municipal Utility District of Ellis County is ~~denied~~ granted.
2. The reporting and transcript costs are allocated: 70 percent to Applicant, 15 percent to Ellis County, and 15 percent to CAECM.
3. All other motions, any requests for 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 section 80.273 and Texas Government Code section 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