

State Office of Administrative Hearings

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Chief Administrative Law Judge

September 6, 2024

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RE: Docket Number 582-23-26772; TCEQ No. 2023-0566-DIS;
Application for the Creation of Shankle Road MUD of Ellis County

Dear Parties:

Please find attached a Proposal for Decision (PFD) 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

APPLICATION FOR THE CREATION OF SHANKLE ROAD MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION FOR THE CREATION OF SHANKLE ROAD MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY

TABLE OF ABBREVIATIONS AND ACRONYMS

Abbreviation/Acronym	Meaning
Applicant	Steve Selinger
CAECM	Citizens Against Ellis County MUDs
CCN	certificate of convenience and necessity
Code	Texas Water Code
Commission (or TCEQ)	Texas Commission on Environmental Quality
CV	curriculum vitae
District	Proposed Shankle Road Municipal Utility District of Ellis County

Abbreviation/Acronym	Meaning
East Garrett	East Garrett Water Supply Corp.
ED	Executive Director of the Commission
ETJ	extraterritorial jurisdiction
FOF	finding of fact
GCD	groundwater conservation district
GPD	gallons of water per day
IH	interstate highway
MUD	Municipal Utility District
OPIC	Office Public Interest Counsel
Petition	Application for the Creation of Shankle Road Municipal Utility District of Ellis County
PFD	proposal for decision
Prairieland GCD Rules	Prairielands Groundwater Conservation District Rules for Water Wells in Ellis, Hill, Johnson, and Somervell Counties, Texas (as amended effective September 18, 2023)
Protestants	CAECM and Ellis County
Rule	30 Texas Administrative Code section
SOAH	State Office of Administrative Hearings
TCEQ (or Commission)	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION FOR THE CREATION OF SHANKLE ROAD
MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY**

PROPOSAL FOR DECISION

Steve Selinger (Applicant) has filed a petition (Petition) with the Texas Commission on Environmental Quality (TCEQ or Commission) requesting the creation of the Shankle Road Municipal Utility District of Ellis County (District) for a planned residential development. The District would contain approximately 181.5664 acres in Ellis County, located east of Interstate Highway (IH) 45 and north of Farm-to-Market Road 660.¹ The proposed District is not within the corporate limits or extraterritorial jurisdiction (ETJ) of any city, town, or village.²

¹ App. Ex. 19 at 0135. Many of the parties' exhibits have more than one pagination scheme. For consistency, the ALJs have generally cited to Bates numbers for those documents that have them, using the last four digits. Exhibits without Bates numbers are cited by page number.

² App. Ex. 19 at 0135. The Technical Report was also admitted as ED-JW-3.

The Commission's Executive Director (ED) recommends that the Petition be granted, while the Office of Public Interest Counsel (OPIC) joins Citizens Against Ellis County MUDs (CAECM) and Ellis County (jointly, Protestants) in recommending denial of the Petition. Protestants raise a number of concerns about the feasibility of the planned development, but OPIC joined only in the objections to Applicant's plans for the water supply system, and recommended that the Petition be denied on that basis or, alternatively, be remanded for the ED to receive additional evidence on the District's water supply.

Based on the evidence presented and the applicable law, the ALJs conclude that Applicant met its burden of proving the feasibility of the water supply system, but has not shown that the projected costs for the development are reasonable. Because Applicant has not shown the District's creation can meet all applicable requirements, the ALJs recommend that the Commission deny Applicant's Petition for creation of the District.

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.

Applicant filed a Petition for creation of the District with the Commission on April 26, 2022.³ The Petition was declared administratively complete on August 23, 2022.⁴ 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.⁵ 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.⁶

The Commission received timely hearing requests filed by numerous individuals and entities 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.⁷ On October 18, 2023, the ALJs held a preliminary hearing in this matter, at which time the jurisdictional exhibits were admitted into evidence.⁸ Applicant, the ED, and OPIC were named as parties, along with Ellis County, CAECM, and a number of

³ Appl. Ex. 1A at 0075-80.

⁴ App. Ex. 1 at 0027.

⁵ App. Ex. 5.

⁶ App. Ex. 1 at 0018.

⁷ App. Ex. 1 at 0001-02.

⁸ App. Ex. 1.

individual protesting parties who agreed to be aligned with CAECM.⁹ A final prehearing conference was held on May 9, 2024, at which the ALJs ruled on objections to prefiled evidence and addressed hearing procedures.

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.

At the hearing, Applicant presented testimony from four witnesses:

- Applicant, the owner of the Shankle Road property;¹⁰
- Yash Farah, a professional engineer who prepared the preliminary engineering report that supports the Petition;¹¹

⁹ Order Memorializing Preliminary Hearing, Adopting Procedural Schedule, and Scheduling Hearing on the Merits (October 31, 2023).

¹⁰ App. Ex. 10 (Selinger Direct).

¹¹ App. Ex. 8; App. Ex. 12 (Farah Direct); App. Exs. 26-28 (Farah Rebuttal and attached exhibits). Mr. Farah's legal surname is Farahmand, and he is referred to that way in the hearing transcript. *See* Tr. 62 (Farah). However, he uses Farah professionally and that name is used in the parties' exhibits and in the proposal for decision (PFD).

- Cassie Gibson, who prepared the market study that supports the Petition;¹² and
- Ryan Nesmith, a municipal advisor who addressed financial aspects of the District.¹³

Ellis County also presented three witnesses:

- Daniel Lupton, a hydrologist specializing in development of groundwater resources, who addressed concerns with plans for the District's water supply;¹⁴
- Gary Hendricks, a professional engineer who addressed the feasibility of the Development;¹⁵ and
- Tim Osting, an engineer who works primarily on water resources projects, who testified regarding how the District could impact water quality.¹⁶

CAECM presented testimony from four witnesses—Carol Alston, Jeff Pouzar, Charlie Pouzar, and Randy Day—who each own property adjacent to or nearby the District.¹⁷ And the ED presented testimony from James Walker, the

¹² App. Ex. 9; App. Ex. 14 (Gibson Direct).

¹³ App. Ex. 16 (Nesmith Direct).

¹⁴ County Exs. 1-3 (Lupton Direct and attached exhibits).

¹⁵ County Exs. 4-14 (Hendricks Direct and attached exhibits).

¹⁶ County Exs. 14-18 (Osting Direct and attached exhibits).

¹⁷ CAECM Exs. 100-104 (Alston Direct and attached exhibits); CAECM Exs. 200-201 (J. Pouzar Direct and attached exhibit); CAECM Ex. 300 (C. Pouzar Direct); CAECM Ex. 400 (Ray Direct).

technical reviewer for the Commission who reviewed and recommended approval of the Application.¹⁸

Including the witnesses' written testimony, Applicant had 23 exhibits admitted into evidence, and two additional exhibits were admitted by agreement of the parties following the hearing.¹⁹ CAECM had five exhibits admitted at the hearing and another four exhibits admitted after the hearing, by agreement of the parties.²⁰ Ellis County had 19 exhibits admitted,²¹ and the ED had six exhibits admitted.²² The record closed on July 16, 2024, after submission of written closing arguments.²³

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, Chapters 49 and 54 of the Texas Water Code (Code), and the Commission's administrative rules found at 30 Texas Administrative Code chapter 293. The purposes of a MUD include the control and distribution of storm water,

¹⁸ ED-JW-1 to ED-JW-6 (Walker Direct and attached exhibits).

¹⁹ App. Exs. 1A, 2-10, 12, 14-20, 22, 24, and 26-28; Order Granting Motion to Admit Protestant's Exhibits (June 17, 2024, admitting Applicant Exhibits 11 and 13).

²⁰ CAECM Exhibits 100, 200, 201, 300, 400, and 500; Order Granting Motion to Admit Exhibits (June 5, 2024, admitting CAECM Exhibits 101-104).

²¹ County Exhibits 1-19

²² ED-JW-1 to ED-JW-6.

²³ Order Extending the Record Close Date (May 17, 2024).

floodwater, rivers and streams for irrigation and “all other useful purposes”; reclamation and irrigation or drainage of lands; and the preservation of water and other natural resources of the state.²⁴

To accomplish these purposes, a MUD is given authority and power to “purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside or outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary” to, *inter alia*, distribute water; control wastewater collection and disposal; gather, conduct, divert, and control local storm water; irrigate the land; alter land elevation where needed; and provide parks and recreational facilities for a district’s inhabitants.²⁵ A MUD may also exercise eminent domain, acquire power to construct and maintain roads and related improvements, authorize contracts, manage street lighting, enforce real-property restrictions, and (subject to various required approvals and other constraints) issue bonds to finance its projects backed by the MUD’s revenues or ad valorem taxes imposed on the properties within the district.²⁶

A MUD may be created either through special law enacted by the Legislature or, pursuant to general law, through administrative order of the Commission.²⁷ A

²⁴ Tex. Water Code (Code) § 54.012.

²⁵ Code § 54.201.

²⁶ Code §§ 54.209, .234-.237, .501-.604.

²⁷ Code §§ 54.018-.021.

petition requesting creation of a district by administrative order shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district.²⁸ Further, per Code section 54.015, the petition shall:

1. describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;
2. state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and
3. include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated “_____ County Municipal Utility District No. _____.” (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the same county.²⁹

If the proposed MUD is within the corporate limits or ETJ of an incorporated city, town, or village, the applicant must comply with detailed additional requirements that include seeking the city’s advance approval of the MUD’s creation.³⁰ However, if the MUD would lie outside of any city’s limits or ETJ, there are no similar requirements in relation to the county government. Rather, the county

²⁸ Code § 54.014.

²⁹ Code § 54.015.

³⁰ Code § 54.016; 30 Tex. Admin. Code § 293.11(a)(2)-(4), (d)(7)-(8).

commissioners are merely entitled to the opportunity to review the petition and, if they see fit, provide the Commission a “written opinion” conveying their position on the MUD’s creation and any other information they think would assist the Commission’s decision.³¹

The Commission’s rules further prescribe that the petition must include, *inter alia*: evidence that it was filed with the county clerk; a map, market study, preliminary plan, and preliminary engineering report; a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district; and affidavits by those persons desiring appointments by the Commission as temporary directors.³² If the petition includes a request for road powers, the Commission’s rules also require evidence addressing the location and cost of the proposed roads, among other details.³³

Upon receipt of a petition to create a MUD that would be located outside the corporate limits or ETJ of a municipality, the ED (*i.e.*, the Commission staff who initially processes the petition) is to notify the commissioner’s court of any county where the MUD would be located that the petition has been filed.³⁴ Also, upon receipt of “all required documentation,” the ED is to notify the Commission’s Chief

³¹ Code § 54.0161.

³² 30 Tex. Admin. Code § 293.11(d).

³³ 30 Tex. Admin. Code §§ 293.11(d)(11), .202(a)(4), (7)-(9), (b).

³⁴ Code § 54.0161; 30 Tex. Admin. Code § 293.12(h).

Clerk that the petition/application is administratively complete.³⁵ The Chief Clerk, in turn, is to issue notice that the petition/application has been received and procedures by which “interested persons” may request a public hearing on the application.³⁶

If the Commission receives one or more hearing requests and determines that a hearing is necessary, the petition is referred to SOAH.³⁷ Then, after the required notice is issued by the Chief Clerk, the ALJ convenes a preliminary hearing to consider the Commission’s jurisdiction over the proceeding, name the parties (which must include the ED, OPIC, and the applicant, along with any “affected persons”³⁸), and set a final hearing date and procedural schedule.³⁹

The issues to be determined at the hearing are the “sufficiency of the petition” (which in context would include compliance with Code section 54.015 or other procedural prerequisites) 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

³⁵ 30 Tex. Admin. Code § 293.12(a).

³⁶ Code §§ 49.011(a)-(b), 54.018; 30 Tex. Admin. Code § 293.12(b).

³⁷ See Code §§ 49.011, 54.018-.020.

³⁸ 30 Tex. Admin. Code §§ 80.108-.109; *see also id.* § 3.2(4), (24) (defining “application” and “permit”).

³⁹ 30 Tex. Admin. Code § 80.105.

in the district.”⁴⁰ In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

1. the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
2. the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
3. whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.⁴¹

The Commission shall grant the petition if it conforms to the requirements of Code section 54.015 and the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district.⁴² The Commission shall deny the petition if it does not conform to the requirements of Code section 54.015, or if the

⁴⁰ Code § 54.020(a).

⁴¹ Code § 54.021(b).

⁴² Code § 54.021(a).

project is not feasible, practicable, necessary, or a benefit to the land in the district.⁴³ 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 exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.⁴⁴

Applicant bears the burden of proof by a preponderance of the evidence.⁴⁵

III. THE PROPOSED DEVELOPMENT

The proposed MUD is for a planned residential development on a tract owned wholly by Applicant, the Shankle Road Tract, in unincorporated Ellis County, located generally east of the City of Palmer and north of the City of Ennis.⁴⁶ It is within the Palmer Independent School District and within the larger IH-35/Ellis County submarket in the Dallas-Fort Worth area. The region has seen significant growth and surging home development in recent years, and Applicant's market study concluded that the Shankle Road Tract is well-positioned to capture some of this burgeoning demand.⁴⁷

⁴³ Code § 54.021(d).

⁴⁴ Code § 54.021(c).

⁴⁵ 30 Tex. Admin. Code §§ 80.17(a), .117(a)-(b); *see also Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

⁴⁶ App. Ex. 9 at 0041.

⁴⁷ App. Ex. 9; App. Ex. 14 (Gibson Direct) at 5-6.

As currently planned, the development would serve approximately 2,800 residents in approximately 800 single-family homes.⁴⁸ Lots will range from 40 to 50 feet wide by 115 feet deep,⁴⁹ and new homes would be priced between \$235,000 to \$310,000,⁵⁰ a price range that is more affordable than new-housing costs in other communities closer to Dallas and Fort Worth.⁵¹

While the District would serve 181.5664 acres, only 114.86 acres would be developed as single-family residential lots. The rest of the 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.⁵² The District plans to construct roads, a water distribution system, a wastewater collection system, and a storm sewer system within its boundaries. These improvements will be financed through incremental bond issues as construction progresses.⁵³ The preliminary engineering report estimated total construction costs to be almost \$23 million.⁵⁴ And once built,

⁴⁸ App. Ex. 12 (Farah Direct) at 11.

⁴⁹ App. Ex. 9 at 0063; Tr. 38-41 (Farah).

⁵⁰ App. Ex. 9 at 0063; Tr. 38-39 (Farah).

⁵¹ App. Ex. 14 (Gibson Direct) at 8; Tr. 135 (Gibson).

⁵² App. Ex. 8 at 0007.

⁵³ App. Ex. 8 at 0007.

⁵⁴ App. Ex. 8 at 0012, 0017.

the development is projected to have an estimated value of approximately \$223 million.⁵⁵

Applicant's preliminary engineering report and market study were both prepared in 2022, and there have been some changes in the market since then. Ms. Gibson testified home values in the area have substantially risen, but the median new home price in the District's submarket has begun to decline.⁵⁶ According to Ms. Gibson, the price decline is attributable to rising mortgage rates, which prompted home builders to adjust their offerings and prices "to more appropriately service households within the ranges they can afford."⁵⁷ She testified that in terms of lot size and price, the homes Applicant plans to build in the District are "incredibly difficult to produce" in that market and will be met with "incredibly high demand" from homebuyers.⁵⁸

⁵⁵ Tr. 118 (Nesmith).

⁵⁶ Tr. 135-36 (Gibson).

⁵⁷ Tr. 136 (Gibson).

⁵⁸ Tr. 136 (Gibson).

IV. DISCUSSION OF PETITION FOR CREATION OF THE DISTRICT

A. SUFFICIENCY OF THE PETITION

No party disputed that the Petition addressed the components required by Code sections 54.014 and .015. Therefore, the ALJs conclude that the Application satisfied the statutory requirements for what must be included with a petition.

For the most part, no party disputed that the Petition also included all of the information required by the Commission's rule found at 30 Texas Administrative Code section (Rule) 293.11(a) and (d). However, Ellis County has challenged the validity of the preliminary engineering report submitted with the Petition, arguing that its author, Mr. Farah, is unqualified and "has not demonstrated a reliable foundation" for the opinions expressed in the report or his related testimony.⁵⁹ Broadly construed, Ellis County's challenge to Mr. Farah's work is an argument that the Petition did not satisfy Rule 293.11(d)(5), which requires MUD applications to include a preliminary engineering report that addresses certain enumerated elements.

Ellis County raised similar arguments in its prehearing objections and motion to strike portions of Mr. Farah's testimony, and those objections were overruled prior to the hearing. The ALJs explained that Mr. Farah's expertise relative to other

⁵⁹ Ellis County's Closing Argument (Ellis County Closing) at 6.

parties' experts,⁶⁰ and the reliability of the information and opinions provided in the preliminary engineering report, inform the weight Mr. Farah's testimony is given, but those matters are not grounds for striking his testimony and report altogether. For the same reasons, the ALJs decline now to disregard the preliminary engineering report in its entirety. The report was included with the Petition and addressed the required components. The ALJs therefore conclude the Petition included all elements required to meet the technical requirements of Code sections 54.014 and .015, and the Commission's Rule 293.11(a) and (d).

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

After determining that the Petition conforms to the requirements of Code section 54.015 and related rules, the Commission turns to the substantive inquiry into whether "the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district,"⁶¹ a determination made after considering the factors listed in Code section 54.021(b).

⁶⁰ Mr. Farah holds bachelor and master's degrees in civil engineering and is a licensed professional engineer in Texas. His curriculum vitae (CV) lists approximately fourteen years of work in design projects for roads, bridges, and transit projects for government agencies. App. Ex.13. He testified that he has also worked on several residential subdivision developments, though he did not elaborate on the time or nature of that work, and it is not listed on his CV. Tr. 63-64 (Farah).

⁶¹ Code § 54.021(a).

1. Availability of Comparable Service from Other Systems

Code section 54.021(b)(1) requires consideration of “the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities.” CAECM argues that Applicant has not shown a proper request for water service was made or that comparable water service is unavailable from an alternate provider, and therefore “[t]he Petition should be denied on this basis alone.”⁶²

a) Evidence

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).⁶³ In the vicinity of 1008 Shankle Road, East Garrett has a 2-inch water main on one side of Shankle Road, and a 4-inch water main across the street.⁶⁴

In the preliminary engineering report, signed in April 2022, Mr. Farah stated that the District’s west boundary is within East Garrett’s CCN, but that East Garrett had been contacted and “did not respond and has indicated they will not serve the

⁶² CAECM’s Written Closing Arguments (CAECM Closing) at 4-6; CAECM’s Response to Closing Arguments (CAECM Response) at 3. No other party joined CAECM on this issue.

⁶³ County Ex. 4 (Hendricks Direct) at 9, County Ex. 6.

⁶⁴ CAECM Ex. 500 (Wade Depo.) at 16.

area in question.”⁶⁵ Without water from East Garrett, Applicant planned to provide water via onsite wells instead.⁶⁶ The ED accepted these statements at face value, with Mr. Walker stating in the technical memorandum, “East Garrett WSC will not service the area” so “[w]ater will be provided via onsite wells.”⁶⁷

Mr. Farah’s representation that East Garrett would not serve the area was not based on his personal knowledge; rather he was reporting what Mr. Selinger told him East Garrett had said.⁶⁸ When testifying at the hearing, Mr. Farah clarified that when the Petition had been submitted in April 2022, he understood that East Garrett “hadn’t denied [the request for service], but they hadn’t approved it either.”⁶⁹ Later, Mr. Farah said it was his understanding that East Garrett “didn’t answer, then they said ‘no,’ then they said ‘yes’ or ‘we might’” provide water service to the District.⁷⁰

Ultimately, Mr. Farah testified that he was “unaware of what East Garrett’s supply reserves are” and could not opine on whether they would have enough to supply water for the District. At most, he thought East Garrett was a potential source

⁶⁵ App. Ex. 8 at 005.

⁶⁶ App. Ex. 8 at 007; Tr. 58 (Farah).

⁶⁷ App. Ex. 19 at 0137.

⁶⁸ Tr. 69-70 (Farah). The same representation (that East Garrett had been asked to provide water service but did not respond) was included in Mr. Farah’s direct testimony. App. Ex. 12 (Farah Direct) at 8.

⁶⁹ Tr. 42 (Farah).

⁷⁰ Tr. 85-86 (Farah).

for some or all of the water the District would need, depending on the outcome of later negotiations with Applicant.⁷¹ His testimony addressed how some cost estimates and fees could change if East Garrett did supply water.⁷²

John Wade Jr., East Garrett’s general manager since July 2021, was deposed in this case, and he testified that all requests for service go directly to him for review.⁷³ Mr. Wade acknowledged receiving a letter from an engineering firm requesting, on behalf of Applicant, water service for the District.⁷⁴ However, he did not consider the letter a “formal” request for service because it had not been sent by Mr. Selinger. According to Mr. Wade, “by the rules and regulations” of East Garrett, “the developer has to fill out a service application” and a request conveyed any other way would not constitute a formal request for service.⁷⁵ In Mr. Wade’s view, Applicant had not made any request for service from East Garrett, so it was inaccurate to say East Garrett had refused to provide water service to the District.⁷⁶

⁷¹ App. Ex. 12 (Farah Direct) at 8; Tr. 58-59, 103 (Farah). According to Mr. Farah, East Garrett had contemplated drilling an additional deep well to have enough water supply for the District, or the water supply might come from a combination of East Garrett and on-site water wells. App. Ex. 8 at 9.

⁷² App. Ex. 12 (Farah Direct) at 9; Tr. 83-84 (Farah).

⁷³ CAECM Ex. 500 (Wade Depo.) at 8-9.

⁷⁴ The request letter is not in evidence. Though Mr. Farah’s direct testimony stated that an attached letter would show Mr. Selinger’s request to East Garrett, there was no attachment. App. Ex. 12 (Farah Direct) at 8; Tr. 66-67, 69-70 (Farah). There were also no attachments to the copy of the Petition that Applicant offered into evidence, or the copy included in the administrative record, though Mr. Farah testified that the request letter to East Garrett should have been submitted with the Petition. Tr. 66-67 (Farah); App. Ex. 1 at 0032-35; App. Ex. 1-A.

⁷⁵ CAECM Ex. 500 (Wade Depo.) at 18-19.

⁷⁶ CAECM Ex. 500 (Wade Depo.) at 18-19.

According to Mr. Wade, it would be premature to say whether East Garrett could feasibly provide water for the District. Before such a determination could be made, Applicant would have to submit a plat detailing its infrastructure needs, then East Garrett’s engineers would review the plat and evaluate what would be required to provide the service. Without the engineering study, Mr. Wade said he could not evaluate whether it would be feasible for East Garrett to supply water.⁷⁷

b) Analysis

CAECM argues that the Commission cannot consider “the availability of comparable service from other systems,” as required by Code section 54.021(b)(1), because Applicant has not shown whether East Garrett can provide water service to the District. Applicant has not yet requested service from East Garrett, nor has he petitioned to change the boundaries of East Garrett’s CCN to remove the portions of the District contained therein.⁷⁸ Applicant responds that he has presented two feasible options for providing water service—the developer is open to having East Garrett supply water if a suitable agreement can be reached; otherwise, groundwater is available.⁷⁹

⁷⁷ CAECM Ex. 500 (Wade Depo.) at 19-20.

⁷⁸ CAECM Closing at 4-5.

⁷⁹ Applicant’s Reply Brief (Applicant’s Reply) at 3.

The ALJs conclude that Applicant has met his burden of proof on this issue. Contrary to CAECM's assertion, approval of the Petition does not depend upon Applicant's ability to prove whether or not water is available from East Garrett. Rather, the "availability of comparable service from other systems" is merely one of many factors that the Commission must consider in evaluating whether a MUD is feasible, and nothing in the statute suggests that any single factor would be determinative.⁸⁰

Here, Applicant has shown that East Garrett is a possible source of at least some water needed for the District, but availability from that source is speculative and will depend upon the outcome of future negotiations. Unless and until an agreement is reached with East Garrett, Applicant is proceeding on the assumption that groundwater wells will be needed. While Mr. Farah's representation in the preliminary engineering report that East Garrett had "indicated they will not serve the area in question" might have been an overstatement, the evidence known at this preliminary stage supports Applicant's assumption that development should proceed without an expectation that East Garrett will be able to provide water service to the District.

⁸⁰ Code § 54.021(b).

2. Feasibility of Water Supply

Ellis County, CAECM, and OPIC assert that Applicant has failed to offer a feasible, practicable plan for supplying water to the District, arguing that the plan to rely on eighteen groundwater wells would be legally impossible to implement.⁸¹

a) Applicant's Evidence and Position

The 181-acre Shankle Road tract is projected to have 811 single-family homes, each of which Mr. Farah estimated would use 350 gallons of water per day (GPD), for a total daily demand of 283,850 gallons.⁸² Assuming that East Garrett will not be supplying water, Applicant plans to develop a public water supply system that will provide water “via on site wells [that] will meet or exceed the TCEQ minimum requirements.”⁸³

Eighteen wells are tentatively planned. Applicant arrived at this number after consulting with a local well drilling company about what wells in the area can typically produce.⁸⁴ Applicant determined that 18 wells would be the maximum number that might be needed, but that estimate could change later in the process,

⁸¹ Protestants also challenge whether Applicant's projected costs for the wells are reasonable, and contend the wells would negatively impact groundwater. Those arguments are addressed in the sections where those statutory elements are separately addressed.

⁸² App. Ex. 12 (Farah Direct) at 9.

⁸³ App. Ex. 8 at 0007; Tr. 34 (Farah).

⁸⁴ Tr. 81-82 (Farah).

after a test well is drilled and an engineering study is done.⁸⁵ The plat submitted with the Petition does not indicate specific locations for any of the wells. Mr. Farah explained this is because it is too early in the planning process to know precisely how many wells will be needed or where they will be.⁸⁶

Mr. Farah believes the Code would allow pumping up to 25,000 GPD from each well. Assuming each home would need 350 GPD, a well pumping at this rate could support 71 homes.⁸⁷ Eighteen wells could supply 1,285 homes, far more than what is planned for the District.⁸⁸

As Mr. Farah acknowledged, there are statutory limits on which wells can pump up to 25,000 GPD—in the preliminary engineering report, he said this pumping rate applies to wells “constructed on 10 acre parcels if the water is to be used for domestic purposes (as would be the case here).”⁸⁹ While home plots in the District would be much smaller than 10 acres, Mr. Farah asserted that “the overall

⁸⁵ Tr. 82 (Farah).

⁸⁶ Tr. 42, 52, 83 (Farah).

⁸⁷ App. Ex. 12 (Farah Direct) at 9 (25,000 ÷ 350 = 71.43).

⁸⁸ App. Ex. 12 (Farah Direct) at 9 ((18 x 25,000) ÷ 350 = 1285). Mr. Farah emphasized that his calculations should not be read to imply that Applicant contemplates building up to 1285 homes, and in fact Applicant may build fewer than 811 homes if other factors impact the number of lots he can sell. Tr. 83 (Farah).

⁸⁹ App. Ex. 12 (Farah Direct) at 9.

plat of land would still be 10 acres” for purposes of meeting the Code’s requirements.⁹⁰

State law and groundwater conservation districts (GCDs) regulate where wells can be situated and how much water they can pump; in the proposed District, it is Prairielands GCD’s rules and regulations that apply.⁹¹ Mr. Farah said he did not consider the Prairielands GCD rules in the preliminary engineering report because until the number and placement of wells is determined, it is premature to contemplate specific permitting requirements.⁹² Applicant has represented that the water supply system “will be designed in accordance with applicable design criteria as established by the [Commission] and Ellis County,” and “will comply with state law and the groundwater conservation rules—including waivers as allowed, and changes in the water model which occur over time.”⁹³

⁹⁰ App. Ex. 12 (Farah Direct) at 9. In his prefiled testimony, Mr. Farah said that “future homeowners would own the airspace and improvements over the land but the overall plat of land would still be 10 acres...,” but at the hearing he said this was only a “secondary option” that arose after “outside neighbors” had objected to the original plans, which called for homeowners to own their lots. App. Ex. 8 at 9; Tr. 72-74 (Farah).

⁹¹ App. Ex. 12 (Farah Direct) at 9; ED-JW-1 (Walker Direct) at 0016; Tr. 141 (Lupton). The ALJs have taken official notice of the Prairielands GCD *District Rules for Water Wells in Ellis, Hill, Johnson, and Somervell Counties, Texas*, as amended effective September 18, 2023 (Prairielands GCD Rules). See Order Granting Motion to Take Official Notice (Feb. 23, 2024).

⁹² Tr. 55 (Farah).

⁹³ App. Ex. 8 at 0008; App. Ex. 12 (Farah Direct) at 9.

b) Protestants' Evidence and Position (Joined by OPIC)

To legally drill eighteen wells, Applicant must either obtain permits from the Prairielands GCD, or must establish an exemption from permitting requirements. According to Protestants and OPIC, Applicant can do neither and therefore has not shown his water-supply plan is feasible.

The Code gives groundwater districts authority to make and enforce rules that limit groundwater production in the interest of conserving and protecting groundwater and preventing waste.⁹⁴ While GCDs may require permits for groundwater wells, the Legislature requires them to provide certain exemptions. Relevant here, Code section 37.117 provides:

- (b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:
 - (1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:
 - (A) located or to be located on a tract of land larger than 10 acres; and
 - (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
- ...
- (j) An exemption provided under Subsection (b) does not apply to a well if the groundwater withdrawn is used to supply water for a

⁹⁴ Code § 36.101(a).

subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.

Applicant has asserted that this exemption would apply to any wells in the District, but Protestants and OPIC dispute this on several grounds.

First, they assert that the District's wells would not be "solely for domestic use" because Prairielands GCD's rules define "domestic use" and explicitly state that "[d]omestic use does not include use by or for a public water system."⁹⁵ At the hearing, Mr. Farah confirmed that the Application was for a system that "will supply water to the public for human consumption" and constituted a "public water supply system."⁹⁶

Second, Protestants assert that the statutory exemption cannot apply because the District's residential lots—which are planned to be 40-50 wide by 115 feet—will be far smaller than the "larger than 10 acres" required by section 37.117(b)(1)(A).⁹⁷ Mr. Farah's suggestion that individual residential lots could be grouped together to create 10-acre areas for each well "does not make sense legally or practically,"

⁹⁵ Prairielands GCD Rule 1.1(15); County Ex. 4 (Hendricks Direct) at 13.

⁹⁶ Tr. 34 (Farah).

⁹⁷ County Ex. 1 (Lupton Direct) at 8-9.

according to Ellis County, because the District would not own the 10-acre areas where wells would be situated.⁹⁸

Next, Protestants argue that the exemption in section 37.117(b) would not apply because the District will require a county's plat approval pursuant to Texas Local Government Code chapter 232. According to Ellis County witness Mr. Hendricks, the District will be a subdivided addition to Ellis County and will require that county's approval of its plat.⁹⁹ And finally, Protestants argue that Prairielands GCD's rules require a permit for well systems that are capable of producing more than 17.36 gallons per minute, which the District's well system would be.¹⁰⁰

With no exemption from permitting rules, Protestants argue, the District will be subject to Prairielands GCD's rules for permitting wells, and those rules would not permit the wells Applicant has planned. According to Protestants, Prairieland GCD's rules: impose specific well-spacing requirements that make it "not practicable or feasible" to situate 18 water supply wells on a 181-acre tract;¹⁰¹ and limit the annual production on contiguous controlled acres to 50,000 gallons per

⁹⁸ Ellis County Closing at 8; County Ex. 4 (Hendricks Direct) at 13.

⁹⁹ County Ex. 4 (Hendricks Direct) at 14.

¹⁰⁰ County Ex. 1 (Lupton Direct) at 9; Prairielands GCD Rule 2.1(a)(4), (b).

¹⁰¹ County Ex. 4 (Hendricks Direct) at 13; Prairielands GCD Rule 4.3. Mr. Hendricks also argues that the well-spacing rules would apply even if Applicant was otherwise exempt from permitting requirements. *See* Code § 36.117(f).

year, far less (13.7 times less, according to Mr. Hendricks) than what the District would need.¹⁰²

Similarly, according to Protestants, the proposed groundwater wells would run afoul of Commission rules governing public water supply systems or, alternatively, Applicant has not shown how the District can comply with them.¹⁰³ These include rules that impose spacing requirements between wells and storm sewers, sewage treatment plants, pumping stations, or drainage ditches; require sanitary control easements; and require fencing around wells.¹⁰⁴ And the Petition is silent about what Protestants characterize as “critical minimum components of the water distribution system,” including a water treatment plant, storage reservoirs, and pressure tanks.¹⁰⁵ Complying with the Commission’s rules for public water systems, according to Protestants, would require Applicant to eliminate more than 200 residential lots from the development, calling into question the District’s financial feasibility.¹⁰⁶

¹⁰² County Ex. 4 (Hendricks Direct) at 20; App. Ex. 8 at 0008; Prairielands GCD Rule 5.2(b).

¹⁰³ See Ellis County Closing at 10-11; CAECM Closing at 9.

¹⁰⁴ Tex. Admin. Code § 30 TAC 290.41(c)(1)(B), (F), (3)(O).

¹⁰⁵ See Ellis County Closing at 10; CAECM Closing at 9-10; 30 Tex. Admin. Code § 290.45(a)(6), (b)(1)(D)(iv)).

¹⁰⁶ Ellis County Closing at 11; CAECM Closing at 9-10; OPIC Closing Argument (OPIC Closing) at 11; County Ex. 4 (Hendricks Direct) at 19-20.

According to Protestants and OPIC, Applicant’s conclusory assertion that the “MUD will comply with state law and groundwater conservation rules”¹⁰⁷ is insufficient to overcome what they characterize as the legal impossibility of his plans.¹⁰⁸ Unless Applicant can affirmatively show how it will comply with all of these regulations, they argue, the Petition should be denied.

c) ALJs’ Analysis

The contention that Applicant’s water-supply plan will be impossible to implement is factually and legally untenable.

First, in challenging the legal feasibility of using groundwater wells to supply water, Protestants and OPIC generally depend on a firm assumption that the District will have exactly 18 wells, drilled to 1,000 feet, with each well producing 25,000 GPD in order to serve 811 single-family residences. Yet none of these features is set in stone. Nor are they required to be at this stage of development.

Mr. Farah emphasized that the preliminary engineering report is only a preliminary planning document, not a design document.¹⁰⁹ At this point, the District’s design is only tentative. Engineers will later determine the size and

¹⁰⁷ App. Ex. 12 (Farah Direct) at 9.

¹⁰⁸ Ellis County Closing at 7.

¹⁰⁹ Tr. 101 (Farah).

placement of a wastewater treatment plant, groundwater wells, water storage basins, and other design elements. As those plans firm up, the size, placement, and number of residential lots could change, which in turn could impact how much water will be needed. Engineers will evaluate how, where, and how much water can be provided by wells. Wells may not be needed at all if East Garrett ultimately agrees to supply water. With none of these details settled, it would be premature (and largely impossible) to determine what permits might be needed, let alone anticipate whether regulators will grant them. The ALJs also note that, in insisting it would be legally impossible to obtain permits for Applicant's groundwater wells, Protestants ignore Prairieland GCD rules that allow discretionary exceptions to some of the requirements they characterize as absolute.¹¹⁰

Second, the Code and Commission rules simply do not require the level of specificity that Protestants and OPIC would demand of a preliminary plan. The statutory factors for evaluating whether a project is “feasible and practicable” implicate water-supply plans only to the extent those plans relate to the Commission's consideration of “the availability of comparable service from other systems,” “the reasonableness of projected construction costs,” or whether there could be an unreasonable effect on groundwater levels or recharge capability.¹¹¹ Whether or how Applicant will eventually be able to satisfy other regulators, such as

¹¹⁰ See, e.g., Prairielands GCD Rule 4.7 (titled, “Exceptions to Well Spacing Requirements”).

¹¹¹ Code § 54.021(b).

the Prairielands GCD, is not part of the Commission’s feasibility analysis. At this stage, Applicant’s acknowledgement that regulations apply and will be complied with is sufficient to establish feasibility.

Finally, at its open meeting convened on October 25, 2023, the Commission considered the proposal for decision (PFD) issued in *The Application by Highland Lakes Midlothian I, LLC for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, in which the ALJ had recommended denying a petition because the applicant had not shown the development would not have an unreasonable effect on groundwater.¹¹² The Commission overturned the ALJ and approved the application.¹¹³ In explaining their changes to the PFD during the meeting, Chairman Jon Niermann deemed the ALJ’s focus on the development’s groundwater supply to be “misplaced,” adding:

The Commission does not regulate groundwater—that’s subject to the rule of capture—or limitations that are imposed by a groundwater conservation district. **I don’t think the legislature intended TCEQ to regulate groundwater through the creation of MUDs.** For example, I don’t believe the Commission should bar or limit Mountain Peak’s ability to develop groundwater sources to which it’s otherwise lawfully entitled. **Mountain Peak’s lawful use of groundwater is not relevant**

¹¹² *Application by Highland Lakes Midlothian I, LLC for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Proposal for Decision (June 29, 2023).

¹¹³ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order (November 6, 2023).

to our inquiry. And the same would be true for this, or any other, Petitioner.’”¹¹⁴

While Chairman Niemann’s remarks were not included in the Commission’s final order in that case, they are nonetheless instructive authority on how the Commissioners view their role in reviewing MUD applications.

In sum, Protestants’ claim that it will be impossible for Applicant to rely on groundwater wells for water supply is factually unsupported, legally premature, and depends on regulatory determinations that are outside the Commission’s purview in this proceeding. The ALJs conclude that Applicant’s plan to rely on groundwater wells, combined with his assurance that the wells will comply with applicable regulatory requirements, is feasible and practical for the limited purpose of approving the MUD.

3. Feasibility of Wastewater Plan

Protestants also assert that Applicant has failed to offer a feasible, practicable wastewater plan for the District, arguing that it will be legally impossible to construct the planned wastewater treatment plant.

¹¹⁴ Commissioners’ Agenda Meeting, October 25, 2023, Agenda Item 2, beginning at 1:03:44. *Available at* https://www.youtube.com/watch?v=RgtQnKn8g_c. (discussing *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS) (emphasis added).

a) Applicant's Evidence and Position

To serve the District, Applicant plans to construct a wastewater collection system, including sewer lines and a wastewater treatment plant that will discharge into an unnamed tributary to Fourmile Creek.¹¹⁵ The proposed plan shows a square indicating the plant's location in the development,¹¹⁶ but Mr. Farah testified that the location will likely change before plans are finalized. In the preliminary plan, he was only trying to show that land could be set aside for the plant while still meeting the District's "financial responsibilities."¹¹⁷ Applicant also represents that he intends to comply with all relevant regulatory requirements applicable to the wastewater treatment plant.¹¹⁸

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.¹¹⁹

¹¹⁵ App. Ex. 1 at 0007; App. Ex. 8 at 0009

¹¹⁶ App. Ex. 8 at 0027.

¹¹⁷ Tr. 101-02 (Farah).

¹¹⁸ Tr. 104 (Farah).

¹¹⁹ App. Ex. 24; *see In re Application by Stephen Richard Selinger For TPDES Permit No. WQ0016103011*, SOAH Docket No. 582-24-08875, TCEQ Docket No. 2023-1667-MWD (hearing held June 18, 2024).

b) Protestants' Evidence and Position

Protestants allege that Applicant's plan for a wastewater supply is not legally feasible because the preliminary plan shows the wastewater treatment plant in a location that would violate the Commission's rules.¹²⁰ They point to Commission Rule 309.13, which addresses unsuitable site characteristics for wastewater treatment plants and includes requirements for a 150-foot buffer zone between the plant and nearby properties, and a 500-foot buffer zone between the plant and any public wells.¹²¹ Applicant's preliminary plan places approximately 19 residential lots within the 150-foot buffer zone, in violation of this rule.¹²² According to Protestants, the preliminary plan also does not account for the 500-foot buffer between the treatment plant and proposed well, does not address required sanitary easement requirements, and fails to provide a workable conveyance path for treated effluent.¹²³ By ignoring these "critical and necessary components" of the proposed wastewater treatment plant, Protestants assert, Applicant has failed to show the wastewater plan is feasible or practical.¹²⁴ Further, complying with these requirements could require removal of

¹²⁰ Ellis County Closing at 11-12; CAECM Closing at 11-12.

¹²¹ 30 Tex. Admin. Code § 309.13(c)(3), (e)(1).

¹²² County Ex. 4 (Hendricks Direct) at 24-25; County Ex. 9.

¹²³ County Ex. 4 (Hendricks Direct) at 26.

¹²⁴ County Ex. 4 (Hendricks Direct) at 26-27.

up to 89 lots from the development, rendering other estimates in the preliminary plan unreliable.¹²⁵

c) ALJs' Analysis

As with Protestants' objections to the water-supply plan, their objections to the wastewater plan hinge on details that do not need to be settled in this early stage. The preliminary plan does not reflect a final location for the treatment plant, so it is premature to address whether or how the location might comply with specific regulations. Moreover, siting requirements and effluent paths are matters that will be determined in the Commission's eventual review of Applicant's petition for a TPDES permit. Just as the Legislature did not intend for the Commission to regulate groundwater through the creation of MUDs, it also did not intend for them to bypass the separate permitting process for wastewater treatment plants by regulating the same matters through MUD petitions.

Applicant has shown that the District plans to own and operate a permitted wastewater treatment plant, and that it will be constructed and maintained in compliance with all applicable regulations. This is sufficient to meet Applicant's burden of showing its wastewater plan is feasible and practical.

¹²⁵ Ellis County Closing at 12; CAECM Closing at 11-12; County Ex. 4 (Hendricks Direct) at 25.

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

In determining whether the project is feasible, practicable, and necessary, and whether it would be a benefit to the land included in the District, the Commission must consider the reasonableness of projected construction costs, tax rates, and water and sewer rates.¹²⁶ The Commission considers whether these costs and rates were reasonable when the Petition was submitted and does not consider future projections.¹²⁷

a) Applicant's Evidence and Position

In the preliminary engineering report, Mr. Farah estimated Applicant'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.¹²⁸ In his direct testimony, Mr. Farah added to the estimate costs for water wells (\$1,570,000 for eighteen wells), a storage tank (\$400,000 for a 200,000 gallon storage tank), and a wastewater treatment plant (\$1,250,000).¹²⁹ There is no evidence showing how Mr. Farah or Applicant arrived at any of these estimates, or why they believe them to be reasonable. Mr. Farah did not address the

¹²⁶ Code § 54.021(b)(2).

¹²⁷ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Final Order at § III.3 (November 6, 2023).

¹²⁸ App. Ex. 8 at 0017-18.

¹²⁹ App. Ex. 12 (Farah Direct) at 8-9.

basis for his cost estimates in his testimony. And while Applicant claimed in its brief that Mr. Farah used “actual construction bids” in preparing his report,¹³⁰ no such bids were included or even referenced in Applicant’s evidence. There is also no evidence addressing how Applicant’s estimates compare to other projects, other than Mr. Farah’s bare assertion that his estimates are in line with costs for similar developments and the estimates were “reasonable estimates as of approximately 2022.”¹³¹ Mr. Farah acknowledged there has been “unprecedented” cost inflation since he gave his cost estimates, but at the same time, market prices have also substantially increased. This led Mr. Farah to conclude that “[t]aken together, these two market realities maintain the overall feasibility of the project.”¹³²

In conducting the technical review, Mr. Walker considered Applicant’s estimated costs but did no independent investigation or examination into the reliability of those estimates.¹³³ Thus, when he concluded that the District’s construction costs “appear reasonable compared to other taxing authorities” and met the Commission’s economic feasibility standards for issuing bonds to support the MUD,¹³⁴ Mr. Walker was accepting Mr. Farah’s corresponding statements as true.

¹³⁰ Applicant’s Reply at 5.

¹³¹ App. Ex. 12 (Farah Direct) at 10.

¹³² App. Ex. 12 (Farah Direct) at 10.

¹³³ Tr. 163, 165-66 (Walker).

¹³⁴ ED-JW-1 (Walker Direct) at 010; 30 Tex. Admin. Code § 293.59.

Applicant’s expert Mr. Nesmith, who testified on financial feasibility of the District, relied on Mr. Farah’s cost estimates in his analysis; he did not analyze whether they were accurate.¹³⁵ Mr. Nesmith also based his analysis on the assumption that the District would have 811 homes.¹³⁶ Mr. Nesmith calculated that the District would be “feasible and practicable from a financial perspective” with an ad valorem tax rate of \$1.00 per \$100 valuation—with \$0.30 for operation and maintenance, and \$0.70 for debt service.¹³⁷ This satisfies the \$1.00 per \$100 limit set in the Commission’s rules.¹³⁸ Mr. Nesmith also opined that the District’s total overlapping tax rate (approximately \$2.25 per \$100) compares favorably to the overlapping tax rates in other districts and developments in the market (\$2.60 to \$2.85 per \$100) and is reasonable for the type of development proposed.¹³⁹ That tax rate would not need to change even if the number of homes developed was reduced, according to Mr. Nesmith.¹⁴⁰ Ms. Gibson also opined that the proposed tax rate and the total overlapping tax rate “are in line with developments of similar quality and size” in the area.¹⁴¹

¹³⁵ Tr. 111 (Nesmith).

¹³⁶ Tr. 113 (Nesmith).

¹³⁷ App. Ex. 16 (Nesmith Direct) at 4-5.

¹³⁸ 30 Tex. Admin. Code § 293.59(k)(3)(C).

¹³⁹ App. Ex. 16 (Nesmith Direct) at 5-6.

¹⁴⁰ Tr. 112-13 (Nesmith).

¹⁴¹ App. Ex. 14 (Gibson Direct) at 9.

If construction costs exceed the estimate, Applicant argues, then the tax rate can be adjusted to offset those expenses. The \$0.30 per \$100 they have assumed for maintenance and operation expenses is a conservative estimate; other districts have rates between \$0.10 and \$0.20, which Applicant says leaves room for the District to adjust the maintenance/debt-service apportionment if necessary to offset other costs that may arise.¹⁴² Even at the \$1.00 per \$100 limit in the Commission's rules, the District would still have a total overlapping tax rate lower than surrounding areas. And, rising home values can further mitigate costs, according to Applicant.¹⁴³

Applicant also projected a water rate of \$8.00 per 1000 gallons and a wastewater treatment rate of \$6.16 per 1000 gallons, which Mr. Farah opined is competitive with other area developments.¹⁴⁴ He said he referred to water and sewer rates in the city of Ennis to calculate the revenue expected from these charges.¹⁴⁵

b) Protestants' Evidence and Position

Protestants argue that because Applicant's water-supply and wastewater plans are legally unfeasible, the projected costs of building those systems are unreliable.

¹⁴² Tr. 117 (Nesmith); Applicant's Reply at 7.

¹⁴³ Applicant's Reply at 7.

¹⁴⁴ App. Ex. 12 (Farah Direct) at 13.

¹⁴⁵ App. Ex. 26 (Farah Rebuttal) at 2-3.

Alternatively, they argue even if those plans are deemed feasible, Applicant has nonetheless underestimated the costs and tax rate necessary to support the development.¹⁴⁶

According to Mr. Hendricks, Applicant's estimated construction costs for the water system (\$1,706,374.36 for the distribution system, plus \$1,570,000 for eighteen wells and \$400,000 for a storage tank) fail to account for many components that the system will have to include.¹⁴⁷ Mr. Hendricks also opined that the groundwater is likely to require reverse osmosis or other treatment in order to meet the Commission's drinking-water standards, which will add significant expense.¹⁴⁸ Mr. Hendricks estimated that the water distribution system will cost a total of \$11,766,376.00,¹⁴⁹ which is far more than the \$3,676,374.36 that Mr. Farah estimated.¹⁵⁰ Mr. Hendrick's calculations relied in part on cost estimates provided by County witness Mr. Lupton, who worked with a drilling contractor to prepare the estimates for drilling completed 1,000-foot wells like Mr. Farah planned. Mr. Lupton

¹⁴⁶ Ellis County Closing at 15.

¹⁴⁷ County Ex. 4 (Hendricks Direct) at 28

¹⁴⁸ County Ex. 4 (Hendricks Direct) at 16-17.

¹⁴⁹ County Ex. 11. The parties' engineers had conflicting opinions on how many wells would be needed. Mr. Hendricks's estimate assumed seven wells, 1,600 feet deep, would be needed, at a total cost of \$3,209.794 million. For his eighteen, shallower wells, Mr. Farah seemed to be assuming a per-well cost of \$87,222.22, for a total cost of \$1,570,000. Mr. Hendricks also estimated that the system would need a 400,000-gallon ground storage tank which would cost \$800,000, as compared to the 200,000-gallon, \$400,000 ground storage tank that Mr. Farah estimated.

¹⁵⁰ In its brief, Ellis County asserted that Applicant had underestimated the costs for a water-supply system by \$10.6 million. This figure seems to forget the additional \$1.97 million that Mr. Farah added to his estimate via his prefiled direct testimony. Ellis County Closing at 16; App. Ex. 12 (Farah Direct) at 8.

estimated that a well would cost approximately \$311,509, and that completing eighteen wells would cost \$6,117,464.¹⁵¹

Similarly, Protestants argue that Mr. Farah has underestimated the costs of a wastewater system, specifically the cost of building a wastewater treatment plant. Applicant's preliminary engineering report did not include this expense at all, and it was not until his direct testimony was filed two years later that Mr. Farah added \$1.25 million for a wastewater treatment plant to his cost estimate. Together with the estimated \$1,878,912.22 cost Mr. Farah originally gave for the entire wastewater system, Applicant now estimates it will cost a total of \$3,128,912.22 to build a wastewater system. Again, Mr. Hendricks asserts this is a gross underestimate. Where Mr. Farah assumed a treatment facility would have to have a 206,000 GPD capacity, Mr. Hendricks contends 320,000 GPD is a more accurate estimate.¹⁵² Mr. Hendricks said that the prevailing unit cost for a wastewater treatment plant in 2021, when the Petition was filed, was \$18-\$20 per gallon, which means the wastewater treatment plant will cost an estimated \$7.2 million,¹⁵³ almost \$6 million more than Mr. Farah estimated. And where Mr. Farah estimated \$6,104,297.20 for a storm drainage system, Mr. Hendricks added costs for sewer pipes and a detention

¹⁵¹ County Ex. 1 (Lupton Direct) at 8.

¹⁵² County Ex. 4 (Hendricks Direct) at 30; App. Ex. 12 (Farah Direct) at 8.

¹⁵³ County Ex. 4 (Hendricks Direct) at 30-31.

pond that he said must be included, arriving at his own estimate of \$8,260,000, or \$2.1 million more that Mr. Farah estimated.¹⁵⁴

Protestants also think that Applicant has significantly overestimated the number of residential lots it will be able to build after complying with all the restrictions imposed by Prairielands GCD and Commission rules.¹⁵⁵ Protestants claim that at most the District could be developed with no more than 692 units, far less than the 811 Applicant has projected.¹⁵⁶

With the costs significantly underestimated and the number of residential lots significantly overestimated, Protestants argue, Applicant has also significantly underestimated the tax rate that will be needed to support the development. Mr. Hendricks calculates that the actual effective tax rate for the Shankle Road MUD would need to be nearly double the rate proposed.¹⁵⁷ Protestants also contend that Applicants have not shown their water and sewer rates are reasonable because the Application does not provide sufficient information to assess those rates.¹⁵⁸

¹⁵⁴ County Ex. 4 (Hendricks Direct) at 31-32; County Ex. 12.

¹⁵⁵ Ellis County Closing at 17.

¹⁵⁶ County Ex. 4 (Hendricks Direct) at 36. Elsewhere in his testimony, Mr. Hendricks estimated that 200 to 230 residential units would have to be eliminated from the plan. County Ex. 4 (Hendricks Direct) at 20.

¹⁵⁷ County Ex. 4 (Hendricks Direct) at 36-37.

¹⁵⁸ County Ex. 4 (Hendricks Direct) at 37-38.

In sum, Protestants argue that because the cost estimates in the preliminary engineering report are understated to such a significant degree, Applicant has not met its burden to demonstrate that the projected construction costs are reasonable, or that the corresponding tax rates and water and sewer rates are reasonable.¹⁵⁹

c) ALJs' Analysis

The ALJs agree with Protestants that Applicant has not shown his projected construction costs are reasonable.

In the cost estimates submitted with the Petition, Mr. Farah offered little to no explanation for how he calculated his global estimates for the water, wastewater, and storm drainage plans, other than making a general assertion that his figures were “based on similar residential developments.”¹⁶⁰ At no point has Mr. Farah mentioned what developments he might be comparing the Shankle Road MUD against, let alone explained how much those developments paid to construct their water, wastewater, and storm drainage systems. The preliminary engineering report did not even include the significant costs for groundwater wells or a wastewater treatment plant, though it acknowledged both would have to be constructed.¹⁶¹ As Chairman Niermann has stated, it is the Commissioners’ practice “to judge the

¹⁵⁹ Ellis County Closing at 17.

¹⁶⁰ App. Ex. 8 at 12.

¹⁶¹ App. Ex. 8 at 0007, 0009.

reasonableness of projected costs and rates at the time that the petition is submitted.”¹⁶² On its face, a petition that entirely fails to anticipate costs for major, required components does not contain a reasonable cost estimate.

Even including Mr. Farah’s subsequent additions to his cost estimates in the reasonableness analysis, there is still little to show what he based those estimates on. Mr. Farah does not appear to have much experience with residential developments—his résumé lists over fourteen years of experience with projects involving public transit projects and bridges, but no experience with residential projects.¹⁶³ He acknowledged that he did not consider any land-use restrictions in Prairielands GCD’s and the Commission’s rules. As discussed above, Applicant is not required to show permits will actually be granted, but these regulations still inform how much land needs to be set aside for infrastructure and, in turn, how many lots can be developed. The fact that Mr. Farah did not consider them at all is some evidence that his cost estimates are not based on realistic assumptions. And other than a passing mention to Applicant having “contacted a local well drilling company” to estimate how many wells might be needed, there is no indication that Applicant or Mr. Farah has solicited bids, consulted with engineers, spoken with other developers, researched other developments, or otherwise undertaken any effort to make

¹⁶² Commissioners’ Agenda Meeting, October 25, 2023, Agenda Item 2, beginning at 1:02:45. Available at https://www.youtube.com/watch?v=RgtQnKn8g_c (discussing *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS).

¹⁶³ App. Ex. 13.

grounded cost predictions. From this record, it appears that Mr. Farah pulled his cost estimates out of thin air.

As evidence that the cost estimates are reasonable, Applicant points to Mr. Walker's testimony, in which he concluded that the proposed District's construction costs "appear reasonable."¹⁶⁴ However, Mr. Walker has no apparent experience with estimating costs for real estate development, and he testified that he did not consider Mr. Farah's lack of experience, nor did he independently investigate how Mr. Farah had arrived at his estimates or whether they were reasonable.¹⁶⁵ On this issue, Mr. Walker's technical review consisted of little more than confirming that Applicant had provided a cost projection and had represented that it was reasonable. While this is relevant to whether the Petition was complete,¹⁶⁶ Mr. Walker's review shed no light on whether the projected costs in the Petition were reliable or reasonable. In essence, he deemed the cost estimates reasonable because Applicant said they were. The ALJs have given little weight to Mr. Walker's conclusions on this issue.

In contrast, Protestants have offered alternative—and much higher—cost estimates prepared by Mr. Hendricks, and the ALJs find that his superior experience

¹⁶⁴ ED-JW-1 (Walker Direct) at 0010; Applicant's Closing at 18.

¹⁶⁵ ED-JW-2; Tr. 166 (Walker).

¹⁶⁶ See 30 Tex. Admin. Code § 293.11(d)(1)(E), (5)(D).

generally makes his estimates more reliable than Mr. Farah's.¹⁶⁷ Mr. Hendricks also gave clearer explanations than Applicant for the different assumptions and factors that informed his estimates. Applicant has done little to contest the reasonableness of Mr. Hendricks's figures other than arguing in his brief, without support, that they are inflated. Applicant has offered no plausible explanation for why he believes the water supply system can reasonably be built for \$8 million less than Mr. Hendricks estimated;¹⁶⁸ the wastewater treatment plant can be built for \$6 million less than Mr. Hendricks estimated;¹⁶⁹ and the storm drainage system can be built for \$2.1 million less than Mr. Hendricks estimated.¹⁷⁰ Put simply, the preponderance of the evidence does not show how Applicant's cost estimates could be reasonable.

Applicant deflects the cost-estimate discrepancies by arguing that, even if he has underestimated costs, the district will still be economically feasible because property values are rising and there is ample room to adjust the tax rate and still have a reasonable overall rate. This means the District will be able to generate enough tax revenue to absorb any increase in construction costs, according to Applicant. The ALJs are not persuaded. First, this argument depends on future developments while

¹⁶⁷ Ellis County Closing at 15. Mr. Hendricks's CV lists four decades of engineering experience, including experience acting as City Engineer for various north Texas cities. County Ex. 5.

¹⁶⁸ Subtracting \$3,676,374.36 (Mr. Farah's total estimated cost of a water distribution system) from \$11,766,376.00 (Mr. Hendricks's estimate) = \$8,090,001.64.

¹⁶⁹ Subtracting \$1.25 million (Mr. Farah's estimated cost for a wastewater treatment plant) from \$7.2 million (Mr. Hendricks's estimate) = \$5.95 million.

¹⁷⁰ Subtracting \$6,104,297.20 (Mr. Farah's estimate for a storm drainage system) from \$8,260,000 (Mr. Hendrick's estimate) = \$2,155,702.80.

the Commission's stated focus is on whether the costs and taxes were reasonable when the Petition was filed. But more substantively, economic feasibility is evaluated in connection with "each proposed bond issue, bond amendment, and extension of time application for a bond issue,"¹⁷¹ none of which are decided in a MUD-approval case. Reasonableness of cost estimates is a separate issue, and one the Commission is statutorily required to consider *in addition to* any consideration of whether the tax rate could support the development.

It stands to reason that by underestimating the costs, Applicant has also understated the tax and utility rates necessary to support the district. Still, the tax rates, water rates, and sewer rates projected in the Petition would be reasonable if implemented. They are within the \$1.00 per \$100 maximum rate and in line with other North Texas MUD developments. The record establishes that Applicant will pay all up-front utility costs and can only be reimbursed up to what is allowed under the \$1.00 maximum rate. While Petitioner has not met his burden of proving his cost estimates are reasonable, he has sufficiently shown that his proposed tax rate and water and sewer rates would be.

5. Unreasonable Effects

In determining whether a proposed MUD project is feasible, practicable, necessary, and would be a benefit to the land included, the Commission considers

¹⁷¹ 30 Tex Admin. Code § 293.59(a).

whether the “district and its system and subsequent development within the district will have an unreasonable effect on” seven factors: land elevation; subsidence; groundwater levels in the region; recharge capability of a groundwater source; natural run-off rates and drainage; water quality; and total tax assessments on all land located with a district.¹⁷² Here, Protestants contend Applicant has not met his burden on any of these factors.¹⁷³

a) Land Elevation and Subsidence

Mr. Farah’s preliminary engineering report stated that “the fill and/or excavation associated with the development of the District’s systems will not cause any changes in land elevation other than that normally associated with the construction of the lot construction [sic], underground utility systems, drainage facilities, and paving.”¹⁷⁴ It also asserted that “adequate design of facilities should not lead to concern for subsidence.”¹⁷⁵ Both statements were repeated almost verbatim in Mr. Walker’s technical memorandum.¹⁷⁶

¹⁷² Code § 54.021(b)(3)

¹⁷³ While contending that Applicant has not met his burden on any of the factors in Code § 54.021(b)(3) (that is, has not met his burden of proving the proposed MUD will not have an unreasonable effect on the factors listed), CAECM’s brief addressed only the effect the MUD would have on groundwater levels, natural run-off rates, and drainage. CAECM Closing at 13-14.

¹⁷⁴ App. Ex. 8 at 0014.

¹⁷⁵ App. Ex. 8 at 0014.

¹⁷⁶ ED-JW-1 (Walker Direct) at 0026-27.

Mr. Farah reiterated these conclusions in his testimony, and added assertions that “[t]he need for mass movement of earth or significant changes to elevations or drainage divides is not anticipated to occur during construction of this project,” and “subsidence is not prevalent, anticipated, or reasonably a predictable concern in the area of this MUD. No facilities are proposed that will cause or result in any unusual effect on subsidence.”¹⁷⁷

Ellis County argues that Applicant “failed to offer any meaningful evaluation” of the proposed District’s effect on land elevation and subsidence, and that Applicant’s conclusory assurances are insufficient to carry his burden of showing there will be no unreasonable effects.¹⁷⁸ Ellis County also argues that those assurances “defy logic,” citing Mr. Hendricks’s testimony, which suggested that drilling and operating 18 public water wells, as Applicant has planned, would necessarily impact the property and Applicant has offered no evidence showing the impact would not be unreasonable.¹⁷⁹ Ellis County does not note, however, that Mr. Hendricks testified that he “can make no determination” on whether the MUD could affect subsidence.¹⁸⁰

¹⁷⁷ App. Ex. 12 (Farah Direct) at 15.

¹⁷⁸ Ellis County Brief at 18.

¹⁷⁹ Ellis County Brief at 18; County Ex. 4 (Hendricks Direct) at 38-39.

¹⁸⁰ County Ex. 4 (Hendricks Direct) at 38-39.

While the ALJs agree that Mr. Farah's opinions are somewhat conclusory, there is nothing in the record that controverts them. Mr. Hendricks's unsupported suggestion that groundwater wells will somehow have an unspecified impact does not counter Applicant's evidence that it will not. In fact, Mr. Hendricks declined to offer an opinion on the issue. The ALJs conclude that Applicant proved by a preponderance of the evidence that the District, its systems, or its subsequent development will not have an unreasonable effect on land elevations or subsidence within the District.

b) Groundwater Levels and Groundwater Recharge

The preliminary engineering report stated that, with proper design, the proposed facilities "do not create a concern of adverse impacts to groundwater levels," and "do not create a concern of adverse impacts to groundwater levels."¹⁸¹ The proposed plan includes 9.03 acres of park area, and Mr. Farah testified that the final plans may have even more green space, but most likely will not have less.¹⁸² This is "much more green space than what is typical in a residential development," according to Mr. Farah, leaving plenty of pervious areas and natural drainage corridors to absorb drainage.¹⁸³ This shows that the District's systems and

¹⁸¹ App. Ex. 8 at 14.

¹⁸² App. Ex. 8 at 16; Tr. 106 (Farah).

¹⁸³ App. Ex. 12 (Farah Direct) at 16.

developments will not have an unreasonable effect on groundwater levels or recharge in the region, Applicant argues.¹⁸⁴

Protestants assert that Mr. Farah's statements should be disregarded as conclusory and unsupported.¹⁸⁵ They insist that Petitioner's proposed water system would directly conflict with Prairielands GCD's rules governing well spacing and allowable production. These rules are meant to protect groundwater levels, Protestants argue, and a water plan that violates them will necessarily cause an unreasonable effect on groundwater levels in the area.¹⁸⁶ Mr. Lupton testified that pumping water at the rate proposed by Applicant would cause "significant impacts to groundwater levels and thus local water users in the area surrounding the property."¹⁸⁷

The Commission has previously explained that it does not consider a proposed MUD's water supply source to be a consideration for the groundwater factors, deferring those matters to the GCDs with specific authority to regulate

¹⁸⁴ Applicant's Closing at 22.

¹⁸⁵ Ellis County Closing at 18; County Ex. 4 (Hendricks Direct) at 39-40.

¹⁸⁶ CAECM Closing at 13-14; Ellis County Closing at 18.

¹⁸⁷ County Ex. 1 (Lupton Direct) at 11.

groundwater.¹⁸⁸ Instead, the Commission construes Code section 54.021(b)(3)-(4) as relating to how the project’s impervious cover will affect groundwater levels or recharge capacity of groundwater as compared to similar single-family developments in the region.¹⁸⁹ Here, Mr. Farah testified that the District is planned to have more green space than other residential developments and will therefore be able to absorb more water than what is typical in similar developments. There is no controverting evidence. Therefore, the ALJs conclude that a preponderance of the evidence shows the District will not have an unreasonable effect on groundwater levels within the region or recharge capability of a groundwater source.

c) Natural Run-off Rates and Drainage

In the preliminary engineering report, Mr. Farah stated that the District “is located on prairie fields where existing drainage is through overland flow and runoff which collects onsite,” and that surface waters currently drain to “un-named channels traversing adjacent properties.”¹⁹⁰ The District will have a storm water collection system designed with street curbs, gutters, and an underground pipe

¹⁸⁸ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS (November 6, 2023), Final Order at § III.1 (explaining Commission’s changes to the PFD); *see also* Commissioners’ Agenda Meeting, October 25, 2023, Agenda Item 2, beginning at 1:03:44, available at https://www.youtube.com/watch?v=RgtQnKn8g_c (discussing the *Highland Lakes* PFD, Commissioner Niermann stated, “I don’t think the legislature intended TCEQ to regulate groundwater through the creation of MUDs”).

¹⁸⁹ *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*, SOAH Docket No. 582-23-11658, TCEQ No. 2022-1157-DIS (July 16, 2024), Final Order at 9-10 (July 16, 2024) (explaining Commission’s changes to the PFD).

¹⁹⁰ App. Ex. 8 at 0014.

system that will convey runoff to detention ponds.¹⁹¹ There are three detention facilities planned to reduce flows from the new development to properties downstream.¹⁹² 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.¹⁹³ Mr. Farah further testified that these facilities will conform to generally accepted design practices and will maintain post-development flows at or below pre-development conditions and maintain velocities at or below non-erosive levels.¹⁹⁴

Protestants contend that Mr. Farah's statements are conclusory and lack sufficient detail to show what impacts the development will have on drainage.¹⁹⁵ CAECM presented testimony from several nearby property owners who expressed concern that Applicant's planned development will cause flooding and other damage to their property, which is already prone to flooding. Carol Alson owns eight acres of land approximately half a mile from the District, property her family has used for generations as a pecan orchard and for grazing cattle and growing hay.¹⁹⁶ Jeff Pouzar

¹⁹¹ App. Ex. 8 at 0010-11.

¹⁹² App. Ex. 8 at 0014.

¹⁹³ App. Ex. 8 at 0011; App. Ex. 12 (Farah Direct) at 14.

¹⁹⁴ App. Ex. 12 (Farah Direct) at 16.

¹⁹⁵ Ellis County Closing at 20; CAECM Closing at 15.

¹⁹⁶ CAECM Ex. 100 (Alson Direct) at 1.

and his father, Charlie Pouzar, own a combined 188 acres across Shankle Road from the District, and have used the property for beef production and cattle grazing for decades.¹⁹⁷ Randy Ray owns 15 acres that border the District where he resides with his family and raises cattle.¹⁹⁸

Ms. Alston testified that an unnamed tributary collects runoff primarily from Applicant's property, crosses Shankle Road through a culvert pipe, and enters the Pouzars' pasture, a "normally dry, well-vegetated swale."¹⁹⁹ The tributary does not have a bed and bank after it crosses Shankle Road.²⁰⁰ When it rains, the clay soil in the Pouzars' pasture becomes saturated and it can take several days for the tributary to drain.²⁰¹ The tributary fills a stock tank in the Pouzars' pasture, and the rest of the water flows towards Four Mile Creek, with excess water flowing into Ms. Alston's grazing fields and providing periodic irrigation of the pecan orchard.²⁰²

¹⁹⁷ CAECM Ex. 200 (J. Pouzar Direct) at 1; CAECM Ex. 300 (C. Pouzar Direct) at 1-2.

¹⁹⁸ CAECM Ex. 400 (Ray Direct) at 1.

¹⁹⁹ CAECM Ex. 100 (Alston Direct) at 2-3.

²⁰⁰ CAECM Ex. 200 (J. Pouzar Direct) at 3.

²⁰¹ CAECM Ex. 100 (Alston Direct) at 2; CAECM Ex. 300 (C. Pouzar Direct) at 3.

²⁰² CAECM Ex. 100 (Alston Direct) at 4.

The property has a history of flooding, and long, heavy rains leave Trojacek Road impassable.²⁰³ Floods have also damaged the Pouzars' electric fences, allowing cattle to escape.²⁰⁴ The property owners worry that flooding will increase when Applicant paves over the portion of the tributary on his property. Ms. Alston and the Pouzars said they expect more flooding from increased storm run-off, as well as the 500,000 gallons per day of treated municipal wastewater Applicant plans to discharge into Four Mile Creek. This would increase flooding, make roads impassable, cause erosion that could effectively bisect the Pouzars' properties, and render the area near the tributary as permanent wetlands that are unusable as a pasture for grazing.²⁰⁵ The Pouzars are also concerned that stormwater or wastewater discharge could taint the water that flows into the stock pond their cattle drink from.²⁰⁶ Mr. Ray's property has a 2-acre pond that his family uses for recreational purposes and as drinking water for cattle.²⁰⁷ He also fears that water runoff from the District will impact the local creeks, could flood his property, and taint the water in his pond.²⁰⁸

²⁰³ CAECM Ex. 100 (Alston Direct) at 4-6; CAECM Ex. 200 (J. Pouzar Direct) at 3. From the record it is not clear where Trojacek Road is in relation to the District, but a map attached to Jeff Pouzar's testimony shows that the road runs perpendicular to Shankle Road. CAECM Ex. 201.

²⁰⁴ CAECM Ex. 300 (C. Pouzar Direct) at 3.

²⁰⁵ CAECM Ex. 100 (Alston Direct) at 6; CAECM Ex. 200 (J. Pouzar Direct) at 3-4; CAECM Ex. 300 (C. Pouzar Direct) at 4.

²⁰⁶ CAECM Ex. 200 (J. Pouzar Direct) at 4; CAECM Ex. 300 (C. Pouzar Direct) at 5.

²⁰⁷ CAECM Ex. 400 (Ray Direct) at 2.

²⁰⁸ CAECM Ex. 400 (Ray Direct) at 3.

The Protestants' concerns, while understandable, are not sufficient to show the District cannot be developed without having unreasonable effects on their property. Consistent with the Commission's orders in other recent MUD cases, the ALJs find that, at this preliminary stage, it is enough that Applicant intends to develop the property in compliance with the regulations of Ellis County and other regulatory authorities.²⁰⁹ Applicant has met his burden of proving the planned development will not have an unreasonable effect on natural run-off rates and drainage.

d) Water Quality

The preliminary engineering report stated that the development is not anticipated to have an adverse effect on the quality of ground water or surface water because a sanitary sewer collection will be constructed, including a wastewater treatment plant. The plant will be permitted by the Commission, and built and operated in compliance with Commission standards.²¹⁰ In addition, Mr. Farah

²⁰⁹ *Petition for the Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Order Granting Petition at FOFs 38-42 and § III.1 (November 6, 2023) (addressing changes to the PFD are explained); *Petitions for Creation of Lakeview Municipal Utility District Nos. 1, 2, and 3*, SOAH Docket Nos. 582-22-0259, -0260, and -0261, TCEQ Docket Nos. 2021-0571, -0573, and -0574, Order Denying Petitions at FOFs 34-36 (August 24, 2023) (findings on effect on natural run-off rates and drainage).

²¹⁰ App. Ex. 8 at 0015.

testified that stormwater collection, conveyance, and detention facilities will also help maintain water quality.²¹¹

Ellis County argues that Mr. Farah's statements are conclusory and provide no substantive assessment of water quality impacts.²¹² They cite to Mr. Osting's testimony, which explained how groundwater will have to be treated to meet drinking-water standards, then will drain from households into the sewer system before eventually being discharged from the wastewater treatment plant into the receiving waters. Groundwater in the area has concentrations of dissolved mineral solids that will, in turn, increase the concentration of dissolved minerals (including chloride, sulfate, and total dissolved solids) in the receiving waters.²¹³ Applicant has not addressed how groundwater will be treated to meet drinking-water standards and has not contemplated or proposed a TPDES permit that would address how discharge from wastewater treatment plant will affect surface waters.²¹⁴ Therefore, Ellis County argues, Applicant has not shown the District will not adversely impact water quality.

²¹¹ App. Ex. 12 (Farah Direct) at 14.

²¹² Ellis County Closing at 20.

²¹³ County Ex. 14 (Osting Direct) at 8-10.

²¹⁴ County Ex. 14 (Osting Direct) at 10.

The ED argues that Mr. Osting’s testimony is speculative and does not establish that water quality will be harmed.²¹⁵ The ALJs agree. The issues raised by Mr. Osting are more properly addressed in a separate proceeding where Applicant’s TPDES permit or enforcement of regulations are being considered. Applicant has represented that the stormwater collection, conveyance, and detention facilities will be constructed, operated, and maintained in compliance with all federal, state, and local requirements, as will the wastewater treatment plant. At this stage, that is sufficient to show that the District will not have an unreasonable effect on water quality.²¹⁶

e) Total Tax Assessments on All Land Located Within District

As addressed above, Applicant contemplates a District tax rate of \$1.00 per \$100 valuation—the limit imposed in the Commission’s economic feasibility rules,²¹⁷ and a total overlapping tax rate of \$2.64, which is consistent with comparable rates in the region.²¹⁸ Ellis County contends that, because Applicant has substantially underestimated construction costs, the District may require a much higher tax rate

²¹⁵ Executive Director’s Closing Argument (ED Closing) at 8.

²¹⁶ See *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ No. 2022-0532-DIS, Order Granting Petition at FOFs 43-47 and § III.2 (November 6, 2023) (explaining changes to the PFD).

²¹⁷ 30 Tex. Admin. Code § 293.59(k)(3)(C).

²¹⁸ App. Ex. 8 at 0013, 0015; App. Ex. 14 (Gibson Direct) at 4-5.

than is allowed by law.²¹⁹ The ED responds that tax rates for each particular bond issue will be reviewed and justified on its own economic feasibility merits prior to the issuance of any bonds by the District.²²⁰

The parties' arguments echo what they urged in relation to the reasonableness of projected tax rates. For the same reasons set forth in section IV.B.4.c regarding projected taxes, the ALJs find that the District, its systems, and subsequent development within the District will not have an unreasonable effect on total tax assessments on all land located within the District.

6. Complete Justification for Creation of the District

Commission rules require that the preliminary engineering report include “complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district,” the substantive statutory standard governing the Commission’s disposition of the Petition.²²¹ Based on the foregoing analysis of subsidiary factors and other evidence, the ALJs conclude that because Applicant has not shown the reasonableness of his projected construction costs, he has not met this burden.

²¹⁹ Ellis County Closing at 22.

²²⁰ ED Closing at 9.

²²¹ Code § 54.021(a); 30 Tex. Admin. Code § 293.11(c)(5)(J).

C. ROAD POWERS

With respect to their request for road powers, Commission rules required Applicant to include (1) a “preliminary layout” showing the proposed location for all road facilities to be constructed, acquired, or improved by the District; (2) a “cost analysis and detailed cost estimate of the proposed road facilities with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance, and improvement”; and (3) 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.”²²² The preliminary engineering report addressed each of these matters,²²³ and the ED determined that the proposed roads “appear to benefit the proposed District,” that “financing appears feasible,” and that Applicant’s request for road powers should be granted.²²⁴ No party has contested any of these matters apart from their broader complaints about the District that have already been addressed. The ALJ concludes that Applicant met its burden of proof as to road powers.

²²² 30 Tex. Admin. Code § 293.202(a)(7)-(9), (b).

²²³ App. Ex. 8.

²²⁴ App. Ex. 19 at 0140, 0142-43. The Technical Report was also admitted as ED-JW-3.

V. 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 to the various parties of having a transcript;. . . [and]
- any other factor which is relevant to a just and reasonable assessment of costs.²²⁵

Additionally, 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.²²⁶

Applicant argues, without elaboration, that each party should bear "their own share" of the transcript cost. CAECM and Ellis County contend that Applicant should bear all transcript expenses. The ED and OPIC take no position on cost apportionment.

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

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

Considering the Commission's factors, the ALJ finds that the transcript was ordered by the ALJs, not requested by either party, and no party has claimed a financial inability to pay transcript costs. The parties all participated in the hearing and all benefitted equally from having the transcript. Through requesting and participating in the hearing, Protestants identified meaningful deficiencies in Applicant's Petition, and incurred significant litigation expenses in doing so. Unlike Applicant, Protestants do not stand to profit from the creation of this MUD and are seeking only to maintain the status quo. Based on these factors, the ALJs recommend that the Commission assess most of the transcript expenses to Applicant, with the costs apportioned 70 percent to Applicant; 15 percent to Ellis County; and 15 percent to CAECM.


VI. CONCLUSION

For the reasons stated, Applicant failed to meet his burden of proving the reasonableness of projected construction costs and therefore has not satisfied all applicable statutory and regulatory requirements for the creation of the proposed District. Accordingly, Applicant's Petition should be denied. The ALJs also recommend that reporting and transcript costs be assessed 70 percent to Applicant, 15 percent to Ellis County, and 15 percent to CAECM.

In further support of these recommendations, the ALJs have prepared the Findings of Fact and Conclusions of Law incorporated within the accompanying proposed Order of the Commission. The Order would adopt the incorporated

proposed Findings of Fact and Conclusions of Law and, in turn, deny Applicant's Petition. The ALJ respectfully recommends that the Commission, for the reasons stated, adopt the proposed Order.

Signed September 6, 2024

Handwritten signature of Rebecca S. Smith in cursive script.

Rebecca Smith

Administrative Law Judge

Handwritten signature of Sarah Starnes in cursive script.

Sarah Starnes

Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER DENYING 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.
4. 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.
5. 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.
6. 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.
7. On May 9, 2024, a final prehearing conference was held at which the ALJs ruled on objections to prefiled evidence and addressed hearing procedures.
8. 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.
9. The record closed on July 16, 2024, after submission of written closing arguments.

Sufficiency of Petition

10. 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 extraterritorial 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 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 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 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 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.
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.

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