

TCEQ DOCKET NO. NO. 2023-0858-DIS

APPLICATION FOR ROCKWALL	§	BEFORE THE TEXAS
COUNTY MUNICIPAL UTILITY	§	COMMISSION ON
DISTRICT NO. 11	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Request (Response) on the Petition by Bahamas Laguna Azure, LLC, a Wyoming limited liability corporation, (Petitioner) for the creation of Rockwall County Municipal Utility District No. 11 (District). The Office of the Chief Clerk received a hearing request from Royse City and Rockwall County.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

The Executive Director recommends that the Commission find Royse City and Rockwall County are Affected Persons and grant their Hearing Requests.

I. DESCRIPTION OF DISTRICT

Bahamas Laguna Azure, LLC, a Wyoming limited liability corporation, (“Petitioner”) filed a petition for creation of Rockwall County Municipal Utility District No. 11. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, and the lienholder has given written consent to the creation petition; (3) the proposed District will contain approximately 430.45 acres, located within Rockwall County, Texas; (4) the proposed District is entirely within the extraterritorial jurisdiction of Royse City, Texas.

The petition further states that the proposed District will construct, maintain, and operate a waterworks system including the purchase and sale of water for domestic and commercial purposes; to construct, maintain and operate a sanitary sewer collection, treatment and disposal system, for domestic and commercial purposes; to construct, install, maintain, purchase and operate drainage and roadway facilities and improvements; and to construct, install, operate, purchase and maintain facilities, systems, plants and enterprises of such additional facilities as shall be consonant with the purposes for which the District is organized.

II. PROCEDURAL HISTORY

The TCEQ received the petition on September 22, 2022. The Application was declared administratively complete on September 22, 2022.

Proper notice of the application was published on February 2 and 9, 2023, in the Royse City Herald-Banner, a newspaper regularly published or circulated in Rockwall County, the county in which the district is proposed to be located. Proper notice of the application was also posted on January 24, 2023 at the Rockwall County Clerk’s Office.

The 30-day comment period ended March 13, 2023. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied.

The TCEQ received two timely hearing requests on this Petition from the City of Royse and Rockwall County.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition for consent to Royse City. After 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by Texas Water Code § 54.016(c) expired without a contract for service being agreed to. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

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. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the

¹ Tex. Water Code § 54.014.

district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

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

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates: and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

² Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

³ Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

⁴ Tex. Water Code § 54.021(b).

⁵ 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

⁶ 30 Tex. Admin. Code § 55.251(a).

⁷ 30 Tex. Admin. Code § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.¹¹

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

⁸ 30 Tex. Admin. Code § 55.251(b) and (d).

⁹ 30 Tex. Admin. Code § 55.251(c).

¹⁰ 30 Tex. Admin. Code § 55.256(a).

¹¹ 30 Tex. Admin. Code § 55.256(c).

¹² 30 Tex. Admin. Code § 55.256(b).

V. THE HEARING REQUESTS

A. Analysis of Royse City's Hearing Request.

1. Whether the City Complied with 30 TEX. ADMIN. CODE § 55.251(c)

The City submitted a timely hearing request which contained all required information for a contested case hearing request pursuant to 30 TAC § 55.251(c)(1). The City requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3) and provided the TCEQ Internal Control Number for the case as required in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by the City complies with the requirements of 30 TAC § 55.251.

2. Whether the City is an Affected Person

It is undisputed that the proposed district is wholly located in the extraterritorial jurisdiction of Royse City. The Executive Director therefore recommends finding that the City is an affected person. The issue of city consent is an interest that is protected by the law under which the application will be considered, and the issue of city consent contains a reasonable relationship between the interest claimed and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(a)(1) and (3). Furthermore, the City identified its statutory authority and interest in the issues relevant to the application pursuant to 30 TEX. ADMIN. CODE § 55.256(c)(6) in its request. Specifically, the City cited TWC §§ 13.242(a) and 13.250 which outlines its powers and privileges as the holder of a Certificate of Convenience and Necessity. Although the TCEQ does not have jurisdiction over CCN matters, the City argues that the creation of the District would interfere with the services it currently provides within the ETJ and CCN. These services include water, sewer, and waste disposal.

Without city consent, landowners can pursue creation under the provisions of TEX. WATER CODE § 54.016(b) - (d). Under the Texas Water Code, if the city fails or refuses to grant consent within 90 days after receipt of a written request, the landowners in the area may petition the city to provide the land with the water and sewer services contemplated to be provided by the district. TEX. WATER CODE § 54.016(b); LOC. GOVT. CODE § 42.042(b).

The Petitioner indicated that no agreement was reached in response to their Petition for Service.

Under the Texas Water Code, if the landowners and the city fail to execute a “mutually agreeable contract” for the provisions of the requested services within 120 days after receipt of the petition, “the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section.” TEX. WATER CODE § 54.016(c); LOC. GOVT. CODE § 42.042(c).

The petitioner indicated in the materials they provided to Executive Director staff that no mutually agreeable contract between themselves and the City exists. If, as it appears, the City failed to enter a mutually agreeable contract during the 120-day time period, then the landowners would have authorization “to initiate proceedings to include the land within the district as otherwise provided by this Act.” TEX. WATER CODE § 54.016(c). This issue is both material and relevant to the creation of the proposed District.

Therefore, the Executive Director recommends that the Commission find Royse City an Affected Person.

B. Analysis of Rockwall County's Hearing Request.

1. Whether the County Complied with 30 TEX. ADMIN. CODE § 55.251(c)

Rockwall County submitted a timely request which contained a name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). The County requested a contested case hearing for the MUD pursuant to 30 TAC § 55.251(c)(3). The County also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4). The Executive Director recommends the Commission find that the hearing request by Rockwall County complies with the requirements of 30 TAC § 55.251.

2. Whether the County is an Affected Person

In its hearing request, the County identified its statutory authority and interest in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). Specifically, the County stated that has statutory and/or constitutional authority over various functions - including but not limited to transportation, emergency services, and health and safety, citing several statutes corresponding with that authority including: Texas Constitution Article 11, Section 2, Texas Local Government Code Chapter 232, Texas Transportation Code §251.016, Texas Transportation Code §251.003, Texas Local Government Code Chapter 352, Texas Local Government Code Chapter 418, Texas Health and Safety Code § 121.003, Texas Health and Safety Code Chapter 366, and Texas Water Code §26.171.

For these reasons, and because it is undisputed that the proposed District lies within Rockwall County, the Executive Director recommends that the contested case hearing request should be granted pursuant to 30 TAC § 55.251(a).

VI. RECOMMENDATION

The Executive Director recommends that the Commission grant the hearing requests of the Royse City and Rockwall County

If the Commission chooses to deny the above hearing requests, then the Executive Director recommends that the creation petition be granted.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Harrison Cole Malley, Staff Attorney
Environmental Law Division
State Bar No. 24116710
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-1439
Fax: (512) 239-0626

CERTIFICATE OF SERVICE

I certify that on August 14, 2023, the “Executive Director’s Response to Hearing Requests” for the was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley Staff Attorney
Environmental Law Division

MAILING LIST
Rockwall Municipal Utility District No. 11
Docket No. 2023-0858-DIS; Internal Control No. D-09222022-043

FOR THE APPLICANT:

Ross Martin, Attorney
Winstead PC
2728 North Harwood Street, Suite 500
Dallas, Texas 75201

Alex Pfefferkorn
Quiddity Engineering
2805 Dallas Parkway, Suite 600
Plano, Texas 75093

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison "Cole" Malley, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Daniel L. Harrison, Technical Staff
Texas Commission on Environmental
Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Public Interest Counsel
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711

REQUESTER(S):

David J. Klein
Lloyd Gosselink Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Frank New
101 East Rusk Street, Suite 202
Rockwall, Texas 75087

Craig Stoddart
1111 East Yellowjacket Lane, Suite 201
Rockwall, Texas 75087

INTERESTED PERSON(S):

Clifford James Sevier
Rockwall County
101 East Rusk Street, Room 202
Rockwall, Texas 75087

Attachment A

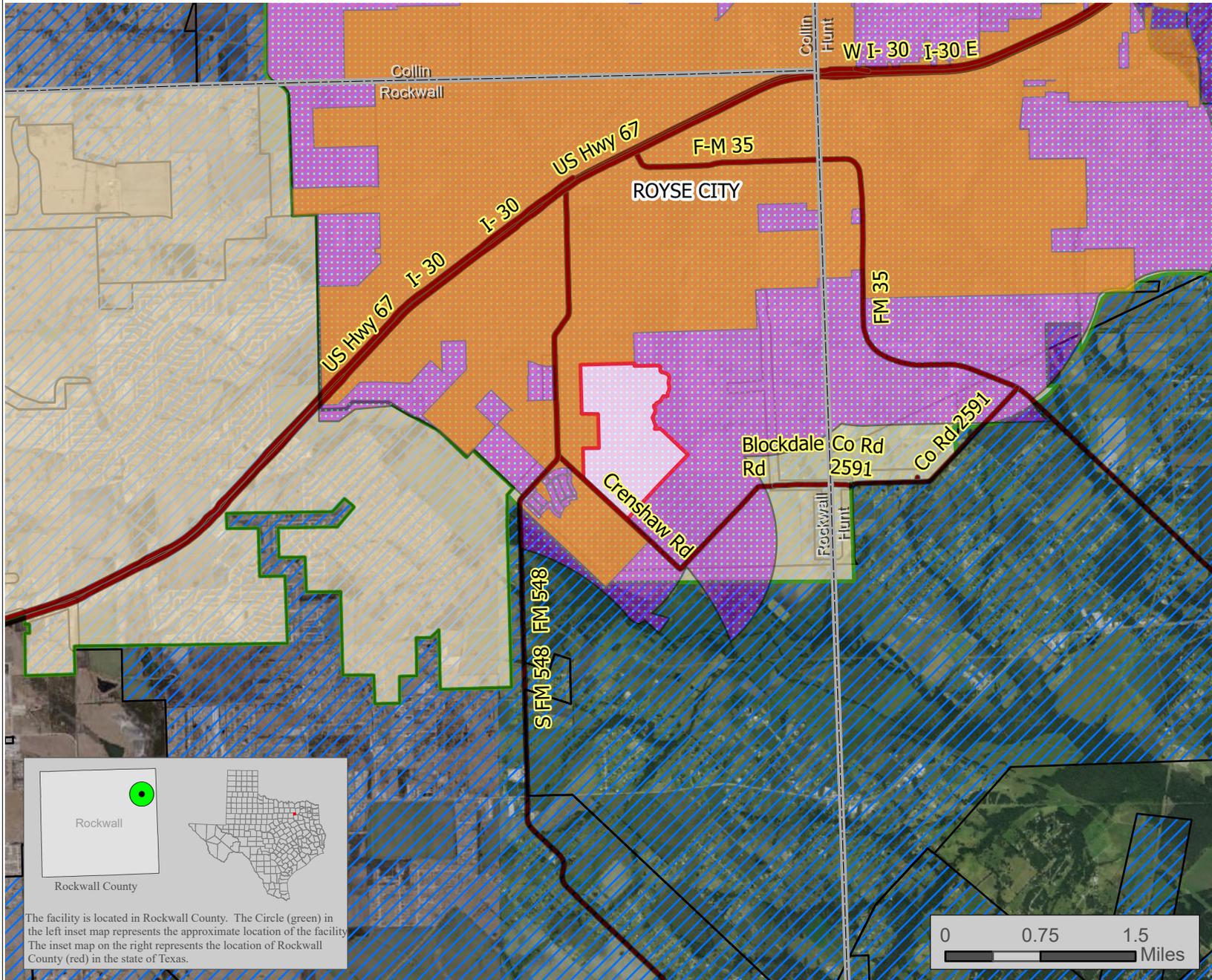
Petition for Creation of Rockwall County Municipal Utility District No. 11

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 7/20/2023
CRF 0091721
Cartographer: jbartlin



- Proposed MUD
- Royse City Boundary
- Royse ETJ
- Water CCN
- Sewer CCN



The facility is located in Rockwall County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Rockwall County (red) in the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.