

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 30, 2025

Stephen Selinger, Applicant
Stefanie Albright for Ellis County and the City of Ennis
Harrison Malley for the Executive Director
Elic Martinez for the Office of Public Interest Counsel

VIA EFILE TEXAS

**RE: SOAH Docket Number 582-24-19086.TCEQ; TCEQ Docket
No. 2024-0671-DIS; *Petition for Creation of Ellis County Municipal
Utility District FM 984***

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 Administrative Law Judge shall be filed with the Chief Clerk of the Texas Commission on Environmental Quality (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

SOAH Docket No. 582-24-19086

Suffix: TCEQ

TCEQ Docket No. 2024-0671-DIS

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**PETITION FOR CREATION OF
ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984**

PROPOSAL FOR DECISION

Stephen Selinger (Applicant) filed with the Texas Commission on Environmental Quality (TCEQ or Commission) a petition (Petition) for creation of Ellis County Municipal Utility District FM 984 (District). The proposed District contains approximately 530.573 acres located within Ellis County, and all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Ennis (City).

Based on the evidence presented and the applicable law, the Administrative Law Judge (ALJ) concludes that Applicant did not meet his burden

of proving the Petition meets all applicable requirements. Accordingly, the ALJ recommends that the Commission deny the Petition.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law in the Proposed Order attached to this Proposal for Decision.

The Petition was declared administratively complete on May 1, 2023. On May 22, 2024, the Commissioners referred the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. At the preliminary hearing on July 22, 2024, Applicant, the Executive Director (ED) of TCEQ, the Office of Public Interest Counsel (OPIC), Ellis County (County), and the City were named parties.

On March 26, 2025, SOAH ALJ Linda Brite convened a hearing on the merits via videoconference. Applicant represented himself. The ED was represented by attorney Harrison Malley. OPIC was represented by attorney Eli Martinez. The County and the City (collectively, Protestant) were represented by attorneys Stefanie Albright and Sara Labashosky. The record closed after submission of written closing arguments on May 8, 2025.

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, and the Commission's rules found at 30 Texas Administrative Code chapter 293. The purposes of a MUD include the control and distribution of storm water, 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.¹

A MUD may be created either through special law enacted by the Legislature or, pursuant to general law, through administrative order of the Commission.² If the proposed MUD is within the corporate limits or extraterritorial jurisdiction (ETJ) of an incorporated city, town, or village, the applicant must comply with additional requirements that include seeking the city's approval of the MUD's creation.³ A petition requesting creation of a district by administrative order shall be signed by a majority in value of the holders of the land within the proposed district, as indicated by the tax rolls of the central appraisal district.⁴

The Commission shall grant the petition if it conforms to the requirements of Texas Water Code section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district.⁵ The Commission shall deny the petition if it does not conform to the requirements of

¹ Tex. Water Code § 54.012.

² Tex. Water Code § 54.018-.021.

³ Tex. Water Code § 54.016; 30 Tex. Admin. Code § 293.11(a)(2)-(4), (d)(7)-(8).

⁴ Tex. Water Code § 54.014.

⁵ Tex. Water Code § 54.021(a).

Texas Water Code section 54.015 or the project is not feasible, practicable, necessary, or a benefit to the land in the district.⁶ 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.⁷

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.⁸

⁶ Tex. Water Code § 54.021(c), (d).

⁷ Tex. Water Code § 54.021(c).

⁸ Tex. Water Code § 54.021(b).

Applicant carries the burden of proof by a preponderance of the evidence.⁹

III. DISCUSSION

Applicant had 13 exhibits¹⁰ admitted and presented the testimony of Eugene Middleton, Cassie Gibson, Charles Gillespie, Stephen Selinger, and Ryan Nesmith. Protestant had eight exhibits¹¹ admitted and presented the testimony of Gary C. Hendricks, Daniel Lupton, and Justin Baker. The ED had four exhibits¹² admitted and presented the testimony of Justin Taack. OPIC did not offer exhibits or present witnesses.

A. UNCONTESTED MATTERS

The following requirements were uncontested by the parties.

⁹ 30 Tex. Admin. Code § 80.17(a).

¹⁰ Applicant Exhibits 1 (Prefiled Testimony of Eugene Middleton); 2 (Prefiled Testimony of Cassie Gibson); 3 (Prefiled Testimony of Charles Gillespie); 4 (Prefiled Testimony of Stephen Selinger); 5 (Prefiled Testimony of Ryan Nesmith); 6 (Report dated 11/11/2024 of CEE regarding wells); 7 (bid for materials and installation of standby generators); 8 (bid for deep water wells); 9 (report of Talem Inc. showing TDS levels of nearby wells); 10 (30 TAC 290 standard on sanitary sewer-well setback); 11 (Watermann Engineer proposal for water treatment plant); 12 (page 36 of Ellis County Exhibit 4 to Shankle Road MUD report); and 13 (PVC schedule for pipe showing PSI rating).

¹¹ Protestant Exhibits 1 (Prefiled Testimony of Gary Hendricks, P.E., R.P.L.S.); 2 (Resume of Gary C. Hendricks); 3 (PUC CCN Overlay at FM 984 MUD); 4 (City of Ennis Will Serve Letter); 5 (Water Wells Siting and TCEQ Sanitary Easement Requirements); 6 (Proposed Wastewater Treatment Siting Exhibits); 7 (Corrected Opinion of Probable Construction Cost for Water system Critical Components); and 8 (Corrected Lot Count and Assessed Valuation).

¹² ED Exhibits JT-1 (Justin Taack Prefiled Testimony); JT-2 (Justin Taack Resume); JT-3 (ED's Technical Memo); and JT-4 (Applicant's Engineering Report).

1. City Consent (Tex. Water Code § 54.016; Tex. Loc. Gov't Code § 42.042; 30 Tex. Admin. Code § 293.11(a)(2))

The proposed District is located in the ETJ of the City. As required by Texas Water Code section 54.016 and Local Government Code section 42.042, Applicant submitted a petition to the City, requesting the City's consent to the creation of the District.¹³ After more than 90 days passed without receiving consent, Applicant submitted a petition to the City to provide water and sewer services to the District.¹⁴ The 120-day period for reaching a mutually agreeable contract expired.¹⁵ Applicant and the City have not executed a mutually agreeable contract for service. Failure to execute such an agreement constitutes authorization for Applicant to proceed to request approval from TCEQ for inclusion of the property into the District without the City's consent.¹⁶

2. Availability of Comparable Service (Tex. Water Code § 54.021(b)(1))

The District proposes to construct a water system, wastewater treatment plant, wastewater collection system, storm water system, and internal collector roadway system to serve the District. There are no other sources which have the facilities or capacity to serve the District.¹⁷

¹³ ED Ex. JT-3 at 14.

¹⁴ See Tex. Water Code § 54.016(c).

¹⁵ See Tex. Water Code § 54.016(c).

¹⁶ See Tex. Water Code § 54.016(d).

¹⁷ ED Exs. JT-3 at 15, JT-4 at 36. Page numbers refer to Bates stamp numbers.

3. Signature of Majority in Value of the Landowners (Tex. Water Code § 54.014)

The Petition states that Applicant holds title to a majority in value of the land in the proposed District. Applicant has attested that there are no lienholders on the property to be included in the District.¹⁸

B. FEASIBLE, PRACTICABLE, AND NECESSARY, AND WILL BENEFIT ALL OF THE LAND TO BE INCLUDED IN THE DISTRICT (TEX. WATER CODE § 54.021(a); 30 TEX. ADMIN. CODE § 293.11(d)(5)(J))

Mr. Taack initially reviewed the Petition and concluded that, based on the included engineering reports and the information, all criteria under Texas Water Code section 54.021 were addressed.¹⁹ However, upon review of Applicant's prefiled testimony, Mr. Taack no longer supported his original conclusions as to these issues.²⁰ Mr. Taack noted that Applicant's experts' testimony and accompanying exhibits presented new information that contradicted what was originally submitted with the Petition. Mr. Taack noted discrepancies and was concerned that he and his staff had not evaluated certain information.²¹ Examples included the number of wells to provide water to the District²² and the number of single-family homes to be constructed.²³

¹⁸ ED Ex. JT-3 at 13-14.

¹⁹ ED Ex. JT-1 (Taack Direct) at 5.

²⁰ ED Ex. JT-1 (Taack Direct) at 6.

²¹ Transcript (Tr.) at 72-73.

²² Tr. at 30-56.

²³ Tr. at 72-73.

In his technical memorandum, Mr. Taack originally determined that the project was economically feasible based on the proposed District tax rate and the year 2023 overlapping tax rate on land within the District and assuming 100 percent financing.²⁴ A district's combined tax rate for water, wastewater, drainage, roads, and recreation debt must not exceed \$1.04 per \$100.00 of assessed valuation for districts in Ellis County.²⁵ According to the engineering report, the tax rate proposed for water, wastewater, drainage, roads, and recreation debt was set at \$1.04 per \$100.00 of assessed valuation.²⁶

Subsequently, Applicant's prefiled testimony presented new evidence not previously considered to justify new costs of the project. After reading the testimony Applicant submitted, Mr. Taack testified that he could not support the District's creation.²⁷ According to Mr. Taack, the number of homes ultimately can impact tax rates and the tax base.²⁸ Mr. Taack did not conduct a subsequent technical review of the creation because once a creation has been referred to SOAH, the ED does not have jurisdiction to conduct a new technical review or revise fundamental findings about the application.²⁹

²⁴ ED Ex. JT-3 at 19.

²⁵ 30 Tex. Admin. Code § 293.59(k), (l).

²⁶ ED Ex. JT-3 at 19.

²⁷ ED Ex. JT-1 (Taack Direct) at 6.

²⁸ Tr. at 76-77.

²⁹ ED Ex. JT-1 (Taack Direct) at 7.

1. Projected Construction Costs, Tax Rates, and Water and Sewer Rates (Tex. Water Code § 54.021(b)(2))

Applicant's preliminary engineering report showed an estimate of \$45,756,856 in District improvements.³⁰ Mr. Middleton's prefiled testimony adds an additional \$8.5 million to the costs originally submitted in the Petition for water wells, water storage, and the wastewater treatment plant, bringing the total to \$54,256,856.³¹ Mr. Middleton's estimates were based on the work of Consulting Environmental Engineers that was not submitted with the Petition. Mr. Middleton maintains that the project remains feasible because housing market prices have also increased.³² Applicant explained during the hearing that the costs increased because "it was unclear whether there would be water service from a local water company."³³

a) Groundwater Wells and Wastewater Treatment Plant

Applicant's engineering report (submitted with the Petition) states that the potable water supply will be obtained from groundwater wells and that there will be no more than one well drilled for every 40 acres of open space.³⁴ In the engineering report, the estimated cost of the "water distribution system" was \$7,686,315.³⁵ In his prefiled testimony, Mr. Gillespie estimated that three wells could supply the needed

³⁰ ED Ex. JT-4 at 45; *see* App. Ex. 1 (Middleton Direct) at 9.

³¹ App. Ex. 1 (Middleton Direct) at 9.

³² App Ex. 1 (Middleton Direct) at 9.

³³ Tr. at 77-78.

³⁴ ED Ex. JT-4 at 37.

³⁵ ED Ex. JT-4 at 43.

gallons per minute and that each well would cost approximately \$1.5 million, for a total of \$4.5 million.³⁶ He estimated the water wells and storage would cost approximately \$6,150,000.³⁷

Protestant witness Mr. Hendricks testified that 17 water wells are needed to support Applicant's development.³⁸ Mr. Hendricks estimated the cost as \$1,480,000 for each shallow well (approximately 1,200 feet); \$175,000 for each generator; and \$14,976,000 for the 640,000 gallons-per-day wastewater treatment plant.³⁹ Mr. Hendricks estimated that additional water system components would need to be included to develop a comprehensive water supply, which he estimated would bring the total water system cost to \$40,395,000.⁴⁰

Applicant argues that it has obtained significantly lower bids than the estimates Mr. Hendricks provided. The bids show these costs: \$215,000 for each shallow well (1,164 feet); \$76,700 for each generator; \$601,065 for a 100,000 gallons per day wastewater treatment plant; and \$230,000 plus labor, not to exceed \$600,000, for a 1,550 kiloliters per day (approximately 409,467 gallons per day) wastewater treatment plant.⁴¹

³⁶ App. Ex. 3 (Gillespie Direct) at 7.

³⁷ App. Ex. 3 (Gillespie Direct) at 7.

³⁸ Prot. Ex. 1 (Hendricks Direct) at 22.

³⁹ Prot Ex. 1 (Hendricks Direct) at 29, 32.

⁴⁰ Prot Ex. 1 (Hendricks Direct) at 28-29.

⁴¹ App. Exs. 8, 7, 3 at 43-56.

Mr. Gillespie estimated that the cost for a 405,000-gallon wastewater system would be about \$2.4 million, based on a 2021 cost estimate by Southwest Fluid of \$601,000 for a 100,000-gallons-per-day system.⁴² Watermann Engineers provided a wastewater proposal with an estimated cost of \$230,000, plus lodging/casual, shipping insurance, and miscellaneous items. Mr. Gillespie estimated that \$400,000 would cover the Watermann Engineers proposal.⁴³ In summary, Mr. Gillespie estimated that the wastewater treatment plant would cost approximately \$400,000 or \$2.4 million.

Mr. Hendricks testified that the proposed wastewater treatment plant's capacity of 405,000 gallons per day is insufficient for the required 533,000 gallons per day included in Mr. Middleton's final engineering report. Mr. Hendricks extrapolated Mr. Gillespie's estimate to the required 533,000-gallon-per-day system, resulting in a modified cost estimate of \$3,158,518.⁴⁴ He also opined that the construction cost of a wastewater treatment plant was in the range of \$18.00 per gallon in 2021 dollars, which would result in a total estimated construction cost of \$9,594,000.⁴⁵

⁴² App. Ex. 3 (Gillespie Direct) at 8-9.

⁴³ App. Ex. 3 (Gillespie Direct) at 9.

⁴⁴ Prot. Ex. 1 (Hendricks Direct) at 24-25.

⁴⁵ Prot Ex. 1 (Hendricks Direct) at 25.

b) Number of Lots in the Proposed District

The engineering report provides a lot count of 1,517 and a projected population of 5,310 residents.⁴⁶ Yet Mr. Middleton testified that the District is planned to serve approximately 5,000 total residents with a total of approximately 1,522 single-family connections.⁴⁷ The ED's review of the Petition was based on the 1,517 proposed homes. Protestant contends that the difference in lots between the preliminary engineering report and the prefiled testimony could impact the costs and feasibility of the project and calls into question the reliability of Applicant's engineering report and witness testimony.

Mr. Hendricks testified that placing 17 groundwater wells on the development tract (with the required 500-foot spacing radius around the proposed wastewater treatment plant, 300-foot radius around each sanitary sewer lift station, and 150-foot radius sanitary easement around wells) would consume approximately 160 to 240 residential units, depending on the final configuration of the water well layout.⁴⁸ The ED also posits that TCEQ requirements pertaining to setbacks from wells to single-family residences undermines the total number of homes presented by Applicant.⁴⁹

⁴⁶ ED Ex. JT-4 at 30.

⁴⁷ App. Ex. 1 (Middleton Direct) at 10; *see* App. Ex. 3 (Gillespie Direct) at 7.

⁴⁸ Prot. Ex. 1 (Hendricks Direct) at 22.

⁴⁹ ED Closing Brief at 3.

Applicant contends that Mr. Hendricks is mistaken in his understanding of the 150-foot sanitary sewer easement of 30 Texas Administrative Code section 290.41(c)(1)(F) because residential houses are not prohibited within the sanitary control easements, and sanitary sewer lines are allowed up to ten feet from a well with certain PVC requirements, which Applicant plans to meet.⁵⁰

c) Analysis

Applicant's prefiled testimony included significant changes from the information included in the Petition, including an additional \$8.5 million in construction costs and the number of lots. These discrepancies cause uncertainty about the water supply costs, water treatment costs, and number of lots in the proposed District. Although Mr. Taack on behalf of the ED originally determined that the District was economically feasible based on the Petition, after reading Applicant's prefiled testimony, he no longer supports the District's creation.⁵¹

Applicant challenges the credibility and accuracy of Protestant's witnesses and their estimates. Yet, even setting aside the opinions of Protestant's witnesses, the construction costs described in Applicant's prefiled testimony exceed those included in the Petition. And the discrepancy in the number of lots only exacerbates the confusion about what the project entails. The additional construction costs call into question whether the land values, existing improvements, and projected improvements in the District will be sufficient to support a reasonable tax rate for

⁵⁰ See 30 Tex. Admin. Code § 290.41(c)(1)(A), (F)(i).

⁵¹ ED Ex. JT-1 (Taack Direct) at 7.

debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates.⁵² Applicant's argument that any shortfall will be made up by increased home values in the District was not fully developed or corroborated with evidence. As such, insufficient evidence was presented to establish that the District is feasible, practicable, and necessary, and will be a benefit to the land included in the District.

2. Unreasonable Effects (Tex. Water Code § 54.021(b)(3))

In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider whether or not the district and its system and subsequent development within the district will have an unreasonable effect on certain factors.⁵³ The ALJ finds that the District will not have an unreasonable effect on land elevation; subsidence; groundwater levels and recharge; natural run-off rates and drainage; water quality; or total tax assessments.

a) Land Elevation and Subsidence (Tex. Water Code § 54.021(b)(3)(A), (B))

According to Applicant's engineering report, the fill and/or excavation associated with the residential development will not cause any major changes in the overall land elevations other than that normally associated with the construction of lots, paving, and drainage facilities.⁵⁴ The engineering report and Mr. Middleton indicate that land subsidence is not a prevalent, anticipated, or predictable concern

⁵² See 30 Tex. Admin. Code § 293.59(b).

⁵³ Tex. Water Code § 54.021(b)(3).

⁵⁴ ED Ex. JT-4 at 36.

in this area.⁵⁵ There is no controverting evidence. The ALJ finds that the District will not have an unreasonable effect on land elevation or subsidence.

**b) Groundwater Levels and Recharge within the Region
(Tex. Water Code § 54.02(b)(3)(C), (D))**

The engineering report states that the District's potable water supply will be obtained from groundwater wells. According to Applicant, since there will be no more than one well drilled for every 40 acres of open space, the development of the District should not affect the groundwater levels.⁵⁶ Mr. Middleton testified that no facilities are proposed that will result in any unusual effects on groundwater levels in the region. He explained that the re-use of treated effluent from the wastewater treatment plant is contemplated for irrigation of public open space, which will reduce the demand on any existing and proposed groundwater pumping compared to similar projects.⁵⁷

Protestant points out that Prairielands Groundwater Conservation District rules limit production to 50,000 gallons per year per contiguous acre, which are meant to protect groundwater levels⁵⁸ The District consists of approximately 531 acres,⁵⁹ and according to Mr. Hendricks, the construction of any wells that would produce over 26,550,000 gallons of water per year would have unreasonable effect

⁵⁵ App. Ex. 1 (Middleton Direct) at 15; ED Ex. JT-4 at 37.

⁵⁶ ED Ex. JT-4 at 37.

⁵⁷ App. Ex. 1 (Middleton Direct) at 15.

⁵⁸ Prot. Ex. 1 (Hendricks Direct) at 37.

⁵⁹ ED Ex. JT-4 at 4.

on groundwater levels.⁶⁰ Using the average day unit demand of 100 gallons per capita per day as indicated in the engineering report, x 120% to account for water loss due to treatment for total dissolved solids, with 1,517 residential units and 3.5 persons per unit, results in an annualized water use of 236,556,100 gallons of water per year for the proposed District.⁶¹ This figure is 8.76 times the allowable annual production amount prescribed by the groundwater conservation district's rules.⁶²

The Commission has previously explained that it does not consider a MUD's water supply source to be a consideration for groundwater factors, deferring those matters to the groundwater conservation districts with specific authority to regulate groundwater.⁶³ Instead, the Commission construes Texas Water Code section 54.021(b)(3)(C)-(D) 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.⁶⁴ Here, Mr. Middleton testified that no unusual effects on groundwater levels is expected. There is no controverting evidence. Therefore, the preponderant evidence shows that the District will not have

⁶⁰ Prot. Ex. 1 (Hendricks Direct) at 37-38. 50,000 gallons per acre per year multiplied by 531 acres equals 26,550,000 gallons per year.

⁶¹ Prot. Ex. 1 (Hendricks Direct) at 20.

⁶² Prot. Ex. 1 (Hendricks Direct) at 20.

⁶³ *Petition for Creation of Highland Lakes Municipal Utility District No. 1 of Ellis County*, SOAH Docket No. 582-22-07138, TCEQ Docket No. 2022-0532-DIS (Nov. 6, 2023), Final Order at § III.1 (explaining Commission's changes to the PFD).

⁶⁴ *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*, SOAH Docket No. 582-23-11658, TCEQ Docket No. 2022-1157-DIS (Jul. 16, 2024), Final Order at 9-10 (Jul 16, 2024) (explaining Commission's changes to the PFD).

an unreasonable effect on groundwater levels within the region or recharge capability of a groundwater source.

c) Natural Run-Off Rates and Drainage (Tex. Water Code § 54.021(b)(3)(E))

The engineering report states the storm water drainage collection system for full development of the District will consist of curb and gutter streets, inlets, and detention ponds which ultimately outfall into Waxahachie Creek Tributaries. All proposed improvements will be designed and constructed in accordance with TCEQ and County design criteria. All internal storm sewer collection systems will be designed using the rational method to convey the runoff from a 100-year storm.⁶⁵

Protestant contends that Applicant does not provide specific details regarding run-off discharge locations or downstream discharge paths, and that the engineering report does not include information regarding natural run-off rates pre-development compared to post-development.

Applicant engineering report generally describes the drainage systems and indicates that they will be constructed in accordance with TCEQ and County requirements. No statutory or regulatory requirement has been established which requires provision of run-off discharge locations and paths or pre-and post-development run-off rates. Therefore, the ALJ finds that the District will not have an unreasonable effect on natural run-off rates and drainage.

⁶⁵ ED Ex. JT-4 at 33.

d) Water Quality (Tex. Water Code § 54.021(b)(3)(F))

The engineering report states that no adverse impact to the water quality of ground or surface water is anticipated because the treatment and disposal of wastewater from the District will be through the wastewater treatment facility. The storm water generated from the initial residential development will pass through erosion control devices during construction, ponds post-construction, and should not significantly affect the ground or surface water quality.⁶⁶

Protestant points out that the engineering report provides no details regarding the location, operations, or components of the wastewater treatment facility. Additionally, no details are provided about the nature of the “erosion control devices.” These matters are more properly addressed in a separate proceeding related to Applicant’s Texas Pollutant Discharge Elimination System permit. At this stage, Applicant’s representation that its wastewater and stormwater facilities will be operated in compliance with applicable requirements is sufficient. The ALJ finds that the District will not have an unreasonable effect on water quality.

e) Total Tax Assessments on All Land Located within the District (Tex. Water Code § 54.021(b)(3)(G))

The engineering report provided a cost estimate for the wastewater treatment facility,⁶⁷ but Applicant’s witnesses testified to an entirely different estimate for the facility. Mr. Middleton proposes that an additional \$8.5 million be added to the

⁶⁶ ED Ex. JT-4 at 37.

⁶⁷ ED Ex. JT-4 at 47.

estimated construction costs outlined in the engineering report.⁶⁸ Protestant argue that this would have an impact on the financial modeling and could result in an effective tax rate substantially higher than the tax rate proposed by Applicant or allowed under state law.

The discrepancy in Applicant's number of lots could affect the financial viability and valuation of the proposed District and available ad valorem tax to support the bond issue requirement.⁶⁹ And with the additional construction costs, it is unclear whether the proposed tax and utility rates are sufficient to support the District. Nevertheless, the tax rates, water rates, and sewer rates described in the Petition would be reasonable if implemented, and Applicant would be reimbursed only up to the maximum rate, \$1.04 per \$100 assessed valuation. Therefore, the ALJ finds that the District would not have an unreasonable effect on total tax assessments.

IV. 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;

⁶⁸ App. Ex. 1 (Middleton Direct) at 9.

⁶⁹ Prot Ex. 1 (Hendricks Direct) at 23.

- the relative benefits of the various parties of having a transcript;. . . [and]
- any other factor which is relevant to a just and reasonable assessment of costs.⁷⁰

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.⁷¹

Protestant asserts that Applicant will financially benefit from creation of the District and has the ability to pay the costs of the transcript. Protestant requests that Applicant be assessed the transcript costs.

The ALJ finds that all parties participated and benefitted equally from having the transcript. Through requesting and participating in the hearing, Protestant identified meaningful inconsistencies in the Petition. Unlike Applicant, Protestant does not stand to profit from the creation of the District and is seeking only to maintain the status quo. Based on these factors, the ALJ recommends that the Commission assess 70 percent of the transcript costs to Applicant and 30 percent to Protestant.

⁷⁰ 30 Tex. Admin. Code § 80.23(d)(1).

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

V. CONCLUSION

Due to the discrepancies between the Petition and Applicant's prefiled testimony, the reasonableness of projected construction costs, tax rates, and water and sewer rates was not established. Therefore, Applicant failed to establish by a preponderance of the evidence that the District is feasible, practical, and beneficial to the land, as required by Texas Water Code section 54.021. As such, the ALJ recommends that the Commission deny Applicant's petition for creation of Ellis County Municipal Utility District FM 984.

Signed June 30, 2025

ALJ Signature:

A handwritten signature in cursive script that reads "Linda Brite".

Linda Brite

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER DENYING THE PETITION OF
STEPHEN SELINGER FOR CREATION OF ELLIS
COUNTY MUNICIPAL UTILITY DISTRICT FM 984
TCEQ DOCKET NO. 2024-0671-DIS;
SOAH DOCKET NO. 582-24-19086**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petitions for creation of Ellis County Municipal Utility District FM 984 (District). A Proposal for Decision (PFD) was issued by Linda Brite, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH) and considered by the Commission.

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

I. FINDINGS OF FACT

1. Stephen Selinger (Applicant) filed a petition (Petition) for creation of Ellis County Municipal Utility District FM 984 with the Commission.
2. The Petition was declared administratively complete on May 1, 2023.
3. On June 7 and 14, 2023, notice of the Petition was published in the *Waxahachie Daily Light*, a newspaper regularly published or circulated in Ellis County.
4. On June 6, 2023, notice of the Petition was posted on the Ellis County Courthouse, the place where legal notices in Ellis County are posted.
5. On May 22, 2024, the Commissioners referred this matter to SOAH for a contested case hearing.
6. At the preliminary hearing on July 22, 2024, Applicant, the Executive Director (ED) of TCEQ, the Office of Public Interest Counsel (OPIC), Ellis County (County), and the City of Ennis (City) were named as parties.
7. SOAH ALJ Linda Brite convened the hearing on the merits via videoconference on March 26, 2025. Applicant represented himself. The ED was represented by attorney Harrison Malley. OPIC was represented by attorney Eli Martinez. The County and City (collectively, Protestant) were represented by attorneys Stefanie Albright and Sara Labashosky. The record closed after submission of written closing arguments on May 8, 2025.

Request for Consent and Service

8. The District is proposed to be located withing the extra-territorial jurisdiction of the City.
9. Applicant delivered its request for consent to the creation of the District to the City, and did not receive a written response within 90 days.
10. Applicant petitioned the City for water and sewer services, and a mutually agreeable contract for service was not executed within 120 days.

11. Thereafter, Applicant filed its Petition with the Commission.

Petition Signature of a Majority in Value of the Landowners

12. Applicant holds title to a majority in value of the land in the proposed District.

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

13. Applicant's preliminary engineering reports provided an estimate of \$45,756,856 in District improvements.
14. Applicant's witness testified that \$8.5 million should be added to the costs originally submitted for water wells, water storage, and the wastewater treatment plant, bringing the total to \$54,256,856.
15. Insufficient evidence was presented to establish that Applicant's projected construction costs are reasonable.
16. With the additional costs, it is unclear what the proposed tax rate, water rates, and sewer rates would be.
17. Insufficient evidence was presented to establish the proposed tax rate, water, rates, and sewer rates are reasonable.

Effect on Groundwater Levels and Recharge Within the Region

18. The District proposes to use groundwater wells as its water supply.
19. The District's impervious cover 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

20. The District's drainage systems will include curb and gutter streets, inlets, and detention ponds which ultimately outfall into Waxahachie Creek Tributaries.

21. The District's stormwater drainage systems will be constructed in accordance with TCEQ and Ellis County design criteria.
22. The District, its system, and subsequent development will not have an unreasonable effect on natural run-off rates and drainage.

Effect on Water Quality

23. The District proposes to construct its own wastewater treatment plant pursuant to a permit issued by TCEQ, which entails its own permitting process.
24. The District, its system, and subsequent development will not have an unreasonable effect on water quality.

Effect on Total Tax Assessments on All Land Located Within the District

25. Based on Applicant's engineering report, the combined projected tax rate was \$1.04 per \$100 assessed valuation, for 100 percent financing.
26. Subsequently, Applicant added \$8.5 in estimated costs for water wells, water storage, and the wastewater treatment plant.
27. The combined projected tax rate for the District must not exceed \$1.04 per \$100 valuation pursuant to 30 Texas Administrative Code section 293.59(k), (l).
28. Based on the tax rates proposed in the Petition, the District will not have an unreasonable effect on total tax assessments on all land located within the District.

Feasible, Practicable, Necessary, and Will Benefit All of the Land to be Included in the District

29. Due to the discrepancy in the cost estimates from the original Petition and hearing testimony, insufficient evidence was presented to establish the District

is feasible, practicable, necessary and will benefit all of the land included in the District.

Allocation of Transcript Costs

1. No party requested the transcript because SOAH required a transcript.
2. All parties fully participated in the hearing and benefitted from the transcript.
3. By participating in the hearing, Protestant pointed out meaningful inconsistencies in Applicant's Petition and subsequent filings.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code ch. 49 and 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 satisfied the requirements related to requests for service when a municipal utility district is proposed to be located within the extraterritorial jurisdiction of a city. Tex. Water Code § 54.016(a)-(d); Tex. Loc. Gov't Code § 42.042(a)-(f).
6. Applicant satisfied the requirements related to availability of comparable service from other systems. Tex. Water Code § 54.021(b)(1); 30 Tex. Admin. Code § 293.11(d)(5)(G).

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. The proposed District would 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 the land located within the District. Tex. Water Code § 54.021(b)(3).
11. Insufficient evidence was presented to establish the reasonableness of projected construction costs. Tex. Water Code § 54.021(b)(2).
12. Insufficient evidence was presented to establish the projects 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).
13. Applicant's Petition should be denied.
14. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the

Commission. Tex. Water Code §§ 5.275, .356; 30 Tex. Admin. Code § 80.23(d)(2).

15. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
16. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), an appropriate allocation of transcript costs is: 70 percent to Applicant and 30 percent to the County and City.

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

1. The petition for Creation of Ellis County Municipal Utility District FM 984 is denied.
2. The transcript costs are allocated 70 percent to the Applicant, and 30 percent to the County and City.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
4. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Brooke Paup, Chairman, For the Commission