

**SOAH DOCKET NO. 582-24-19086
TCEQ DOCKET NO. 2024-0671-DIS**

PETITION FOR CREATION OF ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROTESTANTS ELLIS COUNTY AND THE CITY OF ENNIS’S EXCEPTIONS TO
PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW Protestants Ellis County and the City of Ennis (collectively “Protestants”) and file this, their Exceptions to the Proposal for Decision (“PFD”), and in support thereof would show the following:

I. INTRODUCTION

Protestants agree with the Administrative Law Judge’s (“ALJ”) recommendation in the Proposal for Decision (“PFD”) that Steven Selinger’s (“Applicant”) petition for the creation of Ellis County Municipal District FM 984 (“the Petition”) should be denied. The ALJ properly recommended that the Petition should be denied because the Applicant did not meet his burden of proving that the proposed District’s creation meets all applicable state law requirements. Specifically, the Applicant failed to properly prove that the construction costs are reasonable and that the project and the proposed District are feasible, practicable, and necessary and would be a benefit to the land included in the District as required by Section 54.021 of the Texas Water Code. However, Protestants except to certain proposed Findings of Fact and Conclusions of Law in the PFD, as detailed below.

Specifically, in addition to the deficiencies in the Petition listed above, the Applicant did not meet his burden on the following statutory elements for a district’s creation: (1) whether the proposed District and its systems and subsequent development will have an unreasonable effect

on land elevation and subsidence; (2) whether the proposed District and its systems and subsequent development will have an unreasonable effect on groundwater levels and recharge within the region; (3) whether the proposed District and its systems and subsequent development will have an unreasonable effect on natural run-off rates and drainage; (4) whether the proposed District and its systems and subsequent development will have an unreasonable effect on water quality; (5) whether the proposed District and its systems and subsequent development will have an unreasonable effect on total tax assessments on all land located within the proposed District.

II. EXCEPTIONS TO THE PFD

A. Exceptions to the PFD's Analysis and Recommendations Regarding Whether the Proposed District and its Systems and Subsequent Development Will Have an Unreasonable Effect on Land Elevation and Subsidence.

Protestants except to the conclusion of the ALJ that the proposed District will not have an unreasonable effect on land elevation and subsidence. It is the *Applicant's* burden to prove that each element of Section 54.021 is met. The ALJ also accepts, without question, the representations made by the Applicant and its experts. The Applicant has only made self-serving, conclusory assurances that the proposed District will not cause any major changes to the land elevation other than that normally associated with construction, and that subsidence "is not a prevalent, anticipated, or predictable concern in this area." (PFD, p. 14). The Applicant has failed to present any actual evidence showing that the proposed District will not have any unreasonable effects on land elevation and subsidence, and the Applicant's engineering report fails to provide any substantive information that would allow for such an analysis. (Protestants' Closing Argument, p. 11).

As the PFD does not contain any findings of fact on this element, Protestants do not have any exceptions or recommendations in this regard. However, Protestants except to and recommend the amendment of Conclusion of Law No. 10 as follows:

“10. Insufficient evidence was presented to establish that tThe 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).”

B. Exceptions to the PFD’s Analysis and Recommendations Regarding Whether the Proposed District and its Systems and Subsequent Development Will Have an Unreasonable Effect on Groundwater Levels and Recharge Within the Region.

Protestants except to the conclusion of the ALJ that the proposed District will not have an unreasonable effect on groundwater level and recharge capability within the region. It is the *Applicant’s* burden to prove that each element of Section 54.021 is met. Again, however, the ALJ appears to shift this burden to the Protestants, by stating that “there is no controverting evidence” on this element. (PFD, p. 15). The ALJ also again accepts, without question, the self-serving and conclusory assurances of the Applicant and its experts that “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,” and that “no facilities are proposed that will result in any unusual effects on groundwater levels[.]” (*Id.*). No meaningful analysis of either of these statements was conducted by the Applicant. The Applicant’s engineering report provides no details regarding the specific number, locations, or cost of Applicant’s proposed groundwater wells. (Protestants’ Closing Argument, p. 6).

The Applicant’s expert, Mr. Gillespie, estimates that only three wells are necessary to supply the proposed District. (PFD, p. 9). Conversely, Protestant’s expert, Mr. Hendricks,

estimates that the proposed District would require at least 17 wells. (PFD, p. 10; Protestants' Closing Arguments, p. 6).

Notably, the ALJ has referred to the testimony of the ED's witness, Mr. Taack, who was concerned about "discrepancies" between the information originally submitted with the Applicant's Petition and the information and testimony of the Applicant and its experts during the contested case hearing process. (PFD, p. 7). One of these discrepancies included "*the number of wells to provide water to the District.*" (*Id.*; emphasis added). However, the ALJ does not reference any number of groundwater wells or any potential effect of these wells in the Findings of Fact; only that the Applicant "proposes to use groundwater wells as its groundwater supply." (PFD, Finding of Fact No. 18). And, although the ALJ concludes that the District's impervious cover will not have an unreasonable effect on groundwater or recharge, nowhere in the PFD does the ALJ cite to any supporting evidence or testimony of the Applicant specific to impervious cover.

Therefore, Protestants except to and recommend the amendment of Finding of Fact No. 19 as follows:

- "19. Insufficient evidence was presented to establish that tThe District's impervious cover will not have an unreasonable effect on groundwater level within the region and recharge capability of a groundwater source."

Protestants also except to and recommend the amendment of Conclusion of Law No. 10 as follows:

- "10. Insufficient evidence was presented to establish that tThe 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)."

C. Exceptions to the PFD's Analysis and Recommendations Regarding Whether the Proposed District and its Systems and Subsequent Development Will Have an Unreasonable Effect on Natural Run-Off Rates and Drainage.

Protestants except to the conclusion of the ALJ that the proposed District will not have an unreasonable effect on natural run-off rates and drainage. The ALJ's analysis focuses solely on the representations made by the Applicant with respect to its proposed drainage facilities and does not give weight to Protestants' arguments regarding the Applicant's lack of evidence regarding effect on natural run-off rates. (PFD, p. 17). Specifically, Protestants have noted that the Applicant's engineering report provides little substantive information about the proposed District's effect on natural run-off rates, and only provides two conclusory sentences stating that "most" of the runoff will be to an existing flood plain and that detention ponds will be used. (Protestants' Closing Arguments, p. 12). It is the *Applicant's* burden to prove that this element is satisfied under the Water Code, and the Applicant has provided insufficient information to be able to accurately assess any potential impact of the District on natural run-off rates and drainage.

Therefore, Protestants except to and recommend the amendment of Findings of Fact Nos. 20-22 as follows:

- “20. The District's proposes drainage systems that will include curb and gutter streets, inlets, and detention ponds which ultimately outfall into Waxahachie Creek Tributaries.
21. The District's proposes to construct its stormwater drainage systems ~~will be constructed~~ in accordance with TCEQ and Ellis County design criteria.
22. Insufficient evidence has been presented to establish that tThe District, its system, and subsequent development will not have an unreasonable effect on natural run-off rates and drainage.”

Protestants also except to and recommend the amendment of Conclusion of Law No. 10 as follows:

- “10. Insufficient evidence was presented to establish that tThe 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).”

D. Exceptions to the PFD's Analysis and Recommendations Regarding Whether the Proposed District and its Systems and Subsequent Development Will Have an Unreasonable Effect on Water Quality.

Protestants except to the conclusion of the ALJ that the proposed District will not have an unreasonable effect on water quality. Although the Applicant proposes treatment and disposal of wastewater through a wastewater treatment facility, the Applicant has provided no other substantive information to be able to accurately assess any impact of the proposed District on water quality. And, even though there may be overlap between some of the issues addressed in this matter and those addressed in relation to the Applicant's Application for a TPDES permit, the *Applicant* still has the burden here to prove that there will be no unreasonable effect on water quality under the Water Code, which he has not. Protestants' arguments regarding the lack of information provided by the Applicant regarding the composition of groundwater relative to that of the receiving waters, as well as the Applicant's lack of information regarding the nature of proposed "erosion control devices," are certainly issues relevant to an assessment of whether the Applicant has met his burden in this case, and the ALJ erred in failing to give weight to these arguments. (See Protestants' Closing Arguments, p. 13).

Therefore, Protestants except to and recommend the amendment of Finding of Fact No. as follows:

- "24. Insufficient evidence has been presented to establish that tThe District, its system, and subsequent development will not have an unreasonable effect on water quality."

Protestants also except to and recommend the amendment of Conclusion of Law No. 10 as follows:

- "10. Insufficient evidence was presented to establish that tThe 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).”

E. Exceptions to the PFD’s Analysis and Recommendations Regarding Whether the Proposed District and its Systems and Subsequent Development Will Have an Unreasonable Effect on Total Tax Assessments on All Land Located Within the District.

Protestants except to the conclusion of the ALJ that the proposed District will not have an unreasonable effect on total tax assessments on all land located within the District. Prior to making this conclusion, the ALJ notes that “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 \$54,2556,856.” (PFD, p. 9). The ALJ also notes that “Mr. Middleton’s estimates were based on the work of Consulting Environmental Engineers that was not submitted with the Petition.” (*Id.*). The ALJ further notes that the ED’s witness, Mr. Taack, found that “Applicant’s experts’ testimony and accompanying exhibits presented new information that contradicted what was originally submitted with the Petition,” including discrepancies regarding “the number of wells to provide water to the District and the number of single family homes to be constructed.” (*Id.* at p. 7).

Per Protestants’ expert, Gary Hendricks, the Applicant’s proposed additional \$8.5 million in construction costs is drastically lower than the actual costs that would be required to construct the scope of facilities necessary to meet the needs of the proposed District. Notwithstanding this fact, even the proposed \$8.5 million in additional costs would have an impact on the financial modeling of the proposed District and could result in an effective tax rate substantially higher than the rate proposed by the Applicant or allowed under State law. Furthermore, a change in lot counts would affect the financial viability and valuation of the proposed District and the available ad

valorem tax to support the bond issue requirement. (Protestants' Closing Arguments, p. 14; Protestants' Exh. 1, p. 23:19-21).

The ALJ found that "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 debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates." (PFD, pp. 13-14). However, the ALJ ultimately went on to conclude that the District would not have an unreasonable effect on total tax assessments. This conclusion does not follow based on the evidence presented and the prior conclusions made by the ALJ regarding the insufficiency of the Applicant's evidence.

Therefore, Protestants except to and recommend the amendment of Findings of Fact Nos. 26 and 28 as follows:

- "26. Subsequently, Applicant added \$8.5 million in estimated costs for water wells, water storage, and the wastewater treatment plant."
- 28. ~~Based on the tax rates proposed in the Petition,~~ Insufficient evidence was presented to establish that the District will not have an unreasonable effect on total tax assessments on all land located within the District."

Protestants also except to and recommend the amendment of Conclusion of Law No. 10 as follows:

- "10. Insufficient evidence was presented to establish that tThe 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)."

III. CONCLUSION

Protestants respectfully request that the TCEQ grant their exceptions and amend the PFD with the corrections as set out above. Protestants respectfully request any other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2025, a copy of the foregoing document was served on all persons listed below either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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