

#16

Bleyl & Associates

Planning • Engineering • Management

318 W. Highland
San Angelo, Texas 76903
Tex. Reg. No. F-678

April 6, 2015

The Hon. Steve Floyd
Tom Green County Judge
112 West Beauregard
San Angelo, TX 76903

Reference: Tom Green County's 2014 Texas Disaster Grant Application
Water Improvements for Tom Green County Fresh Water Supply District No. 3

Dear Judge Floyd:

Bleyl & Associates has worked with the Tom Green County Fresh Water Supply District No. 3 (the "FWSD No. 3") to choose a location for their proposed water well associated with the Disaster Grant. The original location was not viable due to it being fully encompassed in the floodway. Below describes the process in selecting the new site for the District's proposed water well.

First, the majority of available property within a reasonable distance from the District's water facilities is located within the floodway, which made locating a viable property for the new water well challenging at best. Second, the land tracts are large within the District and most of the residents own livestock and raise them within the District, which also reduced the number of viable locations for the new water well. 30 TAC §290 ("TCEQ rules") does not allow water wells to be constructed within FEMA Floodways nor does it allow for livestock to be within 50 ft. of a public water well.

The first property investigated is owned by Washington County Independent School District, which is managed by Washington County. The property in question is already leased; after discussing the issue with Judge Brieden it was determined the re-leasing and lease agreement with FWSD No. 3 would take an enormous amount of time which would exceed our required grant schedule.

Several other properties were researched and were either determined to be in the floodway, currently being used to raise livestock or were located too close to Spring Creek or Lake Twin Buttes. The District cannot utilize properties in close proximity of creeks or lakes because water wells in these locations have a high tendency to become under the influence of surface water, and the District does not have the facilities to treat surface water.

The next property investigated was located out of the floodway, was not adjacent to surface water sources and was not currently utilized to raise livestock. But according to preliminary water well drilling information, the water well would have produced a low flow as well as poor water quality.

The only option for the District's proposed water well was determined to be a piece of property owned by one of the District's Board Members. There is an existing water well on this property that tested at 300 gpm and the preliminary water quality reports show low TDS and all tested constituents were below their MCL's. It was determined a new water well would need to be constructed in compliance with 30 TAC §290 and the old well abandoned.

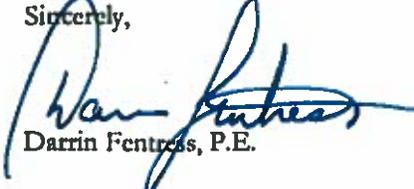
It was decided by the District to pursue a long term lease agreement with the Board Member, with the understanding the Board Member must excuse himself from any vote or discussion on behalf of the District regarding the lease agreement.

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I recommend the County and District to disclose the conflict of interest and submit an exception request to the funding agency to allow the long term lease agreement with the land owner.

Should you have any questions or need additional information please feel free to contact me at (325) 262-4082 or by e-mail at dfentress@bleylengineering.com.

Sincerely,



Darrin Fentress, P.E.

CC: Board of Directors

Tom Green County Fresh Water Supply District No. 3

**Tom Green County Fresh Water Supply District # 3, a M.U.D.
11191 Northcross Lane
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April 21, 2015

The Honorable Stephen C. Floyd
County Judge
Tom Green County
112 West Beauregard
San Angelo, TX 76903

RE: Texas Department of Agriculture Disaster Relief Community Development Block Grant
TxCDBG Contract #7214047 – Tom Green County (Dove Creek)

Dear Judge Floyd:

Tom Green County has been awarded a 2014 Disaster Relief Texas Community Development Block grant by the Texas Department of Agriculture (TDA) to improve the Fresh Water Supply District #3's (FWSD #3) water system facilities. This grant will allow the construction of a new water well(s), piping, six-inch (6") water line, and appurtenances in the FWSD #3 service area in Dove Creek. The project will address severe water supply issues resulting from drought conditions.

During the design phase of this project, the engineer discovered that the initial location proposed for the new well site was in the floodway and would not be permitted by TCEQ. After consideration of several sites, a new potential location has been identified and it is owned by one of the District's Board Members. TDA's guidelines prohibit conflicts of interest as stated below:

Under the conflict of interest provisions at 24 CFR 570.489(h) included in the regulations governing state administration of CDBG non-entitlement funds (24 CFR 570, Subpart I), no persons who exercise or have exercised any function or responsibilities with respect to TxCDBG activities, or who are in a position to participate in a decision-making process, or gain inside information regarding TxCDBG activities, may obtain a financial interest or benefit from the activity, or have interest in any contract, subcontract, or agreement, or the proceeds thereof, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official of the state, or of a unit of general local government, or of any designated public agencies, or sub-recipients receiving CDBG funds. Upon written request, the State may elect to grant certain exceptions to these criteria as provided in 24 CFR 570.489(h)(4).

The FWSD #3 relies upon wells for its water supply. Due to unprecedented drought conditions, the existing wells are now at dramatically low levels. If existing conditions persist, the FWSD #3 faces the real possibility of not having a source of water. Because it is urgent that we successfully complete this project, in accordance with 24 CFR 570.489(h), the FWSD #3 respectfully asks the County to request an exception to the conflict of interest criteria from the TDA.

This request requires:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made.
2. An opinion of the attorney for the county that the interest for which the exception is sought would not violate state or local law.

To support the exception request, the FWSD #3 has considered the following

- This exception would provide a significant project benefit otherwise not available. There is no other viable well site that can be acquired within the grant's budget and timeline.
- Alternate locations were evaluated as described in the enclosed letter from the engineer.
- The Board Member is not a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
- The Board Member has withdrawn from his/her functions or responsibilities and from the decision making process with respect to this project.
- The interest or benefit became apparent while the Board Member was in the position as a sub-recipient representative receiving CDBG funds.
- Actions to avoid the prohibited conflict will create an undue hardship to the FWSD #3 service area residents.

The FWSD #3 understands that Federal acquisition guidelines apply to this project. Any compensation offers made to the Board Member would be based on market value derived by a method acceptable to TDA.

The FWSD #3 is very grateful for the opportunity to utilize County grant funds for this project. All decisions and actions pertaining to securing the new proposed well site are on hold until we hear back from the County and TDA. If you have any questions, please contact Cristal Funderburk, Grant Administrator, at 512-420-0303 ext.318. Thank you in advance for your immediate assistance in this matter.

Sincerely,



Michael Nikolauk, President
Tom Green County FWSD #3