

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** concerning the application of Northwest Dallas County Flood Control District for authorization to proceed to bankruptcy; TCEQ Docket No. 2013-1384-DIS

On January 29, 2014, the Texas Commission on Environmental Quality (hereafter "Commission") considered an application submitted by Northwest Dallas County Flood Control District (hereafter "District") for authorization to proceed under Federal Bankruptcy Code Chapter 9, and found that it has merit. After considering the following findings of fact and conclusions of law, the Commission has determined that the application should be GRANTED.

## FINDINGS OF FACT

1. On December 27, 2012, the District filed an application with the Commission requesting authorization to proceed in bankruptcy under Chapter 9 of the Federal Bankruptcy Code.
2. Notice. The Chief Clerk provided notice of the application in the following manner:
  - a. By Mail. Written notice was mailed to all creditors shown in the district's application, all developers and their lien-holders and the top ten taxpayers shown in the district status report, the city in whose corporate limits or extraterritorial jurisdiction the district is located, if any, and the county in which the district is located.
  - b. By Publication. The published notice appeared on September 29 and October 6, 2013, in the *Coppell Gazette*, a newspaper of general circulation in Dallas County; and in the *Texas Bond Reporter* on September 27, 2013.

3. The Commission examined the application materials and the District's financial condition, including its assets, liabilities, and sources of revenues.
4. The Commission further considered the District's resolution to proceed in bankruptcy and the January 8, 2014, memorandum from the Executive Director regarding the application, a copy of which is attached as Exhibit "A" and is incorporated herein.
5. The District currently owes the original \$8,424,000 in principal, with an interest rate of 8% per year, and \$6,588,933 in an accrued compounded interest, for a total of \$15,012,933 for its Series 1992 Bond.
6. If the original principal sum is retained, the interest rate decreased, previously accrued compounded interest discharged, while the property tax base remains intact, as allowed in Chapter 9 bankruptcy, through the proposed periodic principle payments or redemptions, the \$8,424,000 outstanding original principal can then feasibly be repaid.
7. The District's major source of income is from residential property taxes, representing 99.9% of total revenues, which are levied on October 1 of each year, due and payable at that time. District total revenues available to pay debt service on the Series 1992 Bonds \$1,153,805 for the year ended September 30, 2012.
8. District total expenses are \$1,373,651, of which 86% went to pay interest on long-term debt and 14% was for operations, which exceeds total revenues by \$219,846.
9. The District's ability to meet its debt service requirements for the Series 1992 Bonds was and is dependent upon tax revenues increasing in subsequent years.
10. The tax rate cannot increase as long as the Refunding Bonds or interest is unpaid due to tax rate cap, and given that the District is now almost completely developed, further growth in its tax base is not reasonably foreseeable. Therefore, any increase in tax revenues will depend on increases in the property valuation above what is presently foreseeable.

## CONCLUSIONS OF LAW

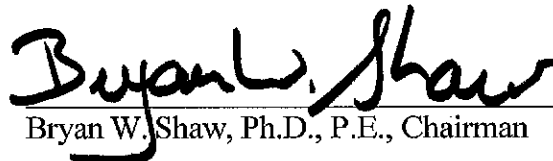
1. The Commission has jurisdiction to consider the request for authorization for the District to proceed with filing a petition in bankruptcy, pursuant to TEX. WATER CODE § 49.456, and 30 TEX. ADMIN. CODE § 293.88.
2. The Commission, after having considered the above findings of fact, concludes that the District cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debts and other obligations as they mature.
3. The notice requirements of 30 TEX. ADMIN. CODE § 293.88(b) were met.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that**

1. The request by Northwest Dallas County Flood Control District for authorization to proceed under Federal Bankruptcy Code Chapter 9 is granted.
2. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this order to the parties.
3. If any provision, sentence, clause, or phrase of this order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the order.

Issue Date: FEB 06 2014

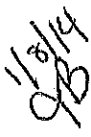
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Bryan W. Shaw, Ph.D., P.E., Chairman


# EXHIBIT A

# Texas Commission on Environmental Quality

## TECHNICAL MEMORANDUM

To: <sup>1/8/14</sup>  Texas Commission on Environmental Quality      Date: January 08, 2014

Thru: Tammy Benter, Manager, Utilities & Districts Section  
 1/8/14 Seyed Miri P.E., Team Leader, District Creation Team

From:  Beatriz Flores  
1-9-14 Districts Creation Team

Subject: Docket No. 2013-1384-DIS: Application by Northwest Dallas County Flood Control District for Approval to Proceed under Federal Bankruptcy Code Chapter 9 (11 U.S.C. Sections 901-946) pursuant to Texas Water Code Section 49.456 TCEQ Internal Control No. D-12272012-022; CN: 600650584; RN: 101206654

### A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received an application from Northwest Dallas County Flood Control District (District) requesting authorization for the District to proceed with filing a petition in bankruptcy, pursuant to Chapter 9 of the Federal Bankruptcy Code.

Notice required by 30 Texas Administrative Code (30 TAC) § 293.88(b) was evidenced by proof of publication in the *Texas Bond Reporter* on September 27, 2013, in the *Coppell Gazette* on September 29 and October 6, 2013, and an affidavit provided by the Chief Clerk's office indicating that notice was provided to appropriate parties as listed in the District's application. The comment period ended on November 5, 2013. The TCEQ has received one comment from bondholder, Mr. Milford L. Sharp.

The District was created pursuant to Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 57 of the Texas Water Code through an order issued by the TCEQ on June 30, 1985. The primary function of the district was to finance the construction of certain flood control and drainage projects to reclaim land in the District. The District contains approximately 611 acres located wholly within Dallas County and within the city limits of Coppell, Texas, of which approximately 564 acres were to be developed under a master planned community. According to the District's audited financial statements and under a bankruptcy plan, United States Bankruptcy Court Northern District of Texas, Dallas Division Case No: 392-31469-RCM-9 (April 13, 1992), the District is precluded from issuing any additional bonds payable in whole or part from ad valorem taxes for any purpose so long as the Limited Tax Modified Capital Appreciation Refunding Bonds, Series 1992 are outstanding.

The District previously filed bankruptcy in 1992 and has been discharged from bankruptcy court. The plan of reorganization effectively forgave much of the interest on the bonded indebtedness but did not release the District from obligations to pay the outstanding principal balance of \$8,424,000. The last maturity date for these bonds is May 1, 2025. Based on application material, principal amounts due from May 1, 2012 through May 1, 2025 are all due and unpaid.

The District is seeking reorganization in bankruptcy under Chapter 9 of the Bankruptcy Code which includes discharge of all obligations to pay the compounded interest outstanding.

The District's attorney for collection of delinquent accounts reported at the time the application was filed that the District has cumulative unpaid and accrued 1992 Bond Interest balance as of September 30, 2012, had reached the level of \$6,588,933, with additional unpaid interest compounding to this deficit at a rate in excess of \$275,000 per year. It is estimated that the accrued, unpaid, compounding obligation will reach approximately \$17,184,960, at the currently scheduled maturity of the Bonds in 2025.

#### **B. FINANCIAL ANALYSIS**

The District indicated in its application that it does not collect enough revenues to pay for operations and to make payments on principal and interest for the outstanding bonds without jeopardizing operations. Moreover, the District also indicated in its application that it is unable to make payments on the outstanding bonds. The following facts are noted from the audited financial statements:

1. The District currently owes \$8,424,000 in principal and \$6,588,933 compounded interest for a total of \$15,012,933 for its 1992 Bond Series.
2. If the original principal sum is amortized, as allowed in Chapter 9 bankruptcy, through periodic redemptions, then by maturity of 2025, a substantial portion, if not all, of the \$8,424,000 will be repaid.
3. The District is currently in default on debt service payments, paying only interest and no principal on an annual basis.
4. The District's total revenues are \$1,153,805 for the year ending September 30, 2012. Property taxes represent 99.9% of total revenues, which are levied on October 1 of each year, due and payable at that time.
5. The District's total expenses are \$1,373,651 of which 86% went to pay interest on long-term debt and 14% went for operations, which exceeds total revenues by \$219,846. The District is experiencing negative cash flows on an annual basis.
6. The District's economic situation depends on the future costs to repair and maintain infrastructure and the ability to meet its debt service requirements. The District's tax rate is fixed at \$0.30 for each \$100 of assessed valuation of taxable property within the District, of which \$0.25 went to finance the payment of principal and interest on long-term debt, and \$0.05 went to finance general government services. This rate cannot increase as long as any of the Refunding Bonds or interest thereon is outstanding and unpaid.

#### **C. ENGINEERING ANALYSIS**

Not applicable to this application.

#### **D. CONCLUSIONS**

1. Based on review of the audited financial statements and the District's application and assertions, the District cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature.
2. Based on review of the amended documents of the District's application and assertions, the District cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature.
3. Based upon the application and information provided, the District has fully exercised its rights and powers under the law in attempts to collect revenues for payment of debts and other obligations.
4. The recommendation is made under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

Texas Commission on Environmental Quality  
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January 8, 2014

**E. RECOMMENDATION**

Staff recommends approval of the District's application to proceed under Federal Bankruptcy Code, Chapter 9.