



*HCA is a passionate community caring for the unique features, spring-fed streams, heritage ranch lands, spectacular beauty and culture of the Texas Hill Country for the benefit of future generations.*

*Water Control and Improvement Districts (WCIDs) and others. Our intention is to broaden the knowledge of public policy decision makers and the taxpayers who are affected by their actions.*

*The paper was originally drafted in January of 2007 and focused on local conditions in Kendall County, in particular WCID No 2. With the recent and ongoing proliferation of special districts throughout the Hill Country, we see a current need to provide this update.*

## **We Really Need to Pay Attention to Special Districts**

By Milan J. Michalec  
President, Hill Country Alliance  
4.25.2013

### **Key Points**

The use of special districts can pose a significant risk to loss of local government control. In the case of a water district adjacent to a city, approval is traditionally granted by ordinance after a negotiation of Development Agreement with the developer. However, the district is confirmed by popular vote. This is the popular vote of those who live within the new boundaries of the new district. In this case, a handful of citizens will control and implement the policy decisions that thousands will ultimately live with.

- Special districts, in particular the water districts, can serve to marginalize local government. In the Houston area, municipal government policy is significantly, influenced, if not ignored altogether, by a form of regionalized government through a wide range of Municipal Utility Districts (MUD) and Water Control and Improvement Districts (WCID).

- The proposal to create a water district most often occurs after local government, typically a County Commissioners Court, declines to alter subdivision development rules to accommodate the developer. When this happens, the use of these districts bypasses, and therefore, undermines these rules. These are rules used to limit density to protect natural resources. Rules specifically intended to ensure sustained groundwater water availability and protection of recharge from being degraded by high density development.



**hill country alliance**

- Special districts court local support with a promise of increased tax revenue, increased economic development and more jobs. However, this benefit can quickly become a tax liability for residential taxpayers should the development be unable to attract substantial commercial activities to offset the cost of services. The true impact is difficult to determine as cost analysis is provided by the developer.

- Special districts have created fragmented services and eroded local governments' tax bases. They can become large, difficult to oversee, and may not represent the community as a whole. They do in fact create the appearance, if not the reality of hidden government. By pitting general against specialized government, effectiveness of both is reduced. This can result in less efficient local government.

- The use of special districts, like the water district, clearly is the State's preferred method to meet the challenges of rapid growth. Consideration of local input and conditions is secondary to the meeting the needs of the investor. They have broad political support throughout the legislature. They are administered by the TCEQ which functions as the review authority for financial viability.

Bottom line - These districts are sanctioned and condoned by the State to support continued economic development. They will continue to be a popular development tool.

The challenge is to preserve the Hill Country by discouraging further proliferation of the water district through the education of the public and the elected officials who serve us.

## **BACKGROUND**

Texas has four types of local government these are municipal, county, school district and special district.

Municipalities are general purpose local governments found in cities, towns and villages. Over 1,200 municipal governments meet the needs of most of the state's population, but cover just a small portion of the land.

In contrast, there are 254 counties covering the whole state. For most of recent history, county government was the only general purpose government for most Texans. About eighty years ago, when municipalities numbered less than 300, only a small number of the total population lived within these boundaries.

Today, even though cities are growing quickly with over 1,200 municipalities, county government remains a basic government unit for all who live within Texas.

As counties were organized, they were subdivided by school districts. Today, about 1,100 school districts, just like the counties, cover all of Texas. However, school districts, unlike municipalities and counties, are limited in scope. They provide service to satisfy just one policy need, education.

Because of the inability or unwillingness of local government to provide the wide range of necessary services to meet public needs, a corresponding wide range of special district governments have been evolving over the last several decades.

Special districts are political subdivisions of the state. Where state, county, and city governments are multi-functional and provide a wide range of services, a special district usually performs just one function.

Property tax revenues are the major tax revenue source for cities, counties, school districts, and many special districts. Here, an ever increasing burden is placed on the homeowner.

As alternative funding schemes, particularly the use of special districts to raise taxes are developed, significant consequences can be expected as local government policy is developed.

The proliferation of special districts is particularly problematic to the voter who must determine what taxes are being collected by whom, where are they going and who is accountable.

Perhaps the words of Russel B. Long (U.S. Senator Louisiana) reflected this dilemma best when he said: "Don't tax me. Don't tax thee. Tax that fella behind the tree."

The Dallas Morning News once wrote, "Few people even know about the existence of most special taxing districts, which "may create the appearance of 'hidden government' and raise questions about accountability to local taxpayers," a recent Texas comptroller's office report concludes."Currently, tax data and other information are not available in a central location."

The Texas Comptroller noted: "The growth of special districts has created fragmented service provision and eroded local governments' tax bases. In addition, the general lack of coordination between local entities and the state may inadvertently lead to duplicative services or overlapping jurisdictions."

In 2002, in response to concerns voiced by the general public and public officials at all levels of government, formed a committee to look into the use and powers of certain development districts (House Committee on General Investigating, Interim Report, 2002).

The charge: "Review the state's laws and procedures for the creation of special purpose districts whose jurisdiction is limited to a specific geographic area or areas and whose powers may include the imposition of taxes, the creation of public debt, the exercise of eminent domain, or the exercise of police power. Consider the proliferation of special purpose districts, and investigate whether the activities of these districts comport with the legislative intentions and public purposes for which they were created."

Observations included: "The powers of special districts have expanded significantly over the years through judicial and legislative action. The legislature has continued to create new types of special districts, making it easier for these districts to grow in size and number. The number of special districts in the state is difficult to determine because there is no one source of data to document the creation and continued use of special districts. It is known, however, that in 1999, 1241 special districts assessed property taxes and 515 special districts assessed sales taxes. Further compounding the inability to quantify the precise number of districts in the state are the various types and titles and multiple powers attributed to each special district."

Among the findings: "The committee has completed its review of the issues and finds that, while certain important reforms are justified and appropriate, it would be a disservice to unduly restrict the operations of special districts, particularly because of the size of the state and the current rapid rate of growth in urban and suburban areas. More stringent controls on certain activities of special districts, more consistency among very similar types of special districts, and better communication with the public, residents of districts, and other governmental officials should be imposed."

Though numerous recommendations have been acted upon since this report was written, public knowledge remains generally very low, subsequently so is public confidence.

Until recently, local government throughout much of the Hill Country operated in a fairly straight forward manner – either City or County. This generally reflected a cooperative mixture of rural and urban concerns resulting in unique and separate strategies to manage growth. Unfortunately, this balance has been upset by political and financial forces unfamiliar or unconcerned about how this area should grow and prosper.

The recent trend to employ special districts, particularly water districts, deserves close scrutiny for appropriateness in this region. This additional form of government can lead to policy making decisions that will

convert the existing rural character of the Hill Country into a never ending urban expansion with little long term benefit.

## **GENERAL DISCUSSION**

As previously stated, because of the inability or unwillingness of local government to provide the wide range of necessary services to meet public needs, special district governments have been evolving across Texas over the last several decades.

The highest concentration is in the Houston metropolitan area, over 700. In Dallas metro area, the number is about 100, the same goes for Austin. There are about 30 in and around Fort Worth.

In Houston, over 400 are located in Harris County. The most common form is the “utility district.” These Districts provide basic infrastructure for new development and can take the form of a Municipal Utility District (MUD), a Water Control and Improvement District (WCID), and a Public Improvement District (PID).

Why so many? Harris County, is the center of the urbanized area and must divide its’ resources to meet a wide variety of obligations such as parks, roads and bridges, community centers, and administrative staff.

More importantly, the City of Houston previously operated as the region’s strong center with a strong mayor form of government. It now has sweeping term limits on its elected leaders.

Resolving tough issues such as mobility, development patterns, air quality, flooding, and water supply will usually require the involvement and consent of more than one of the governmental entities, cities, and counties in the region.

Creating a consensus in a geographically separated, highly diverse region, with many governmental units and few long-term elected officials, is admittedly difficult at best.

Therefore, the Houston region’s approach has been to create multiple entities to achieve services and maintenance goals. Enter the special district.

The ultimate wisdom of this approach is for the community and its leadership to evaluate.

We certainly don’t have the magnitude as Houston, but we do have the same basic problems to face.

Special districts may sound great to someone from Houston or Dallas, but they may not be the right approach for our community.

## **SPECIAL DISTRICTS IN KENDALL COUNTY**

The advantage of a special taxing district is that it allows a particular area to address its specific needs by taxing only within its jurisdiction. The most common of the special districts are the water districts.

These districts cover a broad scope of subjects, from water resource management to amoeba control. Examples include Water Control and Improvement Districts, Underground Water Conservation Districts, Fresh Water

Supply Districts, Municipal Utility Districts, Water Improvement Districts, River Authority, Levy Improvement Districts, Drainage Districts, Irrigation Districts, Navigation Districts, Storm water Control Districts, and others.

Of particular interest in Kendall County are the Municipal Utility Districts (MUD), Water Control and Improvement District (WCID) and River Authority (RA).

The MUD and closely related WCID, have powers of eminent domain, can sell bonds and impose taxes to pay for them. Both allow the developer to issue tax-exempt bonds to finance drainage, water distribution, wastewater collection and treatment systems and to levy a property tax on the land in the district to pay back the developer the cost of building those facilities. This primarily benefits the developer, with the homebuyer bearing the burden through increased taxation.

A River Authority is basically an extended, multi-county water district. They are authorized under the same constitutional provision which authorizes the water conservation districts. The primary difference between river authorities and water districts is that river authorities have taken on the status of a quasi-government as the vacancies on some boards may be filled by the governor. They also control a large portion of the state's water rights.

The recent availability of surface water from Guadalupe-Blanco River Authority (GBRA) from Canyon Reservoir has enabled the MUD and WCID to become feasible and thus very popular funding tools to bring new development to the Hill Country. Particularly vulnerable are the fast growing Kendall and Comal Counties.

In simple terms, limited groundwater availability once was a barrier to high density development. This out-of-county water has become problematic in trying to manage local development consistent with the characteristic low density, and corresponding low impact to natural resources.

For many years, Kendall County WCID No.1 in Comfort was the only water related special district in Kendall County.

By 2007, Kendall County had seen the creation of the first MUD near Boerne (Lerin Hills) and a second WCID in the ETJ of Boerne (Esperanza).

In the same time frame, Comal County saw its first WCID (Bulverde-Johnson Ranch) and the 2009 Legislation Session introduced four more. Additionally, either a Fresh Water Supply District or WCID (Kings Gate) and a MUD (Hills of Castle Rock) have been proposed in Medina County.

All were met with vocal public protest. Most comments reflected concern for density and associated negative impact to natural resources, in particular water.

Proponents of the newest WCID in Kendall County touted significant economic benefits - namely increased tax revenue and large scale development that is somehow respectful of the local conditions and the community. However, as a political subdivision of the state, with a locally elected board, they do function with great autonomy.

This WCID was deemed necessary by the developer Marlin Atlantis for a Master Planned Community known as Esperanza. The proponents were able to garner the necessary political support to have the District created by the Legislature as it was in regular session.

Senate Bill 1245 generated considerable local debate. The developer needed Legislative action to create Kendall County WCID No. 2 instead of taking the longer route of creation by the TCEQ or to avoid the other way of

creating the district, going directly to the County. Something a previous developer had tried, but could not get relief from low density limits of the County Subdivision Rules.

Politicians supported creation of the WCID because they maintained local control, by the voters, was in the best interest of the citizenry. As publicly discussed, the voters would have to approve creation of Kendall County WCID No.2 by majority vote.

To be honest, these are actually voters who live within the boundaries created by the enabling legislation. Thus, in reality, it is actually only a handful of voters will vote for a District and the taxes that will ultimately affect thousands of future voters.

This theme of local control was re-iterated by saying it was not beneficial to go the TCEQ for approval. Here, an analogy was provided that said local officials have a dog in this hunt, the TCEQ does not. Therefore, a WCID created by the Legislature would be the best route for everybody involved.

The review and approval authority for the bonds issued for this, and other, special districts is the TCEQ. The TCEQ is the dog in this fight no matter which route of approval would have been pursued. The only benefit of going to the legislature vice the TCEQ was really to increase the speed of approval to proceed.

Ultimately, a substitute bill was approved and Kendall County WCID No. 2 was created by the 80<sup>th</sup> Legislature. The district was approved by the City of Boerne by Resolution instead of by Ordinance.

## **CONCERNS AND ISSUES**

The City of Boerne had the ultimate responsibility to approve Kendall County WCID No.2. The process for final approval by resolution (not by ordinance) was accomplished after successful negotiation of a Development Agreement. A cursory review of documents found in the public domain revealed numerous areas of concern.

1. Kendall County WCID No. 2 will reduce property taxes.

A 2002 study prepared for the Texas Senate Committee on Finance showed taxes constituted approximately 39 percent of all revenue of local governments. Property taxes represented about 80 percent of that number, while sales taxes represented about 17 percent.

The construction of Esperanza was said to provide significant economic impact for the local area. Overall, it was supposed to contribute to a strategy to reduce the burden on home owners. This was to be done by building a new tax base that would have increased commercial development.

Ohio State University Cost of Community Services (COCS) studies divide land use into three categories: residential, commercial/industrial, and farmland/open space.

Residential land is a net drain on local government budgets. The average estimate ranges from about 1.15 to 1.50, which means that for every dollar collected in taxes and non-tax revenue, between \$1.15 and \$1.50 gets returned in the form of services by the local government and school district.

For commercial/industrial, the ratio usually ranges from 0.35 to 0.65. This means that for every dollar collected, only about 35 to 65 cents worth of services are provided by the local government.

For agriculture and open space, the ratios usually range from 0.30 to 0.50.

The largest single expenditure category for communities, according to the studies, is the public school system, accounting for 60 to 70 percent of spending.

Therefore, it would be imperative a thorough financial account of planned land use be provided for analysis. In turn, this could be used to determine the potential benefit to the taxpayer or whether it presents a liability as planned.

## 2. Water districts can, and do, grow.

The Brushy Creek MUD is in the Georgetown vicinity. In 1978, a bond authorization for the original District of 725 acres authorized \$10M in Unlimited Tax and Revenue Bonds. The authorization was increased by \$25M to a total of \$35M by the District when a 1,485 acre annexation was approved in 1983. Brushy Creek MUD approved a third bond election in 2001. This time the voters approved \$ 39M in Unlimited Tax Bonds.

The result is more debt liability for the tax paying homeowner in the District or potentially the taxpayer in the city.

## 3. As they grow, these districts can change into other types of special districts.

Trinity Falls is a Marlin Atlantis master planned community of 1,700 acres in Collin County, adjacent to the City of McKinney. Here, City Council initially approved a WCID, but that quickly changed as the development agreement was negotiated. Within 90 days of the WCID approval, the developer had requested the WCID be divided into four MUDs. The City eventually approved two MUDs.

This poses significant challenges as tax policy evolves through the actions of elected officials. The use of Special Districts is preferred by Houston. Once they take root, they tend to multiply. It is imperative to determine if they appropriate for any community within the Hill Country.

## 4. As they grow, some special districts can exercise annexation powers.

The ability for a MUD to annex territory and create a new MUD for more high density development is a significant threat throughout the Hill Country. This is because of the power given by the legislature for some MUD's to annex territories outside its territory and then divide the territory into two districts and create another MUD for more development. Here a new MUD can be created by the legislature without public consent or by TCEQ, where proper public notification is made.

The size and scope of Esperanza is comparable to the size of the City of Boerne. At full build-out, it will be in direct competition for services and natural resources. This WCID may also desire to expand. At this point, the powers of annexation must be considered for the impact to existing local government as well the local community.

## 5. Special districts can be created in spite of local opposition, with minimal inhabitants.

An example is the Castle Hills Development in Denton County, Fresh Water Supply District No.1, an area characterized by high density development. Developers pay money for a few people to live as residents in

unincorporated areas of the special districts so they are the only ones who vote for the creation of the new MUD. In the eastern part of Denton County, there were three trailers clustered together that voted on \$71 million dollars worth of development. It has been reported about twelve of these MUD's that have been created by the legislature and have these additional powers exist.

As previously noted, this emphasizes the point that once they take root, they tend to multiply.

6. Special districts do exercise the power of Eminent Domain.

The Glenwood subdivision is located in far western Comal County. Water here was supplied by Guadalupe Blanco River Authority (GBRA) managed wells. The boundaries of this subdivision are within a short distance of the GBRA pipeline that brings Canyon Lake water to customers in Boerne and Cordillera Ranch. When the wells could not produce enough water, GBRA declared an emergency and initiated Eminent Domain actions against several property owners to connect the necessary water lines to supply surface water.

7. They can pose a significant negative environmental impact.

Even if sufficient water could be located to supply a centralized public water system, these districts would in turn need to create central wastewater systems. This results in a legitimate concern for potential groundwater contamination due to direct discharge of treated effluent or spillage of raw sewage into aquifer recharge features.

Brushy Creek MUD uses a conjunctive water supply from Brazos River Authority and City of Round Rock. It has four main water wells. Currently, the District does not operate its groundwater wells due to a sewage spill that led to contamination of the groundwater supply in July 1998. Today, they must treat this contaminated groundwater before it is mixed with surface water before it is safe to drink.

In 2006, an affiliate of Baruch Properties of Dallas purchased 1,766 acres of Hill Country 10 miles northwest of San Antonio, named it "Hills of Castle Rock". To support this water district, the developer applied to the TCEQ for a permit to build a wastewater treatment plant that directly discharge treated effluent into San Geronimo Creek, a direct conduit into the Edwards Aquifer.

Considering the karst nature of the Trinity Aquifer, and the adjacent Edwards Aquifer, the possibility of direct contamination protection of the aquifer is imperative. In the fast recharging Edwards Aquifer, the impact to water quality would be immediate, with slower degradation in the Trinity Aquifer. This also extends to concerns for the impact of increased run-off associated with the increased impervious cover that will follow high density construction. Irrigation run-off poses a significant threat as well.

With the increasing use of recycled water as a conservation measure, the highest discharge standards must be maintained. Direct discharge into tributaries should logically be avoided.

To continue this practice introduces other pollutants, pollutants we do test for nor understand the long term effects. These are known as emerging contaminants-chemical, microbial, and hormonal constituents. These are commonly known as "Pharmaceuticals and Personal Care Products" (PPCP's).

8. Newly created special districts in the Hill Country were supported in some circles because they claim to need only surface water from GBRA - groundwater will not be needed.

Though the developer of Esperanza has said they do not intend to use groundwater, they have also maintained a right to pump groundwater. In the development agreement between the City of McKinney and Trinity Falls, they agreed to allow the developer access to groundwater.

As described in the City of Boerne and Esperanza Development Agreement:

"Water Wells. Owner and/or the District shall be permitted to dig water wells to satisfy service needs as Owner and/or the District deem necessary or desirable, however, (a) such wells may not be used to provide potable



water without the consent of the City except in the event the City fails to provide retail water service as described in Section 5.2 above, and (b) such wells shall be subject to all applicable rules

and regulations of the TCEQ. In the event that Owner or the District dedicate any such wells to the City, the City shall allow Owner or the District, as applicable, to reserve the right to use water from such wells for irrigation purposes.”

On the final vote of Development Agreement a motion was offered, and accepted, to prohibit the drilling of wells for irrigation.

Additionally, the enabling legislation of Kendall County WCID No. 2 gives the District wide ranging powers of water development, storage and distribution.

Generally, in Texas, water rights are conveyed to the owner of the property. However, the use of all groundwater within Kendall County is the responsibility of the Cow Creek Groundwater Conservation District. This begins by registering all wells. Should any of these wells be considered for any use beyond the category of a Domestic Exempt Well, they will require an operating permit.

9. Special districts can spawn other districts that can impose and collect a tax.

Negotiation of the development agreement between the City of McKinney and the Marlin Atlantis partners in the Trinity Falls revealed a Public Improvement District (PID). The City was asked to consent to the creation of one or more PIDs covering this property.

This district within a district masks who actually pays for what service.

10. The PID described in the Trinity Falls example also creates fragmented services and additional cost to taxpayers.

One purpose is to design, construct, install, operate, maintain, and repair roadway improvements to serve a property (both within and outside the boundaries of the PID to the extent the district does not have or acquire the authority to do so.

The PID, with City Council approval can design, construct, install, operate, maintain, and repair other public improvements. It can be used to operate, maintain and repair parks, open space, and other common areas and amenities within the PID.

Finally, a PID can be used to finance any of the activities previously noted through the levy and collection of special assessments against a property, including the issuance of PID bonds (either directly by the City or through a local government corporation created by the City) and secured special assessments and by other legally available sources of bond security.

This district within a district not only masks who actually pays for what service, but adds additionally costs and subsequent taxes to whoever provides the service.

## CONCLUSIONS

The use of special districts poses a significant risk to the voter. Voters may or may not be able to vote for things that affect him or her. This is especially problematic for those who live in the ETJ.

The use of special districts can pose a significant risk to loss of local government control. In the case of a water district adjacent to a City, approval is traditionally granted by ordinance after a negotiation of Development Agreement with the developer. However, the district is confirmed by popular vote. This is the popular vote of those who live within the new boundaries of the new district. In this case, a handful of citizens will control and implement the policy decisions that thousands will ultimately live with.

Special districts, in particular the water districts, can serve to marginalize local government. In the Houston area, Municipal government policy is significantly, influenced, if not ignored altogether, by a form of regionalized government through a wide range of MUDs and WCIDs.

The proposal to create a water district most often occurs after local government, typically a County Commissioners Court, declines to alter subdivision development rules to accommodate the developer. When this happens, the use of these districts bypasses, and therefore, undermines these rules. These are rules used to limit density to protect natural resources. Rules specifically intended to ensure sustained groundwater water availability and protection of recharge from being degraded by high density development.

Special districts court local support with a promise of increased tax revenue, increased economic development and more jobs. However, this benefit can quickly become a tax liability for residential taxpayers should the development be unable to attract substantial commercial activities to offset the cost of services. The true impact is difficult to determine as cost analysis is provided by the developer.

Special districts have created fragmented services and eroded local governments' tax bases. They can become large, difficult to oversee, and may not represent the community as a whole. They do in fact create the appearance, if not the reality of hidden government. By pitting general against specialized government, effectiveness of both is reduced. This can result in less efficient local government.

The use of special districts, like the water district, clearly is the States' preferred method to meet the challenges of rapid growth. Consideration of local input and conditions is secondary to the meeting the needs of the investor. They have broad political support throughout the Legislature. They are administered by the TCEQ which functions as the review authority for financial viability.

Bottom line - These districts are sanctioned and condoned by the State to support continued economic development. They will continue to be a popular development tool.

## RECOMMENDATION

The challenge is to preserve the Hill Country by discouraging further proliferation of the water district through the education of the public and the elected officials who serve us.

Milan J. Michalec  
12 Brandt Road  
Boerne, TX 78006  
[redfish@gvtc.com](mailto:redfish@gvtc.com)



**hill country alliance**