



Control Number: 44267



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PUBLIC UTILITY COMMISSION
FILING CLERK

December 30, 2015

Public Utility Commission
Attention: Central Records
1701 N. Congress Avenue, Suite 8-100
Austin, Texas 78711

VIA Efile and Hand Delivery

RE: Docket No. 44267; Application of Double Diamond dba The Cliffs Resort to Obtain or Amend a Water/Sewer Certificate of Convenience and Necessity in Palo Pinto County

To Whom It May Concern:

I am submitting this letter on behalf of Double Diamond d/b/a The Cliffs Resort (“Double Diamond”) to express Double Diamond’s position that affirmative, written consent from the Brazos River Authority (“BRA”) is not required in the above-referenced matter.

PUC Staff requested that Double Diamond obtain affirmative, written consent from the BRA for Double Diamond’s application in the above-referenced docket (the “Application”) pursuant to § 13.244(c), Texas Water Code.¹ The area subject to the Application is within BRA’s district boundaries.

BRA is a conservation and reclamation district created by Special District Local Laws Code Chapter 8502. Chapter 8502 provides broad power to BRA to “conserve, control, and utilize to beneficial service the storm waters and floodwaters of the rivers and streams of the state . . .” Spec. Dist. Local Laws Code § 8502.001(c). Nothing in the statute requires, or authorizes, BRA to provide consent to an application seeking to obtain or amend a CCN within BRA’s district boundaries. By contrast, Texas Local Government Code § 42.042 requires a municipality to consent to the creation of a political subdivision for the provision of water or sewer services within the municipality’s extraterritorial jurisdiction. A municipality is, therefore, statutorily required to provide consent before another retail public utility can provide water or sewer service in the municipality’s extraterritorial jurisdiction.

¹ The relevant provision provides:

Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the utility commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Tex. Water Code § 13.244(c).

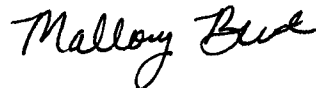
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Section 12.344 (c), Texas Water Code states that an applicant must provide the Commission evidence of the “required consent” from a “proper municipality or other public authority.” This provision does not create an independent obligation by all municipalities or public authorities to provide consent that is not otherwise required. Unlike a municipality or other types of public authorities where consent is statutorily required, BRA is not required, or even authorized, to provide consent to the Application. Therefore, BRA is not a “proper authority” required to provide a “required consent,” and there is no separate consent required by statute which Double Diamond must obtain and submit to the PUC. While BRA may, if it chooses, protest² a CCN application related to area within its district boundaries, nothing in Chapter 8502 requires that BRA provide affirmative, written consent to the PUC before the PUC may approve a CCN application.

A copy of this letter is being sent to the individuals below. Please contact me if you have further questions or concerns.

Sincerely,



Mallory Beck

cc: Mandeep Chatha, PUC Legal Division (Via email)
Riley Woods, Attorney, BRA (Via email)

² Double Diamond provided BRA with mailed notice of the Application in accordance with the notice provisions of Chapter 13, Texas Water Code, and the PUC’s rules.