

Control Number: 44380



Item Number: 17

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44380

PHILIP A. HOWRY

October 26, 2015

Office of the Governor  
Honorable Greg Abbott  
P. O. Box 12428  
Austin, TX 78711-2428

2015 OCT -4 PM 2: 23  
FILING CLERK

**SUBJECT:** Annexation of Travis County Lost Creek MUD by the City of Austin (CoA)

Dear Governor Abbott:

It is understood that in the State of Texas "home rule" municipalities are granted annexation privileges of areas within their extra-territorial jurisdictions (ETJ) in accordance with prescribed guidelines and requirements. Currently, the (CoA) is in the process of annexing the subject area; however, in my view the (CoA) annexation plans do not comply fully with the letter or the spirit of the applicable Texas code.

Specifically, the (CoA) has announced their intent as follows:

- To continue operating the existing package waste water treatment plant and NOT extend standard city sewer services,
- Continue using the existing Travis County-owned Fire and EMS facility located on South Capital of Texas Highway (Loop 360) to provide required response times to the subject area,
- Not provide service or maintenance to the annexed area's parks and greenbelts built by the subject MUD patrons

Regarding the existing waste water treatment plant, with annexation the (CoA) must re-negotiate a deal with the Lost Creek and Barton Creek Country Clubs to continue receiving effluent from the existing treatment plant to water their golf courses which will remain un-annexed and in the (ETJ). Extension of full (CoA) sewer services would negate the need for this questionable (ETJ) agreement, but require placement of a sewer line from the subject area along Barton Creek to a point at or near Spyglass, downstream of the Barton Creek Mall (intersection of south Loop 1 and Loop 360). This would require a tremendous environmental approval, terrain and construction expense challenge.

There are other inexplicable exorbitant rate increase issues I have, formally, communicated to the Office of Attorney General and Public Utility Commission of Texas (PUC) (enclosed); as of today, I have received a response from the (PUC) (see enclosed).

In my biased view, this is not a case of the (CoA) altruistically annexing an un/under-served area, but rather a "taking" of a fully-functional privately-owned utility infrastructure with no consideration paid and no value-added services offered to the annexed area/citizens. How can the "taking" of private assets by a City with no consideration paid be a valid legal process?

## PHILIP A. HOWRY

In all fairness and equity, if the (CoA) wishes to exercise their legal right to annex they should be required to pay for the assets acquired and abide by ALL the rules. As a successful property rights condemnation attorney, who for many years, successfully defended clients against eminent domain "taking", primarily by the State of Texas, the Mayor of Austin should be seeking equity for the private assets being annexed ("taken").

In addition, recent (CoA) annexations have targeted high-value tax base areas perhaps driven by nothing more than a fiscal demand to meet existing (FY'14) bond debt (i.e., \$8.9B) payment schedules; regardless, the fact remains these areas are also, socioeconomic, non-minority areas. A valid observation is the (CoA), by omission or commission, is diluting the socioeconomic minority voting base with these "targeted" annexations. Under-developed areas of the (ETJ) exist where the (CoA) could annex and bring much needed water and sewer services to socioeconomic minority areas, instead the (CoA) prefers to annex areas with developed high-value tax base with no inherent expense side budget impacts. Is this the real intent of the City annexation code in the State of Texas?

Yours truly,



Phil Howry

Enclosure(s): 3

Cc:

Donna L. Nelson, Chairman  
Public Utility Commission of Texas  
P. O. Box 13326  
Austin, TX 78711-2428

Steve Adler, Mayor  
City of Austin  
P. O. Box 1088  
Austin, TX 78701

Mark Ott, City Manager  
P. O. Box 1088  
Austin, TX 78701

Office of Attorney General  
P. O. Box 12548  
Austin, TX 78711-2428



Consumer Protection Division  
Complaint Form Report

Today's Date: 10-12-2015 6:58 pm  
Date filed: 10-12-2015 6:58 pm

**Consumer's Information:**

Name: Philip A Howry  
Address: 6201 DIAMOND HEAD CIRCLE  
  
City, State, Zip: AUSTIN, TX, 78746, TX  
County: Travis

Home Phone: 512-327-3855  
Work Phone: 512-306-7900  
Age: 60-64  
Supporting documents will be sent by:

**Business or individual complaint is filed against:**

Business: City of Austin  
Address: P. O. Box 2267  
  
City, State, Zip: Austin, 78783  
County: Travis

Phone: 512-494-9400  
Contact person at business: Utility Department  
Website: www.coautilities.com  
Email address:

First contacted via: Other  
(other): email messages  
Solicitation in other language?  
Where transaction took place: At my home  
(other):  
Transaction Date: 9-1-2015

Contract Signed? No  
Original Amount: 0.00  
Amount paid: 0.00  
Payment Method: Not Reported  
Date of Payment: 0-0-0000

Complained to business? Yes  
If so, when? September 2015

Business' response? The utility claimed the historic water usage was correct refusing to inspect the meter or provide a realistic explanation for the anomaly.

Have you contacted another agency or attorney about this complaint? Yes

Name and Address of agency or attorney?

Texas Public Utility Commission

What action was taken by this agency or attorney?

None to date

**Description of complaint:**

The CoA is annexing the Lost Creek MUD that has successfully existed as a self-sufficient entity since 1970. Operating its own water distribution and package waste/water treatment plant, as a bulk domestic water purchaser of the CoA, servicing this 1200 home subdivision. In December, approximately (3) years ago, without posted notice, the CoA voted to annex this area. The LC MUD's first notice of the annexation vote/action was received by letter from the Austin Water Utility department. Last December (2014) the CoA took over the water and waste/water billing process of the LC MUD. \r\n\r\nAfter recently reading publicized reports of the CoA's settlement with the River Place MUD and the CoA's defeat in a four (4) year-long rate case dispute with four (4) Central Texas Water District's, it appears the CoA does not have a compelling argument for their excessive rate matrix schedule, which includes direct transfers to the the CoA's general fund.. \r\n\r\nThe problem I have with the LC MUD annexation is private citizens voted to collectively tax their property to create and maintain a self-sufficient utility system. After forty (40) plus years, this infrastructure remains fully-functional generating a low operating tax base. The CoA seeing this, comes in and \"takes\" this asset from private citizens, with no consideration paid, and then requires the annexed area to pay for a city-wide infrastructure and coresponding debt these citizens had no voice in

approving. Finally, the CoA admits they do not plan to a) extend city sewer service to the area (opting to continue operation the less expensive package w/w treatment plant), b) provide city-owned fire or emergency medical service, c) will not provide a public transportation services and, d) will not maintain the MUD's parks and greenbelts. (The CoA asserted Travis County's existing ESD #9 station on Loop 360 will continue to provide service the LC MUD area after annexation),  
If the CoA elected not to provide bulk-water to the LC MUD, the W.C.I.D. #10 has existing water main infrastructure in place to service the area. Bottom line, this is merely an adverse condemnation of private property (called annexation), without due course lacking legitimate rationale of overriding necessity for the well-being of the CoA, offering the annexed area nothing in return except a four (4) to five (5) time increase in water & waste/water rates on top of a new layer of CoA property taxes.  
This is an absurd gerrymandering of the Austin city limits lacking any real or perceived purpose other than to expand the CoA's tax base. If that's the way we work in Texas then I suppose nothing has changed since the Revolution....we still pay rent to a King.  
The Austin American Statesman issued report coverage of the River Place MUD and water district rate case lawsuits. Local attorney Randy Wilburn represented both sustained Plaintiffs. .



**Public Utility Commission Of Texas**  
1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
(888) 782-8477  
www.puc.texas.gov

PUCTX Online Complaint CP2015100253

### Water Complaint Form

Date: 10/7/2015 10:12:32 AM

**Complaint No:** CP2015100253

**Account Holder:** Philip Howry

**E-mail Address:** pah@philhowry.com

**Service Address:** 6201 DIAMOND HEAD CIRCLE  
AUSTIN

AUSTIN TX 78746  
Travis County

**Day Phone:** (512) 306-7900

**Complaint Against:** City of Austin Water - W/W Utility

**Service Phone:**

**Complaint Information:** The City of Austin (CoA) will complete annexation of the Travis County Lost Creek M.U.D. December 2015; however, the (CoA) took over the water waste/water billing December 2014.

**Alternate Contact:** (Empty) Howry

**Mailing Address:** Phil Howry Co.

5450 Bee Cave Road #1-B  
Austin TX 78746

**Evening Phone:** (512) 848-0923

**Complaint Type:** Billing

**Account No:**

These (CoA) billings appeared to mirror historical usage with obvious decreases due to the heavy area rainfall received this Spring. However, in August the (CoA) sent me the previous month's water usage (July) that was double what I've ever used since 1980! It appears every household meter account in the LC MUD experienced the same situation. I issued written complaints to the (CoA) water utility department along with the new District 8 City Council representative and the Mayor.

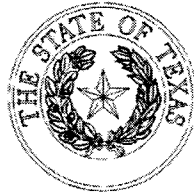
My point is the (CoA) is annexing a fully-functioning, (CoA) bulk water purchasing MUD distribution system with an on-site package waste/water treatment facility. The (CoA) is now assessing their, onerous, tiered multiple times "X" fee over the MUD water waste/water rate schedule. How can the State allow a city to annex a fully-operational utility area, offering no consideration, or value-added services and assess excessive fees/rates? In fact, the (CoA) will continue to use the existing package waste/water treatment facility; obviously with no increase to their existing infrastructure, but charging the annexed properties the standard city-wide rates?

**Donna L. Nelson**  
Chairman

**Kenneth W. Anderson, Jr.**  
Commissioner

**Brandy Marty Marquez**  
Commissioner

**Brian H. Lloyd**  
Executive Director



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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10/20/2015

Mr. Philip Howry  
Phil Howry Co  
5450 Bee Cave Rd #1B  
Austin, TX 78746

Dear Mr. Howry,

Thank you for contacting the Public Utility Commission of Texas (PUCT) regarding the accuracy of the bills you are receiving from the city of Austin, TX for water and waste water services after they acquired/annexed the Lost Creek M.U.D. Unfortunately, we are unable to investigate your concerns as the PUCT does not have jurisdiction over municipalities or M.U.D.'s. To have your concerns regarding the water/waste water billing addressed you will need to contact the City of Austin, TX at the following address:

*City of Austin, TX*  
301 W. Second St., Austin, Texas 78701  
Mailing address: P.O Box 1088, Austin, Texas 78767-1088  
Telephone number: 512-494-9400

*Or*

Your city council and/or Mayor.

Mayor: Mr. Stephen Adler: telephone number: 512-978-2100  
City Manager: Mr. Marc Ott: telephone number: 512-974-2200

We trust that you will find the above contact information helpful.

Sincerely,

Customer Protection Division  
Public Utility Commission of Texas



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