

**COMMENTS OF ROBERT G. “BOB” WEST  
TO TEXAS HOUSE COMMITTEE ON NATURAL RESOURCES,  
ON MUDS; AUGUST 3, 2006, IN HOUSTON, TX**

Chairman Puente and Members of the House Committee on Natural Resources:

1. My name is Robert G. “Bob” West. I am an attorney and Partner with Whitaker Chalk Swindle & Sawyer, a 30-lawyer firm in downtown Fort Worth. I am the head of that firm’s real estate and oil & gas practice group.

I am a MUD lawyer for north Texas, and there are not very many MUD lawyers in North Texas. I am primarily a real estate attorney and came to represent MUDs as part of my general real estate practice.

I have represented MUDs and other special districts in the Fort Worth area for over 30 years, including districts in Tarrant County, Denton County, and Johnson County.

As a lawyer for MUDs and special districts:

I have assisted in the creation of general law MUDs under the Texas Water Code through the state agency now known as the TCEQ, and in the issuance of bonds to finance water and sewer infrastructure. Let me add that I have not been involved in any MUDs created by the Legislature, but I have learned a few things today about how that works and I may want to try some of those special legislative provisions that were mentioned today for the benefit of my clients!

I have been involved in the day-to-day legal matters for both developer-controlled districts and districts that have transitioned to resident-controlled boards;

I have handled litigation matters for districts in both state and federal courts and administrative matters before the state agency now called the TCEQ; and

I have represented districts during involuntary annexation proceedings by cities.

2. Most of my experience as MUD lawyer has been with the Trophy Club real estate development. I have been involved with Trophy Club since the summer of 1972, when we were negotiating and closing the purchase of over 2,000 acres that became Trophy Club.

Trophy Club is located about 14 miles northwest of DFW Airport, south of Lake Grapevine. It was being developed at the same time as DFW Airport. It is consistently rated as one of the top communities in North Texas based on its high quality of life, along with communities such as Highland Park and Colleyville.

The Trophy Club MUDs are a model of good MUDs that have been survivors during the hard times of the late 1980s and the 1990s.

The Trophy Club project is a “Houston-style” planned development built around the only golf course ever designed by legendary golfer Ben Hogan, who was from Fort Worth. The initial development partner in the project was Johnson-Loggins, Inc., a Houston-based real estate development company -- the same group that developed several golf course residential projects in the Houston area. They were familiar with MUDs and brought that development concept to North Texas for the Trophy Club project.

The land that became Trophy Club was in the city limits and ETJ of the Town of Westlake, but Westlake was a rural village in those days and did not want to undertake the expense and city management of a major real estate development, so it agreed to de-annex the land and allow Trophy Club to be developed as a MUD-based project, and later as a separate town. The Town of Trophy Club was incorporated in 1985 and it became a home rule city about 4 years ago, but the two MUDs in Trophy Club still exist and cooperate with the Town under several interlocal agreements to provide cost-efficient municipal services to the residents.

The Trophy Club MUDs have also cooperated with the City of Fort Worth and other cities in the area around Trophy Club on regional development issues, like paying the initial expense of a 21-inch water line to bring surface water from Fort Worth to northeast Tarrant County and southern Denton County.

3. Let me share with you how MUDs are being used in the Fort Worth area.

MUDs and other special districts have never been as widely used in the North Texas area as in the Houston and Austin areas, but that is now changing.

The City of Fort Worth did not like MUDs and for many years would not consent to the creation of MUDs. Like Austin, it preferred to annex and directly serve the new developments on the edges of the city, and Fort Worth's relatively slow growth over the years allowed it to do that.

However, one MUD — Tarrant County MUD#1 — had been formed in the 1970s a few miles northwest of Fort Worth on the shores of Eagle Mountain Lake. The main subdivision that was served by Tarrant County MUD#1 is called Lake Country Estates, which is a golf course and lakeside residential community.

That MUD existed quietly for over 20 years and was nearing the final payment of some of its initial bonds and had a low tax rate. In the summer of 1999 the City of Fort Worth initiated involuntary annexation of that area without any prior warning or discussions with the area involved, but acting under an old consent agreement from the 1970s that allowed the City to annex the area at any time. Of course, most of the residents of the district had never heard of that agreement, or had forgotten it. As many of you will recall, the municipal annexation laws had been changed by the Legislature in 1999, as a result of annexation problems in the Houston area, to place greater restrictions on the annexation rights of a city. Fort Worth, like several other cities across Texas that summer, decided that it wanted to beat the effective date of the new statute. I happened to have been hired as the general counsel for Tarrant County MUD#1 about two months before the

annexation hit, so I quickly became very familiar with both the old and the new annexation laws. The annexation of Tarrant County MUD#1 was completed by Fort Worth in early 2000 pursuant to an agreement with the city negotiated by the MUD and the homeowners association. I believe that the MUD served a very valuable function in helping to negotiate as good an annexation agreement as was possible under the circumstances at that time.

That annexation in early 2000 began a period of very rapid growth for the City of Fort Worth. Its population is currently the 18<sup>th</sup> largest in the US and recent reports show that Fort Worth is one of the fastest growing large cities in the nation. In the past 7 years, Fort Worth has annexed large amounts of land in order to get out beyond its immediate suburbs, and has established its full 5 mile ETJ along most of the north, west and south sides of the city. That is all very similar to the rapid development activity that occurred in Houston in the 1970s and early 1980s, and which is now occurring again in Houston.

But now that Fort Worth has swallowed all that new territory in the last 7 years, it is having trouble digesting it. Fort Worth now has about 300 square miles in its ETJ. The city staff and council members have realized that it will be very expensive for the city to pay for all the water and sewer infrastructure that would be required to properly serve the newly annexed areas and developments in its ETJ.

So in May 2005, the City of Fort Worth changed its long-standing dislike of MUDs and adopted a new pro-MUD Consent Ordinance. Two new MUDs (including the MUD for the Haywire Ranch project mentioned by Allen Hodges earlier this afternoon) and one new water control and improvement district already have been approved by the Fort Worth City Council during the past several months pursuant to the new consent ordinance and several more projects are currently being discussed with the city.

What Fort Worth has discovered is that MUDs and special districts are a very good development tool. They allow the city to control the development within the MUDs under negotiated development agreements that require all infrastructure to be built to the city's standards, but the city avoids paying the cost of that infrastructure. The cost and economic risk is

shifted to the real estate developers and property owners in the new district, under the regulation of the TCEQ. The city will then annex these districts when the district's bonds are largely paid down and the tax base of the project has been established so that there is little or no economic risk to the city. The city of Fort Worth is also using the relatively new procedures of "limited purpose annexation" and "strategic partnership agreements" for some of its new developments, so that the city can share in the sales tax revenue from retail activity in the new developments.

The only concern that I have heard so far from the Fort Worth city staff and council members is that the approval of MUDs and special districts can lead to "leap frog" development, which the city views as undesirable, and which is a particular burden to the city for the cost of roads that must be extended out to the new district developments. The city is currently looking at various alternatives to get the developers to pay a greater share of the cost of those roads, such as road impact fees. Of course, "leap frog" development can also occur even if there are no MUDs involved.

In short, the City of Fort Worth is now going through many of the same development growing pains that have been faced in the Houston area for many years, and MUDs and special districts are being used in a very positive manner to help Fort Worth meet the challenges of its rapid development.

4. Let me conclude my remarks with a couple of personal observations about MUDs as a local government entity.

In my law practice I have occasion to represent or work with many cities, boards, commissions, homeowner associations, churches and other government or non-profit organizations. My experience with MUDs and special districts is that both the appointed and elected directors of the districts tend to be the highest quality public servants that I have ever worked with. They tend to be very conservative in their financial management and are fair and reasonable in their policies and decisions. I personally have never seen a MUD board that I thought was wasteful of a

single penny of its revenues. On the contrary, MUD directors tend to pinch pennies very tightly.

It is also my personal experience that MUDs are a model of local governance. They are close to their customers and voters and are very responsive to their concerns.

In the Fort Worth area there have been several attempts by small cities to take over the operations of a special district and merge it into that small city. If given a chance, the citizens vote against the city takeover of the district because the citizens want to keep the efficient and responsive operations of the district separate from the politics and slow bureaucracy that are often found in the cities.

In conclusion, I am a strong supporter of MUDs and special districts. I think they are a very important and useful development tool, particularly for a rapid-growth municipality like Fort Worth or Houston. I encourage you to be supportive of MUDs in your legislative deliberations.

Thank you.

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