



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

October 29, 1997

The Honorable Frank Madla
Chair, Committee on Nominations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-099

Re: Whether the town of Barstow is included in
Ward County Irrigation District No. 1 (RQ-974)

Dear Senator Madla:

You ask whether the town of Barstow is included in Ward County Irrigation District No. 1, and provide the following background information to this question:

On October 13, 1913, the County Commissioner[s] Court of Ward County, Texas, ordered the establishment of the Ward County Irrigation District [No. 1]. In describing the lands contained within the boundaries of the newly created District, the Commissioner[s] Court expressly excluded the town of Barstow.¹

In the early 1930's, seven water districts in West Texas, including Ward County Irrigation District [No. 1], formed the Red Bluff Water Power Control District to provide an adequate supply of water to their farm land. On January 15, 1934, the Texas Board of Water Engineers granted a permit to the Red Bluff Water Power Control District to construct a dam on the Pecos River. [Footnote added.]

You read the permit as expressly including the town of Barstow in Ward County Irrigation District No. 1 ("the irrigation district"). The citizens of Barstow have historically been taxed as members of the Red Bluff Water Power Control District but have not been allowed to vote in matters relating to the irrigation district. You wish to know whether the reference to the town of Barstow in the permit issued to the Red Bluff Water Power Control District has the effect of including Barstow in Ward County Irrigation District No. 1. You have provided us with copies of the order of the commissioners court and the order of the Texas Board of Water Engineers granting the permit.

¹Order Establishing Ward County Irrigation District No. 1, Oct. 13, 1913, Minutes of the Commissioners Court of Ward County, Texas, Vol. 2, pp. 597-606.

The Ward County Irrigation District No. 1 was organized in 1913 under provisions² now found in Water Code chapter 55, subchapter B.³ In 1934, the irrigation district and six other water districts similarly situated along the Pecos River entered into a contract creating Red Bluff Water Power Control District (“the Red Bluff District”) and designating it as a master district including within its boundaries the seven subdistricts.⁴ Under the contract, the Red Bluff District agreed to construct a reservoir on the Pecos River and to operate the reservoir to store the water of the Pecos River belonging to the subdistricts.⁵ When notified of the need for the water, the Red Bluff District would distribute it to the subdistrict by conveying the water down the Pecos River to the headgate of the requesting subdistrict.⁶ To carry out this project, the Red Bluff District applied to the Board of Water Engineers⁷ for and was granted a “permit to appropriate from the public resources of the State of Texas sufficient water for the purpose of irrigation and hydro-electric power.”⁸

If an applicant proposes to use appropriated state water for irrigation, the application must contain a description of the land proposed to be irrigated.⁹ The permit must state the use or purpose for which the appropriation is to be made, and any other information the commission prescribes.¹⁰ The permit issued to the Red Bluff District states that “[t]he lands to be irrigated under this permit are included within seven water improvement districts” and lists each district by name. All of these lands “have heretofore acquired the right of irrigation from the Pecos River by virtue of water appropriations made, and by virtue of certain permits heretofore granted for the irrigation of said lands by the State Board of Water Engineers.” The permit further states that “[t]he lands permitted

²See Act of March 29, 1913, 33d Leg., R.S., ch. 172, § 1, 1913 Tex. Gen. Laws 380, 381.

³See Water Code § 55.022 (authorizing commissioners court of a county to create one or more water improvement districts in the county); see also *Texas & P. Ry. Co. v. Ward County Irr. Dist. No. 1*, 251 S.W. 212 (Tex. 1923); *Barstow v. Ward County Irr. Dist. No. 1*, 177 S.W. 563, 564 (Tex. Civ. App.—El Paso 1915, writ ref'd) (describing creation of Ward County Irrigation District No. 1).

⁴*Bildon Farms, Inc., v. Ward County Water Improvement Dist. No. 2*, 415 S.W.2d 890, 893 (Tex. 1967).

⁵*Id.*

⁶*Id.*

⁷The Texas Natural Resource Conservation Commission now has general jurisdiction over water and water rights, including the issuance of water rights permits. Water Code § 5.013; see Water Code ch. 11, subch. D (permits to use state water). The commission is the statutory successor to the board of water engineers. See generally 73 Tex. JUR. 3D Water § 8.

⁸Order No. 1217, Texas Board of Water Engineers, Permit to Appropriate Public Waters of the State of Texas 1 (January 15, 1934) (application of Red Bluff Water Power Control District for and order granting permit).

⁹Water Code § 11.124(b)(1). See Act of March 19, 1917, 35th Leg., R.S., ch. 88, § 15, 1917 Tex. Gen. Laws 211, 214-15.

¹⁰Water Code § 11.135. See Act of March 19, 1917, 35th Leg., R.S., ch. 88, § 32, 1917 Tex. Gen. Laws 211, 218-19.

to be irrigated under this permit, situated within the seven water improvement districts above described, are described in part as follows:

All of the land in Reeves County Water Improvement District No. 2.

All of the lands in Ward County Water Improvement District No. 3; also lands known as Boxley lands included in Sections 56 and 57, H. & T. C. Ry. Co. Survey, in Ward County, Texas, *including all of the lands in said two sections not included in Ward County Water Improvement District No.3.*

All of the land in Ward County Irrigation District No. 1, *also including the town of Barstow, and forty acre water right tracts 7 and 10, Section 186, Block 34, H. & T. C. Ry. Co. Survey, in Ward County.*¹¹

This portion of the permit authorizes irrigation of lands that are not within the boundaries of any of the seven water districts that comprise the Red Bluff District. The first paragraph quoted above applies only to the land in the Reeves County Water Improvement District No. 2, while the other two paragraphs include land that is not part of a water improvement district. Thus, lands in Sections 56 and 57, H. & T. C. Ry. Co. Survey, which are not included in Ward County Water Improvement District No. 3, may be irrigated under the permit issued to Red Bluff. The town of Barstow and the specified forty acre water right tracts 7 and 10, in addition to “[a]ll of the land in Ward County Irrigation District No. 1,” may be irrigated under the permit. The permit actually does not treat the town of Barstow as part of Ward County Irrigation District No. 1, but as land that may be irrigated under the permit issued to Red Bluff even though it is not in that irrigation district. Accordingly, the language of the water appropriation permit that authorizes irrigation of lands within the town of Barstow does not provide for the inclusion of Barstow in the Ward County Irrigation District No. 1.

We have answered only the narrow question you asked—whether the permit issued to Red Bluff has the effect of including Barstow in the Ward County Irrigation District No. 1. Our answer is based on the documents you have provided and the information available through legal research in statutes and case law. We do not consider whether the Board of the Ward County Irrigation District No. 1 ever took formal action to include the town of Barstow in the district pursuant to Water Code provisions authorizing the addition of land to a district,¹² nor do we consider the basis for Red Bluff’s taxation of land in Barstow. The resolution of these questions would require an inspection of public records for relevant actions taken by the Board and by Red Bluff, an endeavor which is beyond the scope of the opinion process. We finally note that section 49.301 of the Water Code authorizes landowners to petition the board requesting the inclusion of their land in the district.

¹¹Texas Board of Water Engineers, *supra* note 8 (emphasis added) (footnote added).

¹²Water Code §§ 49.301 - .302 (annexation of land by water district).

S U M M A R Y

In 1913, the Commissioners Court of Ward County established the Ward County Irrigation District No 1, which expressly excluded the town of Barstow. In the early thirties, seven water districts, including the Ward County Irrigation District No. 1, formed the Red Bluff Water Power Control District and applied for a water appropriation permit from the Texas Board of Water Engineers. The permit granted by the Board of Water Engineers authorized the irrigation of land within the town of Barstow but did not have the effect of including Barstow in Ward County Irrigation District No. 1. The Board of the Ward County Irrigation District No. 1 may take action pursuant to procedures set out in the Water Code to add land to the district.

Yours very truly,

Susan Garrison
Susan Garrison
Assistant Attorney General
Opinion Committee