

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
H. S. Buddy Garcia, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 2, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 NOV -2 AM 9:30  
CHIEF CLERKS OFFICE

**RE: CITY OF FRISCO AND TERRA SOUTHWEST, INC.  
TCEQ DOCKET NO. 2007-0275-UCR**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Terra Southwest, Inc.'s Motion to Overturn in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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**TCEQ DOCKET NO. 2007-0275-UCR**

<b>SECTION 13.248 AGREEMENT</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DESIGNATING SERVICE AREAS</b>	<b>§</b>	<b>TEXAS</b>
<b>BETWEEN THE CITY OF FRISCO,</b>	<b>§</b>	<b>COMMISSION</b>
<b>CCN NO. 11772 AND TERRA</b>	<b>§</b>	<b>ON</b>
<b>SOUTHWEST, INC. CCN NO. 11068</b>	<b>§</b>	<b>ENVIRONMENTAL</b>
<b>IN DENTON COUNTY, TEXAS</b>	<b>§</b>	<b>QUALITY</b>

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO  
TERRA SOUTHWEST, INC.'S MOTION TO OVERTURN**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on  
Environmental Quality (TCEQ or the Commission) responds to Terra Southwest Inc. (Terra or  
Movant) concerning the above-referenced matter as follows:

**I. INTRODUCTION**

On October 12, 2007, Terra filed a timely Motion to Overturn the Executive Director's  
(ED's) Decision dated September 20, 2007 regarding a section 13.248 agreement designating  
Certificate of Convenience and Necessity (CCN) areas between the Movant and the City of  
Frisco (Frisco or Respondent). According to the Movant, the agreement provides for Terra to  
transfer 335 acres of its CCN area to Frisco, but the map included with the ED's order is  
incorrect and transfers more than the agreed upon 335 acres. Therefore, Terra requests this  
Motion to Overturn be granted to that the map properly reflects the section 13.248 agreement.  
Terra provides a map to illustrate what portion was inadvertently included in the ED's order.

The Respondent agrees that there was a mapping error but disagrees with Terra as to the  
extent of the error. Frisco provides its own map with its rendition of what it believes the

agreement to be. Respondent urges the Commission to deny the Motion to Overturn and simply correct the map.

## II. RESPONSE

It is clear that the parties disagree as to what area should be included in the section 13.248 agreement, and OPIC cannot determine which party is correct based on the information provided. However, there is no dispute that both parties agree the map provided in the ED's order is incorrect. On that basis alone, the ED's order should be overturned, and the parties should meet with the ED to determine the extent of the transfer of service area from the Movant to the Respondent.

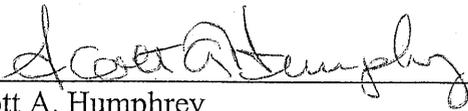
OPIC recommends granting the Motion to Overturn the Executive Director's Order. Furthermore, OPIC recommends remanding the matter to the ED so that the ED can work with the Movant and Respondent to determine the correct boundaries of the service areas in light of the section 13.248 agreement.

## III. CONCLUSION

OPIC recommends granting the Movant's Motion to Overturn based on both parties' agreement that the Executive Director's map does not accurately reflect the section 13.248 agreement. OPIC further recommends remanding the matter to the Executive Director so that he may work with the Movant and Respondent to produce a map that corresponds with the parties' agreement.

Respectfully submitted,

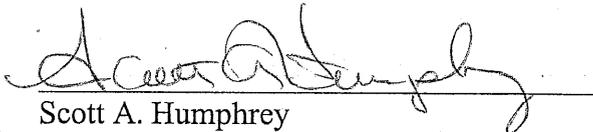
Blas J. Coy, Jr.  
Public Interest Counsel

By 

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2007 the original and eleven true and correct copies of the foregoing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Scott A. Humphrey

**MAILING LIST**  
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**TCEQ DOCKET NO. 2007-0275-UCR**

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