

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 21, 2010

**Via Certified Mail, Return Receipt Requested**  
**Via First Class Mail, Postage Pre-Paid**

Gregory M. Ellis  
Attorney at Law  
2104 Midway Court  
League City, Texas 77573  
Article No. 7010 0290 0002 7775 1817

Re: Commission Agenda Notice; January 26, 2011; Compliance Status;  
Kinney County Groundwater Conservation District; TCEQ Docket No. 2010-  
0875-DIS

Dear Mr. Ellis:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality at its **January 26, 2011, meeting at 9:30 a.m.** The meeting will be held at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. For further information concerning procedures of the Commission, you may contact the Commission's Public Interest Counsel at (512) 239-6363.

The purpose is to allow the District and the Executive Director to report the Commission on the status of the District's compliance with the terms and conditions of the Compliance Agreement executed on September 10, 2010. Accordingly, be prepared to respond to the Commission.

If you have any questions, please do not hesitate to contact me at (512) 239-2053 or by electronic mail at [jsallans@tceq.state.tx.us](mailto:jsallans@tceq.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "James Sallans".

James Sallans, Attorney  
Litigation Division

cc: Office of The Chief Clerk, MC 105  
Blas Coy, TCEQ Public Interest Counsel, MC 103  
Ken Carver, Gen. Mgr., KCGCD, P.O. Box 369, Brackettville, Texas 78832-0369

CHIEF CLERK'S OFFICE

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COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Bryan W. Shaw, Ph.D., *Chairman*  
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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 31, 2010

Gregory M. Ellis  
Attorney at Law  
2104 Midway Court  
League City, Texas 77573

Re: Proposed Compliance Agreement  
Kinney County Groundwater Conservation District; TCEQ Docket No. 2010-0875-DIS  
**FOR SETTLEMENT PURPOSES ONLY**

Dear Mr. Ellis:

Please find enclosed a proposed Compliance Agreement on the matter of Kinney County Groundwater Conservation District.

This Compliance Agreement has been drafted to address matters related to the operational status, and the financial and operational management of Kinney County Groundwater Conservation District. Please review and consult with your client regarding the terms of the Agreement.

We desire to have this matter considered promptly by the Commission. Accordingly, we need to have a response to this proposed Compliance Agreement within ten days of receipt of this letter. If your client would like to execute the proposed Compliance Agreement, please have an authorized representative of the District sign and date on the signature page and mail the original to:

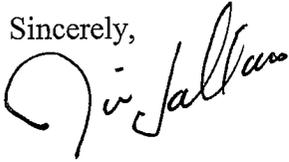
Mr. Kelly Mills  
Leader, Groundwater Planning and Assessment Team, MC 147  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

After the Compliance Agreement is executed by District and the Executive Director, he will report back to the Commission as required and request the matter be placed on the Commission's Agenda. It is important to note, that the earlier we receive the signed Compliance Agreement the earlier the District will be able to complete the requirements of the Agreement.

Mr. Ellis  
August 31, 2010  
Page 2

If you have any questions, please do not hesitate to contact me at (512) 239-2053 or by electronic mail at [jsallans@tceq.state.tx.us](mailto:jsallans@tceq.state.tx.us). Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James Sallans". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James Sallans, Attorney  
Litigation Division

cc: Kelly Mills, Leader, Groundwater Planning and Assessment Team, MC 147

Enclosure

# Texas Commission on Environmental Quality

## COMPLIANCE AGREEMENT

### Kinney County Groundwater Conservation District Kinney County, Texas

The Texas Commission on Environmental Quality (TCEQ) is charged with the regulation of underground water conservation districts pursuant to Tex. Water Code ch. 36. Under Tex. Water Code § 36.1071, a groundwater conservation district is required to adopt a groundwater management plan and submit the adopted plan to the Executive Administrator of the Texas Water Development Board (TWDB) for approval. Pursuant to Tex. Water Code § 36.1072, the TWDB must approve the plan if it meets the requirements of the Code. The State Auditor's Office (SAO) is charged with determining whether a groundwater conservation district is actively engaged in achieving the objectives of its approved groundwater management plan. The TCEQ is required, under Tex. Water Code § 36.302, to take appropriate action to ensure groundwater conservation districts comply with these requirements.

In 2006, the State Auditor's Office (SAO) performed an audit of the Kinney County Groundwater Conservation District (District) and found the District operational in achieving 75% of the objectives of its 2004 management plan in fiscal year 2004 and 78% of the objectives of its management plan in fiscal year 2005. The SAO also found that the District had not fully complied with mandatory provisions of the Water Code and District rules regarding financial and operational management and made 32 recommendations to address these deficiencies. In response, the District revised its management plan. The new plan included 10 specific objectives which were approved by the TWDB in June 2008.

On February 26, 2010 the SAO released a report to follow up on the District's operational status wherein the agency concluded that the District was not operational because it had failed to meet 80% of the objectives of its 2008 management plan. The SAO additionally disclosed deficiencies in the financial and operational practices of the District and that the District had failed to fully implement 31 of the 32 financial and operational recommendations made by the SAO in its 2006 report.

Subsequent to the release of the February 2010 report, the District provided updates in April, May and June, 2010 to report on its progress towards meeting the SAO recommendations and to implement the objectives of its 2008 management plan. The District also provided financial audits for the fiscal years ending September 30, 2006, 2007, 2008, and 2009. Based on these reports, the Executive Director's staff concluded that the District's financial outlook was precarious and liabilities had exceeded assets for fiscal years 2006 through 2009.

On May 13, 2010, the District adopted amendments to its 2008 management plan. The TWDB approved the amendments on July 5, 2010. The 2010 management plan objectives specified that the District shall:

1. Include in future Annual Reports to the Board of the District a list of all activities performed during the year to obtain funding for the District;
2. Create and submit for publishing an article regarding the elimination of wasteful practices and/or conservation of groundwater for distribution in Kinney County and keep a copy in the District office for a period of three (3) years;
3. Maintain records of minutes of Board meetings for Region J in the District for a period of three (3) years;

4. Include a report from the US Drought Monitor, South Region in the regular monthly meeting agenda and retain a copy in the meeting minutes kept at the District office; and,
5. Document any attempts to secure funding and retain documentation of these attempts in the District office for a period of three years.

The Executive Director's staff recognize that the District has implemented four of the 2010 management plan objectives described above and anticipate that the fifth objective will be accomplished with the December 31, 2010 filing of its annual report to the District's Board of Directors. To address the Executive Director's continuing concerns about the financial and operational management of the District, to encourage active implementation of the District's 2010 approved management plan and ensure compliance with Chapter 36 of the Water Code and TCEQ rules, and to provide the District the opportunity to fulfill its statutory obligations, the District and the Executive Director have entered into this Compliance Agreement (CA). Without admitting any legal liability or waiving any defenses, the District agrees to undertake the following provisions:

1. Within 60 days of the effective date of this CA, the District shall provide documentation to the Executive Director to demonstrate adoption and implementation of the 32 financial and operational recommendations cited in the 2006 State Auditor's Office Audit Report and the 2010 State Auditor's Office Follow-Up Audit Report, and/or the adoption of other policies related to the financial or operational management of the District.
2. Within 90 days from the effective date of this CA, the District shall submit a report on District permitting activity to the Executive Director. The report shall provide detailed information on each permit application and include copies of all permit applications received by the District since January 1, 2009 through the effective date of this CA. The report must document the permitting process for each permit application submitted and must list the name of the applicant, date of receipt, and action taken, including the date the application was found to be administratively complete or incomplete, date the notice of hearing was mailed to the applicant, date of the hearing and whether a final decision has been rendered.
3. Within 90 days from the effective date of this CA and for each 90 day period directly thereafter, the District shall submit a summary of its well permitting activity conducted after the effective date of this CA. Each summary shall detail permit activity demonstrating compliance with Texas Water Code ch. 36 and District rules for each application considered by the District during the reporting period. The summary shall include copies of each permit application received by the District during the reporting period and must list the name of the applicant, date of receipt, and action taken, including the date the application was found to be administratively complete or incomplete, date the notice of hearing was mailed to the applicant, date of the hearing and whether a final decision has been rendered.
4. Within 180 days from the effective date of this CA, the District shall submit to the Executive Director a five-year budget adopted by the District's Board. The five-year budget shall forecast income and expenditures for the next five budget years of the District and must provide a timeline showing when the District will achieve a positive account balance.
5. By January 31, 2011, the District shall file with the Executive Director:
  - a. A report demonstrating that it is actively engaged in achieving all objectives of the District's 2010 management plan which shall include documentation that the all the objectives of the plan for the year 2010 have been implemented; and,

- b. The District's 2010 annual financial audit, signed and dated by the independent auditing entity.
6. By January 31, 2012, the District shall submit to the Executive Director:
- a. A report demonstrating that it is continuing to be actively engaged in achieving all objectives of the Districts 2010 management plan. The report shall demonstrate the implementation of all the objectives of the plan for the year 2011.
  - b. The District's 2011 annual financial audit, signed and dated by the independent auditing entity.
7. Within 15 days of the date after each provision above is required to be completed (provisions 1 through 6.b.), the District shall submit written certification and supporting documentation including District minutes and publications, and or other records to demonstrate compliance with the provisions of this CA. The certification shall be notarized by a State of Texas Notary Public and include the following language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The District shall submit the written certification and copies of documentation necessary to demonstrate compliance with these requirements to:

Mr. Kelly Mills, Leader  
Groundwater Planning and Assessment Team, MC 147  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

8. Unless the Executive designates a different deadline, the District shall respond completely to all requests for documentation and information within 30 days from the date of receipt of any request made by the Executive Director.
9. The Executive Director may grant an extension of any deadline in this CA or in any plan, report, or other document submitted pursuant to this CA, upon a written and substantiated showing of good cause. All requests for extensions by the District shall be made in writing to the Executive Director no later than fifteen (15) business days before the deadline, or earlier if ascertained. The request shall contain an explanation as to why the extension is needed and a modified timeline adjusting subsequent action dates as agreed to in the CA. Extensions are not effective until the District receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
10. The District shall give notice of this CA to personnel who manage the District and to all members of the District's Board of Directors. At any time, the Executive Director may make recommendations to the District and/or file a report with the Commission recommending further action.

Should unforeseen circumstances indicate a need to alter the CA, the District must immediately notify Mr. Kelly Mills in writing so that an amendment may be considered by the Executive Director. Amendments to this CA must be in writing and signed by the Executive Director. The determination to grant any amendment to this CA rests solely with the Executive Director.

This CA shall terminate eighteen (18) months from the effective date of this agreement.

The effective date of this CA shall be the last date of execution by the parties as indicated below. Acceptance of the terms of this CA is indicated by the signatures below.

\_\_\_\_\_  
Authorized representative Kinney County  
Groundwater Conservation District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of authorized representative of  
Kinney County Groundwater Conservation District

\_\_\_\_\_  
Title

\_\_\_\_\_  
L' Oreal W. Stepney, P.E., Deputy Director,  
Office of Water, TCEQ

\_\_\_\_\_  
Date

Instructions: Send this signed, original Compliance Agreement to Mr. Kelly Mills, Leader, Groundwater Planning and Assessment Team MC-147, Technical Analysis Division, Texas Commission on Environmental Quality, P.O. Box 13087-3087, Austin, Texas 78711-3087. Retain a copy of the signed Compliance Agreement for District records.