

TCEQ Interoffice Memorandum

To: Les Trobman, General Counsel

From: Kathleen Decker, Director *KCD*
Litigation Division

Date: November 8, 2011

Subject: Resolution
Docket No. 2011-2026-RES
December 7, 2011 Commission Agenda

Attached is a draft resolution which would give the Executive Director the authority to transfer Supplemental Environmental Project funds, which were previously allocated to specific counties via Agreed Orders, to another county in the same community.

An original and 7 copies are enclosed. Please do not hesitate to call me at (512) 239-6500 if you have any questions regarding this matter.

cc: Blas Coy, TCEQ Public Interest Counsel

RESOLUTION

Delegating to the Executive Director the authority to authorize the transfer of Supplemental Environmental Project (SEP) funds from one project to another and authorizing the Executive Director's sub-delegation of authority relating to the transfer of SEP funds as provided by this Resolution, Docket 2011-2026-RES

WHEREAS, the Commission is authorized by Section 7.002 of the Texas Water Code, to issue administrative enforcement orders, including administrative orders that assess penalties or require corrective measures; and

WHEREAS, the Commission is authorized by Section 7.067(a) of the Texas Water Code, to compromise, modify, or remit, with or without conditions, an administrative penalty as provided by Subchapter C of the Texas Water Code; and

WHEREAS, the Commission is authorized by Section 7.067(a) of the Texas Water Code to encourage participation in the cleanup of contaminated property through the use of Supplemental Environmental Projects giving preference to projects that benefit the community in which the alleged violations occurred as an offset to the payment of an administrative penalty assessed within an Agreed Order issued by the Commission; and

WHEREAS, the term "Supplemental Environmental Project" (SEP) is defined by Section 7.067(b) of the Texas Water Code as a project that prevents pollution, reduces the amount of pollutants reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters; and

WHEREAS, third-party administrators frequently perform or contract out the performance of the SEP projects utilizing funds received from respondents wanting to participate in the program in lieu of the payment of an administrative penalty; and

WHEREAS, at times a third-party administrator will receive more funds from respondents than is needed to complete the project and the funds are held for the development of a new project in the community or returned to the Commission for deposit in the state General Revenue fund; and

WHEREAS, the Texas Association of Resource Conservation and Development Areas, Inc. (RC & D) is a non-profit organization under U.S. Internal Revenue Code Section 501(c) founded for the purpose of promoting conservation, development, and utilization of natural resources and enhancing the environment and standard of living in all rural communities; and

WHEREAS, RC & D has entered into an agreement with the Texas Commission on Environmental Quality to perform SEPs throughout the state of Texas utilizing SEP funds received from enforcement respondents wanting to participate in the program; and

WHEREAS, RC & D has received monies but not yet expended funds from various respondents whose Commission Agreed Orders required them to send a set monetary amount to the RC & D for the purpose of paying for SEP projects in various counties in Central Texas; and

WHEREAS, an historic and devastating wildfire occurred in Central Texas during September and October 2011. The fire consumed over 34,000 acres, 1,645 homes and 38 commercial buildings including most of the Bastrop State Park; and

WHEREAS, the Commission strives to improve efficiency and effectiveness in its service to the public in fulfilling its mission to protect human health and the environment; and

WHEREAS, there exists good cause to allow the transfer of existing and non-utilized RC & D funds which are required to be used for other SEP projects within Central Texas by way of previously issued Commission Agreed Orders to be used for the benefit of human health and the environment in Bastrop County and other surrounding counties; and

WHEREAS, there exists good cause to allow the transfer of existing and non-utilized RC & D funds which are required to be used for SEPs in other communities in Texas by way of previously issued Commission Agreed Orders to be used for the benefit of human health and the environment in these other communities; and

WHEREAS, it will expedite matters to delegate to the Executive Director, or any authorized individual designated to act for the Executive Director, the authority to release RC & D from utilizing these funds as prescribed by existing Agreed Orders and to utilize them to remediate environments harmed by the historic wildfires in Central Texas and to remediate other environmental harm in those same communities where the SEP funds were previously dedicated; and

WHEREAS, the Executive Director is authorized to delegate to his staff any authority or duty assigned to him unless the statute, rule or order, assigning

the authority or duty specifies otherwise pursuant to Section 5.222 of the Texas Water Code; and

WHEREAS, 30 Tex. Admin. Code § 3.2 defines Executive Director as the Executive Director of the Commission, or any authorized individual designated to act for the Executive Director; and

WHEREAS, to streamline the transfer of these funds, the Executive Director may elect to delegate his authority to approve the transfer of SEP funds held by RC & D to the Office of Legal Services Deputy Director; and

WHEREAS, the Commission does not intend by the issuance of this resolution to repeal or change any duty or authority delegated to the Executive Director by Commission rule; and

NOW, THEREFORE, BE IT RESOLVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Commission hereby authorizes the Executive Director or his designee to work with the RC & D to effectuate the use and transfer of existing SEP funds from projects which were authorized by the Commission in previously issued Agreed Orders to be utilized for the benefit of human health and the environment in Bastrop and other surrounding counties subjected to the historic wildfires of September and October 2011 and for those communities where dedicated funds exist but need to be redirected to other projects in that same community.

IT IS FURTHER RESOLVED that the Commission hereby directs the Executive Director to implement this transfer as soon as practicable.

Issue date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman