

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



TEXAS
COMMISSION
ON ENVIRONMENTAL
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

February 25, 2009

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

Re: Executive Director's Exceptions to the ALJ's Proposal for Decision
Salt Fork Underground Water Conservation District
Enforcement ID No. 24642; RN101231082; TCEQ Docket No. 2007-0766-DIS-E

Dear Ms. Castañuela:

Enclosed for filing are the originals of the 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision.

Enclosed please also find one copy of this letter to you, one copy of the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, one copy of the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, and one copy of the letter to the Respondent. Please file stamp these documents and return them to Jim Sallans, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-2053.

Sincerely,

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

Jim Sallans
Attorney
Litigation Division

Enclosures

c: Mr. Jim Guess, President, Salt Fork Underground Water Conservation District, Box 162, Jayton, Texas 77528
Rebecca Clausewitz, Enforcement Division, TCEQ, MC R-13
Kelly Mills, Team Leader, TCEQ Groundwater Planning and Assessment Team, MC 147
Blas Coy, Public Interest Counsel, TCEQ, MC 103

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 25, 2009

Via Interagency Mail
Via Facsimile (512) 475-4994

The Honorable Tommy L. Broyles
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and The Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision; Salt Fork Underground Water Conservation District; Enforcement ID No. 24642; RN101231082; TCEQ Docket No. 2007-0766-DIS-E; SOAH Docket No. 582-09-0132; TCEQ Docket No. 2007-0766-DIS-E

To The Honorable Judge Broyles:

Please find enclosed a copy of 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision. These pleadings are being filed in response to your Proposal for Decision signed on February 6, 2009, 2009. If you have any questions or comments, please call me at (512) 239-0617.

Sincerely,

A handwritten signature in black ink that reads "Jim Sallans". The signature is written in a cursive style with a large initial "J" and "S".

Jim Sallans
Attorney
Litigation Division

Enclosures

c: Mr. Jim Guess, President, Salt Fork Underground Water Conservation District, Box 162, Jayton, Texas 77528
Office of the Chief Clerk, MC 105

letter of the term "publication" should be a lower case letter instead of an upper case letter. The sentence should be changed and revised by adding the underlined terms to the first sentence and by changing the "P" in the term "publication" to a lower case letter. The revised sentence should read, "On May 1, 2006, and July 14, 2006, the TCEQ Groundwater Planning and Assessment Team requested the following documentation to demonstrate that the Respondent's Management Plan was being implemented and enforced:

- a. Copies of the articles published by the local newspaper and the date of publication;..."

CONCLUSION OF LAW NO. 2

The Executive Director respectfully requests that Conclusion of Law No. 2 be revised to correct a typographical error by changing the capitalization of the first letter in the term "a district", on the second occurrence of the word in Conclusion of Law No. 2, to a lower case letter to reflect the general meaning of the word. The sentence should be changed and revised by changing the "D" in the term "a district" to a lower case letter. The revised sentence should read, "Under TEX. WATER CODE §§ 36.302 and 36.303, the Commission may take certain actions, including dissolving the District, when a district has been deemed non-operational."

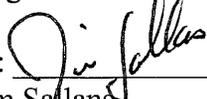
Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen Decker, Division Director
Litigation Division

By: 

Jim Sallans
State Bar of Texas No. 00785413
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3400
Fax: (512) 239-3434

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CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2009, the original and seven (7) copies of the foregoing Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

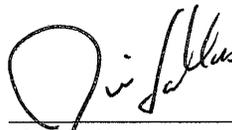
I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Certified Mail, return receipt requested Article No. 9171082133393456029682, to:

Mr. Jim Guess, President
Salt Fork Underground Water Conservation District
Box 162
Jayton, Texas 77528

I further certify that on this day a true and correct copy of the foregoing Exceptions was electronically delivered, to Blas Coy, Jr., Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via fax to 512/475-4994 and mailed via inter agency mail, to:

The Honorable Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701



Jim Sallans
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

**Granting Dissolution of Salt Fork Underground Water Conservation District
TCEQ Docket No. 2007-0766-DIS-E
SOAH Docket No. 582-09-0132**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition (First Amended EDRP) recommending that the Commission enter an order dissolving the Salt Fork Underground Water Conservation District (Respondent or District). The Executive Director (ED) of TCEQ, Represented by James W. Sallans of the Litigation Division appeared at the hearing. Respondent did not appear at the hearing and did not file for a continuance or otherwise explain its lack of participation. The ED requested that a default order be entered against Respondent and a proposal for decision (PFD) was prepared by an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), after a public hearing on this matter that convened on December 9, 2008 in Austin, Texas. After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. At the time of the violations, Respondent operated a ground water conservation district in Kent County, Texas.
2. The District was created under chapter 36 of the TEXAS WATER CODE.
3. On May 1, 2006 and July 14, 2006, the TCEQ Groundwater Planning and Assessment Team requested the following documentation to demonstrate that Respondent's Management Plan was being implemented and enforced:
 - a. Copies of the articles published by the local newspaper and the date of publication;
 - b. Copies of the signed Board meeting minutes on the results of consultation of the Palmer Drought Severity Index and Drought Preparedness Council Situation Report;
 - c. A copy of registration and permit forms for all new wells registered with and permitted by the District; and
 - d. Copies of any groundwater analysis requested by well owners.
4. Respondent did not supply documentation to demonstrate that its groundwater management plan was being implemented.
5. The District is not operational and is not engaged in achieving the objectives of its ground water management plan.
6. Respondent received notice of the ED's findings and alleged violations on February 16, 2007.
7. On May 29, 2008, the ED filed his First Amended Report and Petition (EDFARP) and mailed a copy of it via first class mail and certified mail to Respondent.
8. On July 7, 2008, Respondent filed an answer to the EDFARP disputing the violations and requesting that the matter be referred to SOAH.
9. On September 10, 2008, the TCEQ referred the case to SOAH.

10. On November 7, 2008, notice of a December 9, 2008 hearing and of the EDFARP was sent to the President of Salt Fork Underground Water Conservation District and to each of the members of the Board by U.S. mail, first class and by certified mail, return receipt requested.
11. A preliminary hearing was held at 10:00 am on December 9, 2008. Neither Respondent nor a representative of Respondent appeared.
12. After the hearing, the ALJ who had presided left employment at SOAH. This case was reassigned to another SOAH ALJ who reviewed the record and prepared the PFD.
13. The notice of hearing:
 - a. Indicated the time, date, place, and nature of the hearing;
 - b. Stated the legal authority and jurisdiction for the hearing;
 - c. Indicated the statutes and rules the ED alleged Respondent violated;
 - d. Referred to the EDFARP, a copy of which was attached, which indicated the matters asserted by the ED; and
 - e. Advised Respondent, in at least 12-point bold-faced type, that failure to appear would result in the factual allegations contained in the notice and EDFARP being deemed as true and the relief sought in the notice possibly being granted by default.
14. All copies of the Notice and EDFARP sent via certified mail were claimed, except that sent to Roy Chism, Board Director, Salt Fork Underground Water Conservation District. None of the “wrappers” sent via first class mail was returned.
15. Kassi Atkinson, Advertising Director for the *Texas Spur*, provided an Affidavit of Publication stating that the Notice of Hearing and the Dissolution of the Salt Fork Underground Water Conservation District was published for two consecutive weeks in a publication regularly published or circulated in Kent County. The dates of publication were November 6, 2008 and November 13, 2008.
16. On December 9, 2008, the ALJ convened the preliminary hearing and jurisdiction was taken. The ED appeared through counsel of record, but Respondent did not appear.

17. Based on Respondent's failure to appear and proof of appropriate notice of the proceeding, the ED moved for a default judgment against Respondent.
18. The District is non operational and is not actively engaged in achieving the objectives of its management plan, as alleged by the ED.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the enforcement jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 because the violations alleged are within the TCEQ's general jurisdiction pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's water district program.
2. Under TEX. WATER CODE §§ 36.302 and 36.303, the Commission may take certain actions, including dissolving the District, when a district has been deemed non-operational.
3. The Commission is required to take action if a district fails to be actively engaged and operational in achieving objectives of its ground water management plan, 30 TEX. ADMIN. CODE § 293.22(a).
4. As required by TEX. GOVT. CODE § 2001.052 and 30 TEX. ADMIN. CODE §§ 1.11, 70.104 and 80.6. Respondent was notified of the EDFARP and the opportunity to request a hearing on the alleged violations.
5. Proper notice was provided specifically related to the dissolution of the District as required by 30 TEX. ADMIN. CODE § 293.22(d)(1) and (d)(2) and TEX. WATER CODE § 36.305.

6. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE § 70.106(b) and 80.113(d) that if it failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the Allegations contained in the notice of hearing would be deemed admitted as true.
7. As required by TEX. GOVT. CODE § 201.052, TEX. WATER CODE § 36.305, 1 TEX. ADMIN. CODE § 155.401 and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations, and the proposed dissolution of the District.
8. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOVT. CODE ch. 2003.
9. Based on the above Findings of Fact and Conclusions of Law, a default judgment should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.501 and 30 TEX. ADMIN. CODE § 70.106(b).
10. Based on the above Findings of Fact and Conclusions of Law, the allegations contained in the notice of the hearing, including those in the EDFARP attached thereto, are admitted as true.
11. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 293.20(d) and 293.22(a)(5).
12. The appropriate remedy is the dissolution of the District for alleged violations under 30 TEX. ADMIN. CODE §§ 293.20(d) and 22(a)(5).

13. Based on the above Findings of Fact and as set out in TEX. WATER CODE § 36.302, the District is non operational and is not actively engaged in achieving the objectives of the District's management plan and should be dissolved pursuant to TEX. WATER CODE § 36.303.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. On the effective date of this Commission Order, the Salt Fork Underground Water Conservation District is dissolved
2. Within 90 days after the effective date of this Commission Order, Respondent shall take any action necessary to comply with the dissolution of the District and transfer all records and any remaining funds to the Commissioners Court of Kent County.
3. Within 120 days after the effective date of this Commission Order, Salt Fork Underground Water Conservation District shall submit certification of the dissolution and transfer to:

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

4. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to the Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
5. All other motions, requests for entry of specific Findings of fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOVT. CODE § 2001.144
7. As required by TEX. WATER CODE § 36.308, the commission's Chief Clerk shall forward a certified copy of this Order to Respondent.
8. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman
For the Commission