

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 9, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP -9 PM 1:16
CHIEF CLERKS OFFICE

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Via Facsimile (512) 239-5533

Re: SOAH Docket No. 582-08-1502; TCEQ Docket No. 2007-0099-MIS; In Re:
Designation of the Central Texas Trinity Aquifer Priority Groundwater
Management Area

Dear Mr. Trobman:

I address the comments, exceptions, and responses that were submitted by the Executive Director, the McClennan County Groundwater Conservation District (GCD), and Hill County in response to the July 28, 2008, Proposal for Decision (PFD) and Proposed Order.

Executive Director's comments

1. Page 11 of the PFD

The Executive Director disagreed with the statement relating to the Executive Director's non-response to Coryell County's concerns about the alleged underestimate of the water usage for the sixteen county study area, the failure of the studies to consider increasing water use requirements of Fort Hood, or the inconsistencies of the various data bases on which the reports rely. I recommend no change to the PFD.

2. Page 15 of the PFD

The Executive Director disagreed with the statement that no single groundwater conservation district recommendation was made. I recommend no change to the PFD.

3. Finding of Fact 27

The Executive Director recommended the deletion of the word "done." I recommend adoption of the change.

4. Finding of Fact 28

The Executive Director recommended that the reference be changed to the “Clearwater Underground Water Conservation District.” I recommend adoption of the change.

5. Finding of Fact No. 41

The Executive Director recommended that the phrase “transferring water out of the districts” be changed to “regulating transfers of groundwater out of the districts.” I recommend adoption of the change.

6. Conclusion of Law No. 3

The Executive Director recommended that the text of the conclusion of law end after the word “groundwater” because the evidence did not raise issues about the elements listed in the balance of the definition of the term. I recommend adoption of the change.

McClennan County Groundwater Conservation District’s exceptions and the Executive Director’s responses

1. Use of the term “unreasonable”

The district disputed that it had argued that the designation of a Priority Groundwater Management Area (PGMA) for the five-county region would be unreasonable. Instead, the district asserted that it had argued that the recommendation to create a five-county groundwater conservation district would be unreasonable because of issues of representation and maintenance obligations.

The Executive Director had no objection to amending the PFD to reflect the district’s position. I concur with the district’s observation. However, the district did not seek a change in the PFD, despite the Executive Director’s lack of objection.

2. Conclusion of Law No. 5

The district excepted to Conclusion of Law No. 5 and recommended that the date of September 1, 2012, be added to it, as follows: “If elections do not confirm McLennan County GCD and Tablerock GCD by September 1, 2012, the most practicable and feasible option for the five county PFMA is one GCD that covers all five counties.”

The Executive Director did not agree with the exception because the legislation creating the two districts provides that by September 1, 2011, the boundaries of both of the districts must include at least one adjacent county. If the elections in the districts fail to add at least one adjacent county to each, then the Commission is to dissolve the districts. If that dissolution occurs, then the Commission is required to create new groundwater conservation districts *before*

2012. Because of these statutory deadlines, I concur with the Executive Director and do not recommend the adoption of the district's proposal.

3. Conclusion of Law No. 6

Conclusion of Law No. 6 drew a variety of proposals and counterproposals for change.

- The district excepted to Conclusion of Law No. 6, and recommended this change: “. . . if both GCDs are confirmed by September 1, 2012, the most practicable and feasible option for GCD creation is two GCDs. One GCD would consist of”

The Executive Director disagreed with the district's exception and proposal for the same reasons stated in the previous item. For the same reasons, I concur with the Executive Director and do not recommend the change proposed by the district.

- The district also asked that Conclusion of Law No. 6 be changed to read: “. . . and both GCDs are required to add a county, if either or both GCDs are confirmed”

The Executive Director did not oppose the proposed change, and I would recommend the adoption of the change.

- In addition, the Executive Director proposed in his response that the conclusion read “if both GCDs add a county by September 1, 2011, and are confirmed by September 1, 2012, the most practicable”

A summary of the proposals for the drafting of Conclusion of Law No. 6 are shown in the following table:

ALJ's Initial Draft	Because two GCDs, McLennan County and Tablerock GCD, have been legislatively created in the PGMA, and both GCDs are required to add a county, if both GCDs are confirmed, the most feasible and practicable option for GCD creation is two GCDs. One GCD would consist of Bosque, Somervell, and Coryell Counties, and the other would consist of McLennan and Hill Counties.
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District's Proposed Draft	Because two GCDs, McLennan County and Tablerock GCD, have been legislatively created in the PGMA, and both GCDs are required to add a county, if <u>either or both GCDs are confirmed by September 1, 2012</u> , the most feasible and practicable option for GCD creation is two GCDs. One GCD would consist of Bosque, Somervell, and Coryell Counties, and the other would consist of McLennan and Hill Counties.
Executive Director's Draft	Because two GCDs, McLennan County and Tablerock GCD, have been legislatively created in the PGMA, and both GCDs are required to add a county <u>by September 1, 2011, and, if both GCDs are confirmed by September 1, 2012</u> , the most feasible and practicable option for GCD creation is two GCDs. One GCD would consist of Bosque, Somervell, and Coryell Counties, and the other would consist of McLennan and Hill Counties.

I recommend adoption of the Executive Director's version.

4. Proposed Conclusion of Law Nos. 7 and 8

The district recommended that two new conclusions of law be adopted. One would be Conclusion of Law No. 7: "The enabling legislation of the McLennan District and the Tablerock District allow those districts to have until September 1, 2012, to be confirmed at a confirmation election." The second would be Conclusion of Law No. 8: "The Commission declines to adopt a two-year timetable between the designation of the PGMA and the creation of any new district or districts, or the expansion of any district or districts within the PGMA."

The Executive Director opposed the adoption of these new conclusions of law because he asserted the necessity of adopting the two-year timeframe outlined in item 2 of this letter. I do not concur with the Executive Director with regard to proposed Conclusion of Law No. 7 because I believe that the statement is accurate and relevant. I do concur with the Executive Director with regard to proposed Conclusion of Law No. 8 because of my adoption of the Executive Director's timetable.

The Executive Director also alternatively and contingently proposed changes to Conclusions of Law 57 and 58 if the Commission were to reject the Executive Director's position on the two-year time frame. In Conclusion of Law No. 57, the change would delete the words "will be subject to dissolution" and would add the words "shall be dissolved." Similarly, in

Conclusion of Law No. 58, the change would add the words “and a county is added to both GCDs” after the sentence’s introductory passage, “If both GCDs are confirmed.” The changes would more accurately reflect the Commission’s statutory obligations, and I would recommend their adoption.

I recommend adoption of the change.

5. Proposed Conclusion of Law No. 9

The Executive Director proposed in his response the adoption of a new Conclusion of Law No. 9: “If McClennan County Groundwater Conservation District or Tablerock Groundwater Conservation District does not add another county to its district by September 1, 2011, that non-confirming GCD is dissolved under S.B.3 (2007) and S.B 1985 (2007), as of that date.”

The Executive Director’s proposal is consistent with the rest of his proposals regarding the two-year timeframe. I recommend the adoption of the proposal.

Hill County’s comments and the Executive Director’s response

1. Finding of Fact No. 58

Hill County disagreed with Finding of Fact No. 58 because the county asserted that it has plans to form a groundwater conservation district. The county claims that its plans are without regard to the outcome of the McClennan County or Tablerock Groundwater Conservation Districts’ confirmation elections. The county asserted that it had begun discussions with Johnson and Ellis Counties about forming a separate multi-county groundwater conservation district.

The Executive Director disputed both Hill County’s disagreement with Finding of Fact No. 58 and the county’s right to submit the response because the document was filed ten days late. The Executive Director asserted that a finding about Hill County’s groundwater management plans should not be based on the county’s having merely begun discussions about its plans.

I concur with the Executive Director’s assertion about the finding. Under the circumstances, I recommend that the county’s late filing of its comments not be bar to the Commission’s consideration of the submission.

Sincerely,



Paul D. Keeper

Administrative Law Judge

STATE OFFICE OF ADMINISTRATIVE HEARINGS
WILLIAM P. CLEMENTS BUILDING
300 West Fifteenth Street
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 475-4994

SERVICE LIST

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
(TCEQ)

STYLE/CASE: TRINITY AQUIFER PRIORITY GROUNDWATER
MANAGEMENT AREA

SOAH DOCKET NUMBER: 582-08-1502

TCEQ DOCKET NUMBER: 2008-0099-MIS

STATE OFFICE OF ADMINISTRATIVE HEARINGS	PAUL D. KEEPER ADMINISTRATIVE LAW JUDGE
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PARTIES	REPRESENTATIVE/ADDRESS
Texas Commission On Environmental Quality	Robin Smith, Staff Attorney Texas Commission on Environmental Quality MC-175 P.O. Box 13087 Austin, TX 78711-3087 Tel 512/239-0600 Fax 512/239-3434 512/239-0606
Office Of Public Interest Counsel Of The Texas Commission On Environmental Quality	Blas Coy Office of the Public Interest Counsel Texas Commission on Environmental Quality MC-103 P.O. Box 13087 Austin, TX 78711-3087 Tel 512/239-6363 Fax 512/239-6377
McClennan County Groundwater Conservation District	Hunter Burkhalter, Attorney Kemp, Smith 816 Congress Avenue, Ste. 1150 Austin, TX 78749 Tel (512) 320-5466 Fax (512) 320-5431

Hill County, Texas	Justin W. Lewis, County Judge P.O. Box 457 Hillsboro, TX 76645 Tel (254)582-4020 Fax (254) 582-4028
Bosque County, Texas	Cole Ward, County Judge P.O. Box 647 Meridian, TX 76665 Tel (254) 435-2382 Fax
Coryell County Texas	John Firth, County Judge 1704 Freedom Lane Copperas Cove, TX 76522 Tel (254) 865-5911 ext. 222 Fax (254) 865-2040
Somerville County, Texas	Lloyd Wirt, County Commissioner P.O. Box 28 Glen Rose, TX Tel (254) 897-2206 Fax (254) 897-7703
City of Clifton	Patricia Coy, Attorney P.O. Box 547 Clifton, TX 76634 Tel (254) 675-8663 Fax (254) 675-4567
Bosque County Farm Bureau	Ned Meister Texas Farm Bureau P.O. Box 2689 Waco, TX 76702 Tel (254) 751-2457 Fax (254) 751-2671
Charlotte Miller	975 Anderson Lane McGregor, Texas 76557 Tel (254-723-0337 Fax (254) 840-2897
Jeffrey Martin Hewlett	10370 Highway 6 Meridian, TX Tel: (254) 717-2022
Table Rock Groundwater Conservation District	David Freeman Representative 620 E. Main St. Gates Ville, TX 79528 Tel (254) 865-5911 x221 Fax (254) 865-2040

xc: **Docket Clerk, State Office of Administrative Hearings**
Docket Clerk, Office of the Chief Clerk, TCEQ, Fax No. (512) 239-3311