SOAH DOCKET NO. 582-08-1502
TCEQ DOCKET NO. 2007-0099-MIS

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CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DESIGNATION OF THE CENTRAL TEXAS TRINITY AQUIFER PRIORITY GROUNDWATER MANAGEMENT AREA	§ § § § §	**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

EXECUTIVE DIRECTOR'S RESPONSE TO MCLENNAN COUNTY GROUNDWATER CONSERVATION DISTRICT'S EXCEPTIONS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) responds to McLennan County Groundwater Conservation District's (MCGCD) exceptions to the Administrative Law Judge's Proposal for Decision. The Executive Director recommends that the Administrative Law Judge and the Commission deny MCGCD's second exception.

First Exception: The Executive Director has no objection to amending the PFD to state that MCGCD remained neutral of the question of whether a PGMA ought to be designated for the five-county region proposed by TCEQ.

Third Exception: The Executive Director agrees that Conclusion of Law No. 6 on page 11 of the order should be reworded to state that only one GCD, either MCGCD or Tablerock GCD, needs to be confirmed for two GCD's to be the most feasible and practicable option for GCD creation. If only one GCD is confirmed, the TCEQ would likely pursue GCD creation in the other areas only.

Second Exception: MCGCD's second exception requests two Conclusions of Law be changed to the following:

5. 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 PGMA is one GCD that covers all five counties.

6. 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 by September 1, 2012, the most practicable and feasible 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.

MCGCD also requests the following Conclusions of Law be added:

7. The enabling legislation of the McLennan District and the Tablerock District allow those districts to have until September, 2012, to be confirmed at a confirmation election.

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.

MCGCD additionally requests that the commission not adopt that portion of the PFD that recommends a two year timetable for further action by the Executive Director to create GCDs in the PGMA.

The Executive Director disagrees with these changes to the PFD and Order. The legislation creating these two GCDs provides that by September 1, 2011, both of the new GCDs' boundaries must include at least one adjacent county, or the TCEQ shall dissolve the GCDs. S.B. 3 Article 11 (80th Leg. R.S. 2007) and S.B. 1985 (80th Leg. R.S. 2007); Exhibit ED-LB-2, p. 77. If both GCDs do not add other counties and are dissolved by the TCEQ in 2011, the TCEQ should proceed to create GCDs before 2012.

Additionally, the Executive Director believes that the Administrative Law Judge's proposed two year timeline is appropriate and balances the requirements of all the statutes. MCGCD and Tablerock GCD have two years to obtain confirmation from the date of the Commission's order designating this PGMA, if the Commission issues the Order. That should be sufficient time to confirm these districts.

If the Commission does not agree with the Executive Director's position on the two year time frame, and desires to adopt MCGCD's proposed Conclusions of Law, the Executive Director requests that Finding of Fact No. 57 and 58 be changed to:

57. Two GCDs have already been created in the proposed PGMA by legislation. These two districts are the McLennan County GCD and the Tablerock GCD in Coryell County. The legislation for both GCDs requires that by September 1, 2011, both GCDs' boundaries must include an adjacent county, or the districts <u>shall be dissolved</u> [will be subject to dissolution] by the TCEQ.

58. If both GCDs are confirmed <u>and a county is added to both GCDs</u>, two multi-county GCDs in the proposed PGMA would be the best option for the PGMA. One GCD would consist of Bosque, Somervell, and Coryell Counties, and the other would consist of McLennan and Hill Counties.

The Executive Director requests that MCGCD's proposed Conclusion of Law No. 6 be changed to:

6. 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 add a county by September 1, 2011, and are confirmed by September 1, 2012, the most practicable and feasible 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.

The Executive Director also requests that the following Conclusion of Law be added:

9. If McLennan 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.

In conclusion, the Executive Director does not contest MCGCD's first and third exceptions, but recommends that the second exception be denied.

Respectfully submitted,

Texas Commission on Environmental Quality

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CERTIFICATE OF SERVICE

I certify that on August 27, 2008, the "Executive Director's Response to McLennan County Groundwater Conservation District's Exceptions," was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and the State Office of Administrative Hearings, and a complete 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.

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