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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

January 11, 2010

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
State Office of Administrative Hearings
12100 Park 35 Circle
Austin, Texas 78753

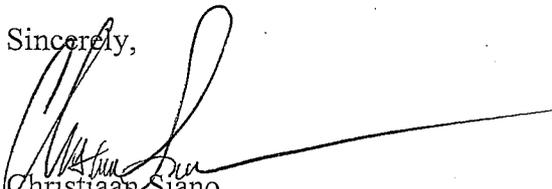
Re: *In the matter of the Creation of a Groundwater Conservation District for Priority Groundwater Management Area in Dallam County; SOAH Docket No. 582-09-2350; TCEQ Docket No. 2008-1940-WR; Exceptions to PFD*

Dear Ms. Castañuela:

Enclosed is the original of the Executive Director's Exceptions to the Administrative Law Judge's Proposal For Decision in the above referenced matter. A copy is being served on each of the parties.

If you have any questions, please call me at (512) 239-6743.

Sincerely,



Christiana Siano
Staff Attorney
Environmental Law Division

Enclosure

cc: All the parties on the MAILING LIST

SOAH DOCKET NO. 582-09-2350
TCEQ DOCKET NO. 2008-1940-WR

EXECUTIVE DIRECTOR'S	§	BEFORE THE TEXAS COMMISSION
PETITION FOR CREATION OF	§	
GROUNDWATER CONSERVATION	§	
DISTRICT FOR PRIORITY	§	ON
GROUNDWATER MANAGEMENT	§	
AREA IN DALLAM COUNTY	§	ENVIRONMENTAL QUALITY

THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files the following Executive Director's Exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) in the above captioned matter. The ED agrees with the Proposal for Decision and believes it was correctly decided. However, several factual and clerical errors should be corrected.

A. Clerical Errors

1. **Order, page 2**, FoF No. 2 states that the ED approved the Report on "December 9, 2009." In fact, the report was approved on December 9, 2008. This Finding of Fact should be changed accordingly.
2. **Order, page 4**, FoF No. 21 states "The total ad valorem tax impact on the landowners if The Areas joined the NPGCD would be less **that** \$20,000 a year." The ED believes the ALJ meant to write "less **than** \$20,000 a year." This Finding of Fact should be changed accordingly.

B. Factual Errors

1. Boundaries of Dallam County PGMA

- **PFD, page 3** (¶ 1, 1st sentence), states:

"In 1990, all of Dallam County was designated by the Texas Water Commission as a Critical Area . . ."

- **PFD, page 6** (last sentence) states:
“All of Dallam County is a PGMA . . .”
- **PFD, page 20** (§ 1) states:
“In 1990, all of Dallam County was designated a PGMA.”
- **Order, FoF No. 1**, states:
“In 1990, all of Dallam County was designated by the Texas Water Commission as a Critical Area . . .”

These statements should be revised to reflect that all of Dallam County was designated a PGMA **except** for the area within the Dallam County Underground Water Conservation District Number 1. 30 TAC § 294.32(b).¹ Although all of the Areas are within Dallam County PGMA, the area within the Dallam County Underground Water Conservation District (DCUWCD) was excluded because it was already under groundwater management. *See* ED Ex. A-1 (the Report), map at 3 and 14. DCUWCD is now a part of NPGCD.

The ED recommends revising the PFD, pages 3, 6, and 20, and the Order, Finding of Fact No. 1, to reflect that all of Dallam County, except that area already under groundwater management, was designated a Critical Area/PGMA.

2. Boundaries of NPGCD

FoF No. 16 in the proposed Order, states:

The NPGCD encompasses Sherman, Hansford, Ochiltree, Moore, Hutchinson, Lipscomb, Hartley (north of the Canadian River) and Dallam (except for the Areas) Counties.

To the best of the ED’s knowledge, portions of Moore and Hutchinson, in addition to Hartley, Counties, are **not** within NPGCD. *See* Report, at 18. The qualifier—“north of the Canadian River”—applies to Hartley *and* Moore *and* Hutchinson Counties, not Hartley alone. Accordingly this Finding of Fact should be revised to read:

¹ 30 TAC § 294.32(b) states: “The Dallam County Priority Groundwater Management Area is composed of Dallam County **except** for the area within the Dallam County Underground Water Conservation District Number 1, which is excluded from the Priority Groundwater Management Area.” (emphasis added)

The NPGCD encompasses Sherman, Hansford, Ochiltree, Lipscomb, and (north of the Canadian River) Hartley, Moore, Hutchinson, and Dallam (except for the Areas) Counties.

This is also consistent with Mr. Walthour's testimony.²

3. Feasibility

PFD, page 14, §V(D)(3) (¶ 1, 1st sentence) states:

According to the ED, with respect to GCDs “[e]conomic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates.”

30 TAC § 293.59(b), from which the quoted language comes, controls the determination of feasibility when districts apply to the TCEQ for bond approval. It has also been used in the determination of feasibility for district creations. However, Rule 293.59 may not apply to GCDs at all, primarily because a GCD is unlikely to provide utility services. The ED's brief stated:

With respect to water districts, feasibility usually relates to whether the assessed valuation of the land will support a reasonable tax rate to fund the services the district was created to provide. *See, e.g.*, 30 TAC § 293.59(b) (“Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates.”). This requires an examination of how GCDs are funded and how those funding mechanisms are practicable to the Areas.

ED Closing Brief, at 6. By citing Rule 293.59, the ED meant to use it as an example of how feasibility is assessed generally, but not to say that it is necessarily controlling on GCD feasibility. Because there is no definition of feasibility for GCDs, the ED believed that reference to this Rule would assist the ALJ in making that determination, but did not mean to imply that it is *the* definition of feasibility for all purposes. Therefore, the ED suggests the PFD be amended to state:

According to the ED, with respect to water districts, feasibility relates to whether the

² NPGCD Ex. A (Walthour Direct) at 8.

assessed valuation of the land will support a reasonable tax rate to fund the services the district was created to provide.

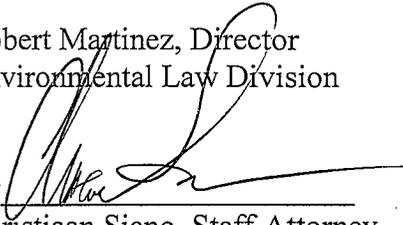
C. CONCLUSION

The ED agrees with the PFD. The Commission should issue an order recommending that Areas A, B and C be added to North Plain GCD. However, the above minor errors should be corrected to make the PFD and Order more accurate.

Respectfully submitted,

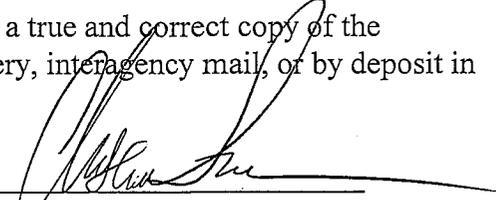
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By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2010 a true and correct copy of the foregoing document was delivered via facsimile, hand delivery, interagency mail, or by deposit in the U.S. Mail to all persons on the attached mailing list.


Christiaan Siano
Environmental Law Division

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TCEQ Docket No. 2008-1940-WR; SOAH Docket No. 582-09-2350

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