

Bryan W. Shaw, Ph.D., *Chairman*
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 22, 2010

State Office of Administrative Hearings

Honorable Richard R. Wilfong
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-0325

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;
Replies to Exceptions to PFD

Dear Judge Wilfong:

Enclosed is the Executive Director's Replies to Exceptions to the Administrative Law Judge's Proposal For Decision in the above referenced matter. The original is being filed with the Office of the Chief Clerk at TCEQ and a copy is being served on each of the parties.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Christiano Siano", written over a horizontal line.

Christiano Siano
Staff Attorney
Environmental Law Division

Enclosure

cc: All parties on the MAILING LIST

Mailing List
Dallam County Priority Groundwater Management Area
TCEQ Docket No. 2008-1940-WR; SOAH Docket No. 582-09-2350

FOR THE OFFICE OF CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental
Quality
Office of Chief Clerk
P.O. Box 13087, MC 105
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

Eliot Crabtree
13311 FM 807
Dalhart, Texas 79022
Tel: (806) 268-0909

Daisy Moore Gabler
12864 US Hwy 385
Dalhart, Texas 79022
Tel: (806) 384-2321

STATE OFFICE OF ADMINISTRATIVE
HEARINGS:

The Honorable Richard Wilfong
State Office of Administrative Hearings
P.O. Box 13085
Austin, Texas 78711-3025
Tel: (512) 475-4993
Fax: (512) 475-4994

Glen Heiskel
Box 45
Dalhart, Texas 79022
Tel: (806) 333-4128
Fax: (806) 384-2367

Gary Heiskel
222 Yucca Place
Dalhart, Texas 79022
Tel: (806) 244-6060

PROTESTANTS:

Doug G. Caroom, Attorney,
Susan Maxwell, Attorney,
Bickerstaff, Heath, Delgado, Acosta, LLP,
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Tel: (512) 472-8021
Fax: (512) 320-5638
Representing Clifford Skiles

Mark Tharp, *Tharp Family Trust*
3030 Canyon Trail Road
Dalhart, Texas 79022
Tel: (806) 244-5608
Fax: (806) 244-5743

Merle Heiskell
4001 Hwy 54
Dalhart, Texas 79022
Tel: (806) 333-2313

Kevin Wakley, Attorney,
Irwin, Merritt, Hogue, Price & Carthel,
P.C.
320 South Polk St., Suite 500,
Amarillo, Texas 79101
Tel: (806) 322-1440
Fax: (806) 322-1441
*Representing Poole Leasing Co., Inc., and
Entrania Springs, L.P.,*

Gerald Wilhem
1919 Cherokee
Dalhart, Texas 79022
Tel: (806) 249-2369
Fax: (806) 249-2773

Edward R. Moore
12857 US Hwy 385
Dalhart, Texas 79022
Tel: (806) 384-2190
Fax: (806) 384-2283

Will Allen
1909 Denver Avenue
Dalhart, Texas 79022
Tel: (806) 333-3335
Fax: (806) 727-4643

FOR NORTH PLAINS GCD:

F. Keith Good, Attorney,
Lemon, Shearer, Phillips, Good
P.O. Box 1066
Perryton, Texas 79070
Tel: (806) 435-6544
Fax: (806) 435-4377

FOR THE OFFICE OF PUBLIC
INTEREST COUNSEL:

Eli Martinez
Texas Commission on Environmental
Quality
Office of Public Interest Counsel MC103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3974
Fax: (512) 239-6377

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 REPLIES TO 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 **Replies** to Protestants' 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.

I. INTRODUCTION

The procedure for a commission-initiated creation of a groundwater conservation district (GCD) in a priority groundwater management area (PGMA) designated before September 1, 2001, is found in Section 293.19(b) of the Texas Administrative Code, Title 30 (30 TAC). The scope of that section is the primary basis for the Protestants' complaint. The Protestants would read that section so expansively as to include considerations of groundwater conditions within the PGMA. They also claim that considerations of whether there is a need and benefit for the GCD are inherent in this process. For the reasons set out below, the ED believes that the ALJ correctly rejected such expansive a reading of Section 293.19(b) and limited the scope of the proceeding to the considerations set out therein.

II. LEGISLATIVE, STATUTORY, AND REGULATORY HISTORY

Legislative History

Dallam County was designated a Critical Area (now PGMA) in 1990, which designation is codified in 30 TAC, Section (§) 294.32 (formerly § 294.22). The statutory intent to ensure groundwater management by way of groundwater conservation districts has not changed since 1990. See TWC § 36.0015 (GCDs are the state's preferred method of groundwater management). PGMA designations are not appealable under the current law, or under the law as it existed in 1990. Cf. TWC, § 35.005(i) with TWC § 52.053(b) (1990).¹ In 1997, the Legislature reaffirmed the PGMA designations up to that date by passing Senate Bill 1, where it stated that:

An area designated as a critical area under Chapter 35, Water Code, as it existed before the effective date of this Act, or under other prior law, shall be known and referred to as a priority groundwater management area on or after the effective date of this Act.²

In 2001, Senate Bill 2³ amended Chapter 35 of the Water Code, to authorize and require the Commission to establish groundwater management in PGMA's by a new or existing groundwater conservation district if, and only if, local actions had not succeeded to create and establish such a groundwater management entity. See TWC § 35.012(b). S.B. 2 further required the Commission to complete the initial designation of PGMA's across all major and minor aquifers of the state for all areas that meet the criteria for designation.⁴ TWC § 35.007. The Commission implemented the PGMA and GCD creation provisions of Water Code, Chapters 35 and 36, by and through the Commission rules contained in 30 TAC, Chapter 293, Subchapter C, and Chapter 294.

¹ In 1990, the law provided that the ED could call a hearing after the designation of a PGMA (then "Critical Area"), to consider whether to add land within a PGMA to an existing district or whether to create a new district. TWC § 52.055 (1990). If the commission found that the land should be added to an existing district, then the commission was to issue an order making that recommendation. TWC § 52.061 (1990). At that time such hearings were discretionary and there were no time constraints. Under current law, if the landowners fail to act within 120 days of the designation of a PGMA, [within two years] the ED shall either create a district or recommend that the land be added to an existing district. TWC § 35.012. Commission created districts in PGMA's designated after September 1, 2001, are done without an evidentiary hearing. TWC § 36.0151; 30 TAC § 293.19(a)(3).

² S.B. 1, 75th Leg., R. S., ch. 1010, § 4.50 (1997). Effective on September 1, 1997.

³ S.B. 2, 77th Leg., R. S., ch. 996, (2001). Effective on September 1, 2001.

⁴ S.B. 2, 77th Leg., R.S., ch. 966, §2.23 (2001).

Statutory History

To establish how Rule 293.19(b) was crafted to carry out legislative intent, it is helpful to review the statutory history of GCD creations and compare the statutes as they were in the past with what they are today. In 1988, Chapter 52 (now repealed) required the Commission to find that “a district is **feasible** and **practicable**, that it would be a **benefit** to land in the district, and that it would be a public benefit or utility.” *See* TWC § 52.025 (1988) (emphasis added). At that time, finding that the district was *not* necessary was grounds for denying the creation. *Id.* These substantive findings were then deleted from Chapter 52 in 1989⁵ and in 1995 Chapter 52 was repealed altogether.⁶ To replace Chapter 52, the Legislature enacted Chapters 35 and 36 to govern PGMAs and GCDs, respectively. At that time, the Commission was required to make findings on benefit, need, and public welfare. TWC §§ 35.012 and 35.013 (1996). Two years later, in 1997, when the designation process was combined with the district creation process, as it is now, the Commission was still required to make findings on benefit, need, and public welfare. TWC §§ 35.012 and 35.013 (1999).⁷ In 2001, however, the Legislature stripped out the findings on benefit, need, and public welfare, and replaced them with the findings on feasibility and practicability that we see today.⁸ In 2002, this language was incorporated into Commission Rule 293.19(b)(6).

Regulatory History

Because Chapters 35 and 36 of the Water Code did not address creating GCDs in PGMAs designated before 2001, the Commission was compelled to address the procedural gap, which it did in Rule 293.19(b). Subdivision (5) of that section provides that, after the report is completed, “The commission shall refer the petition to SOAH for a contested case hearing on the executive director's report and recommendation.” Once at SOAH:

⁵ In place of the required findings, the legislature added new Subsections (a)-(f) “to provide submission, filing, and content requirements for a petition to the commission requesting the commission to designate an underground water management area.” S. NATURAL RES. COMM., 71ST CONG., BILL ANALYSIS (1989).

⁶ H.B. 2294, 74th Leg., R.S., ch. 933, §2 (1995).

⁷ TWC §35.008(a) (1999), provided that “The commission shall call an evidentiary hearing to consider: “(1) the designation of a priority groundwater management area; (2) whether a district should be created over all or part of a priority groundwater management area; or (3) whether all or part of the land in the priority groundwater management area should be added to an existing district.”

⁸ *See* Senate Bill 2, 77th Leg., R.S., ch. 966, §2.24 (2001).

The hearing shall be limited to consideration of the executive director's report and recommendation. The administrative law judge may also consider other district creation options evaluated in the executive director's report. To determine the feasibility and practicability of the recommended district creation action, the administrative law judge shall consider:

(A) whether the recommended district creation action can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(B) whether the boundaries of the recommended district creation action provide for the effective management of groundwater resources; and

(C) whether the recommended district creation action can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district operation functions under TWC, Chapter 36.

30 TAC § 293.19(b)(6) (emphasis added). The parties disagree on the scope of this provision and, specifically, the correct reading of subpart (A).

The Commission is authorized to enact rules to implement legislative intent. TWC § 5.103. Section 293.19(b) is such a rule, designed to carry out the intent of groundwater management in PGMAAs designated before 2001. As noted above, GCDs are the state's preferred method of groundwater management. In adopting § 293.19(b) it was published in the Texas Register⁹ and, as with all rulemaking, included an opportunity for public comment. See APA §2001.029. None of the parties to this case, nor any other landowner, made any comments.¹⁰ In fact, there was only one commenter, Texas Rural Water Association, who had concerns about subsection (c), but not (b).

Additionally, the Legislature has known of the legal gap posed by pre-2001 PGMAAs, and known of the Commission's remedy.¹¹ In 2003, the Commission sent its *Priority Groundwater Management Areas and Groundwater Conservation Districts, Report to the 78th Texas Legislature*, reporting its rulemaking activities, including the adoption of Section 293.19(b).¹² Again in 2008, there was direct correspondence between Senator Seliger's office and ED staff, by which staff stated that "Statutory recognition that the TCEQ will create GCDs in the pre-2001 PGMAAs may be

⁹ 27 TexReg 7942 (2002).

¹⁰ See Texas Register at: <http://texinfo.library.unt.edu/texasregister/html/2002/aug-23/adopted/30.ENVIRONMENTAL%20QUALITY.html#520>

¹¹ Prot. Ex. 3, at 23 ("The rules in 30 TAC, §293.19 also provide procedures for TCEQ creation of GCDs in PGMAAs designated by Commission rule before September 1, 2001.").

beneficial.”¹³

No statutory changes have been made to show the Legislature disagreed with the Commission’s rule. The Legislature has known of Rule 293.19(b) and done nothing to inform the TCEQ that it disapproves.¹⁴ Under such circumstances, a Court is entitled to rely on the legislative silence to indicate approval of the agency interpretation. *Direlco, Inc. v. Bullock*, 711 S.W.2d 360, 363 (Tex.App.-Austin, 1986) (“[O]nce the statute is given a particular [agency] interpretation, a court is entitled to assume that the Legislature, by failing to amend the statute, indicated its approval of the interpretation.”); Tex. Atty. Gen. Op. JM-1228, 4 (“We think that the department's interpretation of the statute in question has been widely published and that the legislature's failure to amend the statute is indicative of its approval of the department's interpretation.”). Accordingly, the Commission correctly interpreted the legislative intent in adopting Rule 293.19(b), and the Legislature approved of that interpretation.

III. RULES OF CONSTRUCTION

The Protestants would have the Commission rely on elements that have been deliberately omitted from the authorities governing this case. The statute and rules require findings on feasibility and practicability, but not on need and benefit. The Protestants assert an *implied* requirement that the district be necessary and benefit the land. This construction violates the rule of *expressio unis est exclusio alteris*: “[w]hen the Legislature has carefully employed a term in one section of a statute, and has excluded it in another, it should not be implied where excluded.” *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980). We must assume that the Legislature intentionally omitted the words “need” and “benefit” from the statutes relating to the creation of groundwater conservation districts if the Legislature employed those terms elsewhere.

The elements found in TWC § 35.008 are incorporated into § 293.19(b)(6). Agency rules have the same force as statutes. See *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999). It is therefore appropriate to apply the rules of statutory construction to

¹² Prot Ex. 3; see also Tr. at 55 -57.

¹³ Prot. Ex. 2 at 3; Tr. 30-32 (cross-examination K. Mills).

¹⁴ Tr. 55:3-57:12 (re-direct K. Mills).

Commission rules. The rules of statutory construction dictate that a Court may not depart from the statutory language simply because it is inconsistent with other policies:

We are bound by well-settled rules of statutory construction. First and foremost, we are required to follow the plain meaning of a statute. *Meno v. Kitchens*, 873 S.W.2d 789, 792 (Tex.App.-Austin 1994, writ denied). If the language of the statute is unambiguous, then the court must seek the legislative intent as found in the plain and common meaning of the words and terms used. *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994); *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 939 (Tex.1993). In applying the plain and common meaning of the language, a court may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning; such implication is inappropriate when intent may be gathered from a reasonable interpretation of the statute as it is written. *Sorokolit*, 889 S.W.2d at 241. **The court must presume that every word in a statute has been used for a purpose and that every word excluded was excluded for a purpose.** *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 888 S.W.2d 921, 926 (Tex.App.-Austin 1994, writ denied) (citing *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex.1981)).

The plain-meaning rule is subject to only narrow exceptions: the interpretation must not lead to foolish or absurd results or attribute to the legislature an intention to work an injustice. *Kitchens*, 873 S.W.2d at 792. **The mere fact that a policy seems unwise or inconsistent with other policies does not justify a departure from the plain meaning of the legislative mandate.** *Id.*; see *Railroad Comm'n v. Miller*, 434 S.W.2d 670, 672 (Tex.1968).

Cornyn v. Universe Life Ins. Co., 988 S.W.2d 376, 378-379 (Tex.App.--Austin, 1999, pet. denied)(emphasis added). Therefore, rules of statutory construction do not allow a Court to read words into a statute just because it disagrees with it.

The Legislature specifically removed findings on need and benefit and replaced them with findings on feasibility and practicability. Additionally, those findings are included elsewhere, but excluded in the creations of GCDs within PGMAs. To illustrate: In creating a water control and improvement district (WCID), the statute requires a finding on need, benefit, *and* feasibility and practicability. TWC § 51.021 (there is also a finding on “public welfare.”). In creating a municipal utility district (MUD), the statute requires a finding on all four—need, benefit, *and* feasibility and practicability. TWC § 54.021(a). The same is required in creating a special utility district (SUD).

TWC § 65.021(a). By contrast, in creating a GCD, *only* feasibility and practicability are required:

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF NEW DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT; COMMISSION ORDER. (a) The commission shall designate priority groundwater management areas using the procedures provided by this chapter in lieu of those provided by Subchapter B, Chapter 2001, Government Code.

(b) The commission shall call an evidentiary hearing to consider:

(1) the designation of a priority groundwater management area; and

(2) whether one or more districts should be created over all or part of a priority groundwater management area, all or part of the land in the priority groundwater management area should be added to an existing district, or a combination of those actions should be taken. Consideration of this issue shall include a determination of whether a district is **feasible** and **practicable**.

TWC § 35.008. By amending the statute and replacing the old language with new and distinct words, the Legislature effectively repeals the old language. *Natural Gas Clearinghouse v. Midgard Energy Co.*, 113 S.W.3d 400, 413-414 (Tex.App.-Amarillo, 2003, pet. denied). “It is a general rule of statutory construction that when the Legislature amends a particular statute and omits certain language of the former statute in its amended version, the Legislature specifically intends that the omitted portion is no longer the law.” *State v. Eversole*, 889 S.W.2d 418, 425 (Tex.App.-Houston [14th Dist.] 1994, pet. ref’d). “Every word excluded from a statute must be presumed to have been excluded for a reason.” *Id.* Accordingly, the proposed findings on need and benefit are not only not a part of this proceeding, but they are specifically excluded from consideration in this proceeding.

IV. DISCUSSION

Scope of the Hearing

Protestants seek to expand the scope of this proceeding to urge the Commission to consider the *need* for and *benefit* of creating a district in pre-2001 PGMAs. Namely, they seek a re-examination of whether critical groundwater problems exist in the Dallam County PGMA. However, the Commission answered the question of whether there are “critical groundwater problems” in Dallam County by adopting Rules 294.30(a) and 294.34 designating the Dallam County

PGMA. Given that PGMA designations cannot be appealed,¹⁵ these issues should not be re-examined now. Moreover, given the required content of the ED's Report under Rule 293.19(b)(2), the ED did not consider groundwater conditions when analyzing whether to recommend the creation of a GCD within the Dallam County PGMA.

The Protestants' argument hinges on a strained reading of § 293.19(b)(6)(A). Section 293.19(b)(6)(A) states that the ALJ should consider:

whether the recommended district creation action can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

30 TAC § 293.19(b)(6)(A). The ALJ correctly rejected Protestants' arguments that need and benefit are somehow sub-considerations of "effective management," and limited the inquiry under this provision to considerations of managerial ability. The ALJ also correctly found that NPGCD can effectively manage groundwater resources under the authorities provided in Chapter 36. PFD at 23-24. What the above section requires is an inquiry into the effective management of groundwater resources "under the authorities provided in Texas Water Code (TWC), Chapter 36."

Instead of this clear, straightforward inquiry, the Protestants fixate on the words "effectively manage" by which to explode this into an inquiry of whether there is a *need* or *benefit* for the district, which, according to them, could only exist if there are critical groundwater problems. Yet the rule itself directs the ALJ's attention to the authorities of Chapter 36, not to groundwater conditions. The rule does not ask whether the district can effectively manage groundwater resources "given the groundwater conditions in the region," but rather whether it can effectively manage groundwater resources *under the authorities of Chapter 36*. Thus, the ALJ is to consider the district's *managerial ability*, not *whether* management is *needed*. Need and benefit were established when the PGMA was designated.¹⁶ The designation of the PGMA itself creates a presumption of need and benefit. The fact that PGMA designations are not appealable makes this presumption non-rebuttable.

¹⁵ TWC, § 35.005(i)

¹⁶ See Margaret A. Hart, *Dallam County—A Critical Area Groundwater Study*, Texas Water Comm'n Critical Area File Report (1990), at 23 (addressing need) and 27 (addressing benefits).

Excluding need and benefit from the statute was not inadvertent. Our review of the statutory history showed that in 2001 the Legislature stripped out findings on need and benefit, and replaced them with findings on feasibility and practicability. TWC §35.008. Under such conditions, the Legislature must be presumed to have repealed “benefit” and “need”—the language upon which the Protestants rely. *Natural Gas Clearinghouse.*, 113 S.W.3d at 413-414.

Therefore, in adopting § 293.19, the Commission correctly included findings on feasibility and practicability, and excluded a finding on need and benefit, to carry out the legislative intent of TWC § 35.008. The ED submits that the Legislature, and the Commission in turn, have foreclosed considerations of benefit and need by deliberately omitting them from the statute and the rule. Further, the act of adopting § 293.19(b) by the Commission disposes of any public policy considerations that the Protestants urge upon the Commission. Prot. Exceptions at 5, *et seq.* The Commission adopted the rule in 2002 and made its policy decision at that time.

Moreover, § 293.19(b)(6) contains words of limitation. *The hearing shall be limited to consideration of the executive director's report and recommendation.* It is thus appropriate to construe it narrowly. Specifically, looking to what is required of the ED’s Report, it is clear that no groundwater issues—critical or otherwise—are contemplated. Section 293.19(b)(2) involves strictly above-ground inquiries. The Report adhered to the rule; the hearing conducted under this rule is limited to the issues in the Report. The report, of course, must address the feasibility and the practicability of the recommended action, *see* § 293.19(b)(2)(E), which it did. If the Commission adopts the Protestants’ reading that the effective management cannot exist absent groundwater problems, then no report written under § 293.19(b) will ever meet the burden of proof.

V. THE RECORD

The ED would note that any amendments to the ALJ’s proposal for decision must be “based solely on the record made before the administrative law judge.” GOV’T. CODE § 2003.047(m). Nevertheless, the Protestants offer two items that are not a part of the record. The First, Exhibit C, purports to be a poll of landowners’ sentiment toward approving the district creation. This material was the subject of one of the ED’s objections to prefiled testimony and was excluded by the ALJ as

irrelevant. Though offered during the hearing as an offer of proof, the Protestants have not argued that it was improperly excluded. They simply refer to it as if it were evidence. Nevertheless, it was not a part of the record before the ALJ. The Second is contained in footnote 20, page 8 of Protestants' Exceptions, which refers to the ED's report on the *Hill Country Priority Groundwater Management Area*. Both of these items were not part of the record made before the administrative law judge and should therefore be disregarded.

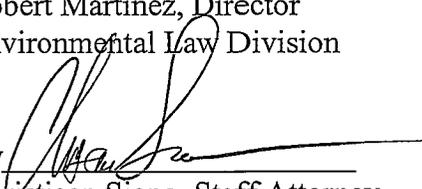
VI. CONCLUSION

The PFD correctly decided that the only issues in this case are whether the creation of the district is feasible and practicable. It was the Legislature's intent to limit the issues to feasibility and practicability. This position is shown by a review of statutory history, rules of construction, the adoption of Rule 293.19(b), the legislative silence in the face of being informed of this rule, and the non-appealability of PGMA designations. Accordingly, all other issues were correctly rejected by the ALJ.

Respectfully submitted,

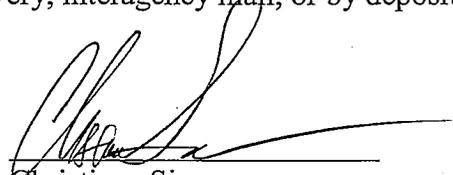
Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar of Texas No. 24051335
P.O. Box 13087; MC-173
Austin, Texas 78711

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd 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.



Christian Siano
Environmental Law Division