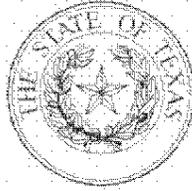


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 14, 2014

Anne Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. 512/239-5533

Re: SOAH Docket No. 582-14-0597; TCEQ Docket No. 2013-1467-WR; In the Matter of the Recommendation by the Executive Director to Add Portions of Briscoe, Hale, and Swisher County Priority Groundwater Management Area in High Plains Underground Water Conservation District No. 1

Dear Ms. Idsal:

I serve as the State Office of Administrative Hearings Administrative Law Judge who issued the Proposal for Decision in this matter. After reviewing the parties' exceptions and replies to the exceptions, I make the following recommendations to the Texas Commission on Environmental Quality (Commission):

Executive Director's Exceptions

The Executive Director raised no exceptions to the Proposal for Decision. He recommended that the Commission adopt the Proposal for Decision and that the Commission reject the Aligned Parties' exceptions.

Aligned Parties' Exceptions

1. The Aligned Parties argued that the Executive Director offered no evidence that:

- regulation by a water district would benefit the groundwater resources of the area;
- the Executive Director complied with the notice requirements of subsections 15(d) and (e) of article 16 of the Texas Constitution; or
- the Commission has standing to regulate groundwater resources beneath private property.

Response: The Executive Director's reply to the exception reiterated that the Executive Director's report is limited to whether the creation of, or addition to, a groundwater conservation district is feasible and practical. The Aligned Parties' exception to the Executive Director's alleged failure to offer evidence is simply not supported by the law under which this proceeding was conducted. The Proposal for Decision considered and rejected the Aligned Parties' arguments on this point. For the same reasons stated in the Proposal for Decision, I recommend that the Commission reject the exception.

2. The Aligned Parties asserted that the Proposal for Decision failed to include seven proposed findings of fact. The proposed findings relate to a legislatively mandated 1990 study about critical groundwater areas in Texas. The Aligned Parties asserted that the proposed Order should include findings about

- the Commission's legislative authority to make the study;
- the year in which the 1990 study period ended;
- the study's reliance on other groundwater studies published in 1987 and 1988;
- the study's reliance on interviews;
- the Commission's failure to submit the study to "an evidentiary review at either the administrative or judicial level";
- a procedure adopted by "the TREC" for designating an area as a priority management area, citing 30 Tex. Admin. Code § 294.42(b)(1);
- the absence of evidence "that an actual water shortage did occur" in the 20-year period covered by the study;
- an acknowledgement in the study that reversals of water level declines took place in Briscoe, Hale, and Swisher Counties during 1980 to 1988; and
- an acknowledgement in the study that water level declines take place "even with regulatory and oversight powers of a district in place."

Response: As with the previous exception, the Aligned Parties' exception based on these procedural and substantive issues should be rejected. The study provided historical evidence for the groundwater problems of the region. The statute under which this proceeding was conducted did not require the inclusion of the types of proposed findings proposed by the Aligned Parties.

Sincerely,



Paul D. Keeper
Administrative Law Judge

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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STYLE/CASE: BRISCOE, HALE AND SWISHER COUNTY PRIORITY
GROUNDWATER MANAGEMENT AREA
SOAH DOCKET NUMBER: 582-14-0597
REFERRING AGENCY CASE: 2013-1467-WR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ PAUL D. KEEPER**

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