

IN THE MATTER OF THE	§	BEFORE THE STATE OFFICE
EXECUTIVE DIRECTOR'S REPORT	§	
AND RECOMMENDATION TO ADD	§	
AREA OF BRISCOE, HALE, SWISHER	§	OF
COUNTY PRIORITY GROUNDWATER	§	
MANAGEMENT AREA (PGMA) TO HIGH	§	
PLAINS UNDERGROUND WATER	§	
CONSERVATION DISTRICT NO. 1	§	ADMINISTRATIVE HEARINGS

ALIGNED PARTIES IN OPPOSITION EXCEPTION TO PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS:

Gary Weaks, Brad Ziegler, Leland Stukey, James Patton, Billy Rank Cogdell, Penny Carpenter, Barry Francis, Earl Cantwell Trust, Alvie Francis, Lavelle Montague, Don Curry, Derrel Johnson, John R. Gill, Dale McWaters, John Burson, Kyle Fuston, Perry Brunson, Jimmy Burson, Don Brown, and Tommy Burson, Aligned Parties in Opposition to Executive Director's Proposal herein, except to the proposal for decision filed by the Honorable Administrative Law Judge, and in support thereof, would respectfully show as follows:

1. The Executive Director has offered no evidence that regulation by a water district would cause any positive change on the groundwater resources of the area. The Executive Director has offered no evidence of any actual shortage. In rebuttal, the Executive Director has offered projections of shortages which continue to recede into the future, but made no effort to contradict the testimony of Mr. Weaks that the best conservation practices are already in place through voluntary actions undertaken out of enlightened self interest.

2. The Executive Director has offered no evidence of compliance with the requirements of Tex. Const. art. 16 §59 (d). "It is fundamental that the Constitution is the paramount law of the state and cannot be altered by legislative amendments." *Frasier v.*

Yanis, 9 S.W.3d 422, 426 (Tex. App.-Austin 1999, no pet.) (quoting *Jones v. Ross*, 173 S.W.2d 1022, 1024 (Tex. 1943)). Subsection (d) of the constitutional amendment which provides the authority under which TCEQ seeks to act mandates that, prior to moving to include additional land in an existing district or create a new district, publication of notice, and delivery to the Governor, Lieutenant Governor and Speaker of the House be given. The Executive Director did not submit proof of such requirements.

3. Further, the Executive Director has offered no evidence of compliance with the requirements of Tex. Const. art. 16 §59 (e), which requires proof of submission to the Commissioner's court. No evidence of compliance with such requirements was offered.

4. Throughout these proceedings, the Executive Director has stated that the TCEQ has no control over privately owned water, yet from the notice of hearing that gave no notice to private water holders, but only noticed holders of public water, the Executive Director has not confirmed in fact what water they are attempting to place in a water district, public only or private also. Aligned Parties own their water, which is privately owned property granted by virtue of land patents issued by the State of Texas under the seals of the Governor and Land Commissioner. Aligned Parties submit that the TCEQ has not shown by evidence that the TCEQ has standing concerning such private property relinquished by the State of Texas many years ago.

5. Aligned Parties except to the failure to include the following findings of fact as requested by the Aligned Parties.

- a. The legislative authority for the study, as recited in the text of same authorized a study "to identify and study potential critical groundwater areas in the state. These are areas which have experienced or are expected to experience critical groundwater problems in the next 20 years."

- b. The study period thus ended in 2010, four years prior to the request of the Executive Director, in reliance on the designation.
- c. As stated in the acknowledgments section, the report relies on studies made in 1987 and 1988 and informal interviews, and was not submitted to an evidentiary review at either the administrative or judicial level.
- d. In contrast, the procedure adopted by the TREC for designating an area as a priority groundwater management area requires evidentiary hearing before an impartial authority. 30 Tex. Admin. Code §294.42 (b)(1).
- e. No evidence was offered that an actual water shortage did occur in the 20 year period covered by the 1990 study.
- f. The 1990 study acknowledges that “some recent reversals [of water level decline] have taken place, with water level rises recorded in portions of all three counties for the period 1980 to 1988.” The study further finds that irrigation wells peaked in Briscoe County in 1974.
- g. The study specifically states that “even with the regulatory and oversight powers of a district in place, water level declines take place and water is removed from storage.” In contrast, the author of the study acknowledges that “more efficient irrigation and farming practices have reversed the trend in water level decline” and recognizes that these changes have been driven by market forces, as opposed to regulatory requirements.

6. Aligned parties reserve in full all rights to complain of the rules and procedures pursuant to which the proposal for decision and this cause was conducted, including without limitation constitutional challenges to same.

Aligned Parties in Opposition respectfully pray that the request by the Executive Director be denied, and that the proposal for decision of the Honorable Administrative Law Judge be rejected.

Respectfully submitted,

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By: _____



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ATTORNEYS FOR ALIGNED PROTESTING
PARTIES

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served July 24, 2014, by e-mail to the following:

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