

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **AN ORDER IMPLEMENTING RECOMMENDATIONS OF THE STARR COUNTY GROUNDWATER CONSERVATION DISTRICT REVIEW PANEL'S REPORT ON THE PETITION FOR INQUIRY BY DISTRICTS WITHIN GROUNDWATER MANAGEMENT AREA 16 AND RESULTING NEGOTIATED SETTLEMENT**

On March 25, 2020, the Texas Commission on Environmental Quality (Commission or TCEQ) considered a report filed by a review panel (Panel) in accordance with Tex. Water Code (TWC), Section (§) 36.3011 and Title 30 Texas Administrative Code (30 TAC) § 293.23. The report conveyed the Panel's findings from its review of a petition for inquiry (petition) filed by eight districts in Groundwater Management Area 16 (GMA 16) regarding Starr County Groundwater Conservation District (GCD). Additionally, the report provided the Panel's recommended actions for the Commission and a negotiated settlement agreement conducted in accordance with TWC § 36.3011.

### **I. FINDINGS OF FACT**

1. A petition by Bee GCD, Live Oak Underground Water Conservation District, McMullen GCD, Brush County GCD, Kenedy County GCD, Corpus Christi Aquifer Storage and Recovery Conservation District, San Patricio County GCD, and Duval County GCD on behalf of GMA 16, was presented to the Executive Director (ED) of the Texas Commission on Environmental Quality for the inquiry of Starr County GCD relating to joint groundwater management planning in GMA 16 pursuant to TWC §§ 36.108 and 36.3011 and 30 TAC §§ 293.22 and 293.23. The petition alleged that Starr County GCD failed to accomplish the following: 1) participate in the GMA 16 joint planning process under TWC § 36.108; 2) adopt the desired future conditions (DFCs) adopted by GMA 16; and 3) update its management plan within two years of GMA 16 adopting new DFCs in accordance with TWC § 36.3011(b)(2),(4),(5) and 30 TAC § 293.23(b)(2),(4),(5).
2. The Executive Director's Response to Petition for Inquiry was filed on September 20, 2019 and Starr County GCD's Agreed and Unopposed Motion to Grant Petition and Select Review Panel was filed on October 22, 2019. Pursuant to TWC § 36.3011(c) and 30 TAC § 293.23(g) within 90 days of receiving the Petition for Inquiry the Commission shall either dismiss the petition or select a review panel. The Commission, in its Interim Order following the October 23, 2019 open meeting (Agenda), appointed a review panel consisting of a Chairman and four other members (Panel). The purpose of the Panel being to review the petition and any evidence it saw as relevant and adopt a final report (Report) to be submitted to the TCEQ in accordance with TWC § 36.3011 and 30 TAC § 293.23.

3. The Panel held two public meetings on this matter. The first public meeting was held in Starr County on January 7, 2020 for the purpose of gathering additional evidence and to allow for public comments. Notice was published in English and Spanish in the Starr County Town Crier on December 4, 2019. The second public meeting was held in Austin on February 13, 2020, for the purpose of adopting the Report to be submitted by the Panel to the Commission. Notice was published in English and Spanish in the Starr County Town Crier on January 29, 2020.
4. The Panel submitted its Report on February 13, 2020 which was within 120 days of their appointment by the Commission in accordance with TWC § 36.3011(e) and 30 TAC § 293.23(h). The Report satisfied the requirements of TWC § 36.3011(f) and included: 1) a summary of all evidence taken in any hearing on the petition; 2) a list of findings and recommended actions appropriate for the Commission to take and reasons it finds those actions appropriate; and 3) defined elements of a negotiated settlement agreement pursuant to TWC § 36.3011(e).
5. The Panel exercised its privilege to negotiate a settlement agreement under TWC § 36.3011(e) which states that the review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means. The negotiated settlement contained requirements and a recommended process for the Commission to address non-compliance by Starr County GCD. The applicable requirements from the negotiated settlement, that are contained within this Order are as follows:
  - 1) Starr County GCD shall provide documentation of the newly appointed directors names and precinct they represent. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
  - 2) Starr County GCD shall provide its approved director election (calendar) schedule for November 2020 and November 2022 general elections. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
  - 3) Starr County GCD shall provide a Starr County precinct map for 2020 election. This element must be completed within 45 days of the date of the TCEQ Agreed Order that formalizes the negotiated settlement;
  - 4) Starr County GCD shall provide its minutes of all board meetings after January 7, 2020, thus documenting any agreements and actions related to becoming operational, this shall continue quarterly until the last quarter of 2021. This element must be completed quarterly beginning in the quarter the TCEQ Order that

formalizes the negotiated settlement;

- 5) Starr County GCD shall provide its approved bylaws and associated resolutions. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
- 6) Starr County GCD shall provide its approved policies and associated resolutions adopted, including, but not limited to, those required by TWC 36.061. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
- 7) Starr County GCD shall provide copies of training certificates for each director on the Open Meetings Act. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
- 8) Starr County GCD shall provide copies of training certificates for directors and staff concerning the Public Information Act. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement;
- 9) Starr County GCD shall provide a draft management plan with current correspondence to TWDB staff. This element must be completed within 90 days of the date of the TCEQ Order that formalizes the negotiated settlement and quarterly until approval of the management plan;
- 10) Starr County GCD shall provide a draft of proposed amendments to district rules correcting disparities with their enabling legislation and proposed date for proper public hearing by Starr County GCD for formal adoption. This element must be completed within 90 days of the date of the TCEQ Order that formalizes the negotiated settlement and quarterly until approval of the management plan;
- 11) Starr County GCD shall provide evidence that each director appointed is qualified to serve in his/her precinct, including address of home and corresponding eligibility of precinct served. This element must be completed within 45 days of the date of the TCEQ Order that formalizes the negotiated settlement agreement.
- 12) Starr County GCD shall provide documentation from Starr County Judge Vera regarding the County Commissioners Court's intent (with corresponding resolution and/or minutes and/or interlocal agreement) making arrangements with the District for 1) office space; 2) phone, fax, and other office-related needs; 3) staff resources; 4) funding as appropriated for startup cost share for GMA 16 participation in Round 3; 5) proposed budget amounts

and support from the Commissioners Court; 6) proposed funding sources (fees and/or property tax) and corresponding proposed MOU related to taxing authority and amount (reference per board testimony on January 7<sup>th</sup> that a governmental property tax swap offsetting \$.005/\$100 valuation is in the works). This element must be completed within 120 days of the date of the TCEQ Order that formalizes the negotiated settlement;

- 13) Starr County GCD shall provide board resolutions affirming:
  - 1) actions regarding GMA 16 participation; 2) actions affirming GMA 16 financial participation in Round 3 (DFC development and all achievable deadlines of above criteria discussed); 3) actions affirming the district is developing a budget to be effective next fiscal year in support of being operational. This element must be started within 90 days of the date of the TCEQ Order that formalizes the negotiated settlement. Quarterly progress reporting to TCEQ is required to indicate progress in obtaining complete participation. This may be in the form of GMA 16 minutes or other proof of participation.
- 14) The Panel noted that evidence supporting the attainment of each element above should be sent to the TCEQ representative identified in that order at the specified frequency until complete or through the last quarter of 2021 (for on-going elements). Furthermore, the Panel recommended that any failure to meet the requirements and reporting schedule above should result in an enforcement letter being issued from TCEQ providing a 90-day opportunity to address the deficiency. Should the deficiency go unresolved, the Panel recommended that TCEQ should initiate proceedings to dissolve Starr County GCD.
- 15) Requirement numbers 1, 3, 4, 5, 6, 8, 9 and 11 above, have already been accomplished by Starr County GCD. Requirement numbers 2, 7, 12, and 13 have been partially accomplished by Starr County GCD.
- 16) The Panel, in its Report, provided the following four potential courses of action for the Commission to take: 1) issue an Order; 2) dissolution of Starr County GCD; 3) dissolution of the Starr County GCD board of directors; and 4) establishment of a receivership.
- 17) The Panel, in its Report conclusion, recommended that the Commission issue an order to Starr County GCD to comply with the negotiated settlement. Additionally, the Panel recommended that if Starr County GCD fails to comply with the Commission order, that the Commission dissolve the district.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Water Code (TWC)

Chapter 36 and Title 30 Texas Administrative Code (30 TAC) §§ 293.22 and 293.23.

2. All statutory and regulatory requirements for the Petition of Inquiry by GMA 16, the formation of the review panel by the Commission, and the report filed by the review panel, have been fulfilled in accordance with TWC, Chapter 36 and Texas Administrative Code Chapter 293.
3. In accordance with 30 TAC § 293.23(i), the Executive Director has submitted a recommendation that the Commission take necessary action under TWC § 36.303 within 45 days of receiving the Panel's Report.
4. Pursuant to TWC § 36.3011(h) the Executive Director or Commission may take any action against a district it considers necessary in accordance with TWC § 36.303. Based on the evidence submitted and reviewed by the Panel to the Commission, several of the elements and timelines from the negotiated settlement and recommended actions proposed by the Panel, may properly be implemented by this Order.
5. Pursuant to TWC § 36.303 and 30 TAC § 293.22, the Commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the Commission considers appropriate. This Order was considered by the Commission during its open meeting (Agenda) on March 25, 2020. Notice of the Commission's Agenda was mailed to the affected parties on February 28, 2020.
6. The Commission has considered the Petition for Inquiry, the Panel's Report, additional evidence submitted by the Panel, and the Executive Director's recommendation. The Commission has determined that elements of the negotiated settlement, that have not already been accomplished by Starr County GCD, should be implemented in this Order pursuant to TWC §§ 36.3011 and 36.303-307 and 30 TAC § 293.22.
7. After an evaluation of all relevant filings, the Commission determined to issue this Order requiring the district to take certain actions pursuant to TWC § 36.303(a)(1).
8. If Starr County GCD fails to meet the requirements and/or timelines of this Order, the Commission may initiate proceedings to: 1) dissolve the Starr County GCD board in accordance with TWC §§ 36.305 and 36.307; 2) request the attorney general to bring suit for the appointment of a receiver pursuant to TWC § 36.303(a)(3); and/or 3) dissolve Starr County GCD in accordance with TWC §§ 36.304, 36.305 and 36.308 and 30 TAC § 293.22.

**NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:**

1. The following elements and timelines from the negotiated settlement and recommended actions proposed by the Panel are hereby implemented in this Order for the purpose of the Commission action it considers necessary in

accordance with TEX. WATER CODE (TWC) §§ 36.3011(h) and 36.303-307:

- I. Starr County GCD must provide its approved director election schedule for November 2022 general elections within 45 days of the date the schedule becomes available from the Secretary of State Office.
- II. Starr County GCD must provide copies of training certificates for directors Villareal and Benavidez and staff concerning the Open Meetings Act within 45 days of the date this Order becomes final.
- III. Starr County GCD must provide a draft management plan with current correspondence to TWDB staff within 90 days of the date this Order becomes final and quarterly until approval of the management plan. Starr County GCD must provide documentation of final adoption of the management plan, evidence of submittal of the adopted plan to TWDB for approval, and evidence of TWDB approval of the management plan.
- IV. Starr County GCD must provide minutes of all board meetings after January 7, 2020, documenting any agreements and actions related to becoming operational. This shall continue quarterly until the last quarter of 2021. This element must be completed quarterly beginning in the quarter that this Order becomes final.<sup>1</sup>
- V. Starr County GCD must provide a draft of the proposed amendments to district rules correcting disparities with their enabling legislation and a proposed date for a proper public hearing, conducted by Starr County GCD, for formal adoption. This must be completed within 90 days of the date this Order becomes final.
- VI. Starr County GCD must provide documentation, in the form of a signed and executed agreement, between Starr County GCD and Starr County Judge Vera regarding the County Commissioners Court's intent (with corresponding resolution and/or minutes and/or interlocal agreement) making arrangements with the District for 1) office space; 2) phone, fax, and other office-related needs; 3) staff resources; 4) funding as appropriated for startup cost share for GMA 16 participation in Round 3; 5) proposed budget amounts and support from the Commissioners Court; 6) proposed funding sources (fees and/or property tax) and corresponding proposed MOU related to taxing authority and amount (reference per board testimony on January 7<sup>th</sup> that a governmental property tax swap offsetting \$.005/\$100 valuation is in the works). This must be completed within 120 days of the date this Order becomes final.
- VII. Starr County GCD must provide Final board resolutions affirming: 1) actions regarding GMA 16 participation; 2) actions affirming GMA 16 financial participation in Round 3 (DFC development and all achievable deadlines of above criteria discussed); 3) actions affirming the district is developing a budget to be effective next fiscal year in support of being operational. This element must be started within 90 days of the date of the TCEQ Agreed Order that formalizes the negotiated settlement. Quarterly

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<sup>1</sup> As evidenced in Exhibit 13, of the Negotiated Settlement, Starr County GCD has completed this requirement through January 7, 2020.

progress reporting to TCEQ is required to indicate progress in obtaining complete participation. This may be in the form of GMA 16 minutes or other proof of participation.

Evidence supporting the attainment of each of the above items should be sent to Kim Nygren, Director, Water Availability Division, MC-160. Failure to submit the above items within the timeframes stated will result in an enforcement letter being issued by TCEQ providing a 90-day opportunity to address the deficiency. Should the deficiency go unresolved, TCEQ shall initiate proceedings to dissolve the Starr County GCD or its board, whichever it deems appropriate.

2. The effective date of this Order is the date the Order is signed.
3. If any provision, sentence, clause or phrase of this Order is, for any reason, held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
4. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

Issue Date: April 2, 2020

  
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Jon Niermann, Chairman