TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ORDER

AN ORDER Recommending Creation of a Groundwater Conservation District for Priority Groundwater Management Area in Dallam County, TCEQ DOCKET NO. 2008-1940-WR; SOAH DOCKET NO. 582-09-2350

On February 10, 2010, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Groundwater Conservation District Recommendation for Dallam County Priority Groundwater Management Area (ED's Report) and the Executive Director's (ED) recommendation that three non-contiguous areas within the Dallam County Priority Groundwater Management Area (Dallam County PGMA) be added to the North Plains Groundwater Conservation District (NPGCD). The Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD) which recommended that the Commission approve the ED's recommendation. After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History

1. In 1990, all of Dallam County, except the area within the Dallam County Underground Water Conservation District No. 1 (DCUWCD), was designated by the Texas Water Commission as a Critical Area based on a Critical Area Study prepared in conjunction with the Texas Water Development Board (TWDB). The study found significant reductions in the saturated thickness of the Ogallala aquifer and concluded that Dallam County was expected to experience critical groundwater problems over the next two decades. The term "Critical Area" was changed to PGMA by legislation enacted in 1997.
2. On December 9, 2008, the ED approved and issued the ED's Report recommending that the Commission recommend that three non-contiguous areas within the Dallam County PGMA, that are not currently in a Groundwater Conservation District (GCD), be added to the NPGCD.
3. By letter dated January 23, 2009, the Commission referred the matter to the State Office of Administrative Hearing (SOAH) for a contested case hearing.
4. Notice of the hearing on the ED's Report was mailed on February 3, 2009.
5. Notice of the hearing was published in the *Dalhart Texan* newspaper on Monday, February 16, 2009.
6. The ALJ conducted a preliminary hearing and took jurisdiction of this matter on March 17, 2009, in Dalhart, Texas.
7. The Evidentiary Hearing on the merits was held August 26, 2009, in Dalhart, Texas.

8. At the Evidentiary Hearing, parties were allowed to present evidence and cross examine the witnesses. The parties filed post-hearing briefs, and the administrative record closed with the filing of the ED's surreply brief on November 17, 2009.

Areas Within the Dallam County PGMA Without GCD Management

9. Of the 1,505 square miles in Dallam County, 1,075 are within the NPGCD, leaving 430 (about 28 percent, comprised of the Areas A, B, and C) with no means of groundwater management.

10. The Ogallala aquifer underlies most of Dallam County, including the Areas A, B, and C (The Areas).

11. 70,000 to 80,000 acre-feet of water is being pumped annually from The Areas.

12. If The Areas are viewed as a single county, they would rank as the seventh or eighth-highest water producer of all the counties in the Texas Panhandle.

13. Of the counties in the NPGCD only two or three produce less water than is produced in The Areas.

14. In Area C alone, 60 water wells have been drilled since 2005. The density of drilling in Area C is about twice that in the NPGCD.

15. In the unregulated Areas, there are no well spacing or water production limitations other than aquifer conditions.

Adding the Areas to the NPGCD

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

17. The NPGCD is established and has experience that enables it to effectively manage all groundwater resources in the Dallam County PGMA.

18. The NPGCD has adopted a TWDB approved groundwater management plan and has rules that set production and well spacing limits, require well permitting and registration, and require production to be metered and reported.

19. The NPGCD has: (1) a monitoring well program that is overseen by a staff coordinator; (2) provides water quality testing and checks wells to detect any pollution; (3) has a hydogeologist and a hydrologist on staff to assist constituents; (4) has an education coordinator that develops and presents water conservation education programs; and (5) performs pump plant efficiency tests and production system flow tests.

20. The NPGCD has an established record of effectively managing groundwater resources. By joining the NPGCD the Areas would have immediate access to the district's established regulations, programs and infrastructure.

21. The total ad valorem tax impact on the landowners if The Areas joined the NPGCD would be less than $20,000 a year. The ad valorem tax impact on the property of Dr. Skiles, one of the largest property owner in Area C, would be about $500 per year.

22. The NPGCD tax rate is about 2 cents per $100 of appraised value. If The Areas created a new GCD, the tax rate would be about 35 cents per $100 of appraised value.

23. Creating a new GCD for The Areas would require a budget of at least $250,000 a year. At that funding level, a new GCD could not provide the water conservation programs currently provided by the NPGCD.

24. The boundaries of The Areas are contiguous to and, except for Area A, completely surrounded by the NPGCD.

25. Having The Areas join the NPGCD is superior to the creation of a new GCD for The Areas.

26. Adding The Areas to the NPGCD is the most feasible, economic, and practicable option for protection and management of the groundwater resources. This would also avoid duplication of administrative and groundwater management programs.

27. Management through the NPGCD would be the best management option for The Areas.

28. The expansion of the NPGCD to provide effective groundwater management to The Areas can be adequately funded

29. Uniform groundwater management strategy is essential to the conservation of the finite groundwater resources and to the future of all residents in Dallam County.

30. GCDs are the preferred method of groundwater management in the State.

II. CONCLUSIONS OF LAW

Jurisdiction and Notice

1. Texas Water Code (TWC) § 35.008(b)(2) gives the Commission authority to call an evidentiary hearing to consider whether land in a PGMA should be added to an existing GCD.

2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law, under Tex. Gov't Code Chapter 2003; TWC § 35.008.

3. SOAH obtained jurisdiction of this matter on January 23, 2009.

4. The ED provided notice of the evidentiary hearing as required by TWC § 35.009 and 30 Texas Administrative Code (TAC) § 293.19 (Rule).

Hearing

5. An evidentiary hearing concerning the feasibility and practicability of the ED's Report and recommendation was held in Dallam County in which the Dallam County PGMA is located as required by TWC § 35.008(c).

6. The evidentiary hearing concerning the addition of land within the Dallam County PGMA to the NPGCD complied with TWC § 35.008 and Rule 293.19.

7. The evidentiary hearing on the ED's Report and recommendation to add the Areas to the NPGCD was conducted in accordance with Water Code Chapter 35 and the Commission's and SOAH's applicable procedural rules.

Adding the Areas to NPGCD

8. TWC § 35.008(b)(2) requires the TCEQ to consider and recommend whether one of more GCDs should be created over all or part of a PGMA, whether all or part of the land in the PGMA should be added to an existing district, or whether a combination of these actions should be taken.

9. TWC § 35.008(b) requires the TCEQ to determine whether creation of a new GCD, or the addition of land to an existing GCD, is feasible and practicable.

10. By restricting TWC § 35.008(b)(2) to a determination of whether proposed action is feasible and practicable, the Legislature excluded all other considerations.

11. GCDs are the best management tool for the PGMA.

12. The addition of The Areas to the NPGCD is feasible and practicable.

13. The NPGCD can effectively manage groundwater resources in The Areas in accordance with TWC, Chapter 36.

14. The boundaries of the NPGCD can be expanded to provide effective management of groundwater resources in The Areas.

15. The NPGCD can be adequately funded to finance groundwater management planning, regulatory, and district operation functions for The Areas in accordance with TWC, Chapter 36.

16. In 2001, Senate Bill 2 (SB#2) mandated that the Commission create GCDs in designated PGMAs, or recommend adding areas within a PGMA to an existing GCD, if the landowners within the areas had not acted to establish a GCD.

17. Rule 293.19(b) implements the legislative intent concerning PGMAs created before 2001 and is consistent with the requirements of TWC, Chapter 35.

18. Rule 293.19 is unambiguous and properly construed according to its plain meaning.

19. Rule 293.19(b)(6) provides that the evidentiary hearing shall be limited to the ED's Report and recommendation, and the feasibility and practicability of the recommended district creation action.

20. Rule 293.19 requires the ALJ to issue and file with the Commission a proposal for decision stating findings, conclusions, and recommendations.

21. The ED's recommendation is the most feasible, practicable and economic means of providing uniform groundwater management in the Dallam County PGMA.

III. EXPLANATION OF CHANGES

The Commission directed from the dais five typographical corrections and clarifying changes to the ALJ's Proposed Order, four recommended by the Executive Director in his Exceptions to the Proposal for Decision, one recommended by the Protestants in their Exceptions to the Proposal for Decision, and all agreed to by the ALJ in his January 15, 2010 Response to Exceptions and Replies.

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

1. The Commission recommends that Areas A, B, and C within the Dallam County PGMA be added to the NPGCD, and directs the NPGCD to vote to add the Areas then call and hold an election within each of the Areas in accordance with Texas Water Code § 35.013.
2. All other motions, requests for entry of specific findings of fact or conclusions of law and any other requests for general or specific relief not expressly granted herein are hereby DENIED for want of merit.
3. The effective date of this Order is the date the Order is final as provided by Tex. Gov't Code § 2001.144.

4. 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.

Issue Date: FEB 17 2010

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D
Chairman

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

February 19, 2010

TO: Persons on the attached mailing list.

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

Decision of the Commission on Executive Director's Petition.

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced matter. Enclosed with this letter is a copy of the Commission's order. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

Deadline for Filing Motion for Rehearing.

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this petition. A person is presumed to have been notified on the third day after the date that this order is mailed.

Motions may be filed with the chief clerk electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and 7 copies with the Chief Clerk at the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 512/239-3311

In addition, a copy of the motion must be sent on the same day to each of the parties on the attached mailing list. A certificate of service stating that copies of the motion were sent to those on the mailing list must also be sent to the chief clerk. The procedures for filing and serving motions for rehearing and responses are located in 30 Texas Administrative Code (TAC) §80.272 and 30 TAC §1.10-1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h).

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this application.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosures

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

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