

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

Recommending the Addition of Portions of Briscoe County in the Briscoe, Hale, and Swisher County Priority Groundwater Management Area to High Plains Underground Water Conservation District No. 1 TCEQ Docket No. 2013-1467-WR; SOAH Docket No. 582-14-0597

On December 10, 2014, the Texas Commission on Environmental Quality (Commission) considered the Executive Director's Report for Briscoe, Hale, and Swisher County Priority Groundwater Management Area—Western Briscoe County (Report) and the Executive Director's recommendation that the western portions of Briscoe County within the Briscoe, Hale, and Swisher County Priority Groundwater Management Area (Briscoe PGMA) be added to the High Plains Underground Water Conservation District No. 1 (District). The State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) presented a Proposal for Decision that recommended that the Commission approve the ED's recommendation. After considering the ALJ's Proposal for Decision, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History

1. In September 2013, the Executive Director issued a Report for Briscoe, Hale and Swisher County Priority Groundwater Management Area—Western Briscoe County (Report).
2. On October 14, 2013, the Executive Director referred this matter to SOAH for a hearing on the merits.
3. On October 29 and 30, 2013, the Executive Director published notice about the December 3, 2013 preliminary hearing in two local newspapers, the *Valley Tribune* and *Caprock Courier*.
4. The Executive Director sent copies of the notice and the Report to the Briscoe County Clerk, the Silverton public library, the Briscoe County judge, the Briscoe County commissioners, state river authorities, state agencies, state districts, other state and local elected officials, federal agencies, and other potential stakeholders.
5. On December 3, 2013, the ALJ held a preliminary hearing in Silverton, Texas.
6. At the preliminary hearing, the ALJ admitted as parties the Executive Director; the Office of Public Interest Counsel (OPIC); the District; and the Aligned Parties, Gary Weaks, Brad Ziegler, Leland Stukey, James Alan Patton, John Burson, Kyle Fuston, Jerry Leatherman, Perry Brunson, Jimmy Burson, Don Brown, Tommy Burson, and County Judge Wayne Nance. County Judge Nance later withdrew as a party.
7. The ALJ adopted the parties' proposed prehearing schedule, and set April 8, 2014, as the date of the hearing on the merits in Silverton.
8. On April 8, 2014, the ALJ convened the hearing on the merits at the Briscoe County Courthouse in Silverton, Texas. Appearing for the parties were attorney Christiaan Siano for the Executive Director; attorney Eli Martinez for OPIC; and attorney Wayne L. Brooks for the Aligned Parties.
9. The ALJ closed the record on May 13, 2014, with the filing of response briefs.

Briscoe PGMA

10. On June 29, 1990, the Texas Water Commission designated all of Briscoe County, except the area south of the Caprock Escarpment, as a Critical Area based on a study prepared in conjunction with the Texas Water Development Board (Board).
11. In 1997, the Texas legislature amended the Texas Water Code (Code) to rename "critical areas" as "priority groundwater management areas."
12. In 1999, the Commission adopted new rules that designated the Briscoe Critical Area as the Briscoe PGMA.

13. The Report considered the alternatives permitted by statute and recommended that the Commission extend the jurisdiction of the District to include the remaining 406 square miles of western Briscoe County (Non-Managed Area) that is within the Briscoe PGMA but that is not part of any groundwater conservation district.

Area Within the Briscoe PGMA Without GCD Management

14. The Ogallala aquifer underlies most of Briscoe County.
15. The District encompasses Bailey, Cochran, Hale, Lamb, Lubbock, Lynn, Parmer, and Swisher Counties, as well as portions of Armstrong, Castro, Crosby, Deaf Smith, Floyd, Hockley, Potter, and Randall Counties.
16. The District has adopted a groundwater management plan that has been approved by the Board.
17. The District has adopted rules and policies as required by law.
18. The District has joint planning relationships with the surrounding districts also involved in the management of their areas' resources within the associated aquifers.

Effective Management and Adequate Funding for Groundwater Resources

19. The option of creating a new groundwater conservation district to manage the Non-Managed Area's groundwater is not practicable because the new district would encompass only 406 square miles, would require the election of a new qualified board of bonded trustees, and would require the hiring of staff.
20. The boundaries of the Non-Managed Area are contiguous to the District's existing boundaries on the Non-Managed Area's western and southern sides.
21. The contiguity makes the addition of the Non-Managed Area to the District a practical choice among the possible alternatives.
22. The major and minor aquifers within the Briscoe PGMA, including the Ogallala, underlie both the existing District managed lands and the Non-Managed Area.
23. The addition of the Non-Managed Area to the District's jurisdiction would result in a single groundwater management program for most of the Ogallala aquifer south of the Canadian River.
24. The District currently relies on taxes to fund its operations, and its current tax rate is \$0.00754 per \$100 valuation.
25. Based on a \$66 million valuation of the Non-Managed Area, the resulting total revenue generated at that valuation rate would be about \$4,974.
26. The District's 2012 budget was about \$2.8 million, or about \$238 per square mile.

27. The Executive Director estimated the costs for operating a new district as ranging between \$125,000 and \$278,000.
28. To generate that level of annual required revenue, a new district with \$66 million in assessed valuation would need to impose a tax rate ranging between \$0.1899 and \$0.4224 per \$100, a rate 25 to 56 times higher than that currently imposed by the District.
29. Adding the Non-Managed Area to the District is the most feasible and practicable option for protection and management of the groundwater resources.
30. The expansion of the District to provide effective groundwater management to the Non-Managed Area can be adequately funded.

II. CONCLUSIONS OF LAW

Jurisdiction and Notice

1. The Commission has jurisdiction to identify areas of the state that are experiencing critical groundwater problems. Code § 35.007(a).
2. The Commission has jurisdiction to call an evidentiary hearing to consider whether all or part of the land in a PGMA should be added to an existing district. Code § 35.008(b)(2).
3. SOAH has jurisdiction to conduct the hearing and to issue a proposal for decision. Tex. Gov't Code § 2003.042(a)(6).
4. The Executive Director provided the required notice of the evidentiary hearing. Code § 35.009 and 30 Tex. Admin. Code §§ 293.18(e) and 293.21(d).

Evidentiary Hearing

5. The April 8, 2014 evidentiary hearing was held in Briscoe County in accordance with the requirements of Code § 35.008(c), 30 Texas Administrative Code § 293.19, and 1 Texas Administrative Code chapter 155.
6. The SOAH hearing was limited to the consideration of the Executive Director's Report and recommendation. 30 Tex. Admin. Code § 293.19(b)(7).

Adding the Area to the District

7. The addition of the area within the Briscoe PGMA that is not part of the District (Non-Managed Area) to the District will result in the effective management of the Non-Managed Area's groundwater resources. 30 Tex. Admin. Code § 293.19(b)(7)(A).
8. The boundaries of the District will provide for the effective management of groundwater resources in the Non-Managed Area. 30 Tex. Admin. Code § 293.19(b)(7)(B).

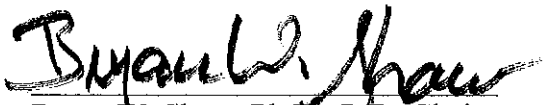
9. The addition of the Non-Managed Area to the District can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district operation functions under Code chapter 36. 30 Tex. Admin. Code § 293.19(b)(7)(C).
10. The addition of the Non-Managed Area to the District is feasible and practicable. Code § 35.008(b)(2).
11. The Non-Managed Area should be added to the District's jurisdiction. Code § 35.008(b)(2).

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

1. The Commission recommends that the western portion of Briscoe County within the Briscoe, Swisher, and Hale County Priority Groundwater Management Area be added to the High Plains Underground Water Conservation District No. 1.
2. The Commission directs the District to hold a vote about adding the Non-Managed Area not later than 120 days of receipt of this order, then advise the Commission of the outcome in accordance with Texas Water Code § 35.013.
3. 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.
4. The effective date of this Order is the date the Order is final as provided by Texas Government Code § 2001.144.
5. 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.
6. The Chief Clerk shall forward a copy of this Order to each party.

Issue date: DEC 12 2014

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Bryan W. Shaw, Ph.D., P.E., Chairman