

Texas Natural Resource Conservation Commission

AN ORDER approving the petition for creation of Gonzales County Underground Water Conservation District; IC No. 101692-D04

On October 27, 1993, the Texas Natural Resource Conservation Commission (Commission) considered the petition for creation of Gonzales County Underground Water Conservation District (District) pursuant to Chapter 52 of the Texas Water Code. Carol Wood, Attorney, a Commission with a Proposal for Decision after Deborah Thomas, Attorney, another Commission Hearings Examiner, held a preliminary hearing on the matter in Gonzales, Texas, on April 14, 1993, and Ms. Wood conducted an evidentiary public hearing in Austin, Texas, on July 6, 1993.

The Hearings Examiner designated the following as parties to the proceeding: the petitioners, the Executive Director of the Texas Water Commission, the Commissioner's Public Interest Counsel, the City of Gonzales, Sue C. Ortman, Thomas R. Semmes, Yates Semmes Land and Cattle Company, Gonzales County Underground Water Supply Corporation, Clifton D. Janota, Kent Knox, W.R. Low, the Independent Cattlemen's Association, and W. Wayne Spahn.

After considering the Hearing's Examiner's Proposal for Decision and the evidence and arguments presented, the Texas Natural Resource Conservation Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On October 16, 1992, a petition for the creation of Gonzales County Underground Water Conservation District was filed with the Texas Water Commission, predecessor agency of the Texas Natural Resource Conservation Commission, in accordance with Chapter 52 of the Texas Water Code.
 - a. The petition was signed by at least 50 landowners within the proposed District.
 - b. The name of the proposed district was included.
 - c. The area and boundaries of the proposed district, as well as a map generally outlining the boundaries of the proposed district, was included.
 - d. The petition included the purposes of the District.
 - e. The petition included a statement of the general nature of projects proposed to be undertaken by the District.
2. A public hearing on the petition for creation of Gonzales County Underground Water Conservation District was held in Gonzales, Texas, on April 14, 1993, and in Austin, Texas, on July 6, 1993.
3. Proper notice of the hearing was given pursuant to Section 52.032 of the Texas Water Code and Section 13(a) of the Administrative Procedures and Texas Register Act, TEX. REV. CIV. STAT. ANN. Art. 6252-13a (Vernon Supp. 1993).
 - a. Notice of the hearing included a statement of the nature and purpose of the proposed District, and the date, time, and place of hearing.
 - b. Notice of the hearing was posted on March 9, 1993, on the bulletin board used for posting legal notices in each county in which all or a part of the proposed District is to be located.

- c. Notice of the hearing was published on March 12 and March 19, 1993, in The Gonzales Inquirer, a newspaper generally circulated in Gonzales County, Texas, the county in which the District is proposed to be located.
- d. Notice of the hearing was mailed by the Chief Clerk of the Texas Water Commission on February 16, 1993, to each statutory party; to every city in whose extraterritorial jurisdiction any portion of the District is proposed to be located; and to the Commissioners Courts of any county in which all or part of the proposed District is proposed to be located.

4. All appropriate and necessary deposits and fees associated with the filing of the petition for creation of the District have been paid.

5. The affidavits of five proposed temporary directors of the proposed District have been received by the Texas Natural Resources Conservation Commission. The proposed temporary directors are the following:

Lawrence Walshak
Ralph Mason
John L. Cook
Steve Ehrig
Greg Tieken

6. Each of the persons named in Findings of Fact No. 5 is qualified to serve as temporary director of the District as each (a) is over the age of 18 years, (b) is a residence of the State of Texas, (c) owns land subject to taxation within the District, (d) has completed and filed with the Texas Natural Resource Conservation Commission an application for consideration of appointment as temporary director in the form and substance required by the rules of the Commission. If appointed, these directors will serve until permanent directors are elected.

7. The proposed District will contain approximately 896 square miles of land and will generally conform with the boundaries of Management Area 3 of the Carrizo-Wilcox Aquifer in Gonzales County, Texas.

8. The petitioners and the City of Gonzales entered into a settlement agreement. The City of Gonzales agreed not to oppose the proposed District's seeking a tax cap of \$0.05 per \$100 property valuation and provisions contained in the petition relating to the proposed District's power of eminent domain. The petitioners agreed the proposed District will restrict the use of ad valorem taxes as follow:

- a. The District will not finance any capital addition by use of ad valorem property taxes if the capital addition is predominantly for the express purpose of the following:
 1. Buying, selling, and transporting water; or
 2. A recharge project – as long as the water usage in the District does not exceed the natural Recharge of the aquifers.
- b. If the District enters into any agreement or contract for the express purpose providing water to a person, firm, or entity, then the contracting person, firm, or entity shall pay the direct development, production, and operation and maintenance costs of the project.
- c. If the District issues bonds for the sale or transport of water, then the District will not pledge any ad valorem taxes for the repayment of those bonds.
- d. Ad valorem property taxes will not be used to directly subsidize the sale or transport of water outside the District.

9. The petitioners further agreed the proposed District will not assess a use fee to any water utility primarily serving end-use customers within the District as long as the water usage in the District does not exceed the natural recharge of the aquifers. However, each water utility will be subject to the District's jurisdiction for all other purposes including, but not limited to, spacing, permits, and all other rules of the District.

10. Because the proposed District's use of the power eminent domain to acquire property interests is necessary to the exercise of the authority conferred by Chapter 52 of the Texas Water Code, restricting the proposed District's power of eminent is not in the public interest.
11. Section 52.023 of the Texas Water Code requires the boundaries of the district created under Chapter 52, Subchapter A, to be coterminous with or inside the boundaries of a management area designated by the Commission.
12. The discrepancy between the petitioner's proposed District boundaries and those of Management Area 3 creates a proposed District larger than the Management Area in Gonzales County.
13. The Queen City and Sparta Aquifers should be included in the proposed District.
14. The proposed District is feasible and practicable.
 - a. The proposed tax rate of 2.5 cents per \$100 valuation will provide the District with an annual budget of \$100,000.
 - b. The proposed District will be able to function properly and carry out its proposed programs with an annual budget of \$100,000.
15. The proposed District will be a benefit to the land in the district.
 - a. The District will protect the Underground water in Gonzales County by preventing over-pumping and contamination by saline water.
 - b. The District will be able to control development of the aquifers and promote water conservation.
 - c. The proposed District will be a public benefit or utility in that it will educate the public about water conservation and will preserve the quality and quantity of the underground water in Management Area 3.

CONCLUSIONS OF LAW

1. The public hearing regarding the petition was held under the authority of, and in accordance with, Chapter 52 of the Texas Water Code and the applicable provisions of the Texas Natural Resource Conservation Commission Permanent Rules.
2. The Texas Natural Resource Conservation Commission has jurisdiction to consider the petition for creation of an underground water conservation district and is authorized to make Findings of Fact and Conclusions of Law and to enter Orders with respect to the creation of the proposed District.
3. All statutory and regulatory requirements for the creation of Gonzales County Underground Water Conservation District have been fulfilled.
4. The proposed Gonzales County Underground Water Conservation District is feasible and practicable, will be a benefit to the land in the District, and will be a public benefit or utility.
WHEREAS Chairman John Hall, Commissioner Pam Reed and Commissioner Peggy Garner vote unanimously to issue this order;
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION:
 1. The petition for creation of Gonzales County Underground Water Conservation District be approved.
 2. Gonzales County Underground Water Conservation District be created under the terms and conditions of Chapter 52 of the Texas Water Code.

3. Gonzales County Underground Water Conservation District have all the rights, powers, privileges, authority, and functions conferred by, and be subject to all duties imposed by, the Texas Natural Resource Conservation Commission and the general laws of the State of Texas relating to Underground Water Conservation District .
4. The boundaries of Gonzales County Underground Water Conservation District be coterminous with or inside the boundaries of Management Area 3 of the Carrizo-Wilcox Aquifer in Gonzales County, Texas.
5. Petitioners submit to the Executive Director of the Texas Natural Conservation Commission a revised map indicating the boundaries of the District are conterminous with or inside the boundaries of Management Area 3 of the Carrizo-Wilcox Aquifer in Gonzales County, Texas.
6. The Gonzales County Underground Water Conservation District include the Queen City Aquifer and the Sparta Aquifer, as well as the Carrizo-Wilcox Aquifer.
7. The Gonzales County Underground Water Conservation District comply with the terms of the agreement set forth in Findings of Fact Nos. 8 and 9.
8. The following five persons be named and appointed as temporary directors of Gonzales County Underground Water Conservation District to serve until their successors are elected or have been appointed in accordance with applicable law:

Lawrence Walshak
Ralph Mason
John L. Cook
Steve Ehrig
Greg Tieken

9. The foregoing temporary directors, no later than the 15th day after the date the individuals are appointed temporary directors, take their oaths of office.
10. No later than the 30th day after the date all temporary directors have been appointed and have qualified, the temporary directors meet and order an election to be held within the boundaries of the proposed Gonzales County Underground Water Conservation District to approve the creation of the District and to elect permanent directors.
11. The Chief Clerk of the Texas Natural Resource Conservation Commission forward a copy of this Order to all parties.
12. If any provisions, 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 portion of the order.

Issue Date:
November 12, 1993

Texas Natural Resource Conservation Commission

Attest:

John Hall, Chairman

Gloria A. Vasquez, Chief Clerk

