



# MINUTES OF SPECIAL BOARD MEETING OF THE SOUTHWESTERN TRAVIS COUNTY GROUNDWATER CONSERVATION DISTRICT

Via Video and Telephone Conference

In accordance with the order of the Office of the Governor issued March 16, 2020, the SWTCGCD Board of Directors conducted a Special Board Meeting as a remote access only meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID-19). The meeting was open to the public and instructions for accessing the conference call were provided in advance with the Notice of Meeting

**Monday, September 22, 2020 at 6:00 PM**

**1. Call to order, declare meeting open to the public, take roll and declare quorum status**

Director and Board President Scadden called the meeting of the Southwestern Travis County Groundwater Conservation District (SWTCGCD or District) Board of Directors to order at 6:00 PM on Tuesday September 22, 2020. Four District Directors were present on the conference call constituting a quorum, including Directors Van Ackeren, Hennings, Hunt, and Scadden. Director Dower joined the meeting at 6:05 PM and Director Davis joined the meeting at 6:08 PM. Director Urie was absent. Also present were General Manager Kodi Sawin, Kirk Holland, Ty Embrey with Lloyd Gosselink, Chris Knox, Darrell Peckham, and Pete Golde

At the request of Director Scadden all present introduced themselves.

**2. Public comments**

Director Scadden called for public comments. There were no public comments.

**3. Conduct Public Hearing to receive input from the public regarding the SWTCGCD proposed District Rules**

***Director Scadden opened the scheduled Public Hearing at 6:03 PM.***

Director Scadden explained that the Hearing would be conducted in two parts with Part 1 being a staff presentation and Part 2 soliciting comments first from the Board and then from the Public.

Mr. Kirk Holland made a Staff Presentation using the document titled *Public Hearing on Proposed Rules*.

***The Public Hearing on Proposed Rules presentation is attached as Exhibit A***



Mr. Holland then initiated Part II of the Hearing by turning it back over to Director Scadden who asked if the Directors had any questions or needed any clarifications.

Director Hunt said that he had received an email from Vicky Kennedy from Travis County asking that language be added to the Rules referring to other jurisdictions' regulations and requiring that the most stringent regulation be used. Mr. Holland said that he had discussed this comment with Ms. Kennedy and explained that this requirement is already in the Rules and she is satisfied with that.

Director Hunt said he had received a comment regarding the requirement that a copy of the TCEQ approval letter be submitted with the registration application for A Public Water Supply Well. Mr. Holland explained that there is specific well information in that approval letter, but he agreed the requested information could be massaged to make it more general.

Director Hennings asked how production volumes are calculated for Aggregated Wells. If there are three wells for example each of which could be Exempt based on their production volume, but whose aggregated production volume might push them into the Non-Exempt category. Mr. Holland advised that Aggregated wells are non-exempt by definition and are measured as a total. Director Hennings said she was curious about what the advantages of aggregating your wells are. Mr. Holland said the advantages are one permit and one meter. General Counsel Embrey added that wells can be taken offline and brought online, and they can be separately metered and summed. Director Dower asked if three wells have separate meters and they are summed, is that the same as having one master meter? Mr. Holland answered yes, as long as those three wells are always treated in an aggregated manner.

Director Scadden asked if any Board member had any more questions and there were none.

Mr. Holland reminded everyone that there is another Public Hearing tomorrow September 23 during the Board Meeting at 10:00 AM

Director Scadden then asked for public comments.

Mr. Chris Knox with Texan Water said he had a question about the October 1<sup>st</sup> effective date for new wells. He explained that his well drilling company is backlogged until January of 2021 and he asked if there could be a grace period for customers already under contract by October 1<sup>st</sup> allowing them to avoid complying with new well construction requirements which will cost several thousand dollars more than they contracted for. Director Scadden said the this could be discussed during Agenda Item 4.

Mr. Darrell Peckham said that he had sent a letter this afternoon and gave a brief overview here. He said that it was good that the SWTCGCD Board did not do historic and existing use treating the property owners differently. He asked that the Board always be conscious of balancing conservation and development of groundwater. He offered an example of developing firefighting systems using groundwater as something it would be great for GCDs to do. Mr. Peckham said that the Groundwater Depletion Area is a "guess-based" planning tool as is the Modeled Available Groundwater (MAG). He asked to take the modeling out of it and said new well owners must be



given equal rights and private property rights are for everyone. Director Davis said that she understood and that she knows a lot of people who feel that way. Mr. Holland commented that what Mr. Peckham is advocating is required by Chapter 36 and it's not as though a new well owner can use as much water as they want, but that they have an equal right to the water as does an existing well owner and if adjustments have to be made then that is going to be done proportionately with both old and new users and that is a common understanding. Mr. Holland said that he does not think our Rules, from the standpoint of what we must do and what we may consider while we do those things, have this sort of problem. He agreed that we might need to do some syntax changes or wordsmithing, but he does not think there is a need for a sea change in our philosophy here. Mr. Peckham thanked Mr. Holland commenting that he "Nailed it".

Director Scadden asked if there were any other questions or comments and there were none.

***Director Scadden closed the Public Hearing at about 7:19 PM***

#### **4. Discuss and possibly act on matters related to the District Rules**

Director Davis opined that she felt that well drillers customers should be taken on a case-by-case basis regarding a grace period for wells that were contracted before October 1<sup>st</sup> but were delayed in the start of drilling. Director Scadden expressed the view that the Board has a fiduciary obligation to the District for funding and needs to be consistent. Director Dower said it seemed to him we could leave the Rules as they are but consider on a case-by-case basis. General Counsel Embrey said that doing things on a case-by-case basis made him uncomfortable. He said words to the effect of "If you have a signed contract as of a certain date could be added, for example as of June 1<sup>st</sup> then a well could be considered an Existing Well as of October 1<sup>st</sup>. Director Hennings said that she felt, during this transition period, we need to be flexible and she agreed with the idea of setting a specific date. Director Hunt said he agreed that we could set a date. Director Van Ackeren also agreed that setting a date would not be arbitrary and maybe we could have a cut-off date by which the well has to be drilled. Director Scadden reminded the Board that we all agreed that October 1<sup>st</sup> was the date by which a well had to be spudded to be an existing well, but we want to be fair with people and as a new district we want to build a good relationship and not have some people feeling that they are suffering as a result of the new district. He said we will have more discussion about this at tomorrow's meeting.

Regarding Mr. Knox comment, Director Scadden asked for an explanation of the construction cost difference prior to the new SWTCGCD rules and with the new Rules. Mr. Knox explained that the main cost difference is the requirement for a longer annulus grout seal which depending on the specific location of the well you could be talking about 50 ft. for the annulus or you could be talking about and 700 ft for the annulus and that is a difference between few hundred dollars and five or six thousand dollars depending on the well. Director Scadden said he agreed that is a big difference.

Regarding Mr. Peckham's comment Director Hunt said that he understood Mr. Peckham's point about the MAG, but the MAG is just one consideration. In paragraph C.6. the MAG is just one consideration in a long list of items but in paragraph C.7. it sort of stands alone there and we should really weigh the potential for "Unreasonable Impacts". Mr. Holland said that we have



eliminated reference to the MAG in other areas and he agreed that it might need some wordsmithing. General Counsel Embrey said he agreed as well.

Director Scadden asked if there were any other comments.

Mr. Peckham said that in the context of a severe situation where you have to enforce restrictions on production you don't want to be limited in your options, the MAG is a planning tool and not a management tool, don't let it trap you, the word "Shall" is the problem. Director Scadden thanked Mr. Peckham and Director Hunt said that he felt we all understand the point and thanked Mr. Peckham for his help to clarify this.

Mr. Knox said he had nothing else.

#### 5. Adjourn

***On a motion by Director Davis and a second by Director Hunt, the Board voted to adjourn the meeting – 6 Ayes to 0 Nays. The meeting was adjourned at about 7:41 PM.***

PASSED, APPROVED AND ADOPTED THIS 14th day of October 2020

  
Tim Van Ackeren, Secretary



## **Exhibit A**

Staff Presentation Public Hearing on Proposed Rules

# Public Hearing on Proposed Rules

Southwestern Travis County Groundwater  
Conservation District

September 2020

# Presentation Topics

- Review of late changes to posted *Rules* language
- Summary of specific *Rules* as now proposed
- Important milestone dates for registration and permitting of wells
- Questions and comments by individual directors
- Public input, questions, and comments on *Rules*

# Late Changes to Proposed Rule Language

1. Made numerous minor edits for clarity and typos
2. Delineated the use, application, permitting, and registration of “Aggregated Wells” at multiple places
3. Explained that simply repairing and/or replacing component parts of wells are not “well modifications”
4. Clarified that WDAs do not require Public Hearings (PHs) before Board action
5. Deleted previous provision that an application for an Existing Well to be under a General Permit by Rule (GP) would receive a 50% discount of the application fee if it was received by March 31, 2021



# Late Changes to Proposed Rule Language (continued)

5. Waived GP application fee for a Test Well that is *solely requested by District during the WDA process*
6. Eliminated variance process in well spacing during new land subdivision, within water-utility service areas, and in well clustering
7. Substituted “avoid Unreasonable Impacts” in lieu of (undefined) “meet minimum drawdown goals” as an additional well-spacing consideration
8. Restricted required wellbore-access specifications to new wells and some existing non-exempts
9. Changed mandatory drought curtailments to be on quarterly-average basis, not monthly

# Notes on Specific Proposed Rules

## Rule 1 – General Provisions

- Generally identical or very similar to over-arching provisions of several adjacent GCDs in GMA 9
- One exception to above: does not include provision of a variance procedure

# Notes on Specific Proposed Rules

## Rule 2 – Definitions

- Generally identical or similar to definitions used in rules of adjacent GCDs in GMA 9
- Supplements terms defined in TWC Chapter 36
- Provides additional information on terminology specific to fee-based, not tax-based GCDs and to regulating groundwater through a permitting program, not just well spacing or areal considerations

# Notes on Specific Proposed Rules

## Rule 3 – Well Registration, Drilling Authorization, and Production Authorization

- “Existing” and “New” Wells have different process, deadlines, and documentation requirements
- No grandfathering of operational requirements
- Registration required of ALL wells NLT 9/30/2021; no registration fees *per se* will be assessed
- Statutes and Rules provide robust exemptions from *permitting* based on type and amount of use
- Both Existing and New Wells may be “Exempt”

# Notes on Specific Proposed Rules

## Rule 3 – Well Registration, Drilling Authorization, and Production Authorization (continued)

- Two types of “Production Authorizations” for Non-exempt Wells: Operating Permits and General Permits by Rule
- Both Existing and proposed New Wells if Non-exempt will require one of these types of permits
- Any proposed New Well must apply for and receive a Well Drilling Authorization before well installation, and before application for the appropriate Production Authorization
- General Permits by Rule have streamlined approval process and do not require installing meters, reporting water use, or paying production fees

# Notes on Specific Proposed Rules

## Rule 3 – Well Registration, Drilling Authorization, and Production Authorization (continued)

- Wells that are not Exempt and that do not qualify for General Permits require Operating Permits, and those permittees must have meters, report use monthly, and pay fees on actual production quarterly
- *Existing* Wells that require Operating Permits will initially be issued Temporary Permits until application process is complete and Operating Permit is issued
- Modifications other than repairs to wells must first *apply* for District determination of whether changes are major or minor and have applicable new requirements for the well

# Notes on Specific Proposed Rules

## Rule 3 – Well Registration, Drilling Authorization, and Production Authorization (continued)

- Proposed *New Wells* may be prohibited in certain aquifers in certain groundwater management zones
- Operating Permits must be renewed annually, and General Permits must be renewed every five years.
- Continually non-compliant General Permits may be reclassified as Operating Permits at District's discretion
- Changes in well ownership, operation, condition, or status and failure to comply with permit conditions may result in modification or revocation of permit and in enforcement penalties

# Notes on Specific Proposed Rules

## Rule 3 – Well Registration, Drilling Authorization, and Production Authorization (continued)

- Existing or New Wells that are public water supply providers will have special permit conditions that require payment of a statutory connection fee before activating each new service connection after October 1, 2020
- Groundwater produced by an Aquifer Storage and Recovery project in the District is subject to special rules that removes ASR-stored water from the District's regulatory purview



# Notes on Specific Proposed Rules

## Rule 4 – Well Standards, Spacing, and Related Reporting

- In addition to Well Drilling Authorizations for New wells, District must be notified no less than one day before active drilling and pump installation activities begin
- Prescribed completion and modification reports for all new wells must be submitted to District
- New wells must be spaced from property lines and other, previously installed wells at prescribed distances that are based on production capacity

# Notes on Specific Proposed Rules

## Rule 4 – Well Standards, Spacing, and Related Reporting (continued)

- New wells must also be located as prescribed to avoid potential contamination sources, flood plains, and interference with drinking-water supply wells owned by retail water utilities and other public water supply providers
- New wells must be constructed in compliance with TDLR standards and with District-specified standards for drilling, completing, capping, sealing, and plugging wells

# Notes on Specific Proposed Rules

## Rule 4 – Well Standards, Spacing, and Related Reporting (continued)

- The District has a right of access to inspect all wells, in accordance with statutory requirements and these Rules, generally with permission of land/well owner if well is following District Rules
- All New Non-exempt Wells and certain modifications to Existing Wells will be assessed a statutorily authorized, one-time Well Construction Fee, per the Fee Schedule

# Notes on Specific Proposed Rules

## Rule 5 – Groundwater Protection

- All Production Authorizations will develop groundwater conservation plans, to avoid waste and to conserve use via conservation-oriented rate structures and voluntary conservation measures, as appropriate to water uses
- All groundwater users in the District will prevent waste of groundwater, including pollution of groundwater supplies, subject to enforcement penalties
- All permittees must develop and implement drought management plans that commit to defined drought stage-specific voluntary and mandatory curtailments in amount of use by groundwater end-users during District declared drought stages

# Notes on Specific Proposed Rules

## Rule 5 – Groundwater Protection (continued)

- Both permit types have mandatory, enforceable provisions related to specific drought curtailments
- The District Rules define a procedure for declaring and implementing an Aquifer Emergency Warning for unanticipated conditions that produce hazardous groundwater conditions that require immediate short-term action by the District and its constituents
- The District Rules define a procedure for declaring and implementing a Critical Groundwater Depletion Area for longer-term additional action in defined areas to reduce adverse effects and their impacts

# Notes on Specific Proposed Rules

## Rule 6 – Procedural Rules

- The District Fee Schedule is reviewed, revised, and re-adopted at least annually, following a PH
- Rules specify procedures for:
  - holding PHs
  - amending the Rules and Management Plan
  - adopting Emergency Rules and Desired Future Conditions
  - permitting actions by District
  - declaring Critical Groundwater Depletion Areas

# Notes on Specific Proposed Rules

## Rule 7 – Enforcement of District Rules

- Encourages and provides for voluntary compliance
- If required, provides for Notices of Alleged Violations followed by Show-Cause hearing before Board
- As required, rules of civil enforcement will be used and case will be adjudicated in Travis County District Court
- Penalties differentiate major and minor violations and whether multiple, recurrent violations occur

# Notes on Specific Proposed Rules

## Rule 7 – Enforcement of District Rules (cont'd)

- Penalties may double during District-declared Extreme and Exceptional Drought stages
- Schedule shows potential per-violation, per-day, per-permittee maximum penalty amounts assessed by Board, not to exceed \$10,000 daily, plus 3x amount of production fees owed and unpaid, if any
- Drilling or using a well in violation of applicable spacing requirements may result in well being plugged



# Important Milestone Dates for Registration and Permitting of Wells

- October 1, 2020
  - Rules become effective, and universe of Existing/New Wells defined
  - New service connection fees begin to be assessed on certain water providers after this date
  - Well registration starts for Existing Wells
- December 31, 2020
  - All existing non-residential wells except livestock wells must be registered, and their owners must have made initial application and application fee for appropriate Production Authorization

# Important Milestone Dates for Registration and Permitting of Wells

- January 1, 2021
  - Temporary Operating Permits issued, as warranted
  - Production fees begin accruing on actual use after this date for Temporary Operating Permit holders
- March 31, 2021
  - Administratively complete applications and supplemental info for those Existing Wells under Operating Permits must be received by District
  - First quarterly payment of production fees and new service connection fees due, if/as applicable

# Important Milestone Dates for Registration and Permitting of Wells

- September 30, 2021
  - All wells used for domestic purposes in single residences or for livestock must have been registered with District
  - Administratively complete applications, including fee, for NDU General Permits, as applicable for certain Existing Wells, must have been submitted

# Comments and Questions by Directors

# Comments and Questions by Stakeholders and Other Members of the Public