



OPEN MEETING MINUTES

SOUTHWESTERN TRAVIS COUNTY GROUNDWATER CONSERVATION DISTRICT BOARD OF DIRECTORS

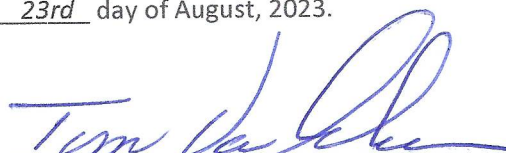
Board Workshop

Wednesday, June 7, 2023, at 9:00 a.m.

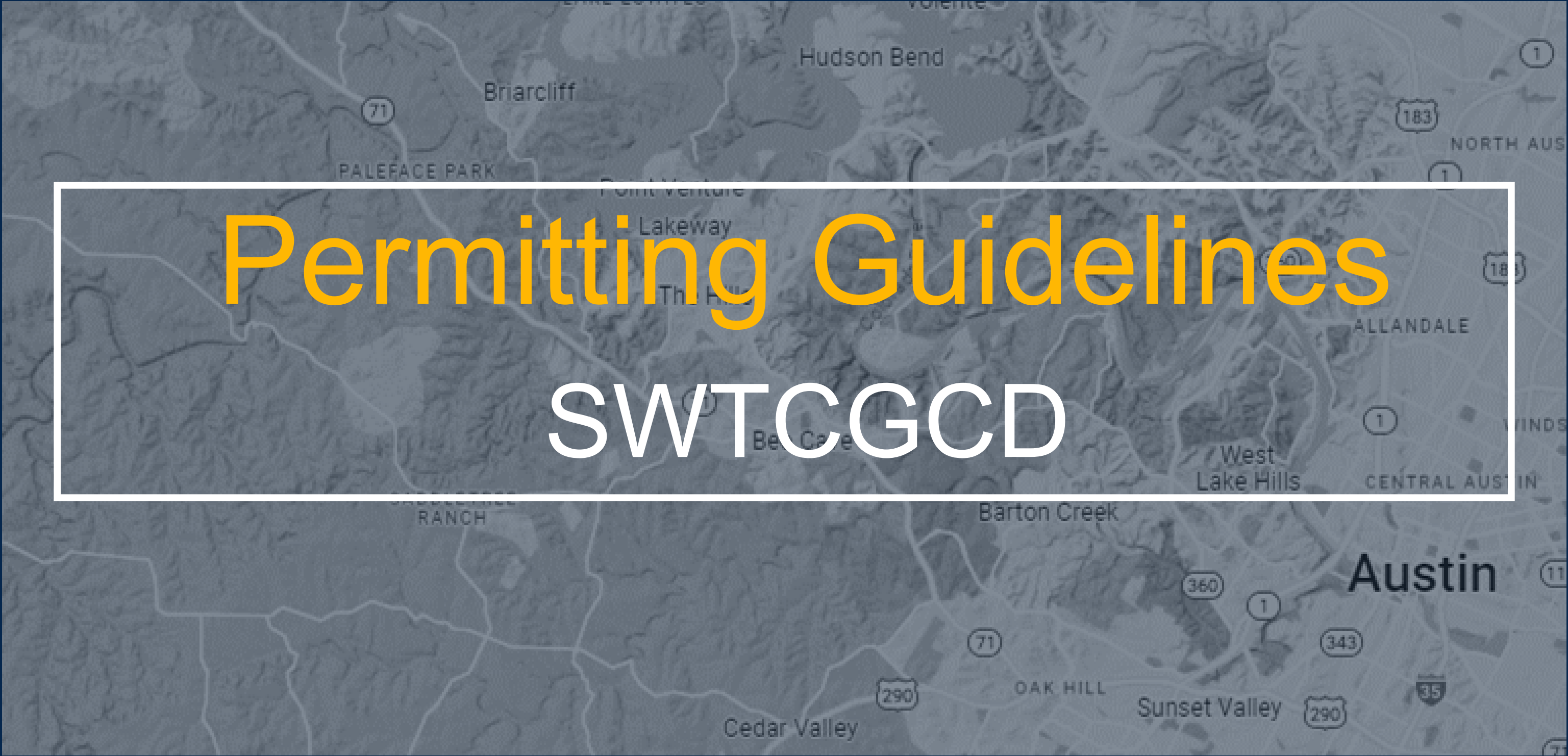
A quorum of the Southwestern Travis County Groundwater Conservation District Board of Directors held a board workshop on Wednesday, June 7, 2023, at 9:00 a.m. at the District office at 8656 W. Highway 71, Building A, Suite 224, Austin, Texas 78735. The meeting was open to the public and a videoconference remote participation option was provided. Instructions for accessing the remote videoconference were provided with the Public Notice of Meeting.

1. **Call to order, declare meeting open to the public, take roll and declare quorum status** – District Vice President Davis called the public meeting to order at 9:01 a.m. on Wednesday, June 7, 2023. Four directors were present at the meeting constituting a quorum, including Director Davis, Director Hennings, Director Hunt, and Director Van Ackeren. Also present were General Manager Lane Cockrell and District staff member Virginia Smith, Ty Embrey and Cole Ruiz with Lloyd Gosselink, Vicky Kennedy with Travis County TNR, Michael Leva, Christy Muse, and Tom “Smitty” Smith. The following individuals participated remotely by videoconference call: CJ Bennett with Bullock, Bennett & Associates, LLC, Lew Adams, and Kelly Zabcik.
2. **Announcements** – No announcements were presented.
3. **Receive and discuss presentation regarding procedures for permitting actions by the District** – Cole Ruiz with Lloyd Gosselink provided a presentation to the Board regarding the District’s permitting duties and authorities, the permitting process, and related procedural requirements. The purpose of the presentation was to educate Directors, District staff, and the public about the permitting process, as described in District Rules and Chapter 36 of the Texas Water Code. The presentation covered the following topics: what information the District may require for Operating Permit applications, factors the Board must consider when making permitting decisions, general timeline of the permitting process and related notice and procedural requirements, and contested cases. A copy of presentation slides is attached as **Appendix A**. No action taken.
4. **Adjourn** – A motion was made by Director Hennings to adjourn the meeting at 10:53 a.m. Motion seconded by Director Hunt. Motion carried 4 Ayes – 0 Nays – 3 Absent.

PASSED, APPROVED, AND ADOPTED THIS THE 23rd day of August, 2023.


Tim Van Ackeren, Secretary

APPENDIX A:
Presentation Slides



Permitting Guidelines

SWTCGCD



AGENDA

1. PERMITTING DUTIES AND AUTHORITIES

- District shall require a permit for drilling and operating a well.
- What may the District require in the permit application?
- What factors may the District consider?
- What are the elements of a permit?

2. PERMITTING PROCESS

- Baseline Procedural Requirements
- Pre-Hearing Requirements
- Final Board Action
- Contested Cases

3. QUESTIONS

Permitting Duties and Authorities

Issuing legally defensible permits

Purpose of SW TCGCD

The District Rules



in the conservation and development of groundwater.

District Rule 1.2.
Tex. Water Code § 36.0015

Best Available Science:

conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

Tex. Water Code 36.0015(a).

Operating Permit Applications

What may the District require?

Tex. Water Code § 36.113(c)

A district may require that only the following be included in the permit application:

- 1) the name and mailing address of the applicant and the owner of the land on which the well will be located;
- 2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;
- 3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- 4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

Tex. Water Code § 36.113(c)

- 5) the location of each well and the estimated rate at which water will be withdrawn;
- 6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;
- 7) a drought contingency plan; and
- 8) other information:
 - a) included in a rule of the district in effect on the date the application is submitted that specifies what information must be included in an application for a determination of administrative completeness; and
 - b) reasonably related to an issue that a district by law is authorized to consider.

Operating Permit Applications

What may the District require?

District Rule 3.4(A)

- Application must be sworn to by owner/operator, include operating permit application fee, documentation showing applicant will have a **“real, non-speculative need”** of the requested quantity of groundwater (3.4A(1)-(3))
- Aquifer test required for some wells – varying requirements depending on requested amount of water (3.4(A)(4))
- 3.4(A)(5)(a)-(n)
 - Applicant’s name, mailing address, physical address, phone number, email address, a contact person, and a copy of the real estate deed to evidence land ownership
 - Withdrawal amount requested and documentation showing that amount is reasonable for the requested use
 - Water conservation plan and drought contingency plan

District Rule 3.4(A)

3.4(A)(5)(a)-(n)

- Total number of wells if permit includes a well field or aggregated system
- Property plat
- Surface geology map
- Drawing and physical description of well construction design, layout, pipelines, chlorination system, etc.
- Pump capabilities
- Texas Well Report and Geophysical Well Log or each well
- Businesses – list owners
- Public water supply well – TCEQ approval for each well
- If well is within designated service area of public utility, need documentation that the utility can’t supply or
- Hydrogeological testing report confirming level of testing under 3.4(A)(4)
- Water chemistry data

Permit Issuance

What may the District consider?

There are eight factors the District shall consider before granting or denying a permit.

The District shall consider whether:

1. the application conforms to the requirements prescribed by Chapter 36 and the District Rules and is accompanied by the prescribed fees, and any information included on the application or supplied therewith;
2. the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders; and such Unreasonable Impacts are unable to be avoided, minimized, or mitigated;
3. the proposed use of water is dedicated to any beneficial use, and the proposed groundwater production amount is reasonable for the intended place of use and purpose of use stated in the application;

Blue indicates language only in District Rule 3.4(C)

Black indicates language or considerations that are present in both the District Rules and Chapter 36.

Permit Issuance

What may the District consider? (Continued)

Whether:

4. the proposed use of water is consistent with the district's approved management plan and will allow the District to achieve its applicable Desired Future Condition;
5. if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is not wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
6. the applicant has agreed to avoid waste and achieve water conservation;
7. the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure; and
8. the applicant has provided the District with a time-stamped photograph(s) of the face plate of the meter showing its identification number and current reading.

Blue indicates language only in District Rule (Rule 3.4(C))

Green indicates language only in Chapter 36 (36.113(d))

Black indicates language or considerations that are present in both the District Rules and Chapter 36

Beneficial Use:

Beneficial use means the use of groundwater for:

- (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, recreational, irrigation, commercial, or pleasure purposes;
- (B) exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (C) any other purpose that is useful and beneficial to the user [except when such use or purpose falls under the definition of “Waste” as defined in these Rules or Texas Water Code Chapter 36.]

Blue indicates only in District Rule (Rule 2)

Green indicates only in Chapter 36 (36.001)

Black indicates present in both District Rules and Chapter 36

Operating Permit Details



Major Sections

Specific well information
Standard Provisions
Special Conditions
Term



May include appended table with additional well information if more than one well is permitted within the single permit (aggregate withdrawals)

LOST PINES GROUNDWATER CONSERVATION DISTRICT OPERATING PERMIT

District Well Number: 5854819

Permit Approved: October 12, 2016

Permittee:

City of Bastrop
Attn: Lynda Humble
1311 Chestnut Street
Bastrop, Texas 78602

Location of Well: approximately 0.1 miles west of Phelan Road in Bastrop County, Texas (30°9'32.76"N 97°19'41.88"W)

Permittee is authorized to operate Well No. 5854819 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: 2,000 acre-feet per year

Maximum rate of withdrawal: 1,500 gallons per minute

Aquifer unit: Simsboro

Type of water use: Municipal

Place of water use: City of Bastrop water service area

Standard Permit Provisions:

This Operating Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Operating Permit, this Operating Permit includes the following provisions:

- (1) This permit is granted in accordance with District Rules, and acceptance of this permit constitutes an acknowledgement and agreement that Permittee will comply with the terms, conditions, and limitations set forth in this permit, the District rules, the orders of the Board, and the District Management Plan.

Operating Permit Elements

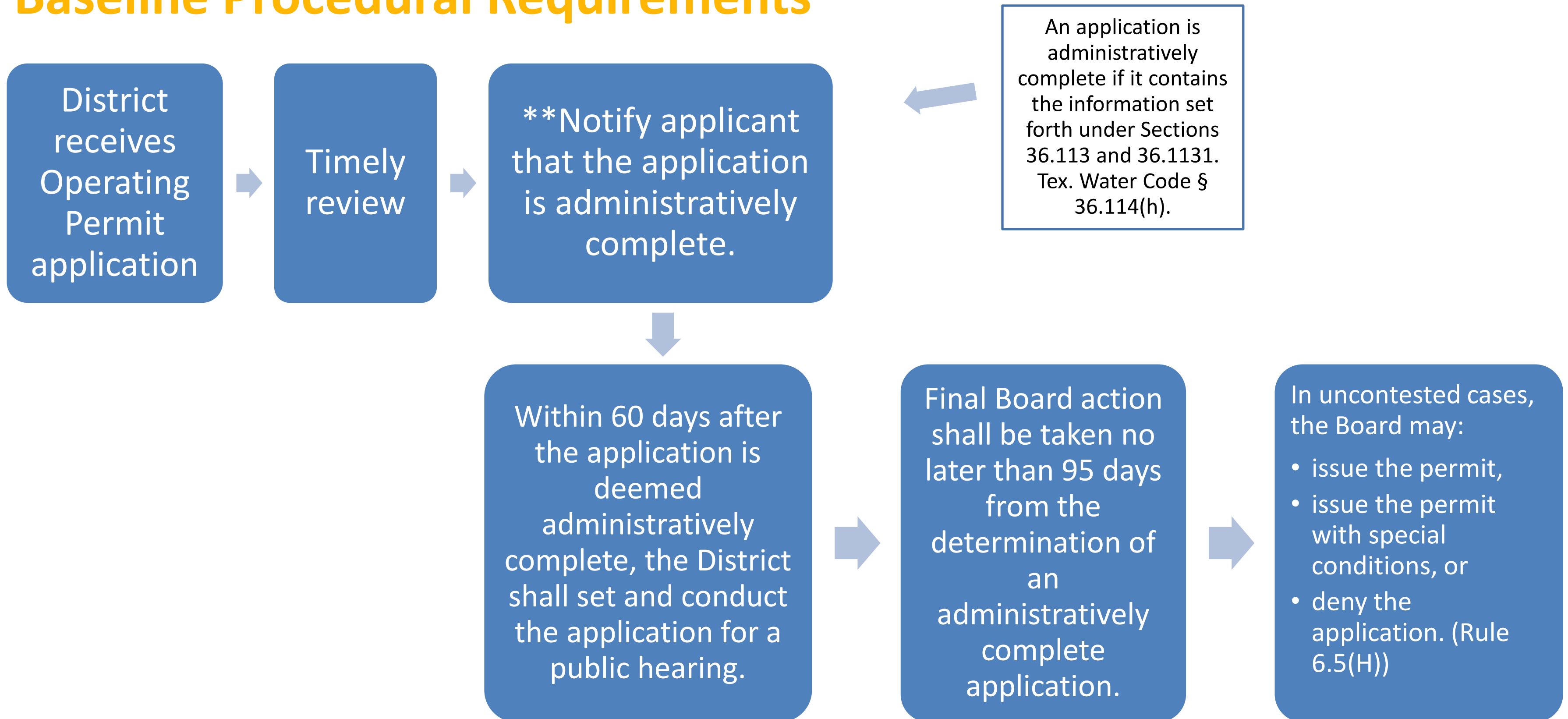
Tex. Water Code § 36.1131:

- a) A permit issued by the district to the applicant under Section 36.113 shall state the terms and provisions prescribed by the district.
 - b) The permit may include:
 - (1) the name and address of the person to whom the permit is issued;
 - (2) the location of the well;
 - (3) the date the permit is to expire if no well is drilled;
 - (4) a statement of the purpose for which the well is to be used;
 - (5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;
 - (6) the location of the use of the water from the well;
 - (7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;
 - (8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;
 - (9) any conservation-oriented methods of drilling and operating prescribed by the district;
 - (10) a drought contingency plan prescribed by the district; and
 - (11) other terms and conditions as provided by Section 36.113.
-

Permitting Process Requirements

Issuing legally defensible permits

Baseline Procedural Requirements



Permitting Process

Pre-Hearing Notice Requirements

The District must:

- Provide notice in accordance with the Texas Open Meetings Act for the meeting and shall include:
 - the type of application under consideration,
 - the name of the applicant,
 - the address or approximate location of the well,
 - the intended use of the water,
 - the requested annual production amount, and any change in use, and
 - the time, date, and location of the hearing.
- Mail notice of the hearing to the applicant at least 10 days prior to the scheduled public hearing.
- Provide notice of the hearing at least 10 days prior to the scheduled public hearing:
 - in a place readily accessible to the public at the District office;
 - to the county clerk of Travis County for posting at the County Courthouse;
 - in one or more newspapers of general circulation in Travis County; and
 - by mail, facsimile, or electronic mail to any person who has requested notice under Rule 6.2.E.

If the District receives an amended application after providing this notice, the application becomes administratively incomplete and must be reprocessed by the District.

District Rule 6.5; Tex. Water Code § 36.404.

Permitting Process

Other Pre-Hearing Requirements

- The applicant shall publish notice of the hearing in a newspaper of general circulation in Travis County at least 10 days prior to the scheduled public hearing.
 - The notice shall include:
 - the name of the applicant;
 - the address or approximate location of the well;
 - a brief description of what the application seeks, including the requested annual production amount, and the proposed action on the application.
- The General Manager must post the information above on the District's Internet site.
- Prior to the meeting, copies of the application, the applicant's response to any notices of deficiency, and the proposed action on the application shall be available at the District Office and posted on the District's Internet site at least 10 days prior to the hearing.

Permitting Process

Basic Hearing Requirements

- The evidentiary hearing must be conducted by:
 - a quorum of the Board or
 - an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing.
- The Board President or the hearings examiner shall serve as the presiding officer at the hearing.
- For contested cases, the State Office of Administrative Hearings shall be delegated the authority to conduct the hearing *if* the applicant or protestant requests.
- The presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription.
 - If a party requests, the hearing shall be transcribed by a court reporter.

District Rule 6.6; Tex. Water Code § 36.406.

Permitting Process

Basic Hearing Requirements – Presiding Officer

The presiding officer may:

1. convene the hearing at the time and place specified in the notice;
2. set any necessary additional hearing dates;
3. **designate the parties regarding a contested application;**
4. establish the order for presentation of evidence;
5. administer oaths to all persons presenting testimony;
6. examine persons presenting testimony and allow cross-examination of persons presenting testimony;
7. ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
8. prescribe reasonable time limits for testimony and the presentation of evidence;
9. exercise the procedural rules adopted by the District; and
10. determine how to apportion among the parties the costs related to:
 - a contract for the services of a presiding officer; and
 - the preparation of the official hearing record.

Permitting Process

Board Actions

For *uncontested* applications, the Board may:

- grant the application;
- grant the application with special conditions; or
- deny the application.

Tex. Water Code 36.4051 and District Rule 6.5(H).

The Board's decision shall be made within 60 days after the date on which the final hearing on the application is concluded. Rule 6.5(H)

- Final Board action shall be taken no later than 95 days from the determination of an administratively complete application. Rule 3.4(D)
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Permitting Process

Contested Cases

If contested before or at the noticed permit hearing, the Board shall send the application to pre-hearing conference to determine standing.

District Rule 6.5(H)(1).

If the District receives a timely written request for contested case hearing from a person other than the applicant, the District shall schedule a preliminary hearing within 35 days to determine at if the requesting person has standing and whether the request raises justiciable issues.

District Rule 6.5(J).

If the Board votes to issue the permit with conditions or denies the permit, the applicant may contest the Board's action by submitting a formal contested case letter to the District office within 20 days after the Board's vote.

The application shall go before the Board as a contested case at the next available Board hearing date to be considered under Rule 6.6.

District Rule 6.5(I).

Permitting Process

Who has “standing” to contest a permit application, or permit application decision?

- The applicant; and
- Any person determined by the presiding officer at a prehearing conference to have personal justiciable interest (i.e. an “affected person.”)

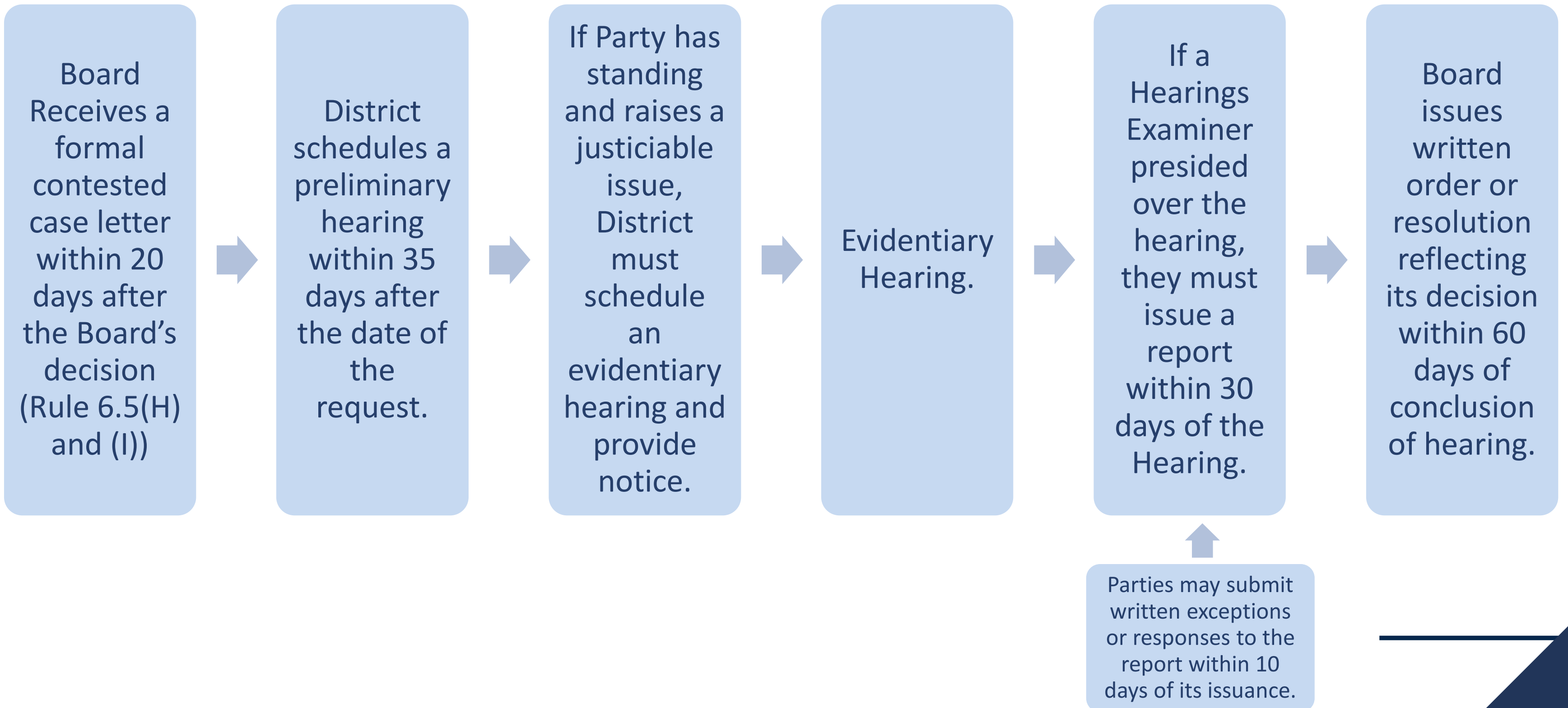
To establish standing to a permit application, the protesting party must demonstrate:

- (1) an “injury in fact” from the issuance of the permit as proposed—an invasion of a “legally protected interest” that is (a) “concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical”;
- (2) the injury must be “fairly traceable” to the issuance of the permit as proposed, as opposed to the independent actions of third parties or other alternative causes unrelated to the permit; and
- (3) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision on its complaints regarding the proposed permit (i.e., refusing to grant the permit or imposing additional conditions).

City of Waco v. Tex. Comm'n on Env'tl. Quality, 346 S.W.3d 781, 802 (Tex. App.—Austin 2011), order vacated (Feb. 1, 2013), rev'd, 413 S.W.3d 409 (Tex. 2013).

Contested Cases

Basic Process

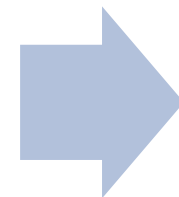


Lawsuits and Judicial Review

Resolution, Rehearing, and Appeal

Board Decision

Board issues written order or resolution reflecting its decision within 60 days of the hearing's conclusion.



Request for Rehearing

District may receive a request for rehearing or for written findings and conclusions. These requests are timely within 20 days of the Board's order or resolution.



Appeal to Dist. Court

A party to a contested hearing may appeal District's decision within 60 days of the decision becoming final. A timely filed request for rehearing is a prerequisite to any such suit.



Final Board Decisions:

The Board's decision on an application is final if:

1. A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
2. A request for rehearing is filed on time, on the date:
 - the Board denies the request for rehearing; or
 - the Board renders a written decision after rehearing.

Lawsuits and Judicial Review

Legal Requirements

Right to Appeal and Parties

- A person affected by and dissatisfied with any rule or order made by a district, including an appeal of a decision on a permit application, is entitled to file a suit against the District to challenge the validity of the law, rule, or order.
- Only the district, the applicant, and parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing.
- An appeal of a decision on a permit application must include the applicant as a necessary party.
- The suit may only be filed after all administrative appeals to the district are final.

Burden of Proof and Evidentiary Standard

- The burden of proof is on the petitioner, and the challenged law, rule, order, or act shall be deemed *prima facie* valid.
- The review on appeal is governed by the substantial evidence rule as defined by Section 2001.174, Government Code.



QUESTIONS