

LONE STAR GROUNDWATER CONSERVATION DISTRICT

August 9, 2023

MINUTES OF SHOW CAUSE HEARING ON ENFORCEMENT MATTERS

The Board of Directors of the Lone Star Groundwater Conservation District (“District”) met in regular session, open to the public, held in person in the Lone Star GCD – James B. “Jim” Wesley Board Room located at 655 Conroe Park North Drive, Conroe, Texas, and remotely via the publicly accessible webinar/telephone conference call within the boundaries of the District on August 9, 2023.

CALL TO ORDER:

President Spigener called to order the Show Cause Hearings at 9:00 AM.

ROLL CALL:

The roll was called of the members of the Board of Directors, to wit:

James Spigener
Janice Thigpen
Jon Paul Bouché
Garry Dent

Four members of the Board were present, thus constituting a quorum of the Board of Directors. In attendance at said meeting were Stacey V. Reese, District Counsel; Kirstin Hein, Permitting Director; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit "A".*

Director Bouché lead prayer and Secretary Thigpen lead the US and Texas pledges.

Ms. Hein stated that items #4, #7, #8, #9, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23 would be removed from the list as they have come into compliance. Director Bouché moved to remove #4, #7, #8, #9, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23 from the agenda as they have come into compliance. Director Dent seconded. The motion passed to remove the state items from the agenda.

5. Show Cause Hearing for Richard Gysler & Cailean McAlister pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **Richard Gysler & Cailean McAlister** to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees, none of which were present.

Ms. Hein stated that the respondents had been requested to appear before the Lone Star Groundwater Conservation District to show cause why the District should not take action for failure to submit the 2022 annual water production report. The following actions were voted on by the Board:

1. issue a cease-and-desist order pursuant to District Rule 12.6(c) failure to submit 2022 annual water production report and/or fines associated with timely submission.
2. file a civil suit against Respondent in State District Court seeking enforcement of District rules and the collection of all due and owing water use fees, late payment penalties, other civil penalties, and attorney's fees and court costs incurred by the District in the prosecution of claims against Respondent for its violations of District Rules; and
3. take all other enforcement action that is necessary and appropriate under the laws of the State of Texas.

Director Bouché moved to approve District staff to initiate further enforcement actions. Secretary Thigpen seconded the motion. The motion passed.

6. Show Cause Hearing for City of Shenandoah, pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **City of Shenandoah** to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees, none of which were present.

Ms. Hein stated that the respondents had been requested to appear before the Lone Star Groundwater Conservation District to show cause why the District should not take action for failure to submit the 2022 annual water production report. The following actions were voted on by the Board:

1. issue a cease-and-desist order pursuant to District Rule 12.6(c) for failure to submit the Consent Order and/or remit the overproduction fees and fines associated with the 2022 withdrawal of groundwater in an amount which exceeded the specific amount authorized for withdrawal by ten percent (10%) or greater than the authorized amount;
2. file a civil suit against Respondent in State District Court seeking enforcement of District rules and the collection of all due and owing water use fees, late payment penalties, other civil penalties, and attorney's fees and court costs incurred by the District in the prosecution of claims against Respondent for its violations of District Rules; and
3. take all other enforcement action that is necessary and appropriate under the laws of the State of Texas.

Ms. Reese provided an update on Shenandoah, as they are willing to pay the fines related to water overproduction but still needs to address water use fees. Their attorney is in touch to discuss a consent order's terms. The permitting director recommended a 30-day extension for Ms. Reese to negotiate the consent order with Shenandoah's legal counsel. If no agreement is reached in this timeframe, Ms. Reese would have authorization to proceed with fee collection as discussed in the show cause hearing. This approach balances negotiation and enforcement options.

Director Bouché moved to extend the terms and the consent order for 30 days to give our general counsel the authority to make changes to the terms of the consent order at her discretion and authorize, if they do not come into compliance at that time, then we give the General Counsel authorization to move forward with collection. Director Dent seconded. Motion passed.

10. Show Cause Hearing for Jo Mark 1 Ltd., pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **Jo Mark 1 Ltd** to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees, none of which were present.

Director Bouché moved the table Jo Mark 1 Ltd until we can ascertain if the District office received the Certified Mail Signature Card was received. Director Dent seconded. Motion passed to table Jo Mark 1 Ltd.

12. Show Cause Hearing for Ernan Puebla (32855 Karen Dr.), pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **Ernan Puebla (32855 Karen Dr.)**, to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees, none of which were present.

Ms. Hein stated that the respondents had been requested to appear before the Lone Star Groundwater Conservation District to show cause why the District should not take action for failure to submit the 2022 annual water production report. The following actions were voted on by the Board:

1. issue a cease-and-desist order pursuant to District Rule 12.6(c) for failure to submit the Consent Order and/or remit the overproduction fees and fines associated with the 2022 withdrawal of groundwater in an amount which exceeded the specific amount authorized for withdrawal by ten percent (10%) or greater than the authorized amount;
2. file a civil suit against Respondent in State District Court seeking enforcement of District rules and the collection of all due and owing water use fees, late payment penalties, other civil penalties, and attorney's fees and court costs incurred by the District in the prosecution of claims against Respondent for its violations of District Rules; and
3. take all other enforcement action that is necessary and appropriate under the laws of the State of Texas.

Director Bouché moved to approve District staff to initiate further enforcement actions. Director Dent seconded the motion. The motion passed

13. Show Cause Hearing for SCI, Texas Funeral Services, Inc. dba Forest Park The Woodlands Funeral Home and Cemetery, pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **SCI, Texas Funeral Services, Inc. dba Forest Park The Woodlands Funeral Home and Cemetery** to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees, none of which were present.

Ms. Hein stated that the respondents had been requested to appear before the Lone Star Groundwater Conservation District to show cause why the District should not take action for failure to submit the 2022 annual water production report. The following actions were voted on by the Board:

1. issue a cease-and-desist order pursuant to District Rule 12.6(c) for failure to submit the Consent Order and/or remit the overproduction fees and fines associated with the 2022 withdrawal of groundwater in an amount which exceeded the specific amount authorized for withdrawal by ten percent (10%) or greater than the authorized amount;

2. file a civil suit against Respondent in State District Court seeking enforcement of District rules and the collection of all due and owing water use fees, late payment penalties, other civil penalties, and attorney's fees and court costs incurred by the District in the prosecution of claims against Respondent for its violations of District Rules; and
3. take all other enforcement action that is necessary and appropriate under the laws of the State of Texas.

Director Bouché moved to give SCI, Texas Funeral Services, Inc. 30 days to come into compliance and at the end of the 30 days if there's still not in compliance so we can move forward with giving general counsel authorization for collection. Director Dent seconded. Motion passed.

The Board of Directors recessed at 9:20am for five (5) minutes to allow Ms. Hein to review the Certified Mail for Jo Mark 1 Ltd.

The Board of Directors reconvened at 9:25am.

Treasurer Prykryl joined the meeting virtually.

Ms. Hein Notified the Board that the Show Cause for Jo Mark 1 Ltd. was still in transit. Director Bouché moved to table Jo Mark 1 Ltd. and reissue a Show Cause for the September Meeting. Director Dent seconded the motion. Motion passed.

11. Show Cause Hearing for Johnston Water Utility, LLC, pursuant to District Rule 12.5

President Spigener announced a Show Cause Hearing pursuant to District Rule 12.5, directing **C Johnston Water Utility, LLC**, to appear before the Lone Star Groundwater Conservation District Board of Directors and show cause why proposed enforcement action should not be pursued by the District. He asked if anyone was present to represent the permittees. Mr. Marty Jones was present to represent the permittees in this matter.

Ms. Reese explained the key points before the board concerning Johnston Water Utility case involves determining whether Johnston Water submitted a timely petition contesting the enforcement action under Rule 13.4.1. The board also needs to consider Johnston Water's motion for continuance. Once these issues are resolved, they can proceed with the show cause hearing under Rule 2.5, which may or may not include the right to cross-examine witnesses based on the petition's timing and compliance with rules. Timeliness and compliance with the relevant rules are crucial aspects of the case.

Ms. Hein provided a summary of the timeline and key dates related to Johnston Water Utility's case, particularly regarding the receipt of the Notice of Violation (NOV) and the subsequent submission of a petition. Ms. Reese emphasized that the first issue to be decided is whether the petition was timely filed under Rule 13.4.1 point one. If it's determined to be timely, they will proceed with the show cause hearing; otherwise, the hearing will follow Rule 12.5. Additionally, Ms. Reese mentioned that there is a second issue related to a motion for continuance filed by Mr. Jones, representing Johnston Water. This motion is based on Mr. Jones' claim of needing to be present in person for cross-examination due to personal issues and difficulties in traveling. Motion was withdrawn as Mr. Jones was present.

Mr. Jones acknowledged that the petition was filed late according to the rules. He explained that they were hired to represent Johnston Water after the last possible date for filing the petition, and Mr. Johnston, their client, was not familiar with the procedures involved. Despite the late filing, Mr. Jones expressed their intention to present the points they'd like to make through the petition, and he offered two

packages of exhibits. Exhibit 1 included the petition they filed for the board's review, whether it would be considered as part of a petition hearing or not. Exhibit 2 eliminated the petition and included only the exhibits they would offer as part of a show cause hearing. Mr. Jones emphasized that they acknowledged the late filing but wanted the board to understand that they proceeded with the petition based on their client's circumstances and intentions.

Ms. Reese clarified that if the board determines that the petition was not timely filed, they would follow the procedures outlined in Rule 12.5 for a show cause hearing. However, there would be no cross-examination of witnesses, and Johnston Water Utility would have waived its right to a contested enforcement action due to Mr. Jones's acknowledgment of the late filing.

Mr. Jones responded by pointing out that both the Administrative Procedure Act (APA) and the Government Code grant the right to appear, present evidence, and cross-examine witnesses in a show cause hearing of this type. He argued that denying them this opportunity would be a denial of procedural due process.

Ms. Reese countered by explaining that they are providing due process, but it's a different level of due process, and it follows the procedures set forth in their rules. She emphasized that Mr. Jones and Johnston Water Utility representatives were present, their evidence had been submitted and would be considered, and if the board followed the procedures under Rule 13.4.1, even though the petition was not timely filed, they would not be violating their own rules.

Director Bouché moved that the Board find that the petition was not in compliance with rule 13.4.1 and filed in a timely fashion. Secretary Thigpen seconded the motion. Motion passed.

Ms. Hein stated that the respondents had been requested to appear before the Lone Star Groundwater Conservation District to show cause why the District should not take action for failure to submit the 2022 annual water production report. The following actions were voted on by the Board:

1. issue a cease-and-desist order pursuant to District Rule 12.6(c) for failure to submit the Consent Order and/or remit the overproduction fees and fines associated with the 2022 withdrawal of groundwater in an amount which exceeded the specific amount authorized for withdrawal by ten percent (10%) or greater than the authorized amount;
2. file a civil suit against Respondent in State District Court seeking enforcement of District rules and the collection of all due and owing water use fees, late payment penalties, other civil penalties, and attorney's fees and court costs incurred by the District in the prosecution of claims against Respondent for its violations of District Rules; and
3. take all other enforcement action that is necessary and appropriate under the laws of the State of Texas.

Mr. Jones argued that public water suppliers, like Johnston Water, face unique challenges compared to other water users. He highlighted that these suppliers are obligated by law to provide continuous and adequate service to their customers and cannot cut off water service to customers, even if they are approaching the limits of their permits. This situation arises from Water Code Chapter 13, which places a statutory duty on public water suppliers to ensure water availability. Mr. Jones also pointed out that Johnston Water had submitted an application to amend its permit when it realized it was approaching its limits, but the application took an extended period to be processed and granted. Had it been processed and granted in a timely manner, they would not have been in violation. He further argued that imposing a fine or penalty on the public water supplier, in this case, was not an effective solution because the customers were the ones

responsible for exceeding their water usage. Public water suppliers cannot control their customers' water use, and imposing penalties on the supplier does not address the root issue. Instead, he suggested calling it a "surcharge for overproduction" so that it can be included in the rates and the customers who are responsible for overproduction bear the consequences. Mr. Jones emphasized that revoking the permit was not a viable option, as it would conflict with the Public Utilities Commission (PUC) regulations, and Johnston Water Utility cannot stop providing water to its customers.

Ms. Hein explained that Johnston Water had applied to increase its allocation in August, but the application was not administratively complete until June 2nd, 2023. The Board approved it on June 13th, 2023. She clarified that the application had to meet specific requirements outlined in the rules to be considered administratively complete and, therefore, eligible for a hearing before the Board. During the application process, there was communication between Johnston Water and district staff regarding the demand calculations for the requested water volume. The district had difficulties making sense of the demand calculations and requested additional information to support the requested amount. Johnston Water subsequently realized that it had initially requested more water than it actually needed and reduced the requested amount accordingly. Ms. Hein emphasized that the district had followed its rules and processes consistently in handling Johnston Water's application. She also pointed out that according to the rules, an approved permit amendment applies prospectively and cannot be applied retroactively. Additionally, she mentioned that Johnston Water received reductions in penalties, and the fine was cut in half as a final effort to resolve the matter without revoking the permit.

President Spigner clarified that the district did not want to revoke anyone's permit.

Director Bouché moved that Board would not seek revocation or suspension of a permit in the show cause hearing, Secretary Thigpen seconded. Motion passed.

Ms. Reese clarified several important points. She acknowledged the discussion about potentially changing the term "penalty" to allow utilities to pass on costs to customers but emphasized that the current discussion focuses on existing rules. She also stressed the need for consistent rule application to all permit holders, without providing preferential treatment to any group. Ms. Reese highlighted that the district's rules align with the Water Code and Chapter 36. These rules allow the district to request specific information to justify groundwater demands and additional documentation to prevent waste and ensure beneficial use. Furthermore, she addressed claims of substantive due process violations. She pointed out that an exhibit submitted as evidence does not serve as conclusive proof. The reference to Quadvest's petition was withdrawn as Quadvest signed a consent order and paid the penalty.

President Spigener expressed his distress at being accused of causing financial burdens to taxpayers through intentional application delays.

Secretary Thigpen expressed her disbelief the permittee had the notion the Board would consider revoking a permit. Ms. Reese clarified that while the rules grant authority for permit revocation, it was not the intent of the board to revoke the permit, as indicated by the agenda for the meeting.

President Spigener reiterated the board's commitment to fair and equitable treatment for all permit holders. He emphasized that no preferential treatment had been given, citing the significant reduction in penalties Johnston Water received, which was consistent with the rules. Overall

message from the board was that revocation was not the goal, and they aimed to maintain fairness and consistency in their dealings with permit holders.

Director Bouché moved that the Board issue a compliance order pursuant to Rule 12.6 giving Johnston water the 30 days to comply with the terms of the June 9th 2023 consent order. If Johnston Water Utility does not sign and pay the penalties within the 30 days and authorize general counsel to file a civil suit seeking enforcement of district rules and the collection of all the knowing water use fees, late penalties. Other civil penalties, attorneys fees, court costs incurred by the District and the prosecution of claims against Johnston Water Utility for its violations of District rules and to not authorize the General Counsel to seek any injunction or otherwise seek to revoke or suspend the permit of any amount. Of authorized to be produced under the permanent in this lawsuit. Treasurer Prykryl seconded. Motion passed.

Director Bouché moved to adjourn, Director Dent seconded the motion. The regular Board of Directors' meeting adjourned at 10:07 am.

PASSED, APPROVED, AND ADOPTED THIS 12th DAY OF SEPTEMBER 2023.



Janice Thigpen, Board Secretary



SIGN IN SHEET

August 09, 2023

Do you wish to speak on an agenda item?	NAME	CITY, STATE, ZIP	E-Mail	Would you like to receive LSGCD updates & information?
	Shawna Marsh			
	Mitchell Marsh			
	Branley Jones			
	Mandy Jones			
	Garrett Marsh			
	Dylan Marsh			
	Jessie Marsh			
	Tanner Marsh			
	Sarah Marsh			
	Cody Marsh			
	Tracy Marsh			