

LONE STAR GROUNDWATER CONSERVATION DISTRICT
Summary of Proposed Amendments to District Rules and
District Regulatory Plan

January 28, 2015

The Lone Star Groundwater Conservation District (the “District”) Rules and Bylaws Committee has been working diligently over the course of the last two years to discuss, analyze, prepare, and review amendments to:

1. the District Rules, regarding well spacing and tract size requirements; and
2. the District Regulatory Plan (“DRP”), regarding the amount of authorized production for new large volume groundwater users in 2016, the transferability of permits by all permit holders, and the procedures applicable to Joint Groundwater Reduction Plan participants and sponsors.

The District Board of Directors initially held a rulemaking hearing to consider for adoption the proposed amendments to the District Rules and DRP in October 2014, which, largely due to the public’s request for additional time to review the proposed amendments, has been continued to allow for public comment at public hearings in November and December 2014, and January 2015. Also during this time, the District held a public workshop in November 2014, and has scheduled another workshop for late January 2015, at which the District’s staff and consultants provide a more detailed explanation of the proposed amendments and address questions and concerns raised by the public.

The proposed amendments to the District Rules related to well spacing and minimum tract size requirements for future wells in the Gulf Coast Aquifer, and to well spacing requirements for future wells in the Catahoula Aquifer from existing wells in the Catahoula Aquifer, were developed over a two-year period after much study on the local hydrogeology of those formations. For new wells in the Gulf Coast Aquifer, a minimum tract size of 1.5 acres and a well screen of no less than 150 feet deep is proposed to minimize interference between wells and prevent performance problems for wells that are drilled too shallow. For the Catahoula Aquifer, minimum spacing requirements are proposed for new wells from existing Catahoula wells that vary in distance based upon the production capacity of the new well. The proposed amendments to the District Rules include a variance process that authorizes the District’s Board of Directors, and in certain instances the District’s General Manager, to grant exceptions to the proposed spacing and tract size requirements.

While the District’s evaluation of well spacing and tract size requirements was initiated largely in response to requests from existing well owners for protection of their investments in the production of groundwater from the Gulf Coast and Catahoula aquifers, the District’s Board of Directors appears willing to table the discussion of the proposed amendments at this time for further deliberation and discussion.

The District adopted the DRP beginning in 2006 as a multi-phased plan designed to require a comprehensive conversion effort to reduce total annual groundwater production from the Gulf Coast Aquifer within Montgomery County to a level that does not exceed, on average, the sustainable recharge rate of the Gulf Coast Aquifer. Phase II(B) of the DRP currently imposes conversion requirements on groundwater users authorized to produce or actually producing 10 million gallons per year (“mgy”) or more in the District. Large Volume Groundwater Users (“LVGUs”)—permit holders who were authorized to produce 10 million gallons or more of groundwater in the year 2009 and are still producing 10 million gallons or more of groundwater today—must, beginning in the year 2016, reduce their annual production to an amount equal to 70% of their 2009 permitted authorization (their 2009 permitted authorization is termed under the DRP as their “Total Qualifying Demand”) or 10 million gallons, whichever amount is greater. Whereas, New LVGUs—permit holders who were authorized to produce zero or less than 10 million gallons of groundwater in the year 2009 but currently have an annual demand and produce 10 million gallons or more of groundwater—must, beginning in 2016, reduce their annual production to an amount equal to their 2009 permitted authorization.

Under the current DRP, a New LVGU with zero 2009 permitted authorization (zero Total Qualifying Demand), would not be able to obtain a permit from the District to produce any groundwater whatsoever beginning in 2016, even if the New LVGU previously held a permit for 9.9 mgy as a Small Volume Groundwater User (“SVGU”). In other words, an SVGU producing an amount equal to or less than 9.9 mgy whose actual production or production authorization increases to 10 mgy or more, resulting in the SVGU becoming a New LVGU, would be limited to producing its 2009 permitted authorization (a.k.a. its “Total Qualifying Demand”)—an amount that would be equal to zero or some other amount less than 10 mgy, depending upon the particular SVGU. Thus, under the current DRP, the permit holder is worse off as a New LVGU than it otherwise would have been remaining an SVGU, producing up to 9.9 mgy and avoiding the DRP conversion requirements.

The proposed amendments to the DRP solve this problem relative to New LVGUs by allowing a New LVGU to actually produce up to 10 mgy regardless of its 2009 permitted authorization, or its Total Qualifying Demand. Under the proposed amendments to the DRP Phase II(B), all New LVGUs, including those with zero 2009 authorized production, or Total Qualifying Demand, may produce up to 10 mgy. Allowing New LVGUs to actually produce 10 mgy either under an individual or Joint Groundwater Reduction Plan (“GRP”) benefits not only New LVGUs, but also other Joint GRP participants because it frees up water that would otherwise have to go towards New LVGUs’ water needs to be used for other purposes.

Additionally, the proposed amendments to the DRP authorize the transfer of permits between LVGUs, New LVGUs, and SVGUs that are currently prohibited under the DRP. The proposed amendments to the DRP authorize SVGUs or New LVGUs with Total Qualifying Demand, or 2009 permitted authorization, to transfer a permit issued by the District to any other person, limited by the amount of Total Qualifying Demand held by the transferring SVGU or New LVGU. However, the transfer of Total Qualifying Demand by an SVGU or New LVGU reduces the permit holder’s ability to itself actually produce up to 10 mgy. The provisions set forth in the proposed amendments provide the proper calculations to determine how much a

permit holder may be able to produce after transferring part or all of its permit issued by the District to another person. As we approach the 2016 conversion date, this proposed change is important because it promotes the transferability of permits and enables LVGUs and New LVGUs to acquire additional permitted authorization from other permit holders in the District in order to meet their water needs post 2016.

The final proposed DRP Phase II(B) amendments involve clarifying some of the permitting procedures between the District and the participants in a Joint GRP. Participants in a Joint GRP are authorized under the DRP to have some members overproduce groundwater while others underproduce, so long as they collectively achieve the groundwater pumping reductions required by the DRP as a group. For this reason, it is necessary that the District adjust its permitting system procedures to account for the operations and logistics of providing this kind of flexibility to permit holders in a Joint GRP. While it appears the District will not go forward with the proposed language requiring the Joint GRP sponsor to be added as a co-permittee to all permits within its Joint GRP, the District nonetheless must adopt the permitting procedures related to permits included in a Joint GRP so that those permit holders will know what to expect as they and the District approach the 2016 conversion. In order to ensure an accurate accounting of groundwater production under a Joint GRP, under the proposed amendments, the Joint GRP sponsor will be responsible each year for informing the District of which participants in the Joint GRP will produce how much groundwater. The Joint GRP sponsor will also be responsible for paying water use fees and other fees for all participants, and is primarily on the hook for enforcement if the Joint GRP participants collectively produce more groundwater than the group is authorized to produce. Individual participants are still responsible for their own metering and groundwater production reporting compliance.

According to the proposed amendments to the DRP, amendments to the permits included in a Joint GRP *should* be signed by both the permit holder and the Joint GRP sponsor, and if only one signs, the other gets notice of the permit amendment application and has the right to participate in the hearing, as do all Joint GRP participants, which makes sense considering the fact that any amendment to a permit in a Joint GRP may have a significant impact on the operation of the Joint GRP and its participants' ability to produce groundwater. Because the DRP requires all LVGUs and New LVGUs to submit an individual GRP or enter into a Joint GRP, the proposed amendments clarify that all permit amendments have to be consistent with the Joint GRP, or with a new individual GRP or new Joint GRP if the permit holder is leaving its current Joint GRP. The proposed amendments also account for the possibility of a permit holder leaving the Joint GRP during the course of the calendar year, and provide that in such case the permit is prorated based on the remainder of days in the calendar year, regardless of how much water has already been pumped. Finally, the proposed amendments reiterate that individual participants and the Joint GRP sponsor remain jointly and severally liable for all rule violations.

While there is no extreme urgency to adopt proposed amendments to the District Rules regarding well spacing and minimum tract size requirements, other proposed amendments to the DRP regarding New LVGUs, transferability of permits, and procedures for Joint GRPs are immediately necessary to the District's regulation of the Gulf Coast Aquifer and to the permit holders who must meet the 2016 conversion requirements. In addition to the District's time and effort, millions of dollars have been spent thus far by various groundwater users in preparation of

the conversion in order to comply with the DRP. The proposed amendments to the DRP work to better assist groundwater users in meeting the 2016 conversion requirements by offering more water to New LVGUs than otherwise allowed under the current DRP and by enabling groundwater users to utilize permit transfers to achieve their water needs. Finally, the proposed amendments outline the operations and procedures applicable to Joint GRPs in anticipation of the conversion. While the District refuses to become involved in the independent contracts and transactions occurring between Joint GRP sponsors and participants, the proposed amendments enable the District to effectively track how much groundwater each participant in a Joint GRP is authorized to produce to ensure compliance with the DRP.