

LONE STAR GROUNDWATER CONSERVATION DISTRICT

MEMORANDUM

TO: Board of Directors
Lone Star Groundwater Conservation District

THROUGH: Rules and Bylaws Committee Members and
General Counsel

FROM: Kathy Jones, General Manager

DATE: November 6, 2014

RE: Proposed Amendments to District Rules and District
Regulatory Plan Phase II(B)

The Lone Star Groundwater Conservation District's (the "District's") Rules and Bylaws Committee has met extensively throughout the year to discuss, analyze, prepare, and review proposed amendments to the District Rules, regarding well spacing, location, and tract size requirements, and the District Regulatory Plan ("DRP") Phase II(B), regarding the production of each landowner's fair share of groundwater, the transferability of Total Qualifying Demand, and permitting procedures applicable to Joint Groundwater Reduction Plan participants and sponsors.

The Rules and Bylaws Committee approved proposed amendments to the District Rules and DRP to be presented to the District Board of Directors (the "Board"). A public hearing was scheduled for October 14, 2014, to consider the proposed amendments and receive public comment. Proper notice of the public hearing was published and posted pursuant to statutory requirements, 20 days in advance of the hearing, and copies of the proposed amendments to the District Rules and DRP were made available to the public for inspection on the District website and at the District office for 20 days in advance of the hearing. During the 20 days in advance of the hearing, the District accepted written comments from the public on the proposed amendments.

On October 14, 2014, the District held a public hearing on the proposed amendments to the District Rules and DRP, during which the District accepted written and verbal comments from the public on the proposed amendments. The Board did not take action on the proposed amendments and continued the public hearing, leaving the record open for the submission of additional written comments until Tuesday, October 21, 2014, at 5 p.m., and continuing the hearing until the next regular Board meeting, November 11, 2014, at 10 a.m. in the District office.

The District received multiple comments from the public on the proposed amendments to the District Rules and DRP. The District's Rules and Bylaws Committee met on Monday,

October 27, 2014, to review all comments received by the District from the public. The public comments received by the District are addressed herein.

SUMMARY OF PROPOSED AMENDMENTS TO DISTRICT RULES

OVERVIEW

The proposed changes to the District Rules involve well spacing, location, and tract size requirements. For new wells drilled or completed in the Gulf Coast Aquifer, a minimum tract size of 1.5 acres is proposed, which was derived by considering both Montgomery County's platting requirements and technical information prepared by the District's hydrogeologists on water level drawdown and well interference. Additionally, all new wells completed in the Gulf Coast Aquifer are required to be screened at a depth no less than 150 feet (regardless of the capacity of the well) in order to prevent well interference problems caused by wells being drilled too shallow.

For the Catahoula Aquifer, minimum spacing requirements are proposed for new wells from existing Catahoula wells based on the production capacity of the new well. Spacing requirements are reduced if there is a vertical offset of 100 feet or more in the elevation of the well screen of the new well and that of the existing well. The Catahoula minimum well spacing requirements were derived based upon studies and technical information prepared by the District's hydrogeologists, balanced with practical considerations of the needs of Catahoula well owners.

A variance application process is provided for both the Gulf Coast Aquifer minimum tract size requirements and the Catahoula Aquifer minimum spacing requirements from existing wells.

PROPOSED AMENDMENTS TO SPECIFIC RULES

Rule 6.1. Spacing and Location of Existing Wells

The proposed amendments to Rule 6.1 clarify that the proposed spacing and location requirements applicable to new wells do not apply to existing wells drilled prior to the effective date of the proposed rules, if adopted. However, the proposed amendments specify that if an existing well is substantially altered in size or capacity (as currently defined in the rules), the well shall become subject to the new spacing, location, and completion requirements applicable to all new wells.

Rule 6.2 Spacing and Location of Wells

Rule 6.2 provides the general spacing and location requirements applicable to all wells, including compliance with TDLR Rules and other drilling and completion requirements set forth under the District's rules. The proposed changes to this rule require all new wells drilled after the effective date of the proposed rules to also comply with the aquifer-specific well spacing, location, and tract size requirements, as applicable, set forth in Rules 6.3 and 6.4, unless a variance is granted. The proposed language in the rule signifies the purpose of the aquifer-specific well spacing, location, and tract size requirements, which is to prevent interference between wells and impacts to neighboring wells within the same aquifer. Finally, the proposed language provides definitions for the terms "tract" and "vertical offset" as those terms are used throughout Section 6.

Rule 6.3 Gulf Coast Aquifer-Specific Well Spacing, Location, and Tract Size Requirements

New Rule 6.3 proposes well spacing, location, and tract size requirements for all new wells drilled or completed in the Gulf Coast Aquifer after the effective date of the rule. The proposed rule requires a minimum tract size of 1.5 acres for existing and future plats as an appropriate site for a new well completed in the Gulf Coast Aquifer. Certain tracts reserved for groundwater production or public water supply located in subdivisions platted prior to the effective date of the proposed rule are exempt from the minimum tract size requirements. However, according to the proposed rule, all new wells completed in the Gulf Coast Aquifer must be screened at a depth no less than 150 feet regardless of the capacity of the well, in order to prevent well interference problems caused by wells being drilled too shallow. The proposed rule allows one or more wells to be completed on a tract of land that is greater than or equal to 1.5 acres if each well is completed into a different subdivision of the Gulf Coast Aquifer (the Chicot, Evangeline, or Jasper) or a minimum horizontal distance of 255 feet exists between each well.

Rule 6.4 Catahoula Aquifer-Specific Well Spacing Requirements

New Rule 6.4 proposes minimum well spacing requirements for all new wells drilled or completed in the Catahoula Aquifer after the effective date of the rule from existing Catahoula wells. The minimum spacing requirements between the new well and the existing well vary depending on the production capacity of the new well. Spacing requirements are reduced if there is a vertical offset of 100 feet or more in the elevation of the well screen of the new well and that of the existing well.

Rule 6.5 Standards of Completion for All Wells

The proposed amendments to this rule cross references Rule 6.3 to account for the completion requirement that new wells completed in the Gulf Coast Aquifer be screened at a depth of at least 150 feet, measured from the surface.

Rule 6.6 Variances to Spacing, Location, and Tract Size Requirements

New Rule 6.6 proposes an application process a person may pursue to receive a variance from the spacing, location, and tract size requirements for wells drilled or completed after the effective date of the proposed rules. The proposed rule authorizes the Board, or under certain specified circumstances the General Manager, to grant an application for a variance on reasonable grounds based on the information contained in the application or evidence properly and timely presented to the Board for its consideration at a public hearing. However, in certain limited cases a public hearing may not be required.

Rule 6.7 Variance Requests Involving Certain Public Water Systems

New Rule 6.7 proposes additional considerations for variance requests when the applicant is a retail public utility proposing to drill a well to supply water exclusively for a public water system, in which case the Board may consider evidence of whether the proposed well will be drilled at a location within the boundaries of a retail public utility that has prohibited the drilling of wells by

other persons through a lawful ordinance, rule, resolution, or order of the retail public utility or whether the drilling of wells on other land in the area of the proposed well is prohibited through deed restrictions or other lawful means.

SUMMARY OF PROPOSED AMENDMENTS TO DISTRICT REGULATORY PLAN PHASE II(B)

OVERVIEW

The proposed amendments to the District Regulatory Plan (“DRP”) Phase II(B) address some problems related to certain New Large Volume Groundwater Users (“New LVGUs”) in the current version of the DRP, who effectively get no ability to produce groundwater from their own groundwater property rights once their demand increases from an amount below 10 million gallons per year (“mgy”) to an amount equal to or greater than 10 mgy. These problems were especially highlighted because of issues presented in the *EAA v. Day* case, in which the Texas Supreme Court stated that landowners shall be entitled to a “fair share” of the right to drill and produce from an aquifer. The proposed amendments also clarify the rules applicable to the transferability of permits as well as the operations and procedures applicable to Joint Groundwater Reduction Plan (“GRP”) participants and sponsors.

PROPOSED AMENDMENTS TO SPECIFIC PARAGRAPHS

DRP Phase II(B) Requirements – Paragraphs 8, 9, & 13

While the DRP currently prohibits a New LVGU without Total Qualifying Demand (“TQD”) from obtaining a permit from the District to produce any groundwater beginning in 2016, even if the water user previously held a permit for 9.9 mgy as a Small Volume Groundwater User (“SVGU”), as defined in the proposed amendments, once the water user’s demand exceeds 9.9 mgy he is entitled to zero groundwater. The proposed amendments to the DRP solve this problem and ensure that each landowner in the District has the opportunity to produce groundwater from its land by allowing each water user with a demand greater than or equal to 10 mgy to actually produce up to 10 mgy. However, the permit holder may not transfer this authorized production to another person for production on a different parcel of land or offer it into a Joint GRP to the extent the permit holder has no TQD. In previous meetings with the Board and members of the Rules and Bylaws Committee, we have referred to these proposed amendments as the “fair share solution.”

Under the proposed amendments, a New LVGU with zero TQD must submit to the District an individual GRP or become included in a fully compliant Joint GRP. A New LVGU with zero TQD may be authorized to actually produce groundwater in an amount not to exceed 10 mgy; however, this amount of permitted production authorization cannot be sold or transferred by the New LVGU for production on a different parcel of land or offered into a Joint GRP for production by another Joint GRP participant. To produce a greater amount of groundwater, the New LVGU must purchase or acquire additional Initial Conversion Obligation-Adjusted Total Qualifying Demand (“ICO-Adjusted TQD”), as that term is defined below, from another permit holder or, if the New LVGU has joined a Joint GRP, the New LVGU may produce additional groundwater available under the collective amount of ICO-Adjusted TQD available in the Joint GRP.

As set forth in the proposed amendments, a New LVGU with TQD must also submit to the District an individual GRP or become included in a fully compliant Joint GRP. A New LVGU with TQD may be authorized to actually produce groundwater in an amount not to exceed 10 mgy, and this amount is inclusive of the New LVGU's original TQD. And, while a New LVGU with zero TQD has no TQD to transfer or sell or offer into a Joint GRP for production by another participant to the Joint GRP, a New LVGU with TQD may transfer or sell or offer into a Joint GRP for production by another participant to the Joint GRP all or part of its TQD. In the event the New LVGU sells or transfers its TQD to another person or offers its TQD into a Joint GRP for production by another participant to the Joint GRP, the New LVGU's ability to produce up to 10 mgy is reduced by the amount of TQD transferred or sold or offered into the Joint GRP. To produce a greater amount of groundwater, the New LVGU must purchase or acquire additional ICO-Adjusted TQD from another permit holder, or if the New LVGU has joined a Joint GRP, the New LVGU may produce additional groundwater available under the collective amount of ICO-Adjusted TQD in the Joint GRP.

DRP Phase II(B) Requirements – Paragraphs 14 & 15

The transferability of TQD, or ICO-Adjusted TQD, as that term is described herein, is also addressed in the proposed DRP amendments and is related to the effectiveness of the fair share solution. As stated, the proposed amendments provide that a landowner with a demand equal to or greater than 10 mgy may be entitled to actually produce up to 10 mgy. The right to produce that 10 mgy of groundwater is nontransferable, except to the extent that the landowner has TQD. Any ICO-Adjusted TQD transferred by the landowner may reduce the landowner's right to obtain a permit for its 10 mgy fair share. Such limitations are provided in the proposed amendments set forth in Paragraphs 14 and 15 of the DRP Phase II(B).

The proposed language in Paragraph 14 applies to the transferability of ICO-Adjusted TQD by LVGUs. LVGUs, which inherently have TQD greater than or equal to 10 million gallons, may transfer or sell all or a portion of their ICO-Adjusted TQD. An LVGU's ICO-Adjusted TQD is equal to 70% of its TQD or 10 million gallons, whichever amount is greater. However, if the amount of ICO-Adjusted TQD sold or transferred by an LVGU takes its remainder ICO-Adjusted TQD below 10 mgy, the LVGU is forever limited to this remaining amount as the maximum amount of authorized production under a permit granted by the District, unless the LVGU purchases or acquires additional ICO-Adjusted TQD from another permit holder in the District.

As the DRP currently exists, SVGUs are prohibited from transferring permits to LVGUs. Under the proposed amendments such transfers are authorized so long as the SVGU is transferring TQD. Paragraph 15, as proposed, provides that an SVGU or New LVGU with TQD (and all SVGUs and New LVGUs inherently have less than 10 million gallons TQD, because otherwise they would be LVGUs) may transfer a permit issued by the District to any other person limited to the amount of TQD held by the transferring SVGU or New LVGU.

However, as set forth in Paragraph 15, TQD transferred by an SVGU or New LVGU reduces the amount of groundwater the SVGU or New LVGU may actually produce if its demand increases. An SVGU or New LVGU who has transferred or sold its TQD will not get a free ticket to produce

10 mgd in the event its demand increases to an amount equal to or greater than 10 mgd. The proposed amendments to the DRP limit the permit holder's maximum permitted production authorization to an amount equal to the lesser of either its actual demand or 10 mgd, minus any TQD sold or transferred, unless the permit holder purchases or acquires additional ICO-Adjusted TQD.

Permitting Operations and Procedures for Joint GRPs – Paragraphs 1-7

The final proposed DRP amendments involve clarifying some of the permitting procedures between the District and the participants in a Joint GRP. Because participants in a Joint GRP are authorized under the DRP to have some participants overproduce groundwater while others underproduce, the District must adjust its permitting system procedures to account for the operations and logistics of that change. The proposed amendments do not substantially change the current DRP, but rather fill in the gap that is presently in the DRP as to how Joint GRPs will operate procedurally.

Under the proposed amendments, the Joint GRP sponsor will be added as a co-permittee and 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 the water use fees and other fees for all participants, and the Joint GRP sponsor will be enforced upon if the Joint GRP collectively pumps more than the group is authorized to pump. Individual participants are still responsible for their own metering and groundwater production reporting compliance.

Permit amendments for permits included in a Joint GRP should be signed by both the permit holder and the Joint GRP sponsor, and if only one party signs, the other gets notice of the permit amendment application and has a right to participate in the hearing, as do all Joint GRP participants. 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 the current Joint GRP. If a permit holder leaves the Joint GRP during the course of a calendar year, the permit is prorated based on the remainder of days in the calendar year, regardless of how much water has already been pumped. Individual participants and the Joint GRP sponsor remain jointly and severally liable for all rule violations.

DRP Phase II(B) – Definitions

The proposed definition of “Initial Conversion Obligation-Adjusted Total Qualifying Demand” or “ICO-Adjusted Total Qualifying Demand” has been revised to mean: for permit holders with Total Qualifying Demand of 10 million gallons or greater, an amount equal to 70 percent of the Total Qualifying Demand or 10 million gallons, whichever amount is greater; and for permit holders with Total Qualifying Demand less than 10 million gallons, an amount equal to the original Total Qualifying Demand.

RESPONSES TO PUBLIC COMMENT ON THE PROPOSED AMENDMENTS TO THE DISTRICT RULES

The District received public comments that relate to the proposed Gulf Coast Aquifer-Specific Well Spacing, Location, and Tract Size Requirements as well as the proposed Catahoula Aquifer-Specific Well Spacing Requirements. In regards to the comments received addressing the Gulf Coast Aquifer-Specific Well Spacing, Location, and Tract Size Requirements, commenters expressed concern that the proposed rules may impact economic development as population growth continues to rise. Specifically, commenters stated that the proposed minimum tract size requirement may impact revenue and economic growth as developers would have to set aside a larger tract of their proposed developments in order to satisfy the minimum tract requirements, land that may have otherwise been subdivided into lots, or the developer must request a variance, which increases costs.

In developing spacing rules, the challenge is to strike the proper balance between the protection of existing users and increasing water demands throughout the county as the number of wells drilled or completed into the Gulf Coast Aquifer will only increase with time as population growth continues to rise at a significant rate in Montgomery County. During the process of developing the proposed rule amendments, the District considered a wide range of options including smaller and larger tract sizes, and made the policy decision to use 1.5 acres as the minimum tract size, which is consistent with the county's minimum tract size requirement for septic systems.

In regards to the comment made that a new developer might have to set aside a larger parcel of land to meet the minimum 1.5-acre tract size requirement and thereby lose potential revenue, the developer need only reserve the right to produce groundwater from a tract that is 1.5 acres in size in order to meet the District's minimum tract size requirement. The developer could divide and sell the remainder of the surface estate associated with the parcel as it deems appropriate. Therefore, because there should be no impact on revenue or economic growth, and because of the importance in adopting the minimum tract size requirement, the District has made no changes to the proposed rules in response to this comment.

While commenters expressed support of the rationale behind the proposed minimum tract size requirements, commenters also expressed concern in regards to the minimum tract size requirement as it applies to wells drilled or completed in the Gulf Coast Aquifer in platted subdivisions on reserved tracts smaller than 1.5 acres. Commenters stated that subdivisions platted prior to the proposed rules have generally reserved tracts less than 1.5 acres to serve as a water well site for the purpose of providing residential water services, and thus all service providers and developers seeking to drill a well on such tracts are disadvantaged under the proposed rules because they would all have to obtain variances from the District.

The District agrees that the minimum tract size requirements may place an additional constraint on those wells to be drilled or completed in the Gulf Coast Aquifer on tracts less than 1.5 acres in subdivisions platted prior to the effective date of the rules. Thus, the proposed rules have been revised to include a provision that exempts from the minimum tract size requirements wells drilled or completed on a restricted reserve tract platted in a subdivision prior to the effective date of the rules. However, this exemption does not apply if the plat of the subdivision is altered in anyway after the effective date of the rules, including any re-platting or new platting of the subdivision.

In regards to the proposed Catahoula Aquifer-Specific Well Spacing Requirements, the District received comments analyzing the criteria the District used to develop the well spacing calculations set forth in the proposed rules. Specifically, one commenter expressed concern with the District's decision to develop well-spacing calculations that limit the impacts of a new well on an existing well to no more than 100 feet of drawdown in an existing well after 10 years of production. The commenter questioned the District's approach and recommended instead a minimum well spacing of 1 foot per gallon(s) per minute ("gpm").

The District, during deliberations of the potential approaches available for establishing well spacing rules, evaluated a number of impact parameters to serve as the basis for the proposed well spacing rules for the Catahoula Aquifer. After consideration of recognized impacts, including the cumulative effects of multiple new wells on an existing well, the District Board selected 100 feet of artesian pressure decline after pumping at maximum well capacity design after ten 10 years pumping, as the most reasonable approach, recognizing the need to balance the protection of historic users with the needs of new groundwater production. In recognition of the fact that the Catahoula Aquifer in Montgomery County is not a homogeneous geologic unit, the District has included in the proposed rules a variance process, whereby a variance may be requested from the District if site-specific information is available to warrant a different spacing requirement.

The approach proposed by the District is based on an analysis of available relevant hydrogeologic information including results from pumping tests from the Catahoula Aquifer and the policy decisions of the Board relevant to local conditions and the needs of water users in Montgomery County. The alternative linear approach proposed by the commenter is supported by no hydrogeologic data, either developed from Montgomery County or the Gulf Coast region. The linear concept would allow different levels of impact on existing wells depending on the pumping rate of the new well. Since the purpose of the regulation is to balance allowable pumping with acceptable impacts to existing wells, the approach proposed by the District seems to be more appropriate, as the linear approach would not have a consistent threshold for allowable impacts to existing wells, regardless of the allowable level of production.

The commenter also expressed concern regarding the difference in minimum well spacing requirements between smaller wells and larger capacity wells drilled or completed in the Catahoula Aquifer, stating that two 1,500 gpm wells with no vertical offset, which must be spaced a minimum of 400 feet from an existing well according to the proposed rules, could be located on average 600 feet from an existing well, whereas a 3,000 gpm well must be located 4,279 feet according to the proposed rules from an existing well. Thus, the two 1,500 gpm wells combined would cause the same impacts to the existing well as the 3,000 gpm well but be located much closer to the existing well than the 3,000 gpm well, at an approximate distance of 600 feet rather than 4,279 feet. Based on this example, the commenter stated that the Catahoula Aquifer-Specific Well Spacing Requirements do not envision the effects of multiple wells, but rather are calculations assuming a single well.

The example provided by the commenter is inaccurate because the commenter incorrectly applies the Catahoula Aquifer-Specific Well Spacing Requirements to the wells collectively, rather than to each well individually. The proposed well spacing rules do envision the effects of multiple wells in that several wells (e.g. 5 or more) may be located around and contribute to the drawdown

in an existing well (for 5 wells, as much as 500 feet of drawdown). As each new well is drilled, it must be spaced according to the District's spacing rules with respect to any existing wells, those wells drilled both before and after the adoption of the spacing rules. Since the District envisioned that several wells could contribute to the drawdown at the existing well, the second 1,500 gpm well referred to in the commenter's example would occupy space that is no longer available for an additional Catahoula Aquifer well to cause drawdown at the existing well.

Lastly, the District received comments recommending the adoption of minimum well spacing requirements from property boundaries in addition to the minimum well spacing requirements from existing wells. One commenter stated that under the District's proposed well spacing rules, a well may be located very near a property boundary, which may enable the well owners to "confiscate" the property of an adjoining property owner and greatly affect the adjoining property owner's right to locate a well on his property. One commenter suggested that the District adopt a property offset that is one-half the minimum well spacing to ensure each property can locate wells without infringing on a neighbor's right to drill a similar well.

All wells in the District must comply with the Texas Water Well Drillers and Pump Installer Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, which provide minimum well spacing requirements from property boundaries. However, any additional minimum spacing requirements for new wells from property boundaries are not practical for users in Montgomery County. Implementing minimum spacing requirements from property boundaries for new wells in addition to the well spacing requirements currently under consideration from existing wells only creates a more restrictive well spacing regime because more LVGUs that have made or will make use of the Catahoula Aquifer in Montgomery County do not have sufficiently sized well location sites to be able to comply with the suggested spacing requirements. If the commenter's suggested property offset of one-half the minimum well spacing distance were actually implemented, then very few existing parcels in Montgomery County would have sufficient space to permit a new, high capacity well in the Catahoula Aquifer. For example, a 2,500 gpm Catahoula Aquifer well could not be located on a plot of land smaller than 143 acres (2,500 ft. spacing / 2 = 1250 feet from property line). It is not practical or economical to acquire that much land for a single well, and doesn't fit the needs of water users in Montgomery County. Again, the District has taken the approach of balancing the protection of historic users with meeting the needs for new groundwater production. The approach proposed by the commenter would certainly prevent most of the anticipated utilization of the Catahoula Aquifer due to the inability to meet spacing setback requirements from property lines.

For these reasons, no additional revisions have been made to the Catahoula Aquifer-Specific Well Spacing Requirements as a result of the comments received.

RESPONSES TO PUBLIC COMMENT ON THE PROPOSED AMENDMENTS TO THE DISTRICT REGULATOR PLAN PHASE II(B)

The District received comments on the proposed amendments to the District Regulatory Plan ("DRP") Phase II(B). As set forth in the public comments submitted, one commenter contended that the designation of 64,000 acre-feet per year of sustainable production from the Gulf Coast Aquifer, which forms the basis of DRP regulations, is likely an inaccurate estimate of available

groundwater. The commenter suggested that the District revise the DRP to differentiate between the various subdivisions of the Gulf Coast Aquifer, including the Chicot, Evangeline, Burkeville, and Jasper aquifers, recommending that the District conduct separate studies of the aquifer characteristics, existing and potential future regional use, and most appropriate management programs for each zone to better understand the total amount of sustainable production in the aquifer.

The District agrees with the commenter's statement to the extent that the 64,000 acre-feet per year number is not a perfect number, but it is the best number available based upon current information. The District is always working towards improving its science and understanding of the aquifers in the county, and may revise the number in the future as better science becomes available and as the District works to further refine the number by breaking it down into the sustainable production amounts for the Chicot, Evangeline, Burkeville, and Jasper subdivisions of the aquifer. Those efforts are included in the current scope of work related to the development of the District's strategic management plan presently being considered by the Board. Regardless, this comment is not relevant to the current proposed amendments to the District Rules or DRP.

Similarly, the commenter expressed concern with the District's lack of regulation related to the location of groundwater withdrawals, specifically relative to groundwater withdrawals authorized by a permit transfer under the proposed amendments to the DRP. The proposed amendments to the DRP authorize the transfer of ICO-Adjusted TQD to another person for the production of groundwater on a separate parcel of land. The commenter noted that the production of groundwater in one part of the county may be much different for aquifer sustainability purposes than groundwater production across the county as a whole. Thus, because the District has not adopted rules that regulate the location of groundwater withdrawals, the proposed amendments to the DRP may be inconsistent with the District's goal to manage the groundwater on a sustainable basis.

Both the 64,000 acre-feet per year sustainability figure and LVGUs' ability to transfer ICO-Adjusted TQD to other permittees anywhere in the county in order to achieve groundwater production reductions are based on the District Board's current approach to groundwater management. Both concepts have been in the District's management plan and rules for over a decade. The Board has contemplated allowing permit holders to do free-market transfers of permitted authorization since its first rules were adopted in 2002, and its permit holders have relied upon that ability in their planning efforts to achieve the District's Initial Conversion Obligation. That approach continues to be the best groundwater management approach for the District and its permit holders right now. In the future, the District will continue to evaluate other management options, including vertical layering restrictions for groundwater production between the Chicot, Evangeline, and Jasper units, as well as geospatial pumping restrictions in different areas of the county after further hydrogeologic studies and the completion of our strategic management plan. For these reasons, no additional revisions have been made to the DRP in response to this comment.

The commenter also expressed concern with regards to the proposed amendments to the DRP in Paragraph 13 that authorize a landowner to actually produce up to 10 million gallons annually, if such demand exists, as the landowner's fair share. The commenter stated that the proposed amendments to the DRP appear to recognize a landowner's fair share based solely on the

landowner's demand without consideration of the landowner's surface acreage or groundwater owned under the applicable land boundaries. The commenter recommended that the District consider the amount of surface acreage owned as a factor in determining a landowner's fair share.

The commenter's statements appear to suggest a correlative rights approach to groundwater management. While correlative rights may be an approach commonly used in agricultural irrigation-based groundwater conservation districts, this approach was rejected early on by the District's Board as not being a practical groundwater management tool for Montgomery County. Such an approach to groundwater management in the county would be devastating for the vast majority of the LVGUs, such as cities and municipal utility districts, who typically have very small land holdings at their well sites. Also, as noted by the commenter, Texas law does not mandate the use of the correlative rights management approach by groundwater conservation districts. The DRP embodies a very complex regulatory system that is tailored to the specific needs of Montgomery County water users. The DRP amendments proposed by the District are necessary for the internal cohesion and consistency of the DRP, and will result in a larger allocation of groundwater to landowners than the current version of the DRP. For these reasons, no additional revisions have been made to the DRP in response to this comment.

Another commenter suggested that all references in Paragraphs 8 and 9 regarding New LVGUs' ability to "purchase" additional ICO-Adjusted TQD from another permit holder be revised to authorize New LVGUs to "purchase or acquire" additional ICO-Adjusted TQD from another permit holder. The commenter explained that without such revisions, the existing language in the proposed amendments to the DRP may be interpreted to mean that all ICO-Adjusted TQD transfers, to the extent that such transfers are recognized by the District, must be completed by purchase or in exchange of money.

The District agrees with this comment, and clarifies that whether an actual exchange of money takes place in the transfer of ICO-Adjusted TQD is irrelevant to the District. For this reason, the DRP has been revised accordingly to provide for New LVGUs ability to "purchase or acquire" additional ICO-Adjusted TQD. Please note that this revision has been made in a various other places throughout the DRP that reference the purchase of additional ICO-Adjusted TQD by LVGUs, New LVGUs, and SVGUs to ensure overall consistency.

The District appreciates the public's participation in this rulemaking effort and all comments submitted. All public comments received by the District have been reviewed and considered by the District Rules and Bylaws Committee. In addition to those revisions described herein made in response to comments received, other minor, non-substantive revisions have been made to the proposed amended District Rules and DRP in response to comments received.