

SUMMARY OF PROPOSED AMENDMENTS TO LSGCD'S RULES

OVERVIEW:

The proposed changes to the Lone Star Groundwater Conservation District's rules ("Rules") involve a repeal of all phases of the District's Regulatory Plan ("DRP") as part of compliance with the final judgment in *City of Conroe, et. al. v. Tramm*, No. 15-08-08942, in the 284th District Court of Montgomery County, Texas. The repeal of the DRP will formally abolish the large volume groundwater user (LVGU) designation, and the reduction, conversion, and groundwater reduction plan (GRP) requirement for LVGUs. As such, the District will no longer have large or small volume user designations or require any permit holder to join a GRP. For the permit holders formerly known as LVGUs, this means all permitting, invoicing, and payment will be directly with the District and not by or through a GRP Sponsor. After formal repeal of the DRP, the GRP and all its tenets will no longer be a part of the District's regulations or rules.

Other proposed changes to the District's rules include additional well spacing requirements for all new, non-exempt wells imposing minimum spacing distances from all registered and permitted wells in the same formation based on the production capacity of the new well. All wells, exempt and non-exempt, must be spaced at least 50 feet from the property line. The proposed changes add a variance process for those new wells that may not comply with the spacing requirements and the variance application will require a hydrogeological report. The District also proposes to add a hydrogeological report requirement for certain applications for operating permits and a requirement that all permits include a Maximum Allowable Pumping Rate. The District proposes these new requirements to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, and prevent or lessen interference between wells. The proposed changes also require almost all new and existing well owners to register with the District and offer a 60-day grace period for owners to register with no penalty. Unregistered wells will not be considered in the review of a proposed new well's spacing requirements or impacts on existing wells.

Under the proposed changes, the District will issue operating permits in the Chicot/Evangeline (considered one aquifer for regulatory purposes), Jasper, and Catahoula aquifers. Permits will be perpetual in nature with periodic reviews. The Catahoula is no longer classified as an Alternative Water Supply source although the District currently intends to keep the Water Use Fees for that aquifer at a lower rate than other aquifers, and impose the least restrictive spacing requirements for the aquifer. The District has not requested the GMA 14 voting districts to propose a desired future condition for the Catahoula during this round of joint planning. The District has not proposed production allocation rules based on acreage or tract size in these proposed rule changes. The District plans to reevaluate the potential for such rules after desired future conditions are adopted during the joint planning process.

The proposed changes retain annual production limits, management zones, and proportional adjustments although changes were made to align with the District's new management goals and to clarify or enhance the requirements and process. For example, production adjustments will no longer be made in connection with the old sustainability goal of recharge and based on the modeled available groundwater; instead, proportional adjustments on total production will be tied to achievement of a desired future condition or management zone and may be applicable to all permits in the affected aquifer or zone on a pro rata basis. The proposed changes authorize the District to create a management zone to assess water availability and water quality, establish more restrictive spacing requirements, or limit and/or adjust total production. The proposed changes also authorize the issuance of new operating permits for production in an aquifer or zone subject to a proportional adjustment in order to provide an opportunity for fair share to every owner in each common subsurface reservoir. The District also proposes to adopt a temporary drought buffer that would authorize the Board to adopt by resolution a drought buffer temporarily increasing annual production limits in all permits for a given period if the Texas Water Development Board reports certain drought conditions in all or part of the District's boundaries.

The District does not propose significant substantive changes to the sections regarding general provisions, well completion, fees, transport, metering, reporting, inspections and enforcement with a few exceptions. The District proposes to authorize the General Manager to make certain application decisions and to provide a process to appeal the General Manager's decision on the application to the Board. The District proposes to add Rule 1.18 that memorializes the District's procedures, conduct and decorum at meetings and hearings. The District proposes to limit the scope of those subject to the Groundwater Transport Fee by not assessing transport fees against production by a retail public utility whose service area is located both inside and outside of the District or against a person who uses the water outside the boundaries if the property where the well is located and the water is used is contiguous and owned by the same person. The District proposes to remove the restriction on the amount of water that can be put into a surface impoundment for irrigation purposes but has retained the conservation standards for losses and the metering and reporting requirements. The District proposes to add reporting requirements post completion for non-exempt wells in Rule 11.2. The District also proposes to allow persons with previously issued early conversion credits to use those credits as an offset against an overproduction disincentive fee or against a proportional adjustment provided all Water Use Fees are paid.

The District proposes changes to the section on hearings to clarify the processes for each type of hearing and address the removal of a contested permit application to the State Office of Administrative Hearings. The District also proposes to add two new sections – one on aquifer storage and recovery and one on brackish groundwater production zones – to address recent changes in Chapter 36.

SUMMARY OF AMENDMENTS TO SPECIFIC RULES

Preamble

The preamble was revised to address the final judgment in the lawsuit on the reduction rule, and make changes consistent with the newly approved management plan and the repeal of the DRP.

Rule 1.1 Definitions

Various definitions were revised, added or deleted as needed in accordance with the proposed rule changes.

Rule 1.3 Purpose of District and Rules

This proposed change consolidates current Rules 1.3 and 1.5 into proposed Rule 1.3 and renumbers the remaining proposed affected rules including deleting current Rule 1.13 as not applicable and moving content of current Rule 1.15 into Rule 12.

Rule 1.12 Request for Reconsideration and Appeal

This proposed new rule establishes an appeal process for a determination made by the General Manager and a process to appeal a decision of the Board.

Rule 1.16 Minutes and Records of the District

This proposed change renumbers current Rule 12.12 to Rule 1.16.

Rule 1.17 District Management Plan

This proposed change renumbers current rule 14.1 to Rule 1.17.

Rule 1.18 Procedure, Conduct and Decorum at Board Meetings

This proposed new rule memorializes the District's policy on procedure, conduct and decorum at Board meetings.

Section 2 Well Registrations and Permitting

The proposed changes in Section 2 include renumbering current Rules 3.1-3.17 to proposed Rules 2.1-2.17.

Rule 2.3 Exempt Well Registration Required

There are no changes to the wells exempt from obtaining permits in proposed Rule 2.12. Proposed Rule 2.3 requires all existing and new exempt wells to register except

for a well authorized by the Railroad Commission under Chapter 134, Texas Natural Resources Code, leachate wells, monitoring wells, and dewatering wells. All exempt well owners are given a 60-day grace period to register with no penalty in proposed Rule 2.3(b). Unregistered wells will not be considered in the review of a proposed new well's spacing requirements or impacts on existing wells. All registrants are required to amend an existing registration as needed per proposed rule 2.3(i).

Rule 2.4 Historic Use Permits; Terms and Renewals

The proposed changes to this section remove all information that is no longer applicable and retains the requirement that all Historic Use Permits shall have Annual Production Limitations subject to proportional adjustments and management zones. The changes further describe how any changes to a Historic Use Permit, other than a decrease in the amount authorized or a transfer of well ownership under Rule 2.17, will require an application for an Operating Permit. The changes further state that a Historic Use Permit will be renewed under the application process and term set forth for Operating Permits in Rule 2.11 and include all the conditions of an Operating Permit.

Rule 2.5 Operating Permits

The proposed changes require an Operating Permit for all new non-exempt production from the District, which will apply to only one Aquifer of the District, and that a separate Operating Permit must be obtained to produce from a different Aquifer of the District. The changes describe when an Operating Permit must be obtained and when changes to an existing well or Historic Use Permit require an application for an Operating Permit or an amendment to an Operating Permit. The changes also describe which wells are considered existing wells and which wells are considered new wells for purposes of the spacing requirements under Rules 3.2 and 3.3.

Rule 2.6 Application Requirements for Operating Permits

The District proposes to add requirements to applications for Operating Permits including information regarding ownership, service area, and demands, and a hydrogeological report for a request to modify or increase an existing well or well system that would result in the new well(s) being equipped to produce 700 gallons per minute or greater; a request to drill and operate a proposed new well or well system with a proposed aggregate production capacity of 700 gallons per minute or greater; or a request for an exception to the spacing requirements.

Rule 2.7 Administrative Completeness of Applications for Operating Permits

This new rule describes the process for administrative completeness review of a permit application.

Rule 2.8 Considerations for Granting or Denying an Operating Permit

This new rule describes what the District shall consider before granting or denying an operating permit.

Rule 2.9 New or Amended Operating Permits Issued by District

This new rule describes the information that will be in a permit and the conditions under which an Operating Permit will be issued including that all permits include Annual Production Limitations, a Maximum Allowable Pumping Rate, and are subject to proportional adjustments and/or a management zone.

Rule 2.11 Historic Use and Operating Permit Terms; Administrative Review

Under the proposed changes, permits will be perpetual in nature with informal and formal periodic reviews. The proposed changes also describe how applications for renewals will be processed, whether a permit amendment is required and gives authority to the General Manager to initiate an amendment.

Rule 2.12 Operating Permit Amendments and Limited Authorized Amendments to Historic Use Permits

The proposed changes describe when a permit amendment is required, gives the General Manager authority to grant or deny minor amendments without a hearing. The proposed change also requires any amendment to only apply prospectively to a permit and cannot be applied retroactively on a one-time basis.

Rule 2.17 Transfer of Well Ownership

The proposed changes require an owner to notify the District of a transfer of ownership and file the Transfer of Well Ownership and once approved, amend the well registration or permit in accordance with the change.

Rule 3.1 Spacing and Location of Existing Wells

The proposed changes renumber current Rule 6.1 to proposed Rule 3.1 and expand the definition of existing well.

Rule 3.2 Spacing Requirement for All New Wells

The proposed change renumbers current Rule 6.2 to proposed Rule 3.2, and retains the requirement that all new wells may not be drilled within 50 feet of the property line.

Rule 3.3 Spacing Requirements for All New Non-Exempt Wells

This new rule imposes minimum spacing distances for a new, non-exempt well from all registered and permitted wells in the same formation based on the production capacity of the new, non-exempt well. The spacing requirements are as follows:

- (1) For the Chicot/Evangeline aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 2.0 feet multiplied by the Maximum Allowable Pumping Rate;
- (2) For the Jasper aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 1.5 feet multiplied by the Maximum Allowable Pumping Rate; and
- (3) For the Catahoula aquifer – new, non-exempt wells shall be spaced from all registered and permitted wells a distance not less than 1.0 foot multiplied by the Maximum Allowable Pumping Rate.

Rule 3.4 Exceptions to Spacing Requirements

The proposed changes add a variance process for those new wells that may not comply with the spacing requirements. The application for a variance must explain the circumstances justifying an exception to the spacing requirements of the District, and include a Hydrogeological Report and boundary survey or sketch, drawn to scale. An exception is automatically granted upon receipt of an application, if the abutting land or well to which the spacing exception is requested is owned or controlled by the same person as the proposed well. The proposed changes also grant a variance without a hearing if the applicant obtains a certified waiver from all affected owners. A hearing is required for all requests for evidence and the applicant may present evidence in support of the request.

Rule 4.1 Annual Production Limits for Permits

The proposed change renumbers current Rules 7.1-7.2 to proposed Rule 4.1. The proposed changes describe how the Annual Production Limitations will be assigned for existing permits and determined for new permits. The rule retains the requirement that all permits are subject to proportional adjustments, management zones, and any other adjustments or reductions authorized under the rules.

Rule 4.2 Temporary Drought Buffer

This new rule authorizes the Board to adopt by resolution a temporary drought buffer temporarily increasing annual production limits in all permits for a given period if the Texas Water Development Board reports certain drought conditions in all or part of the District's boundaries as follows:

- (1) DO abnormally dry conditions: an upward adjustment up to 5%;
- (2) D1 drought-moderate or D2 drought-severe: an upward adjustment up to 10%; and
- (3) D3 drought-extreme or D4 drought-exception: an upward adjustment up to 15%.

Rule 5.1 Responsibility to Protect Groundwater Quality

This new rule requires all owners or operators to prevent the pollution or harmful alteration of groundwater.

Rule 5.2 Responsibility for Well Construction and Management

This new rule mandates that owners are responsible for the installation, equipping, operation, maintenance, and closure of their wells, and all associated costs, and complying with the Texas Department of Licensing and Regulation's rules on well drillers and well pump installers, regardless of whether the well owner is required to obtain a permit from the District.

Rule 5.3 Standards of Completion for All New Wells

This proposed change renumbers current Rule 6.3 to proposed Rule 5.3.

Rule 5.4 Open, Uncovered, Abandoned or Deteriorated Wells Prohibited

This proposed change renumbers current Rule 7.3 to proposed Rule 5.4.

Rule 5.5 Sealing or Plugging of Wells

This proposed change renumbers current Rule 7.4 to proposed Rule 5.5.

Rule 6.1 Purpose and General

This new rule defines the purpose of management zones and proportional adjustments.

Rule 6.2 Authority to Establish Management Zones

These proposed changes renumber current Rules 5.1-5.2 to proposed Rule 6.2 and makes revisions to align with the new management goals and/or clarify/enhance the requirements and process.

Rule 6.3 Proportional Adjustment

These proposed changes renumber current Rules 5.3-5.4 to proposed Rule 6.3 and make revisions to align with the new management goals. For example, adjustments will no longer be made in connection with the old sustainability goal of recharge and based on the modeled available groundwater; instead, proportional adjustments will be tied to achievement of a desired future condition or management zone and may be applicable to all permits in the affected aquifer or zone on a pro rata basis. The proposed changes also authorize the issuance of new operating permits for production in an aquifer or management zone subject to a proportional adjustment in order to provide an opportunity for fair share to every owner in each common subsurface reservoir. The proposed changes allow persons with previously issued early conversion credits to use those credits as an offset against a proportional adjustment provided all Water Use Fees are paid.

Rule 7.1 General Provisions

This proposed change renumbers current Rule 8.1 to proposed Rule 7.1.

Rule 7.2 Transport Fee for Exempt Wells for Discharge Under Other Permit

This proposed change renumbers current Rule 8.2 to proposed Rule 7.2.

SECTION 8 FEES AND PAYMENT OF FEES

The proposed changes in Section 8 include renumbering current Rules 9.1-9.8 to proposed Rules 2.1-2.8.

Rule 8.1 Water Use Fees

This proposed change allows persons with previously issued early conversion credits to use those credits as an offset against an overproduction disincentive fee provided all Water Use Fees are paid.

Rule 8.3 Groundwater Transport Fee

The proposed change limits the scope of those subject to the Groundwater Transport Fee by not assessing transport fees against production by a retail public utility whose service area is located both inside and outside of the District or against a person who uses the water outside the boundaries if the property where the well is located and the water is used is contiguous and owned by the same person.

Rule 8.9 Well Registration and Permit Fees

This new rule authorizes well registration and permit fees.

Rule 8.10 Meter Sealing Fee

This new rule authorizes fees for removing and reapplying a District seal and verifying relevant well and meter information in situations where a well owner or operator submits a request to move a meter from one well to another.

SECTION 9 WATER USE FEE REBATE PROGRAM

The proposed changes in Section 9 include renumbering current Rules 10.1-10.2 to proposed Rules 9.1-9.2.

SECTION 10 METERING

The proposed changes in Section 10 include renumbering current Rules 11.1-11.8 to proposed Rules 10.1-10.8 and current Rules 13.01-13.2 to proposed Rule 10.9.

Rule 10.9 Conservation Requirements for Impoundments

The proposed changes remove the restriction on the amount of water that can be put into a surface impoundment for irrigation purposes but retains the conservation standards for losses and the metering and reporting requirements.

SECTION 11 REPORTING REQUIREMENTS

The proposed changes in Section 11 include renumbering current Rules 4.1-4.4 to proposed Rules 11.1-11.4.

Rule 11.2 Records of Drilling and Pump Installation and Alteration Activity, Plugging and Capping

The proposed changes add reporting requirements post completion for non-exempt wells and well plugging reports in Rule 11.2.

SECTION 12 INSPECTIONS AND ENFORCMENT

The proposed changes in Section 12 include renumbering current Rules 2.1-2.10 to proposed Rules 12.1-12.10.

Rule 12.2 Inspection, Information Gathering, and Compliance Monitoring

The proposed changes include identifying additional circumstances under which the District may conduct inspections.

SECTION 13 HEARINGS OF THE DISTRICT

The proposed changes include renumbering current Rules 12.1-12.12 to proposed Rules 13.5; clarifying the processes for each type of hearing; and addressing the removal of a contested permit application to the State Office of Administrative Hearings

SECTION 14 AQUIFER STORAGE AND RECOVERY

These new proposed Rules 14.1-14.4 recognize that TCEQ authorizes aquifer storage and recovery projects; and that no permit is required and no fee can be assessed on the authorized recovery but the production must be reported. The rule requires a permit and fees for any volume exceeding authorized recovery volume.

SECTION 15 BRACKISH GROUNDWATER PRODUCTION ZONES

This proposed new Rule 15.1 authorizes the District to adopt rules when TWDB designates a brackish groundwater production zone over any part of District and requires the District to adopt rules for certain projects if the District receives a petition.