LONE STAR
GROUNDWATER CONSERVATION DISTRICT

September 8, 2020

MINUTES OF PUBLIC HEARING ON RULEMAKING

The Board of Directors of the Lone Star Groundwater Conservation District ("District") met in regular session, open to the public, but 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 September 8, 2020.

CALL TO ORDER:

President Hardman called to order the Public Hearing on Rulemaking at 6:02 PM announcing the meeting open to the public.

ROLL CALL:

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

Jon Paul Bouché
Harry Hardman
Jonathan Prykryl
Larry A. Rogers
Jim Spigener
Stuart Traylor

All members of the Board were present, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Samantha Reiter, General Manager; Stacey V. Reese, District Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit "A" to the Regular Board of Directors Meeting minutes.*

PRESENTATION AND DISCUSSION OF PROPOSED AMENDMENTS TO THE DISTRICT RULES AND DISTRICT REGULATORY PLAN ("DRP"):

Ms. Stacey Reese announced the meeting was the second hearing on the District Rules. She reviewed the steps in the 18-month process of reviewing and amending the District Rules. The process began in March 2019 with a public workshop on Chapter 36 of the Texas Water Code. In April 2019, five Town Hall meetings were held to gather public input. In May 2019, two study groups were formed – a Technical and the Non-Technical study group. These study

groups met regularly in the month of June 2020. In July 2020, the Board held another public workshop to approve the draft rules for publication. The Board sponsored stakeholder meetings and a workshop in August 2020, calling for public comments and input on refining the rules.

Ms. Reese provided a detailed list of the proposed amendments and reviewed each one, including the revisions identified from input at the previous hearing. She rehearsed the proposed substantive changes to District Rules. Some of these included: an appeal process; permits to be issued by aquifer; new application requirements; permit renewals every 5 years; spacing for all new wells; annual production limitations; and aquifer storage and recovery.

PUBLIC COMMENTS:

John Bleyl, representing the City of Shenandoah, spoke explaining the unique area of Shenandoah. He said that 79% of the city's water goes to commercial customers while 21% goes to residential customers. He conveyed how appreciative the city was to the LSGCD Board for adjusting the District Rules. The City of Shenandoah will make a formal resolution of accepting the District Rules should the LSGCD Board desire to do so. He congratulated the Board for putting in the hard work and noted that Shenandoah is supportive of the good effort.

John Yoars' comments concerned Rule 6.3 Proportional Adjustment. He asks that this rule be edited to include grandfathering in the current permitted groundwater users. He noted The Woodlands as previously having responsibly reducing its groundwater pumping. He called for a delay of approval of the rules until the issue is resolved. *A copy of Yoars' comments is attached hereto as Exhibit "B".*

Ron Kelling, Deputy Manager of the San Jacinto River Authority (SJRA), presented public comments with accompanying letter. *A copy of the September 8, 2020 letter is attached hereto as Exhibit "C".*

Neal Gator, resident of The Woodlands, commented on July's GMA 14 meeting at which Wade Oliver's specific observation on modeling of subsidence for the Jasper aquifer in regard to compaction and subsidence. He concluded that since the current conceptual model of the Jasper aquifer pumping contains unverifiable parameters, that the model cannot provide a creditable estimate of subsidence for the Jasper aquifer. Mr. Gator requested that the LSGCD Board inquire about the parameters used to predict subsidence for all scenarios of aquifer pumping in Montgomery County.

Webb Melder, past LSGCD Director and Board President, addressed the board with words of support for their effort in producing the proposed District Rules. He warned of those speaking to subsidence and fear of draining the aquifer may be motivated with a selfish intent. He suggested to those who are afraid of draining the aquifer to move to surface water use. He stressed that private property rights are constitutionally protected. *A copy of Melder's email comments is attached hereto as Exhibit "D".*

Mark Unland, resident of The Woodlands, conveyed his opposition to any rules that allow groundwater to be extracted which cause any subsidence to property. He mentioned that subsidence is just a fancy word for sinking. He proposed a need to establish an insurance/bond so property owners can be reimbursed for flood damage to a home's foundation should subsidence occur. *A copy of Unland's comments is attached hereto as Exhibit "E".*

Laura Norton, resident of Cochran's Crossing, concentrated on the fairness of Rule 6.3 – Proportional Adjustment. She maintained two facts. Fact one is that the Jones Fault in The Woodlands is typical for the area with the down prone side to the east. Fact two is that the Panther Branch Fault is atypical with the down prone side to the west. She described this as a bowl (made by the faultline) where the homes are sinking inside this bowl. She urged that the board advise the homeowners of the continuing sinking properties in this area.

Simon Sequeira, CEO of Quadvest, commented on the progress LSGCD has made in recognizing the private owners' property rights with regard to groundwater. He asserted that the 5th Amendment exists to protect us all from illegal searches and seizures and it was his opinion that SJRA had attempted to make an illegal seizure. He stated private property rights are not there to let an entity take what is not theirs, and in groundwater, private property rights exist to protect citizen's fair share. He contended that there was a made-up water crisis so a few people could sell bonds and suggested that if subsidence is the only issue that people can simply revert to surface water.

Sue Ellen Meyers expresses her dismay and opposition to the proposed LSGCD rule changes. Her comments focused on increased pumpage resulting in subsidence, shifting of fault lines, and flooding. She asserted her skepticism with the board's disregard to involving outside, scientific peer reviewed studies of the effects of pumping. She cited the Texas Water Code as allowing unlimited pumping of groundwater but appeals to the board on ethical and reasonable grounds. *A copy of Meyers's comments is attached hereto as Exhibit "F".*

Marty Jones, attorney for Sprouse Law, conveyed two points on subsidence from a legal perspective. First, groundwater is a property right. If subsidence becomes a concern of potential production; and if the District decides to curtail production so as to alleviate subsidence, then someone needs to compensate the property owners whose groundwater is now being dedicated to preventing subsidence. Since SJRA is the greatest producer of water to The Woodlands, they could stop producing water by well production and avert surface water to pure lake water. Secondly, the complaint by SJRA and others, that the rules allow for 98,000 acre-feet in production (which was based on Run "D" in the modeling) and not the 61,000 acre-feet that would be allowed under the DFC that was approved by the TWDB.

One note, several additional comments were submitted via email, and copies made for each director to consider but were not read aloud. *A copy of these comments are attached hereto as Exhibits "G-V".*

DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION APPROVING RESOLUTION #20-007 AMENDING AND ADOPTING DISTRICT RULES:

Ms. Stacey Reese announced that the board could discuss public comments, ask questions, consider additional proposed revisions and take action to adopt the rules as published or delay adoption for insert of additional revisions if necessary. She reviewed the process of amending the District views by citing the 3-year Strategic Study completed by LBG-Guyton (now WSP) and significant findings. In 2017, based on this Strategic Study, the old board adopted a plan with a new goal of measured aquifer decline and moved away from the goal of sustainability. The old board approved the increased pumping levels and the resulting aquifer conditions included Run "D" as a solution to the DFC petition. The Run "D" essentially gave back the 30% pumping reduction to the Large Volume Users (LVUs) but ramped it up overtime from 2020 to 2032.

There may be a disconnect with the public's understanding that the old board studied and approved the additional groundwater withdrawals and that the new board is merely implementing that decision with emphasis on protection of property rights.

The old board also studied well spacing. That well spacing analysis was reviewed by the technical consultants in connection with their work and well spacing recommendations for the draft district rules.

Run "D" did not make the cut for the three scenarios the GMA 14 Districts are considering in the DFC round. There is one scenario, that would yield a MAG, that is consistent with Run "D". With regard to subsidence and the socio-economic factors those are two of the factors that are analyzed by the GMA 14 Districts when determining the Desired Future Condition. The protection of property rights is one of the nine factors, but the only factor constitutionally protected. Spending money to keep your system productive and efficient is not a constitutionally protected property right. Nonetheless, all nine factors will be discussed to find a balance between the highest practicable level of groundwater production and conservation and control of subsidence. Chapter 36 mandates this balance between the highest practicable level of production and conservation. Chapter 36 does not state how to weigh those factors but it's very important to note that the only one protection of property rights receives constitutional protection.

With regard to curtailment, the District must have a documented, scientific basis to institute District-wide curtailment and effort to achieve the DFC. There is no evidence to indicate that the District is not on track to achieve whatever DFC is in place for 2070 or 2080. Comments that new use should not be allowed or cut back first, in the event of curtailment, to protect historic and existing use does not fully protect those property rights of those new users. Groundwater ownership and regulation is <u>not</u> based on a first-in-time, first-in-rights, or superior right system like surface water. Surface water is owned by the state and not by landowners. It's very important to understand the difference between those regulations. New users own their groundwater and have an equal right to produce groundwater. Arguably, historic and existing users have been borrowing groundwater from their neighbors who have not yet chosen to exercise their right to produce. It is intended to protect historic and existing use to the detriment of new users who have not yet obtained their fair share and protects the rights of all users. Many of the comments seemed to be

suggesting that failure to restrict new use is a taking of the historic and existing users' property. Takings in groundwater regulation context are very fact specific and arise from when regulation goes too far in restricting the use of your property or eliminating all practical use of the property. In other words, it is the government's over-regulation that would constitute a taking. The landowner must prove that his land has been rendered useless or so significantly reduced in value. Having to spend money to keep your system effective and productive is not eliminating all practical use of your property.

The Woodlands area seems to have unique comments and concerns that other parts of the county do not. It may be appropriate to consider a management zone in The Woodlands area based on the hydrogeological conditions in the future. Ms. Reese recommends that the board continue to study this in Phase II of the subsidence study could shed some light on whether a management zone is appropriate. Finally, we've heard many concerns from The Woodlands and if they are concerned about groundwater withdrawal. They can voluntarily choose to take less groundwater even in the absence of any regulation from the district, forcing them to cutback. They can choose to take as much surface water as they want. Lone Star is not forcing anyone to produce a certain amount of water. Permittees are welcome to reduce their permits and take whatever source of water they feel is best for their water supply planning.

Information from SJRA, who provides water to The Woodlands MUD appears to contradict what some of the comments say. In stakeholder meetings Ms. Reese has had with SJRA, she was told that SJRA would like nothing more than for Lone Star to say that additional groundwater could be produced; consistent with their support of Run "D". SJRA also stated in a public workshop that it was considering seeking a permit amendment to reclaim an additional 3 billion gallons. Ms. Reese stated she did not at this time have any proposed revisions to the rules.

James Beach comments about the modeling process, the model the district is using and the limits and what has been assumed for subsidence in the Jasper model. The District does not control which model is used for the DFC purposes. It is the accepted model by GMA 14 by the TWDB. The District has shown that they are supportive of improving the data that goes into that model recently with Phase II study. It is important to remember that with time we will get better information. The board is committed to improving that model by using the best available science. Currently, he is in process of evaluating the real information from the USGS. We now have a long-term projection of water level declines over a large regional area from GMA 14 and the DFCs. The District is focused on what the impacts are on water level measurements in Montgomery County. This process is ongoing.

Director Bouché comments that there is no one on the Board that wants subsidence. This board is currently doing the first subsidence study solely concerned with Montgomery County and is most concerned about subsidence.

Without further discussion, upon a motion by Director Spigener seconded by Director Prykryl, the Board approved Resolution #20-007 Amending and Adopting District Rules. Motion carried unanimously. A copy of the signed Resolution #20-007 Amending and Adopting District Rules is attached hereto as Exhibit "W".

Ms. Reese had final comments to apprise the next steps for the public. These next steps include billing and invoicing for Q4 for the GRP Participants which will remain the same as in Q1-Q3; the renewals and payments for 2021 will change and be sent directly to the District. Secondly, the existing wells will be processed under old rules; new wells will be processed under new rules. Lastly, staff will begin to work immediately on the 2021 permit renewals.

She has two recommendations given the board has adopted the rules. First, once a DFC is adopted for the Board to review - acreage allocation or production allocation rules in light of not adopting those at this time. Secondly, that you develop a monitoring and tracking system to determine whether you are achieving that DFC.

With regards to local concerns about hydrogeological conditions in The Woodlands; she suggests continuing to monitor that and to evaluate whether it is appropriate to put a management zone into place.

ADJOURN:

President Hardman adjourned the public hearing on rulemaking at 7:13 PM.

PASSED, APPROVED, AND ADOPTED THIS 13th DAY OF OCTOBER 2020.

Larry A. Rogers, Board Secretary

LONE STAR
GROUNDWATER CONSERVATION DISTRICT

September 8, 2020

MINUTES OF PUBLIC HEARING ON PERMIT APPLICATIONS

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 September 8, 2020.

CALL TO ORDER:

President Hardman called to order the Public Hearing on Permit Applications at 6:00 PM announcing the meeting open to the public.

ROLL CALL:

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

Jon Paul Bouché
Harry Hardman
Jonathan Prykryl
Larry A. Rogers
Jim Spigener
Stuart Traylor

All members of the Board were present, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Samantha Reiter, General Manager; Stacey V. Reese, District Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit "A" to the Regular Board of Directors Meeting minutes.*

PRAYER AND PLEDGES OF ALLEGIANCE:

President Hardman called on Director Bouché for the opening prayer and Director Spigener to lead the Pledge of Allegiance and the Pledge of Allegiance to the state flag.

PUBLIC COMMENTS:

No comments were received.

Ms. Reiter briefed the Board on permit applications received for the month. Applications for consideration and recommended for possible approval included the below:

1. **Emerald Lakes POA**

Applicant is requesting registration of a new well and production authorization in the amount of 1,000,000 gallons for 2020 and 500,000 gallons for 2021 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

2. **Aqua Texas, Inc. (Decker Woods)**

Applicant is requesting an amendment to an Operating Permit for an increase in production authorization in the amount of 180,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

3. **Aqua Texas, Inc. (Hidden Forest)**

Applicant is requesting an amendment to an Operating Permit for an increase in production authorization in the amount of 2,000,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

4. **Aqua Texas, Inc. (Woodlands Pkwy)**

Applicant is requesting an amendment to an Operating Permit for an increase in production authorization in the amount of 20,000,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

5. **Aqua Texas, Inc. (West Lane)**

Applicant is requesting an amendment to an Operating Permit for an increase in production authorization in the amount of 4,321,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

6. **Dennis Davis**

Applicant is requesting registration of a new well and production authorization in the amount of 9,500 gallons for 2020 and 26,000 gallons for 2021 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

7. **Undine Texas, LLC (Lochness)**

Applicant is requesting an amendment to an Operating Permit for drilling authorization only. No additional production authorization is being requested at this time. Applicant was previously approved by the General Manager for an Emergency Approval to drill. Based on technical

review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

8. C & R Water Supply Inc. (Emerson Estates)

Applicant is requesting an amendment to an Operating Permit for registration of a new well and increase production authorization in the amount of 15,000,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

9. Brian Perez

Applicant is requesting registration of a new well and production authorization in the amount of 100,000 gallons for 2020 and 300,000 gallons for 2021 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

10. Wisteria Asset LLC

Applicant is requesting registration of a new well and production authorization in the amount of 200,000 gallons for 2020 and 2,000,000 gallons for 2021 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

Ms. Reiter reported that there were ten applications for this month and four applications were for new wells while six were amendments to permits. Following Ms. Reiter's report, Director Spigener motioned to approve items #1-10, as recommended by the General Manager. Director Prykryl seconded. Motion approved.

President Hardman adjourned the public hearing on permit applications at 6:02 PM.

PASSED, APPROVED, AND ADOPTED THIS 13th DAY OF OCTOEBER 2020.

Larry A. Rogers, Board Secretary

LONE STAR
GROUNDWATER CONSERVATION DISTRICT

September 8, 2020

MINUTES OF REGULAR MEETING

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 September 8, 2020.

CALL TO ORDER:

President Hardman presided and called to order the regular Board of Directors meeting at 7:13 PM, announcing that it was open to the public.

ROLL CALL:

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

Jon Paul Bouché
Harry Hardman
Jonathan Prykryl
Larry A. Rogers
Jim Spigener
Stuart Traylor

All members of the Board were present, with the exception of Director(s) Hardman, thus constituting a quorum of the Board of Directors. In attendance at said meeting were Samantha Reiter, General Manager; Stacey V. Reese, District Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit "A".*

PUBLIC COMMENTS:

Ms. Jennifer Eckhardt, concerned citizen, commended the board on spending money to finish the subsidence study. It is her hope that if the study is credible and acceptable to the water entities in the county, that they will all come together to work for the good of the county. She encouraged the board to use other governmental entities to combine efforts to continue to improve things for Montgomery County citizens.

Mr. John Yoars, resident of The Woodlands, joins the meeting via ZOOM and outlined four concerns. His first concern was how LSGCD was complying with the DFC. His next concern centers around property owners in The Woodlands and respecting their property rights. Thirdly, is the consumption of money spent by The Woodlands residents to help with increase the water table. Lastly, his concerns speak to LSGCD board and the harm that could potentially come to The Woodlands property owners. *A copy of the Yoars public comment is attached hereto as Exhibit "G".*

President Hardman clarified that this board did not approved the 2010 DFC, but it is being used as a data point. The District does not currently have a DFC.

EXECUTIVE SESSION:

After a proper and legally sufficient announcement to the public by President Hardman, the Board of Directors recessed into a Closed Executive Session at 7:17 PM pursuant to Texas Government Code, Sections 551.071, to consult with the District's attorney regarding pending or contemplated litigation, settlement offers, personnel matters (§551.074), or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, Chapter 551, Government Code.

RECONVENE IN OPEN SESSION:

Following Executive Session, the Board reconvened in Open Session and President Hardman declared it open to the public at 8:05 PM.

APPROVAL OF THE MINUTES:

President Hardman stated the Board would consider the meeting minutes as listed for approval on today's agenda. Without further discussion, upon a motion by Director Traylor seconded by Director Prykryl, the Board approved the meeting minutes as presented.

a) August 11, 2020, Rulemaking Hearing
b) August 11, 2020, Public Hearing on Permit Applications
c) August 11, 2020, Regular Board of Directors Meeting

REVIEW OF UNAUDITED FINANCIALS FOR THE MONTH OF AUGUST 2020;

Ms. Samantha Reiter reported that for the month of August 2020, income was $170,514 and expenses were $144,473 resulting in a net income of $26,041. Year-to-date net income is $446,209. Total cash was $1,537,033.

ELECTION MATTERS – update and action as necessary:
(*Asuntos Electorales – actualización y acción según sea necesario:*)

a) Receive Certification of Unopposed Status from Election Agent:

(Recibir la Certificación de Estatus No Opositor de Agente Electoral.)

Ms. Reiter requested Board approval for the order of the Certification of Unopposed Status to be completed. Without further discussion, upon a motion by Director Traylor seconded by Director Prykryl, the Board approved the fee and completion of the document. Motion carries.

b) Discussion, consideration and action to approve Order of Cancellation for Place 5 At-large position and Place 6 City of Conroe position:
(Discusión, consideración y acción para aprobar la Orden de Cancelación para el Lugar 5 en posición grande y la posición de Ciudad de Conroe del Lugar 6.)

Ms. Reiter requested Board approval for the Order of Cancellation for Place 5, voting Jurisdiction At-Large and Place 6, voting Jurisdiction City of Conroe. Without further discussion, upon a motion by Director Bouche seconded by Director Hardman, the motion carried.

c) Update on November 3, 2020 election action items and appointment matters:
(Actualización el 3 de noviembre de 2020 de los elementos de acción electoral y asuntos de nombramiento.)

Ms. Reiter had no further updates.

DISCUSS, CONSIDER AND TAKE ACTION AS NECESSARY CONCERNING THE FORMATION OF A LEGISLATIVE COMMITTEE:

Ms. Reese reviewed the need for a Legislative Committee as the legislature will commence this January. Director Spigener motioned to establish a Legislative Committee, seconded by Director Traylor. The motion carried. The committee members are President Hardman, Treasurer Spigener and Director Bouché.

RECEIVE INFORMATION FROM DISTRICT'S TECHNICAL CONSULTANTS REGARDING SUBSIDENCE STUDIES AND/OR DISCUSSION REGARDING THE SAME:

a) Discussion, consideration, and possible action to approve Subsidence Study Phase 2 Scope of Work.

This item is a placeholder in the agenda.

GROUNDWATER MANAGEMENT AREA 14 - UPDATE THE BOARD ON THE ISSUES RELATED TO JOINT PLANNING ACTIVITIES AND DEVELOPMENT OF DESIRED FUTURE CONDITIONS IN GMA 14:

Ms. Reiter, General Manager, had nothing new to report but a GMA 14 is scheduled for September 16, 2020.

a) Discussion, consideration, and possible action on any items related to Lone Star GCD's proposal(s) to and/or participation in GMA 14

GENERAL MANAGER'S REPORT:

Ms. Samantha Reiter's report cited a written comment received on the Phase I final report that was received before the final comment period closed but not in time for board meeting. It has been reviewed and comments sent to consultant which resulted in one non-substantial change. She spoke with the commenter. He understood. She reported that the final report had been updated.

GENERAL COUNSEL'S REPORT:

Ms. Reese had no further updates.

NEW BUSINESS:

No new business.

ADJOURN:

There being no further business, Director Spigener motioned to adjourn the meeting and Director Bouché seconded. The meeting was adjourned at 8:16 PM.

PASSED, APPROVED, AND ADOPTED THIS 13th DAY OF OCTOBER 2020.

Larry A. Rogers, Board Secretary