
Boriack comments on draft rules October 10 2023

1 message

Ted Boriack <tedboriack@gmail.com>

Tue, Oct 10, 2023 at 4:10 PM

To: General Manager <generalmanager@gcuwcd.org>

Please see my comments to the draft rules.

Ted Boriack
2984 FM1296
Waelder TX 78959

 **Boriack comments on GCUWCD draft rules Oct 10 2023.pdf**
690K

Ted Boriack
2984 FM1296 Waelder TX 78959
361-443-2547 tedboriack@gmail.com

October 10, 2023

TO: Gonzales County Underground Water Conservation GCUWCD

GCUWCD Board members and General Manager by email:

Laura Martin - General Manager generalmanager@gcuwcd.org

522 Saint Matthew Street Gonzales, Texas 78629

SUBJECT: Comments on the draft GCUWCD Rules Revision "Draft Amendments to the Gonzales County Underground Water Conservation District" with hearing on October 10, 2023

FROM: Ted A. Boriack tedboriack@gmail.com

2984 FM1296 Waelder, TX 78959

361-443-2547

After review of GCUWCD's draft Amendments to the Gonzales County Underground Water Conservation District with a hearing on same scheduled for October 10, 2023 which I downloaded from the district website (gcuwcd.org), please note my following comments:

I ask that the GCUWCD board members to not approve the draft rules amendment due to the following:

1. The GCUWCD prepared the draft rule changes and issued a draft for potential approval by the GCUWCD board members without holding a single workshop to address the concerns of the local stakeholders or to explain the changes.
2. The draft rules fail to address many of the public comments raised by local stakeholders in the past.
3. The draft rules are provided separate from the actual rule document, leaving the reader to wonder if there are other changes to the rules might be involved but not shown in the published draft. A rule change revision for public notice and review should be made to the full set of rules to ensure completeness and avoid any confusion.

4. The GCUWDC has been including the following restriction on public comment:

Members of the public wishing to comment must attend the meeting in-person. No participation or public comments will be allowed via video or conference call. However, any person may view or listen to the meeting via audio and video conference call.

In my opinion this public comment restriction is in violation of the intent of the Texas Open Meetings Act and also the Americans with Disabilities Act. This requirement unnecessarily restricts input from the public. Other groundwater related entities such as the Region L planning group and the Texas Groundwater Protection Committee allow public comment by video or conference call. People that attend the meeting in person are potentially exposed to viruses from others at the meeting, and some people may have difficulty in physically attending the meeting due to health issues, disability or transportation challenges such as driving at night.

5. The draft rules do not show signature lines for the GCUWCD board members – this should be included in any draft rule document to show which board members voted to approve the revised rules and so the public can understand who actually approved the rules.

Laura Martin

From: Andrew McBride <amcbride@seguintexas.gov>
Sent: Friday, May 10, 2024 8:26 AM
To: Laura Martin
Subject: SSLGC Board letter to lessors

Good afternoon Laura,

As we discussed, I have included the language below that our Board president provided to a portion of our water lessors that could be impacted by the proposed GCUWCD rules changes.

As the president of the Board of Directors for the Schertz/Seguin Local Government Corporation (SSLGC), I am contacting you regarding an upcoming workshop with the Gonzales County Underground Water Conservation District (GCUWCD). The workshop is scheduled to take place in their district office on May 18th, starting at 10 AM. The SSLGC Board has determined that transparent governance directs us to inform the water rights lessor of a GCUWCD proposal to raise the Transportation Export Fee (Appendix D in the included Rules draft document). This export fee is contractually allocated to and directly influences the Net Royalty payments.

Thank you,

Andrew McBride

General Manager · Schertz Seguin Local Government Corporation
108 W. Mountain Street · Seguin, Texas 78155 · (830) 386-2567





May 17, 2024

Mr. Bruce Tieken
 President, Board of Directors
 Gonzales County Underground Water Conservation District
 522 Saint Matthew Street
 P.O. Box 1919
 Gonzales, TX 78629

RE: Comments to Proposed Rule Revisions.

Dear Mr. Tieken and Directors:

Schertz Seguin Local Government Corporation, as an owner of land within the District's boundaries, submits the following written comments pursuant to District Rule 1 (A) (3).

The District must adopt rules to implement its management plan pursuant to section 36.1071(f) of the Water Code. When adopting a rule, Section 36.101 requires districts to

- (1) consider all groundwater uses and needs;
- (2) develop rules that are fair and impartial;
- (3) consider the groundwater ownership and rights described by Section 36.002;
- (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;
- (5) consider the goals developed as part of the district's management plan under Section 36.1071

Several of the proposed rules appear inconsistent with the District's management plan and contrary to the above-quoted mandates.

1. Proposed Rule 10(H)

The proposed new rule requiring the denial of applications for new permits or amendments to permits once the volume of modeled available groundwater is produced appears to be inconsistent with the law and the management plan.

The law requires districts to issue permits, to the extent possible, "up to the point that the total volume of exempt and permitted groundwater production will achieve an

applicable desired future condition” and when “issuing permits, manage total groundwater production on a long-term basis to achieve an applicable desired future condition.” The law requires all districts to consider:

- (1) the modeled available groundwater determined by the executive administrator;
- (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
- (3) the amount of groundwater authorized under permits previously issued by the district;
- (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
- (5) yearly precipitation and production patterns.

The proposed rule automatically denying any application once the production equals the MAG ignores the limitations of models and the other factors that the district is required to consider. The law requires the District to consider the DFC and other relevant factors, and not just the modeled available groundwater.

The current management plan does not include a provision requiring the denial of applications based upon the modeled available groundwater. In fact, the current management plan states:

The District will base future permitting decisions on the amount of existing water permitted, amount existing water being produced, and the condition of the aquifer (water level drawdowns) at the time the permit application is filed in order to achieve the DFC

The proposed rule is inconsistent with the management plan.

Finally, the proposed rule if adopted could create unintended adverse consequences that should be considered. For example, will the District over-permit until production of the MAG is reached? Worse, does this rule create a race to the finish line by rewarding permit holders who rush to produce all of their permit before others?

2. Proposed Rule 15(F)(3) and Appendix D.

The District proposes a rule that adopts a transportation fee based upon the maximum allowable under the law. In the very near future, the export fee may go from 2.5 cents/thousand gallons to over 20 cents/thousand gallons of exported water in two to three years.

First, The District is obviously imposing a cost burden, or penalty, on the individuals who now rely upon the exported water for their domestic and other needs. The magnitude of the increase over a short period of time will cause financial shock within thousands of families who have no choice on where their water is produced. The increased revenue from SSLGC alone is shown below:

- o Financial impacts to SSLGC based on full permit

Year	Rate	Permit AF	Total Fee
Current	\$0.0250	19,362	\$157,728
24-25	\$0.1000	19,362	\$630,913
25-26	\$0.2000	19,362	\$1,261,825
26-27	\$0.2060	19,362	\$1,299,680
27-28	\$0.2122	19,362	\$1,338,671
28-29	\$0.2185	19,362	\$1,378,831
29-30	\$0.2251	19,362	\$1,420,196
30-31	\$0.2319	19,362	\$1,462,801

- o Financial impacts based on recent production of approximately 13,000 AF

Year	Rate	Permit AF	Total Fee
Current	\$0.0250	13,000	\$105,902
24-25	\$0.1000	13,000	\$423,606
25-26	\$0.2000	13,000	\$847,213
26-27	\$0.2060	13,000	\$872,629
27-28	\$0.2122	13,000	\$898,808
28-29	\$0.2185	13,000	\$925,772
29-30	\$0.2251	13,000	\$953,545
30-31	\$0.2319	13,000	\$982,152

The District has not provided any information as to how they will utilize the additional dollars. In order to justify the significant increase in fees, there must be a multi-year strategic plan that will describe the revenue will be utilized.

If export fees must be increased, the increase should be phased in during a longer period of time to avoid rate shock upon the individuals that rely upon the exported water.

By immediately proposing the maximum fee allowed by law, the District appears to be disregarding the budgeting process. If export fees must be raised, the increase should

be based upon District costs as shown in the annual budget that is subject to public review and comment.

The District and SSLGC, among others, are parties to agreements that require the exporter to pay a “negotiated export fee surcharge.” If the District imposes this surcharge on exporters, in addition to the fee stated in Appendix D, the District’s export fees will exceed the maximum allowed by law.

Second, this rule, if adopted, grants preferential treatment for the owners of public water supply wells in the “Annexed Area” because the transportation fee is fixed by Rule 6(B), so they would not be subject to the higher fees proposed by the District. If the District adopts these fees, the District is asked to amend rule 6(B) to read as follows:

- B. Export of water outside the District from annexed water wells that serve as public water utility supply wells shall be limited to 5,000-acre feet of water per year in the aggregate and shall pay ~~an export fee of 2.5 cents per thousand gallons of water exported outside the District's boundaries~~production, export, transport and other fees required under the District's rules. Permittees shall submit reports to the District on a monthly basis. Monthly reports are due in the District office by the 30th day of the following month. Monthly fees are due in the District office by the 30th day of the following month.

Finally, should the District automatically adopt production fees at the maximum allowed by law, the District should consider using the additional revenue to cooperate with the Guadalupe County Groundwater Conservation District to drill, sample, and test monitoring wells around the Post Oak Dump. Only a thin plastic liner separates leachate in the landfill from entering the recharge zone for the Carrizo Aquifer. The management plan states

The District’s goal is to protect the Natural Resources of the GCUWCD. The District believes that preventing the contamination of groundwater is the single most important waste prevention activity it can undertake.

Management Objective 2: The District will monitor new facilities and activities on the recharge zones of the Carrizo/Wilcox, Queen City, Sparta, and Yegua-Jackson Aquifers on at least an annual basis for point source and non-point source pollution and compile this data into a database.

Performance: Record the date and results of the visual survey of all recharge zones for point source and nonpoint source activities and facilities and include the information in the District’s Annual Report.

(emphasis added).

The suggested monitoring wells and data collection are necessary to determine if leachate is entering the water supply.

3. Proposed Rule 18 (B)(6)(B)

The District is proposing to limit the amount of time that individual well production can exceed 150% of the permitted production rate during peak demand periods for a period not to exceed 90 days. Permit holders currently have the ability to produce up to 150% of their volumes without limitations as long as their annual permit volumes are not exceeded.

The proposed limitation of “not to exceed 90 days” further limits the permit holder’s ability to utilize their permitted allocation of groundwater as needed while remaining within their legal volumes. The 90-day limitation period is ambiguous as written as to what 90-day period of time it references. If the 90-day period is the same for all permits, it could create a situation in which all producers are producing up to 150% at the same time causing impacts to water levels in which they are trying to protect.

The District should not focus the permit holders ability to exceed permitted well production limits to a specific duration of time. Permit holders should be allowed to continue operating within the current rules, able to produce up to 150% as needed without focusing on a 90-day period.

4. Proposed Rule 21(C)

The District proposes to use District funds to finance capping and plugging activities that the law, and District rules, make the sole responsibility of the owner of the land where the well is located. This seems to be a gift of public funds that may not be allowed under the Texas Constitution.

Further, the District has agreed to limit expenditures of the money in the fund described in the above-referenced agreement between the District and SSLGC to registered or permitted wells located in Western Gonzales County west of the middle of the San Marcos Arch that:

- a. were drilled on or before January 1, 2010;
- b. were registered with the District on or before June 1, 2010;
- c. do not produce water for a public water supply; and
- d. meet the criteria for mitigation under the District’s Rules and Policies.

The District should not use money in the mitigation fund to cap or plug wells that do not satisfy the above criteria.

Conclusion.



SSLGC requests that the District not adopt the above-described revisions to the District rules.

SSLGC reserves the right to submit additional comments during the public hearing, or after the public hearing if allowed, pursuant to District Rule 1 (A) (4).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew McBride".

Andrew McBride

General Manager

Cc (via email)

Laura Martin, General Manager

Directors and City Managers and Assistant Managers.

Gonzales County Underground Water Conservation District

Rule Change Proposal Form for Adoption, Amendment, or Repeal of Administrative Rule

or Leave unchanged or add

Completing and Sending Form:

- Check all the boxes that apply.
- Provide relevant examples.
- Reference existing rule.
- Include suggested language for a rule, if possible.
- Use multiple forms if more than one change is being requested.

CONTACT INFORMATION: (Please type or print)

Name: Sally Plogger

Name of Organization: _____

Mailing Address: PO BOX N

City: Gonzales State: TX Zip: 78629

Telephone: 512-416-3603 Email: sallyplogger@yahoo.com

Signature: Sally Plogger Date: 5-18-2024

NEW RULE - I am requesting to adopt a new rule.

The purpose of this rule is: _____

The rule is pertaining to: _____

The new rule would affect the following: _____

30 days

Gonzales County Underground Water Conservation District

Rule Change Proposal Form for Adoption, Amendment, or Repeal of Administrative Rule

AMEND RULE – I am requesting to change an existing rule. *or leave existing as is*

Rule Number, Subsection, and Name: (eg. Rule 1.A.2.b INTRODUCTION)

Rule 5 A., Rule 5 D., Rule 10 H., Rule 19 A, B addition and amended

*add
18.1.c,*

- Rule no longer needed.
- Imposes upon. _____
- Conflicts with another federal, state, or local law or rule. (List rule conflict) _____
- Duplicates another federal, state, or local law or rule. (List rule duplicate) _____
- Other (please explain) Please see attached.

REPEAL RULE – I am requesting to eliminate an existing rule

Rule Number, Subsection, and Name: (eg. Rule 1.A.2.b INTRODUCTION)

- Rule no longer needed.
- Imposes upon. _____
- Conflicts with another federal, state, or local law or rule. (List rule conflict) _____
- Duplicates another federal, state, or local law or rule. (List rule duplicate) _____
- Other (please explain) _____

Rule 18 – Classification, Spacing and Production Provisions

B. Production Allocations

To minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to address the potential loss of opportunity to drill a new well because of spacing requirements, and to prevent waste, the District establishes the following groundwater production limitations.

1. Maximum Permitted Production

- a. The maximum permitted production for a tract of land may not exceed a total of one (1) acre/foot of water per surface acre of land owned per year from the Carrizo aquifer or combination of the allowable production from the Queen City and Sparta and Carrizo aquifers. Production from the Queen City Aquifer shall be one (1) acre/foot per surface acre per year and shall be considered part of the one (1) acre/foot per surface acre total production allowed on any tract of land. Production from the Sparta aquifer shall be one half (1/2) acre/foot per surface acre per year and shall be considered part of the one (1) acre/foot per surface acre total production allowed on any tract of land. Production from the Yegua- Jackson aquifer shall be one half (1/2) acre/foot per surface acre per year and shall be considered part of the one (1) acre/foot per surface acre total production allowed on any tract of land. Production from the Wilcox aquifer shall be one (1) acre/foot per surface acre per year and may be in addition to any other production permitted for any tract of land. Water wells previously permitted to produce at a higher rate per surface acre shall be reduced to the rate stated per surface acre in this rule beginning with permits scheduled to be renewed in 2012 and all permits thereafter shall be renewed at the rate then in effect.
- b. A permit for agricultural use shall state the maximum amount of groundwater authorized to be withdrawn during the entire permit term calculated at one (1) acre/foot per surface acre per year times the number of years during the permit term.
- c. The amount of acreage needed to satisfy the maximum permitted production must be located within the extent of drawdown (cone of depression) associated with the well or well field that is at least 50% of the maximum drawdown expected over the next 50 years, unless the required acreage exists within a single tract of land.

2. Groundwater Ownership/Contractual Rights

The determination for the approval of a well drilling and operating permit application will be contingent on the ability of the well owner to demonstrate that they have legal ownership or contractual rights on each individual tract of land as recorded in the Gonzales County Deed Records. A public water utility may claim acreage within their Certificate of Convenience and Necessity or their service area if:

The current DFC for the Yegua-Jackson aquifer is no more than an average of 3 feet of drawdown across the entire aquifer from 2010 aquifer levels (January 2011 measurements) to 2070. The District intends to assess its compliance with the DFC by monitoring water levels in selected observation wells. The annual recorded water levels for each observation well will be averaged together to calculate the yearly average drawdown for the aquifer. The current DFC observation wells for the Yegua-Jackson aquifer are listed in Appendix C along with a map showing the observation well locations.

The District shall measure water levels in the designated observation wells in January of each year. Water level measurements will be obtained by automatic or manual water level monitoring equipment. For newly added observation wells or wells where groundwater levels were not measured prior to the DFC start date the District will calculate the missing data using average drawdown levels from neighboring observation wells or water wells.

3. Designation of Observation Wells

It is anticipated that over time new DFC observation wells will be added to the network or that existing observation wells may be lost and need to be removed from the network. The Board may, by resolution approved during an open Board Meeting, add, remove, or replace observation wells as needed.

B. Exceedance of Drawdown Limits

If the Board determines that a well or well field has caused or significantly contributed to aquifer level declines below the District's Desired Future Condition goals, and in order to minimize, as far as practicable, the drawdown of the water table or reduction of artesian pressure, to prevent interference between wells, to prevent degradation of water quality, to encourage conservation, and to prevent waste in accordance with Section 36.116, Water Code, the District shall apply a reduction in the allowable permitted production within the affected area and applicable to wells drilled into the affected aquifer(s).

1. Carrizo, Wilcox, Queen City, and Sparta Aquifers

The annual outcrop water level declines identified by the District through its groundwater observation well network will inform permitted groundwater users of potential restrictions far in advance of the need to impose production restrictions. Permitted groundwater users can use this information to voluntarily implement gradual reductions in production prior to exceedance of the drawdown limits.

When a water level measurement in an observation well indicates that 60 percent of the District's DFC limit has been reached, the Board shall direct the General Manager to commence a study to assess the extent of the drawdown around the observation well and designate a specific depletion zone for the area. The study shall list the number of wells, the total depths and screened zone of each well, and assess the impacts to those wells based on the most recent water level measurements.

When a water level measurement in an observation well indicates that the District's DFC limit has been reached, the Board shall hold a public hearing to receive comment concerning the intent of the Board to designate specific depletion zone(s) and limit production in the affected depletion zone (s). The Board shall publish a notice not less than twenty (20) days before the actual date of the public hearing to take public comment on the proposed rules and designate

In areas of the District where observation well water level measurements show consistent declines over several years the Board shall direct the General Manager to commence a study to assess the extent of the drawdown around those observation wells and designate a specific depletion zone for the area. The study shall list the number of wells, the total depths and screened zone of each well, and assess the impacts to those wells based on the most recent water level measurements.

When the average annual water level decline in the District observation well network indicates that the DFC limit has been reached, the Board shall hold a public hearing to receive comment concerning the intent of the Board to designate specific depletion zone(s) and limit production in the affected depletion zone (s). The Board shall publish a notice not less than twenty (20) days before the actual date of the public hearing to take public comment on the proposed rules and designate the depletion zone(s). The District shall notify all permit holders in the proposed depletion zone(s) in writing of the hearing to adjust current operating permit limits.

After the public hearing the Board may, within thirty (30) days, take action on a resolution designating the specific depletion zone(s) and adjusting production limits. The Board may impose reductions if water level declines continue to exceed rates consistent with the DFC limits. In the specified depletion zone(s), the Board shall limit groundwater production from non-exempt authorized or permitted well or well field based on the following criteria:

- a. Current water usage, as evidenced by the prior 12 months of actual withdrawals, of each non-exempt authorized or permitted well or well field.
- b. Availability of other existing water sources for each non-exempt authorized or permitted well or well field.
- c. Special or unusual needs of each non-exempt authorized/permitted well or well field.
- d. Historic use status wells, up to the maximum amount of water certified shall be exempt from reductions in production rates; however such wells will be required to implement water conservation measures.

When the Board delineates a management area or areas to have limited production it may require:

- a. All wells located within the designated management area or areas capable of producing 25,000 gallons or more per day, to be equipped with a District approved meter or measuring device.
- b. Increased water level monitoring in the affected area(s).

On a semi-annual basis (or more frequently), the Board will evaluate the water levels and will determine whether any previously imposed reductions continue to be appropriate. If not, the Board will take action to reduce or eliminate the reductions.

Note: Additions and/or amendments noted in Red. Emphasized underline in blue.

Haley Stakes

From: Ted Boriack <tedboriack@gmail.com>
Sent: Saturday, May 18, 2024 10:08 AM
To: Haley Stakes; Laura Martin; Gregory M. Ellis
Subject: Re: GCUWCD District's Rule Workshop

Follow Up Flag: Follow up
Flag Status: Flagged

All,

I made every effort to attend the rules workshop today in Gonzales but was unable to due to being confined in a heart hospital in Austin. I have been in this heart hospital for about a week now and so tied up with IV lines, heart monitors, etc -- so have not been able to type until today. Today I am confined to a hospital room using hospital WIFI to send an email..

I could have participated in the rules workshop today from my hospital room by video conference call, but the GCUWCD has a long standing policy of forbidding remote participation -- that is a willful and intentional choice by the GCUWCD which I have strongly opposed. It's not fair to the landowners that can't drive or that are not available due to health reasons. But yet the GCUWCD insists on silencing landowners that can't physically attend.

I was told by GCUWCD that this will not be the last opportunity to provide comments, so the vast majority of my comments and detailed redline will be coming in the near future and at the next work shop.

In general, some of my comments are:

1. The general manager alone should not have the authority to deem a large permit application as being administratively complete -- this should be a decision by the GCUWCD board members.
2. GCUWCD have maximum pump size (need to analyze this matter for maximum allowable drawdown, perhaps 1000gpm depending on spacing and potential aquifer damage) and minimum spacing to avoid the massive drawdowns that are being requested from GBRA -- GCUWCD is making a huge mistake by considering 20"+ casings, 2000 gpm pumps, spaced so close together and adjacent to landowners that are not participating or being paid by GBRA.
3. Nobody should be allowed to install large pumps that significantly draw down the aquifer below adjoining land for extended periods without paying for the water they are taking.
4. The small towns inside the GCUWCD boundary should have their wells mitigated by the exporters. The city of San Antonio doesnt have the right to dry up the city of Gonzales, Waelder, Smiley, etc. just so San Antonio can have green lawns during the summer dry season.
5. The modeling and safeguards described in the management plan should be implemented by rule, the GCUWCD management plan safeguards such as modeling for protection of the aquifers are being ignored by the GCUWCD.
6. Any landowner with groundwater impacted by exporter pump drawdown has a property interest and should be paid for the water taken from his land.

7. Groundwater is personal property of the landowners, and the state constitution protects the property rights of citizens, the GCUWCD does not have the right to grant personal property from a landowner to a water company or utility without comp
8. Notices to landowners by permit applicants is not based only on well spacing but also on drawdown, and notices require certified mail receipts since GBRA failed to notice landowners despite the rule.
9. Declaration of a permit application as being administratively complete should require a comprehensive and thorough check list prior to making such declaration.
10. If the GCUWCD declares a permit application as being administratively complete when it is in fact not administratively complete, then the GCUWCD should pay damages and legal fees to the impacted landowners.
11. GCUWCD employees engaged in modeling and technical matters related to groundwater modeling should have sufficient credentials and be trained in modeling before getting involved in the data management or decision making related to groundwater modeling.
12. The board members need to sign their names on rule changes, resolutions, management plans, etc and stop trying to hide their decisions.
13. The consent agenda should be banned, it has been exploited by the GCUWCD to hide well mitigation issues, get all the information available to the public.

I have more to contribute, I will see you at the next rules work shop.

Ted Boriack
2984 FM1296
Waelder TX 78959
361-443-2547

On Fri, Apr 26, 2024 at 5:00 PM Haley Stakes <admin@gcuwcd.org> wrote:

To Who it May Concern:

Notice is hereby given to all interested members of the public that the Board of Directors of the Gonzales County Underground Water Conservation District will hold a Workshop on May 18th, 2024, regarding the District's Rules at 10:00 a.m. at the Gonzales County Underground Water Conservation District office at 522 Saint Matthew Street, Gonzales Tx 78629. A copy of the agenda for the Workshop is attached, and can also be found on the District's website at www.gcuwcd.org.

INSTRUCTIONS FOR PARTICIPATION IN BOARD OF DIRECTORS MEETING

Audio and Video Conference Opens 5 minutes before the 5:30 p.m. meeting.

Note: Members of the public wishing to comment must attend the meeting in-person. **No participation or public comments will be allowed via video or conference call.** However, any person may view or listen to the meeting via audio and video conference call. The Audio and Video Conference Opens 5 minutes before the 5:30 p.m. beginning of the meeting. Any person participating in the meeting must be recognized and identified by the Chairman each time they speak.

GCUWCD May 18th, 2024, District's Rule Workshop

May 18, 2024, 10:00 – 10:30 AM (America/Chicago)

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/548466925>

You can also dial in using your phone.

Access Code:

548-466-925

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Haley Stakes

Administrative Assistant

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

830.672.1047

Laura Martin

From: Ted Boriack <tedboriack@gmail.com>
Sent: Tuesday, June 11, 2024 4:13 PM
To: Laura Martin; Gregory M. Ellis; Haley Stakes
Subject: Boriack Public Comment on GCUWCD Proposed Rule 10. H and Right to Public Comment Remote

June 11, 2024

TO: GCUWCD Board Members
Laura Martin, General Manager
Greg Ellis, Attorney for the GCUWCD
Haley Stakes, Administrative Assistant

Additional Comment on the District's proposed rule changes from Ted Boriack:

In addition to my prior comments on rules submitted on May 18, 2024.

Please also note the District's proposed rule change 10 H. is not acceptable, it reads as follows:

No new permits, and or an increase amendments will be issued when the district has reached 100% of production of the current Modeled Available Groundwater (MAG) of measured actual production for the previous calendar year.

First -- the grammar is a bit confusing.

But the intent seems to mean that once the production of groundwater in the District has reached 100% of the MAG that the District will not allow new permits. This is in no way legal as it would deny landowners (family farms and ranches) and owners of groundwater rights that have not sold their water rights from installing wells to serve their own land for agriculture. It would result in the exporters being granted the water rights (and thereby personal property) of farms and ranches. The future of Gonzales County would suffer by the District by denying groundwater to its own landowners and population, while the cities outside the county grow simply because the District granted away groundwater owned by others.

The District needs to be held responsible for its careless permitting to exporters, and not attempt to deny landowners within the District boundary from using their own groundwater to serve their own land. The expenditure of millions of dollars by state water entities on wells and transport facilities based on an unfair allocation of groundwater and unsustainable pumping volumes is irresponsible and a waste of state money.

I will have more comments in the future which I will send separately.

Again -- the District's insistence on not allowing citizens to make public comment from remote location is simply not right.

Ted Boriack
361-443-2547



June 10, 2024

Via Federal Express

Ms. Laura Martin-Preston
General Manager
Gonzales County UWCD
522 Saint Matthew Street
Gonzales, Texas 78629

Re: Proposed Revisions to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Preston:

San Antonio Water System (SAWS) appreciates the opportunity to comment on the District's proposed amendments to the District's Rules. As concurrent regional water planning efforts are ongoing at this time in both the setting of Desired Future Conditions (DFC's) and the drafting of the 2026 Region L Plan, SAWS believes the District's rules should provide flexibility in the management of the District's water resources.

SAWS asks the Gonzales County Underground Water Conservation District (GCUWCD) to consider the following:

Proposed Rule 15(F)(3) and Appendix D

SAWS' Buckhorn well field commenced production and exportation of groundwater January 2014. At that time the District assessed an export fee of \$.025/1,000 gallons and the fee has remained at this rate. The District seeks to increase the export fee to \$.10/1,000 gallons commencing Fiscal year (FY) 2024-2025. SAWS supports this increase.

State law allows Districts to impose an export fee rate not to exceed 20 cents/1,000 gallons with increases in that maximum fee of three percent each calendar year to be used for certain costs related to assessing and addressing impacts associated with groundwater development. However, draft Appendix D Production and Transportation Fee Schedule increases the export fee three percent based upon the District's fiscal year commencing October 1, 2026 rather than per calendar year as expressly prescribed in H.B. 3059.

Effective October 2025, the District plans to increase the export fee 100 percent, on top of a 300 percent increase from the prior year, from \$.010/1,000g to \$.020/1,000g without demonstrating the need for such a substantive increase. The export fee assessed to SAWS based upon full permit increases from approximately \$94,000 today to over \$750,000 in two years. (Table 1)

Table 1.
Gonzales CUWCD Proposed Export Fee Based Upon SAWS Permitted Volume

Fiscal Year	Rate	\$	\$ Increase	% Increase
2024	\$.025/1,000g	93,785.46	-	0.00%
2025	\$.010/1,000g	375,141.83	281,356.37	300.00%
2026	\$.020/1,000g	750,283.66	375,141.83	100.00%
2027	3% increase	772,792.17	22,508.51	3.00%

Rather than adopt export fees within the Districts rules, SAWS suggests adopting export fees annually as a rate schedule as part of the annual budget setting process as related to a justified specifically identified need rather than arbitrary and subject to public comment and review.

Proposed Rule 18 (B)(6)(b)

This rule would limit the time producers can utilize the 150% of monthly allowable production peaking factor. The current rule provides producers operational flexibility to produce and remain within the permit on an annual basis.

SAWS operates the Buckhorn well field with the intent to baseload production annually. This means SAWS objective is to produce approximately one-twelve of the permit monthly. Due to mechanical issues, weather events, power outages etc. impacting production, the peaking factor provides the operational flexibility to make-up for lost production earlier in the year from such uncontrollable events. Furthermore, operationally, SAWS utilizes the current peaking rule to maximize production in the January to March period to hedge against any weather related or mechanical outage and again from October to December if needed to make-up lost production from events earlier in the year. Historically, when SAWS has utilized the peaking factor during summer months, it is a result of returning wells to service rather than a need to meet summer peak demands.

Ms. Laura Martin-Preston
June 10, 2024
Page 3

This proposed rule is not aligned with District Rule 11.H allowing for aggregated wellfields whereas there are no individual well production rates.

If SAWS were to be limited to a period of 90-days to utilize the peaking factor, in some circumstances, SAWS would no longer have access to its full annual permitted volume.

SAWS recommends revising Rule 18 (B) (6) (b) to read:

Individual well production rates, annual production volumes, or aggregated wellfield monthly production totals, are allowed to increase 150% of the permitted volume while remaining within the annual permit.

This change maintains operational flexibility and is aligned with the aggregated well field rule.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Donovan Burton", with a long horizontal flourish extending to the right.

Donovan Burton
Sr. Vice President
Water Resources & Governmental Relations

cc: Hope Wells, Vice President, Legislative & Regulatory Affairs
Linda Bevis, Director, Water Resources
Steven Siebert, Manager, Water Resources
Jennifer Windscheffel, Senior Corporate Counsel



June 27, 2024

Via email to: generalmanager@gcuwcd.org

Ms. Laura Martin-Preston
General Manager
Gonzales County Underground Water Authority
522 Saint Matthew Street
Gonzales, TX 78629

Re: Comments on Proposed Revisions to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Martin-Preston:

Thank you for the opportunity to comment on the Gonzales County Underground Water District's ("GCUWCD's") proposed rule revisions as posted on the GCUWCD's website in April 2024 and as further modified and discussed at the GCUWCD's Board Workshop on May 18, 2024 (the "Rules Workshop"). The Rules Workshop was particularly helpful as it allowed us to better understand GCUWCD's intent with many of the proposed rule changes. This letter follows up on the oral comments made during the Rules Workshop regarding: (1) new Rule 10.H, relating to permit denials as an aquifer management tool, (2) amended Rule 15.F.3 and new Appendix D, relating to Export Fees, (3) amended Rule 18.B.6.b, relating to peaking, and (4) new Rule 21, relating to payment for plugging and capping of old wells.

PROPOSED RULE 10.H – MAG AS PERMITTING CAP

Background

GCUWCD proposes to amend Rule 10, relating to "Application for Drilling and Operating Permits," by adding a new subsection (H), as follows:

10. H. No new permits, and or an increase amendments [*sic*] will be issued when the district has reached 100% of production under the current Modeled Available Groundwater (MAG) of measured actual production for the previous calendar year.

According to information provided at the Rules Workshop, the purpose of this new rule is to manage aquifer declines by denying applications for new permits and for permit amendment applications requesting an increase in production when the full MAG amount is being produced.

Comments

1. As discussed at length during the Rules Workshop, groundwater districts are charged by the Legislature to manage groundwater to achieve the Desired Future Conditions (“DFCs”), not the MAG. The Texas Water Code provides that each groundwater district in a groundwater management area “shall ensure that its management plan contains goals and objectives consistent with achieving the DFCs of the relevant aquifers during the joint planning process.” The Texas Water Code further provides that a district’s rulemaking shall consider the goals in the water management plan. This means that the rules must address the goal of achieving the DFC.
2. In 2011 Senate Bill 737 was passed by the Legislature and signed by the Governor; the intent of this legislation was to clarify that the MAG was not to be utilized as a cap in permitting and is instead only one of five factors to be considered in making permitting decisions. That same legislation (SB 737) also states that districts “shall” issue permits up to the DFC. The currently proposed Rule 10.H would be adverse to the direction provided in SB 737.
3. Furthermore, GCUWCD already has a rule (Rule 19) to monitor DFC compliance and take both proactive and reactive actions to manage aquifer declines. Rule 19.B.1 states that GCUWCD will commence a study of aquifer conditions when the water levels in a DFC observation well reach 60% of the DFC. The purposes of the study are to:
 - Assess extent of drawdown around the observation well
 - Designate specific Depletion Zone(s)
 - Identify affected wells, total depths and screened zones, and water levels

Rule 19 further states that if the water level in a DFC observation well is at the DFC, the Board will take the following actions:

- Hold a public hearing concerning intent of Board to designate specific Depletion Zone(s) and limit production in Depletion Zone(s)
 - 20 days published notice and written notice to all permit holders
 - Notice to include description of proposed Depletion Zone and proposed production limit reductions for non-exempt wells

- Within 30 days after the public hearing, Board may designate Depletion Zone(s) and set production limit reductions for non-exempt wells. Any production limit reductions are to be based on:
 - Current water usage, as evidenced by the prior 12 months of actual withdrawals
 - Availability of other existing water sources
 - Special or unusual needs of permittee
- Board may also require meters on all wells capable of producing more than 25,000 gpd

4. In short, ARWA believes that the GCWUCD already has the framework in place to properly regulate groundwater and therefore the proposed Rule 10.H is unnecessary and likely contrary to legislative intent.

AMENDED RULE 15.F.3 AND APPENDIX D – EXPORT FEES

Background

The GCUWCD’s current regulatory export fee is \$0.25/1,000 gallons exported/month. The GCUWCD has proposed the following new export fee schedule:

	Monthly Transportation Export Fee
Present – September 30, 2024 (FY 23/24)	\$0.025/1,000 gallons exported/month
October 1, 2024 – September 30, 2025 (FY 24/25)	\$0.10/1,000 gallons exported/month
October 1, 2025 – September 30, 2026 (FY 25/26)	\$0.20/1,000 gallons exported/month
On and after October 1, 2026	Automatic 3% increase in fee each GCUWD fiscal year

GCUWCD has issued export permits to six permittees. Three of those permittees – SSLGC, SAWS, and Aqua WSC – each pay monthly export fees calculated at \$0.025 per thousand gallons exported during the prior month. The other three permittees pay a “negotiated” export fee pursuant to that certain “2019 Amended and Restated Negotiated Export Fee Agreement” by and among GCUWCD, CRWA, ARWA, and GBRA (the “A&R Negotiated Export Fee Agreement”). Under the A&R Negotiated Export Fee Agreement, CRWA, ARWA, and GBRA each pay their Proportionate Share¹ of the GCUWCD’s Adjusted Budget.² The A&R Negotiated Export Fee Agreement is based on the amount of water *permitted* to be exported, rather than the amount of acre-feet *actually* exported.

¹ Under the A&R Negotiated Export Fee Agreement, a permit holder’s “Proportionate Share” is calculated by dividing the total number of acre feet the permit holder is *permitted* to export on an annual basis (not the amount *actually* exported) by the total amount all three permit holders are collectively *permitted* to export on an annual basis.

² Under the A&R Negotiated Export Fee Agreement, the “Adjusted Budget” is amount calculated each fiscal year and is the amount of GCUWCD’s total budget, less the amount of export fees expected to be contributed by SAWS, SSLCG, and Aqua, less the amount expected to be collected in taxes.

Two of the three permit holder-parties to the A&R Negotiated Export Fee Agreement have not exported any water from the GCUWCD to date but have been paying the negotiated export fee since 2013.

Comment A2 in the margins of Appendix D to the Proposed Rules notes that “This schedule negates any and all Negotiated Export Fee Contracts”.

Comments:

1. Section 10 of the A&R Negotiated Export Fee Agreement states that it can only be amended by mutual agreement of all parties.³ It cannot be amended by GCUWCD unilaterally through rulemaking. Section 4 of the A&R Negotiated Export Fee Agreement states that it terminates only when that party’s export fee terminates. Legally, the amendment to Rule 15.F and the adoption of new Appendix D have no effect on the parties to the A&R Negotiated Export Fee Agreement. The GCUWCD’s assumption that it can negate a contract via rulemaking is not correct. All parties to the A&R Negotiated Export Fee Agreement must terminate it on mutually acceptable terms in order for the permittee parties to become subject to the regulatory export fee schedule.
2. ARWA understands the reality that costs to manage the GCUWCD continue to rise, which is why the A&R Negotiated Export Fee Agreement provided a mechanism by which the fees paid by the parties to the agreement can increase every year based on the GCUWCD adopted budget.
3. In summary, ARWA would like to understand how the GCUWCD intends to deal with the permittees that are parties to the A&R Negotiated Export Fee Agreement and we would like the GCUWCD to continue to set export fees based on funding needs identified during the annual budget process, not based on some preset schedule that is not tied to anticipated expenditures.

³ Sections 10 and 4 of the A&R Negotiated Export Fee Agreement do allow for amendment of the A&R Export Fee Agreement by fewer than all permit holders and the GCUWCD under a particular circumstance: if a permit holder’s export permit is terminated for reasons other than for non-payment of the negotiated export fee, the remaining permit holders and the GCUWCD can amend the A&R Negotiated Export Fee Agreement without the consent of the former permit holder..

AMENDED RULE 18.B.6.b - PEAKING

Background

GCUWCD proposes to amend Rule 18.B.6.b to add the underscored language shown below:

18.B.6.b. Individual well production rates are allowed to increase up to 150% of the permitted production rate during peak demand periods for a period of not to exceed 90 days.

During the Rules Workshop on May 18, 2024, there was uncertainty expressed by GCUWCD Board members as to the purpose of this proposed amendment. It was mentioned that the intent might be to address conditions experienced during the summer of 2022. Those conditions were not explained.

Comments

1. ARWA strongly agrees with the currently in place Rule 18.B.6.b. concept of allowing temporary escalations in individual well production; however, the need for adjustments in well pumpage rates are not limited to specific intervals. While increased “peaking” capacity is commonly associated with the need to provide for surges in daily and/or seasonal demands, there are other circumstances that require the ability to adjust instantaneous well production rates. For example, when a well in a well field is taken off-line for maintenance the pumpage rates of other wells must be temporarily increased to maintain overall system production amounts. ARWA relies on the ability to use existing Rule 18.B.6.b for operational flexibility in the face of changing circumstances but those circumstances do not restrict themselves to within one 90-day period in a year. Operationally, the Rule is a limit on ARWA’s ability to produce the amount of water it is permitted to produce on an annual basis. It is important to note that, while Rule 18.B.6.b. allows for temporary increases in individual well rates, it does not negate or modify limitations on a permittee’s total annual production. Consequently, short-term fluctuations in aquifer water levels occur when individual well rates change but there is no significant difference in longer-term (annual) aquifer impacts regardless of when well rates are altered within a given year.
2. ARWA agrees with SAWS and SSLGC that this change to Rule 18.B.6.b. is unnecessary, arbitrary, vague as to when the 90-day period begins and ends, removes operational flexibility and thus may limit the ability to produce the full amount of water permitted.

PROPOSED RULE 21 – PAYMENT FOR PLUGGING AND CAPPING OF WELLS

Background

GCUWCD proposes to add new Rule 21.D as follows:

- B. The Gonzales County Underground Water Conservation District (GCUWCD) has budgeted money for assisting landowners located within the district in plugging and abandoning deteriorated wells. The GCUWCD desires to assist the landowners in paying for a portion of the costs to complete the plugging and abandonment of the well in accordance with the Water Well Plugging Fund and Policy Manual adopted May 10, 2016.
 - a. The GCUWCD will provide a landowner who wishes to participate in the water well plugging fund a 90/10 percent cost share allowance. The GCUWCD will pay 90 percent of the costs to plug and abandon the water well with the remaining 10 percent of the costs paid by the landowner.
 - b. The landowner must agree to pay the estimated 10 percent of the plugging and abandonment costs prior to the start of the plugging operations. If the Landowner chooses to make payments over time, then Landowner must consent in writing to the District placing a lien on the property equal to the amount of reimbursement due to the District in accordance with a written payment schedule. The District will file a lien in the Gonzales County Deed Records and will subsequently file a Release of Lien in accordance with payment agreement.

Comment:

ARWA agrees that it is a legitimate use of public funds to plug abandoned and deteriorating wells to protect water quality and prevent unauthorized use of groundwater. Based on the GCUWCD's FY 23/24 budget, it appears that this program is budgeted at \$75,000 from the general fund. However, ARWA does not believe that export fees adopted under Texas Water Code § 36.122(e)(2) can be used to fund this program per the limits placed by the Legislature on use of those funds in Texas Water Code § 36.207(b). Because the program is subject to available funding, which will probably change on an annual basis, the rule should include a statement that monies available for the program are subject to availability and will be set by the Board during the budget process. In addition, the details of the program remain obscure. The "Water Well Plugging Fund and Policy Manual" referenced in the draft rule is not published on the GCUWCD's website. Without more detail about the program, it is difficult to provide additional comments on this proposed rule at this time, but in general, if the finances are made transparent and the program is implemented properly and fairly, ARWA does not object to the general intent of this new rule.

June 28, 2024

Page 7

Again, thank you for the opportunity to present these suggested clarifications to the GCWUCD's Rules. Should you have any questions or need clarifications on our comments, please do not hesitate to contact me at 512-294-3214 or at gmoore@alliancewater.org.

Sincerely,

ALLIANCE REGIONAL WATER AUTHORITY

By: _____



Graham M. Moore, P.E.
Executive Director
Alliance Regional Water Authority
630 E. Hopkins
San Marcos, TX 78666
(512) 294-3214
gmoore@alliancewater.org
www.alliancewater.org

Attachment

cc: Trish Erlinger Carls, Special Counsel, *via email to* tcarls@tcarlslaw.com
James Bené, P.G., R.W. Harden & Associates, Inc., *via email to*
james.bene@rwharden.com



June 28 2024

Via email to: generalmanager@gcuwcd.org

Ms. Laura Martin-Preston, General Manager
 Gonzales County Underground Water Conservation District
 522 Saint Matthew Street
 Gonzales, Texas 78629

Re Proposed Amendments to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Martin-Preston:

Thank you for the opportunity to comment on the Gonzales County Underground Water District's ("District's") proposed rule amendments presented at the District's Board Workshop on May 18, 2024. I send this correspondence on behalf of the Canyon Regional Water Authority ("CRWA"), which currently holds permits from the District to produce and export 8,320.05 acre-feet per year of water from the Carrizo aquifer. A summary of CRWA's comments on the proposed rule amendments follows, and supplemental information supporting the comments is provided in the attached memorandum.

A. RULE 15.F.3 AND APPENDIX D – EXPORT FEES

Proposed Rule:

The District has proposed a new Appendix D with the following new export fee schedule:

	Monthly Transportation Export Fee
Present – September 30, 2024 (FY 23/24)	\$0.025/1,000 gallons exported/month
October 1, 2024 – September 30, 2025 (FY 24/25)	\$0.10/1,000 gallons exported/month
October 1, 2025 – September 30, 2026 (FY 25/26)	\$0.20/1,000 gallons exported/month
On and after October 1, 2026	Automatic 3% increase in fee each District fiscal year

Appendix D includes this comment, "This schedule negates any and all Negotiated Export Fee Contracts."

Summary of CRWA Comments:

1. CRWA is one of the three exporters who are parties with the District to the 2019 Amended and Restated Negotiated Export Fee Agreement (the "Fee Agreement"). Because the Fee Agreement expressly provides that it cannot be unilaterally terminated, the District rulemaking function cannot operate to "negate" it, and CRWA contends that the amount of export fees it pays will be unaffected by the proposed amendment to Rule 15.F.3 and new Appendix D.
2. The proposed increases in regulatory export fees over the first two years exceeds the 3% annual limit set in Texas Water Code § 36.122(e-1).
3. The District has not provided any budgetary explanation supporting its proposal to dramatically increase regulatory export fees.
4. Texas Water Code § 36.207(b) restricts the use of export fee revenue received under Texas Water Code § 36.122(e-1) to "only for costs related to assessing and addressing impacts associated with groundwater development." Under the existing 2012 "Amended Participation Agreement in the Western Gonzales County Dedication Mitigation Fund" by and between CRWA and the District (the "Mitigation Agreement"), CRWA already pays the District to assess and address impacts on eligible wells from CRWA's operations. Accordingly, CRWA seeks further explanation of how the District intends to utilize the increased export fees, and whether a reduction in CRWA's contribution of funds under the Mitigation Agreement would be warranted, or the Mitigation Agreement can be terminated.
5. CRWA requests that the District work with parties to the Fee Agreement and the Mitigation Agreement during a transparent budget process to address funding needs.

B. RULE 10.H – PERMIT MORATORIUM BASED ON MAG AS CAP

Proposed Rule:

The District proposes to amend Rule 10, relating to “Application for Drilling and Operating Permits,” by adding a new subsection (H), as follows:

10. H. No new permits, and or an increase amendments [sic] will be issued when the district has reached 100% of production under the current Modeled Available Groundwater (MAG) of measured actual production for the previous calendar year.

Summary of CRWA’s Comments:

1. A Modeled Available Groundwater (“MAG”) amount for a specific aquifer is only one of several factors to be considered by the District during permitting, and the Texas Legislature has made it clear that the MAG is not a permitting cap. Proposed Rule 10.H places undue weight during the permitting process on the MAG and is not consistent with legislative intent.
2. The Texas Water Code provides that groundwater conservation districts must manage aquifers within their regulatory control to the aquifer’s Desired Future Condition (“DFC”), not to the aquifer’s MAG.
3. District Rule 19 already identifies actions the District can take if/when water table declines approach or exceed DFC limits. New Rule 10.H. is not necessary.
4. Because DFCs and MAGs are generated through a computer modeling process that contains multiple and various data assumptions and limitations, production at or above MAG levels is not a reliable indicator of whether the DFC will be exceeded in the future.

C. AMENDED RULE 18.B.6.b – PEAKING

Proposed Rule:

The District proposes to amend Rule 18.B.6.b to add the underscored language shown below:

18.B.6.b. Individual well production rates are allowed to increase up to 150% of the permitted production rate during peak demand periods for a period of not to exceed 90 days.

Summary of CRWA's Comments:

1. The proposed amendment limits the allowable changes in individual well production rates to a 90-day interval; however, the need for operational flexibility is not restricted to specific times during the year. For example, when one of CRWA's wells in its wellfield is taken off-line for maintenance, the pumpage rates in the other wells must be temporarily increased to maintain overall system production amounts.
2. The proposed amendment restricts flexibility needed for effective well field operation but will not significantly reduce longer-term aquifer impacts.

D. NEW RULE 21- PAYMENT FOR PLUGGING AND CAPPING OF WELLS.

Proposed Rule:

The District proposes to add new Rule 21.D as follows:

D. The Gonzales County Underground Water Conservation District (District) has budgeted money for assisting landowners located within the district in plugging and abandoning deteriorated wells. The District desires to assist the landowners in paying for a portion of the costs to complete the plugging and abandonment of the well in accordance with the Water Well Plugging Fund and Policy Manual adopted May 10, 2016.

1. The District will provide a landowner who wishes to participate in the water well plugging fund a 90/10 percent cost share allowance. The District will pay 90 percent of

the costs to plug and abandon the water well with the remaining 10 percent of the costs paid by the landowner.

2. The landowner must agree to pay the estimated 10 percent of the plugging and abandonment costs prior to the start of the plugging operations. If the Landowner chooses to make payments over time, then Landowner must consent in writing to the District placing a lien on the property equal to the amount of reimbursement due to the District in accordance with a written payment schedule. The District will file a lien in the Gonzales County Deed Records and will subsequently file a Release of Lien in accordance with payment agreement.

Summary of CRWA's Comments:

1. CRWA agrees that it is a legitimate use of public funds to plug abandoned and deteriorating wells to protect water quality and prevent unauthorized use of groundwater. However, Texas Water Code § 36.207(b) does not allow added revenue from increased export fees to be used for this purpose.
2. The "Water Well Plugging Fund and Policy Manual" referenced in the draft rule is not published on the District's website. More information is needed about this program's scope, implementation, and funding.

Thank you for the opportunity to submit these comments. If you have any questions or need additional information from me, please do not hesitate to contact me.

Respectfully,
CANYON REGIONAL WATER AUTHORITY

By:  _____
Kerry Averyt, General Manager

ATTACHMENT:
Memorandum Supporting CRWA's Comments on Proposed Rule Amendments

Ms. Laura Martin-Preston
General Manager, GCUWCD
June 28, 2024
Page 6 of 6

cc: *(w/attachment)*:

Trish Erlinger Carls, Special Counsel, CRWA

Trey Wilson, Special Counsel, CRWA

Adam Telfer, CRWA

James Bene, P.G., RW Harden & Associates, Inc.

MEMORANDUM

TO: Gonzales County Underground Water Conservation District

FROM: Canyon Regional Water Authority

RE: Proposed Rule Amendments

DATE: June 28, 2024

INTRODUCTION

This Memorandum supplements and supports Canyon Regional Water Authority’s (“CRWA’s”) comments on the Gonzales County Underground Water District’s (the “GCUWCD’s”) proposed rule amendments as presented at the District’s Workshop on May 18, 2024.

A. RULE 15.F.3 AND APPENDIX D – EXPORT FEES

Proposed Rule:

The GCUWCD has proposed to add a new Appendix D with the following new export fee schedule:

	Monthly Transportation Export Fee
Present – September 30, 2024 (FY 23/24)	\$0.025/1,000 gallons exported/month
October 1, 2024 – September 30, 2025 (FY 24/25)	\$0.10/1,000 gallons exported/month
October 1, 2025 – September 30, 2026 (FY 25/26)	\$0.20/1,000 gallons exported/month
On and after October 1, 2026	Automatic 3% increase in fee each GCUWCD fiscal year

Appendix D includes this comment, “This schedule negates any and all Negotiated Export Fee Contracts.”

Background:

GCUWCD has issued export permits to six permittees. Three of those permittees – SSLGC, SAWS, and Aqua – each pay monthly export fees calculated at \$0.025 per thousand gallons exported during the prior month. The other three permittees initially paid a “negotiated” export fee pursuant to that certain 2012 “Negotiated Export Fee Agreement” (the “Original Export Fee Agreement”), and continue to pay pursuant to the 2019 “Amended and Restated Negotiated Export Fee Agreement” (the “A&R Negotiated Export Fee Agreement”).¹ Under the Negotiated Export Fee Agreement, as amended, CRWA, ARWA, and GBRA each pay their Proportionate Share² of the GCUWCD’s Adjusted Budget.³ The Negotiated Export Fee Agreement is based on the amount of water *permitted* to be exported, rather than the amount of *actually* exported. Two of the three permit holder-parties to the Negotiated Export Fee Agreement have not exported *any* water from the District to date; yet, have paid the negotiated export fee since their permits were issued.

The methodology for calculating export fees was designed to reallocate the cost of managing groundwater from the GCUWCD’s taxpayers to exporters.⁴ Based on the GCUWCD’s FY 23/24 budget, taxpayers fund less than 25% of the GCUWCD’s operations, while export fee revenues provide over 75% of the District’s revenue and allow it to achieve a balanced budget.⁵ However, the Legislature limits groundwater districts’ ability to shift costs to exporters. In 2023, the Legislature amended Texas Water Code § 36.122(e), (e-1), and (e-3) to provide:

¹ The original Negotiated Export Fee Agreement was entered into by CRWA, ARWA (formerly Hays-Caldwell Public Utility Agency) and GBRA (formerly Texas Water Alliance) in 2012 and had the same fee calculation formula as the A&R Negotiated Export Fee Agreement.

² Under the A&R Negotiated Export Fee Agreement, a permit holder’s “Proportionate Share” is calculated by dividing the total number of acre feet the permit holder is *permitted* to export on an annual basis (not the amount *actually* exported) by the total amount all three permit holders are collectively *permitted* to export on an annual basis.

³ Under the A&R Negotiated Export Fee Agreement, the “Adjusted Budget” is amount calculated each fiscal year and is the amount of GCUWCD’s total budget, less the amount of export fees expected to be contributed by SAWS, SSLGC, and Aqua, less the amount expected to be collected in taxes.

⁴ According to the Texas Natural Resource Conservation Commission’s order creating the GCUWCD, GCUWCD entered into a settlement agreement with the City of Gonzales whereby the City of Gonzales agreed not to oppose the GCUWCD’s seeking a tax cap of \$0.05 per \$100 in assessed value and prohibiting the GCUWCD’s ability to use tax revenue for certain purposes. See “Creation Order,” at <https://gcuwcd.org/creation>. The GCUWCD’s current tax rate is 0.003174 per \$100 in assessed value.

⁵ Taxpayers fund 0% of the GCUWCD’s two mitigation fund budgets.

(e) Except as provided by Subsection (e-1), the district may impose an export fee or surcharge using one of the following methods:

- (1) a fee negotiated between the district and the exporter;
- (2) for a tax-based district, a rate not to exceed 20 cents for each thousand gallons of water exported from the district; or
- (3) for a fee-based district, a rate not to exceed the greater of 20 cents for each thousand gallons or a 50 percent surcharge, in addition to the district's production fee, for water exported from the district.

(e-1) Effective January 1, 2024, the maximum allowable rate a district may impose for an export fee or surcharge under Subsection (e)(2) or (e)(3) increases by three percent each calendar year.

...

(e-3) An export fee or surcharge imposed under Subsection (e) or an increase in an imposed export fee or surcharge is not valid unless it is approved by the board after a public hearing.⁶

The GCUWCD is a tax-based district. Accordingly, the 2023 statutory amendment authorizes GCUWCD to, after notice and public hearing, impose an export fee *up to \$0.20/1,000 gal. exported* (not merely permitted) that increases by 3% each calendar year.

Supplemental Comments:

1. The plain language of Section 10 of the A&R Negotiated Export Fee Agreement expressly states that the Agreement may be amended only by mutual agreement of all parties.⁷ Section 4 provides that the Agreement terminates as to a permittee-party only when that party's export permit terminates. CRWA's export permit is valid through November 9, 2051. There exists no legal authority for GCUWCD to unilaterally amend or terminate a valid contract via rulemaking.⁸ Therefore, all parties to the A&R Negotiated Export Fee Agreement must terminate on mutually

⁶ See HB 3059 (88th Tex. Leg. 2023). Subsection (e-2) of Section 36.122 provides that districts created by the Legislature under special legislation must continue to abide by the export fee provisions contained in that special legislation. GCUWCD was not created by special legislation. It was created in 1993 by order of the Texas Natural Resource Conservation Commission, after a contested case hearing. See Creation Order, at <https://gcuwcd.org/creation>.

⁷ Sections 10 and 4 of the A&R Negotiated Export Fee Agreement do allow for amendment of the A&R Export Fee Agreement by fewer than all permit holders and the GCUWCD under a particular circumstance: if a permit holder's export permit is terminated for reasons other than for non-payment of the negotiated export fee, the remaining permit holders and the GCUWCD can amend the A&R Negotiated Export Fee Agreement without the consent of the former permit holder..

⁸ The Texas Supreme Court has held that by executing a contract, a governmental entity "voluntarily bind[s] itself like any other party to the terms of agreement." [Tooke v. City of Mexia, 197 S.W.3d 325, 332 \(Tex. 2006\)](#).

acceptable terms before the permittee parties may be subjected to the regulatory export fee schedule. As proposed, Rule 15.D.3, would excuse the two export permit holders that are not yet exporting water out of the GCUWCD's boundaries from paying export fees until they actually begin to export water.

2. The fee schedule proposed by the GCUWCD in Appendix D increases the export fee by more than 3% annually in its initial years. This is a violation of Texas Water Code § 36.122(e-1). GCUWCD is proposing a fee increase of 300% from FY 23/24 to FY 24/25, and of 100% from FY 24/25 to FY 25/26. By the plain language of the statute, the 3% per year limit in Subsection (e-1) applies after January 1, 2024.⁹
3. The fee schedule is arbitrary and capricious because it bears no rational relationship to the GCUWCD's budget. Statutory authority to charge a fee does not authorize imposition of excessive fees or fees in amounts with no correlation to the program costs they are designated to cover. All user fees, including export fees, must be based on the cost of the service or program funded and the payors' ability to pay. The U.S. Government Accountability Office advises agencies that set fees to report their methods clearly, including by providing an accounting of program costs and the assumptions used to project future costs and fee collections. During the GCUWCD's September 12, 2023, budget hearing for FY 23/24, Board members asked District Staff whether the proposed budget included increases in mitigation or export fees. District Staff replied that the budget did not include any fee increases, and that any such fee increases would be processed as a budget amendment. To date, no budget amendment has been proposed.¹⁰ From the current draft of the rules, it appears that the GCUWCD intends to increase the export fee by 3% each year in perpetuity after October 1, 2026. This makes plain that there exists no budgetary basis or cost rationale supporting the proposed export fee increases.

⁹ HB 3059 (2023) amending Texas Water Code § 36.122 became effective on September 1, 2023. The GCUWCD began discussing raising export fees in April 2024. It is not clear from the language in the statute whether the annual 3% limit on fee increases in Subsection (e-1) operates to automatically increase the 20 cent limit in Subsection (e)(2) on an annual basis beginning after January 1, 2024, or whether it operates to automatically increase a district's regulatory export fee in effect as of January 1, 2024 by 3% annually thereafter.

¹⁰ GCUWCD receives revenue from two sources: taxes and fees. GCUWCD's current tax rate is \$0.00317400. Per GCUWCD's budget notices, this is an 8.14% increase over the previous tax rate, but it is still the lowest rate of all the taxing authorities in Gonzales County. See <https://www.texas-tax-transparency.com/Gonzales/Search/TaxRates?page=1&rows=100>. Fee income is from export fees (reported with the general fund budget), and mitigation fees (reported for each of the GCUWCD's two mitigation funds).

4. Related to the budgeting issue, note that Texas Water Code § 36.207(b) limits the purposes for which a district can use the additional revenue received from increasing export fees as allowed under Texas Water Code § 36.122(e-1). Texas Water Code § 36.207(b) states:

(b) A district may use funds obtained from the amount that an export fee is increased under Section 36.122(e-1) on or after January 1, 2024, only for costs related to assessing and addressing impacts associated with groundwater development, including:

- (1) maintaining operability of wells significantly affected by groundwater development;
- (2) developing or distributing alternative water supplies; and
- (3) conducting aquifer monitoring, data collection, and aquifer science.¹¹

The GCUWCD is not currently engaged in the activity described in subsection (b)(2). Therefore, Section 36.207(b) requires that the GCUWCD uses the additional amount of fees collected over and above the amount that would have been collected had the fee remained at \$0.0250 exclusively for two of the enumerated purposes: (1) for maintaining operability of wells “significantly affected by groundwater development,” or (2) conducting aquifer monitoring, data collection, and aquifer science. As discussed further below, the revenue from the increased fees cannot be used by the GCUWCD to fund the dilapidated well-plugging activities described in Proposed Rule 21.D.

5. The statutory restrictions on use of revenue from export fees received from a fee increase under Section 36.122(e-1) highlights the already-existing overlap between what exporters pay to the GCUWCD as export fees (whether set pursuant to rule or by the A&R Negotiated Export Fee Agreement), and what exporters pay as export fees under the guise of “mitigation fees” under the Mitigation Agreement.¹² Although

¹¹ Tex. Water Code § 36.207(b).

¹² District Rule 10.E.3 requires producers connected to a common gathering/piping system capable of producing over 3,000 acre-feet/year of water to enter into a mitigation agreement with the District. Pursuant to that rule, the six export permit holders referenced in these comments have each entered into a Mitigation Agreement with the GCUWCD. Pursuant to the Migration Agreements, the exporters pay an additional “negotiated export fee surcharge.” The Mitigation Agreements are attached as appendices to the “GCUWCD Mitigation Fund Annual Report (2023),” available at this link: <https://gcuwcd.org/annual-reports>. The exporters also funded the drilling of new observation wells which the GCUWCD uses to monitor compliance with the DFCs. See “Monitoring Well System Construction, Operation and Maintenance Agreement” dated effective December 30, 2016, by and among GCUWCD, SAWS, ARWA, GBRA, CRWA, and SSLGC, as amended by the “First Amendment to the

GCUWCD receives annual revenue from exporters under two different agreements, the revenues generated under both documents are properly statutorily categorized as “export fees.” If the fees paid under the Mitigation Fee Agreement are classified consistently with the statute as “export fees,” CRWA has made significant export fee payments to the GCUWCD. Any increases in export fees are duplicative of the fees already paid by CRWA under the Mitigation Agreement. If export fees are increased, the continued necessity for the Mitigation Agreement is questionable.

6. The proposed fee increases do not account for an exporter’s ability to pay, or ability to plan to pay. CRWA is a governmental entity but has no taxing authority. Therefore, fees imposed by the GCUWCD are passed through to CRWA’s wholesale customers, and thence to end users who will see the fees reflected as rate increases. The legislative history of H.B. 3059 amending Texas Water Code § 36.122 indicates that the Bill’s supporters believed that 3% increases would not cause rate shock. However, as discussed above, the GCUWCD is proposing a 300% rate increase effective in three months’ time, followed by a 100% rate increase one year later. Immediate steep increases from the previous cap of 2.5 cents/1,000 gallons to 20 cents/1,000 gallons were not intended by the Legislature.

B. RULE 10.H – PERMITTING MORATORIUM BASED ON MAG AS CAP

Proposed Rule:

GCUWCD proposes to amend Rule 10, relating to “Application for Drilling and Operating Permits,” by adding a new subsection (H), as follows:

10. H. No new permits, and or an increase amendments [sic] will be issued when the district has reached 100% of production under the current Modeled Available Groundwater (MAG) of measured actual production for the previous calendar year.

Background:

According to information provided at the Board Workshop, the purpose of this proposed new rule is to allow the GCUWCD to manage aquifer declines by denying new permit applications and permit amendment applications that seek additional production when the full MAG amount is being produced.

Supplemental Comments:

Monitoring Well System Construction, Operation and Maintenance Agreement” dated effective October 3, 2018.

1. Groundwater conservation districts are charged by the Legislature to manage groundwater to achieve the Desired Future Conditions (“DFCs”), not the MAG.¹³ The Texas Water Code provides that each groundwater district in a groundwater management area “shall ensure that its management plan contains goals and objectives consistent with achieving the DFCs of the relevant aquifers during the joint planning process.”¹⁴ The Texas Water Code further provides that a district’s rulemaking shall consider the goals in the water management plan.¹⁵ This means that the rules must address the goal of achieving the DFC.
2. During the May 18, 2024, Rules Workshop and in past Board meetings, some commentators have expressed concern that the MAG increases over time. This concern reflects a misunderstanding of how MAGs are generated by GMA-13 and the TWDB. When creating the Groundwater Availability Model (“GAM”), the computer model simulation used by the TWDB to calculate aquifer MAGs, professionals working on behalf of GMA-13 input groundwater usage data included in the Region L Water Plan into the GAM’s model files. Consequently, any increases (or decreases) in planned groundwater use contained in the Regional L Water Plan are reflected in the MAG. The water level changes predicted by the GAM computer model simulations are adopted by GMA-13 and all groundwater conservation districts in GMA-13 as DFCs but, because groundwater models are imperfect, the computer model predictions will be inaccurate to some degree. In other words, pumpage information at the locations, rates, and schedules inputted into and generated by a MAG computer simulation may not produce the DFC results. Instituting a moratorium on permitting once pumpage reaches the MAG incorrectly assumes that it is inevitable that DFCs will be reached when the MAG pumpage is realized.
3. Focus on the MAG, rather than the DFC, to determine the effectiveness of a district’s aquifer management strategy appears to be based the erroneous assumption that a computer-generated MAG is a more reliable indicator of DFC compliance than actual groundwater level measurements. The assumption has been expressly repudiated by the Legislature, rejected by the Texas Water Development Board (TWDB), and dismissed by the Texas Commission on Environmental Quality (TCEQ). It was

¹³ DFCs are quantitative descriptions of the desired condition of the groundwater resources in a groundwater management area at one or more specified times. *See* Tex. Water Code § 36.001(30). A MAG is the amount of water that the Texas Water Development Board calculates, using an approved groundwater availability model, may be produced on an average annual basis to achieve the DFC. *See* Tex. Water Code § 36.001(25).

¹⁴ Tex. Water Code § 36.1085

¹⁵ Tex. Water Code § 36.101(5)

repudiated by the Legislature through the passage of SB 737 in 2011 (clarifying that the MAG is not a permitting cap). It is rejected by the TWDB in every MAG report the agency authors. Every MAG report includes a detailed description of the specific data assumptions and modeling limitations used to generate the MAG, and *every MAG report contains these cautionary words:*

LIMITATIONS:

The groundwater model used in completing this analysis is the best available scientific tool that can be used to meet the stated objectives. **To the extent that this analysis will be used for planning purposes and/or regulatory purposes related to pumping in the past and into the future, it is important to recognize the assumptions and limitations associated with the use of the results.** In reviewing the use of models in environmental regulatory decision making, the National Research Council (2007) noted:

“Models will always be constrained by computational limitations, assumptions, and knowledge gaps. They can best be viewed as tools to help inform decisions rather than as machines to generate truth or make decisions. Scientific advances will never make it possible to build a perfect model that accounts for every aspect of reality or to prove that a given model is correct in all respects for a particular regulatory application. These characteristics make evaluation of a regulatory model more complex than solely a comparison of measurement data with model results.”

...

Because the application of the groundwater model was designed to address regional scale questions, the results are most effective on a regional scale. The TWDB makes no warranties or representations relating to the actual conditions of any aquifer at a particular location or at a particular time.

It is important for groundwater conservation districts to monitor groundwater pumping and groundwater levels in the aquifer. . . .¹⁶

These limitations caused the Legislature in 2011 to clarify that the MAG is not a permitting cap, but rather, merely one of five factors to be considered in making permitting decisions.¹⁷ Senate Bill 737 introduced during the same 2011 Legislative

¹⁶ See, e.g., “GAM Run 21-018 MAG: Modeled Available Groundwater for the Carrizo-Wilcox, Queen City, Sparta, and Yegua-Jackson aquifers in Groundwater Management Area 13” (TWDB, July 25, 2022), at 24. Emphasis added.

¹⁷ Tex. Water Code § 36.1132. PERMITS BASED ON MODELED AVAILABLE GROUNDWATER.

(a) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.

Session uses the mandatory term “shall” when directing districts to issue permits up to the DFC.¹⁸ SB 737 was specifically crafted to debunk employment of the “MAG as permitting cap.” It is contrary to unambiguous Legislative intent and TWDB’s methodology to place undue emphasis on the MAG when making site-specific permitting decisions.

4. During the May 18, 2024, Rules Workshop, the District’s attorney (Mr. Ellis) stated that the Post Oak Savannah Groundwater Conservation District’s (POSGCD) rules were challenged via two Petitions for Inquiry filed with the TCEQ on the basis that regulating the production of groundwater to achieve the DFCs rather than regulating the issuance of permits via permit denials to achieve the DFCs was not protective of the aquifers. In both cases, the petitioners alleged that issuance of a permit to Blue Water Systems for 71,000 ac-ft/yr. from the Simsboro and Carrizo aquifers for the Vista Ridge project would result in the MAG being exceeded every year after permit issuance, and that the POSGCD rules allowing issuance of permits in excess of the MAG violated the Texas Water Code. The TCEQ disagreed and dismissed both petitions.¹⁹ As stated by the TCEQ’s Office of Public Interest Counsel:

“regardless of the accuracy of Petitioner’s contention regarding the MAG, its exceedance is not dispositive of this issue. Districts are required to establish desired future conditions (“DFCs”) that provide for protection of the aquifers 50 years in the future, and the MAG is one, but, importantly, not the sole factor considered, in proposing and achieving the DFC.”²⁰ And as stated by the TCEQ’s Executive Director, “Post Oak’s rules protect the groundwater by establishing enough flexibility for the district to adapt to the

(b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:

- (1) the modeled available groundwater determined by the executive administrator;
- (2) the executive administrator’s estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
- (3) the amount of groundwater authorized under permits previously issued by the district;
- (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
- (5) yearly precipitation and production patterns.

¹⁸ Tex. Water Code § 36.1132 (a) and (b).

¹⁹ See TCEQ Docket No. 2018-0194-MIS (May 9, 2018) and Docket No. 2015-0844-MIS (August 19, 2015

²⁰ Office of Public Interest Council Response to Petition for Inquiry, at 8-9 (TCEQ Docket No. 2018-0194-MIS).

changing circumstances of the actual aquifer levels and to reduce production as necessary to achieve the DFCs. Accordingly, the Executive Director respectfully recommends that the petition be dismissed.”²¹

Like POSGCD, GCUWCD has an extensive well monitoring network through which it has amassed nearly 10 years of actual water level data. This data is analyzed three times a year for DFC compliance and undeniably indicates that the adopted DFCs have never been reached or exceeded.

5. GCUWCD Rule 19.B addresses how the GCUWCD plans to monitor for DFC compliance and describes the response action plan to be implemented when the DFC is exceeded or expected to be exceeded. Rule 19.B states, for example, that the GCUWCD will commence studies when the water level in an observation well reaches 60% of the DFC and outlines some specific actions the district may take to respond to DFC exceedances based on the studies and after notice and hearing. Several districts have similar rules, with varying degrees of detail.²² Any actions the GCUWCD takes to respond to expected or actual DFC exceedances should be reflected in Rule 19, not Rule 10. If the GCUWCD desires to amend its DFC response action plan, it can commence a rulemaking process for Rule 19.
6. CRWA is unsure why the GCUWCD believes it needs to manage its aquifers to meet the MAGs rather than the DFCs, but offers these two additional comments for consideration:
 - If the focus on the MAG is based the assumption that a groundwater district must ensure that each landowner can produce a proportionate share of groundwater from an aquifer, this assumption has been expressly repudiated by the Legislature. Texas Water Code § 36.002 recognizes the rights of landowners to drill for and produce the groundwater below their surface but does not entitle a landowner the right to capture a specific amount of groundwater. Texas Water Code §36.002(d)(3) expressly states:

§ 36.002

(d) This section [36.002 Ownership of Groundwater] does not:

...

²¹ TCEQ Executive Director Response to Petition for Inquiry, at 12-13 (TCEQ Docket No. 2018-0194-MIS).

²² See, e.g., Post Oak Savannah Groundwater Conservation District Rule 16; Brazos Valley Groundwater Conservation District Rule 7.2, and Groundwater Conservation District Rule 16.

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.”²³

- If the focus on the MAG is based on a belief that if the MAG is exceeded, the Carrizo Wilcox aquifer will “run out of water,” that belief is not supported by data. The TWDB has calculated that the Carrizo Wilcox aquifer in GMA-13 contains 1,942,020,000 acre-feet of estimated recoverable storage, of which 18,000,000 acre-feet are in the GCUWCD.²⁴

C. AMENDED RULE 18.B.6.b – PEAKING

Proposed Rule:

GCUWCD proposes to amend Rule 18.B.6.b to add the underscored language shown below:

18.B.6.b. Individual well production rates are allowed to increase up to 150% of the permitted production rate during peak demand periods for a period of not to exceed 90 days.

Background:

During the Board Workshop on May 18, 2024, there was uncertainty expressed by GCUWCD Board members as to the purpose of this proposed amendment. It was mentioned that the intent might be to address conditions experienced during the summer of 2022. Those conditions were not described or explained.

Supplemental Comments:

1. Existing Rule 18.B.6.b is an important rule because it allows temporary escalations in individual well production while remaining in compliance with annual production limits, but the need for such adjustments is not confined the need to respond to increased daily or seasonal demands. For example, when one of

²³ Tex. Water Code § 36.002(d)(3)

²⁴ See “GAM Task 13-036 (revised): Total Estimated Recoverable Storage for Aquifers in Groundwater Management Area 13” by Shirley Wade, Ph.D., P.G. and Robert Bradley, P.G., TWDB Groundwater Resources Division (July 15, 2013), at 16.

CRWA's wells in its wellfield is taken off-line for maintenance, the pumpage rates in the other wells must be temporarily increased to maintain overall system production amounts. CRWA relies on the ability to use existing Rule 18.B.6.b for operational flexibility in the face of changing circumstances. Those circumstances do not limit themselves to one 90-day period in a year. Operationally, the proposed rule would be a restriction on CRWA's ability to produce the amount of water it is permitted to produce on an annual basis.

2. Although existing Rule 18.B.6.b allows for temporary increases in individual well pumping rates, it does not change a permittee's annual production limit. This means that short term fluctuations in aquifer levels may occur during peaking, but the long term (annual) impact of pumping is unaffected.
3. This change to Rule 18.B.6.b is unnecessary, arbitrary, and vague. It also removes current operational flexibility and may limit CRWA's ability to produce the full amount of water permitted.

D. NEW RULE 21- PAYMENT FOR PLUGGING AND CAPPING OF WELLS.

Background:

GCUWCD proposes to add new Rule 21.D as follows:

D. The Gonzales County Underground Water Conservation District (GCUWCD) has budgeted money for assisting landowners located within the district in plugging and abandoning deteriorated wells. The GCUWCD desires to assist the landowners in paying for a portion of the costs to complete the plugging and abandonment of the well in accordance with the Water Well Plugging Fund and Policy Manual adopted May 10, 2016.

- a. The GCUWCD will provide a landowner who wishes to participate in the water well plugging fund a 90/10 percent cost share allowance. The GCUWCD will pay 90 percent of the costs to plug and abandon the water well with the remaining 10 percent of the costs paid by the landowner.
- b. The landowner must agree to pay the estimated 10 percent of the plugging and abandonment costs prior to the start of the plugging operations. If the Landowner chooses to make payments over time, then Landowner must consent in writing to the District placing a lien on the property equal to the amount of reimbursement due to the District in accordance with a written payment schedule. The District will file a lien in the Gonzales County Deed Records and will subsequently file a Release of Lien in accordance with payment agreement.

Background:

Based on the GCUWCD's FY 23/24 budget, it appears that this program has been budgeted at \$75,000 from the general fund. In the prior fiscal year, it was budgeted at \$100,000. The "Water Well Plugging Fund and Policy Manual" referenced in the draft rule is not published on the GCUWCD's website.

Supplemental Comment:

1. As discussed above, CRWA does not believe that export fees adopted under Texas Water Code § 36.122(e)(2) can be used to fund this program by Texas Water Code § 36.207(b). Because the program is subject to available funding, which will change on an annual basis, the rule should include a statement that monies available for the program are subject to availability.
2. Although this appears to be an existing program, CRWA could find no information about its scope or implementation. Without specific information about this program, it is difficult to provide additional comments on this proposed rule at this time, but in general, if the finances are made transparent and the program is implemented properly and fairly, CRWA does not object to the general intent of this new rule.

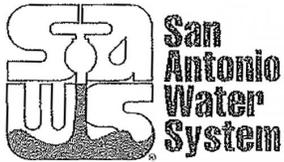
Haley Stakes

From: James Harris <jbhandlah2@icloud.com>
Sent: Friday, August 9, 2024 10:46 AM
To: Laura Martin; Haley Stakes
Subject: Comments on Proposed Rule Amendments

I have the following comments regarding the Proposed Amendments to the GCUWCD Rules, as distributed by email on July 24, 2024. Regarding change #14 to Rule 19:

1. New Rule 19.C does not require any action until a DFC has already been exceeded. Waiting until water levels have already dropped below DFC levels is too late to take effective action. Given the low rate of recharge for these aquifers, once a DFC has been exceeded it could be very difficult, or impossible to recover. This section should be revised to require corrective action as soon as the best available science (monitor well trend data and/or GAM results) indicate any DFC may be exceeded before the applicable target date.
2. Corrective action should be considered in a “graded approach” based on the extent and degree of the projected failure to meet the DFC(s), but it should start with moratorium on the issuance of any new or increased permits in the affected aquifer(s).
3. To support this effort there should be a new rule that requires, as a minimum, the water level in all monitor wells (DFC observation wells) be graphed over time so that trends can be readily identified.
4. Additionally, to monitor the secondary DFCs, average drawdown for each aquifer should also be reported and graphed.
5. Rule 19.B.1 – I believe the MAG is determined by the TWDB using the GAM, not by the executive administrator
6. Rule 19.B – the district has been measuring and reporting water levels 3 times per year since 2016. Every time one of these reports is generated the district should evaluate the data to determine if DFCs are being, **and will continue to be**, met. I believe that trending of current monitor well data indicates that the drawdown rate is increasing and the primary DFCs (75% saturated thickness in the outcrops) may be exceeded well before the 2080 goal. Note that in addition to the two most recent GCUWCD water level reports, the Guadalupe County GCD January and June 2024 water level reports also indicate and discuss increasing drawdown rates. Those reports are available on the GCGCD website.

Thank you,
Jim Harris



RECEIVED AUG 13 2024

August 13, 2024

Via Email

Ms. Laura Martin-Preston
General Manager
Gonzales County UWCD
522 Saint Matthew Street
Gonzales, Texas 78629

Re: Proposed Revisions to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Preston:

San Antonio Water System (SAWS) appreciates the opportunity to comment on the District's proposed amendments to the District's Rules. SAWS would also appreciate a workshop to discuss the proposed rules and provide for a question and answer opportunity between permit holders and the District.

Following a workshop on informally proposed rules of the District on June 10th SAWS provided written comments at the request of the District. However, there are significant differences between the initially proposed rules and the proposed rules posted on July 24, 2024. This letter is the first written response from SAWS regarding the rules as proposed, and, while SAWS has made every effort to thoroughly analyze the proposed rules, the comments below may not encompass the complete analysis by SAWS, and SAWS appreciates any opportunity to supplement these comments as the District proceeds through its rulemaking process.

SAWS respectfully asks the Gonzales County Underground Water Conservation District (GCUWCD) to consider the following:

Proposed Rule 19 Monitoring and Regulation Under Desired Future Conditions

Regarding proposed Rule 19.C establishing production limits of five percent, 10 percent and 20 percent based upon aquifer levels for all wells required to be metered, SAWS request the District provide the modeling and studies used to determine the proposed reduction values. Is this proposed rule based upon the primary DFC established by GMA 13 for the Carrizo-Wilcox, Queen City and Sparta aquifers that 75 percent of the saturated thickness in the outcrop at the end of 2012 remains at the end of 2080, or the secondary DFC of an average drawdown of 48

Ms. Laura Martin-Preston
August 13, 2024
Page 2

feet (+/-5 feet) for all of GMA 13 calculated from the end of 2012 conditions through the year 2080? This District should consider expressly stating this within Rule 19.B.

SAWS request the District facilitate a workshop with permit holders to review and discuss this proposed rule prior to adoption.

Proposed Rule 10 by amending subsection E.3 and adding a new subsection H

The proposed rule suggests the elimination of mitigation agreements. Does the District seek to terminate existing mitigation agreements? SAWS has significant investment based on its current mitigation agreement with the District and requests clarification regarding the impact of this rule change on current mitigation agreements.

Please provide additional information as to how the District will account for mitigation in the annual budget. Will the District continue to develop a separate Western and Eastern mitigation budget?

Proposed Rule 18 (B)(6)(b)

SAWS appreciates the District's revision to this proposed rule from the initial drafting and suggests additional clarification.

SAWS recommends revising Rule 18 (B) (6) (b) to read:

Permitted monthly production may apply a peaking factor of 1.5 or 150% of the annual production rate in a single month from a well or aggregate well field. Permitted annual production may not exceed the permitted annual production volume.

This change maintains operational flexibility and is aligned with the aggregated well field rule.

SAWS request the District facilitate a workshop with permit holders to review and discuss these proposed rules prior to adoption.

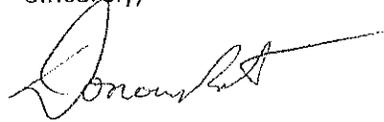
Ms. Laura Martin-Preston

August 13, 2024

Page 3

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Donovan Burton", with a long horizontal flourish extending to the right.

Donovan Burton

Sr. Vice President

Water Resources & Governmental Relations

cc: Hope Wells, Vice President, Legislative & Regulatory Affairs
Linda Bevis, Director, Water Resources
Steven Siebert, Manager, Water Resources
Jennifer Windscheffel, Senior Corporate Counsel



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Water Resource



August 13, 2024

Ms. Laura Martin-Preston
General Manager
Gonzales County Underground Water Conservation District
522 Saint Matthew Street
Gonzales, Texas 78629

RECEIVED AUG 13 2024

Dear Ms. Martin-Preston,

The Guadalupe-Blanco River Authority (GBRA) appreciates the continued opportunity to review and comment on the proposed changes to the Gonzales County Underground Water Conservation District's (GCUWCD) Rules of the District. GBRA currently holds operating and export permits for 15,000 acre-feet per year (AF/yr), with a pending amendment to increase those permits to 24,000 AF/yr. After review of the updated draft proposed changes to the rules, GBRA offers the following comments for GCUWCD to consider.

In our letter dated June 28, 2024, GBRA offered comments related to the proposed transport fee schedule included as Appendix D in the proposed rule changes. The comments in our letter noted that GCUWCD recommends major increases to the export fee over a short two-year period without providing any information on how the revenue generated from these expenses will be utilized, and considering that the level of rate increases proposed over the next two fiscal years would result in GCUWCD collecting revenues that grossly exceed GCUWCD's current annual budget, an explanation of how these excess funds are proposed to be utilized would be helpful to support the significant rate increases proposed. While the revised version of the draft rules distributed by GCUWCD on July 24, 2024 continues to contain the same proposed fee increases, no information has been provided on the proposed use of these funds. GBRA will restate that the need to periodically revisit and consider adjustments to rates is well understood, but an explanation of how the excess revenue that will be generated with these rate increases is proposed to be utilized would be helpful to support any rate increases proposed under the draft rule changes.

Our previous comment letter also indicated it is unclear how the proposed transport fee schedule included in Appendix D of the proposed rule changes would relate to entities with an existing Negotiated Export Fee Agreement. GBRA is one of several existing permittees who has a Negotiated Export Fee Agreement with GCUWCD that provides an alternative methodology for assessing export fees which is not based upon the volumetric export fee included in the Rules of the District. GBRA does not find any provisions in the current Rules of the District, the proposed rule changes, or the existing Negotiated Export Fee Agreement that would make GBRA subject to the proposed transport fee schedule in Appendix D or allow GCUWCD to assess export fees to GBRA that significantly exceed the maximum rate increases identified in the Negotiated Fee Agreement. An understanding on how a change in the Rules of the District has any effect on any existing contracts containing export fees negotiated by GCUWCD under the authority of Chapter

36 of the Texas Water Code will be necessary to understand the impacts of this proposed rule change.

The revised draft rule changes distributed by GCUWCD on July 24, 2024 also contain new modifications to Rule 19 – Monitoring and Regulation Under Desired Future Conditions that were not part of the previous version of the proposed 2024 rule changes. The updated rule changes include provisions that would allow GCUWCD to establish production limits on existing permits that reduce production below the amount authorized by the permit, but the methodology for determining when these reductions apply and how they will be applied is not clear. A few examples of this are as follows:

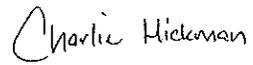
Rule 19.A – This section states GCUWCD’s goal is to achieve the Desired Future Conditions (DFC) and provides that GCUWCD shall manage total groundwater production on a long-term basis to achieve the applicable desired future conditions. With this stated goal, it is not clear why the applicable DFCs have been deleted from the Rules of the District.

Rule 19.B – This section states the board will decide if the DFC is being achieved based upon modeled available groundwater, estimates of exempt groundwater produced, permitted volumes, actual production under existing permits, and hydrologic conditions. The evaluation of whether or not the DFC is being achieved using these factors will be the basis for determining if production limitations are needed. It is not clear how any of these factors relate to GCUWCD’s determination of whether the DFC is being met.

Rule 19.C – This section establishes varying levels of production reductions that appear to apply varying levels of reductions in annual production to observed aquifer conditions related to the DFC goal. It is not clear what methodology will be followed to determine how available monitoring data will be used to determine existing conditions or what defines the DFC goal in any given year. It is not clear if the DFC Goal relates to the primary DFC, the secondary DFC, the 50-year projected drawdowns, or some intermediate drawdown level. Additional definition is needed to define the methodology associated with Rule 19.C.

We appreciate your consideration of these comments on the revised draft of the proposed rule changes and we are supportive of an ongoing dialogue on how the GCUWCD can better manage water resources and financial resources. However, GBRA requests that no action be taken by the GCUWCD Board of Directors related to the draft rule changes outlined in Rule 19 or in Appendix D until there is an opportunity for additional dialogue and discussion on these items. We welcome the opportunity to participate in a future workshop or individual meeting with the GCUWCD to have this discussion before any rule changes are considered. Should you need additional information or have questions, please feel free to reach out to me at your convenience.

Sincerely,



Charles M. Hickman, P.E.
Executive Manager of Engineering
O: 830-560-3908
E: chickman@gbra.org

cc: Darrell Nichols, GBRA General Manager/CEO
Joe Cole, GBRA General Counsel



ALLIANCE WATER

August 13, 2024

Via email to: generalmanager@gcuwcd.org

Ms. Laura Martin-Preston
General Manager
Gonzales County Underground Water Authority
522 Saint Matthew Street
Gonzales, TX 78629

Re: Comments on Proposed Revisions to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Martin-Preston:

Thank you for the opportunity to comment on the Gonzales County Underground Water District's ("GCUWCD's") proposed rule revisions as posted on the GCUWCD's website in July 2024. In April 2024 the GCUWCD had proposed rule changes and held a Board Workshop on May 18, 2024 (the "Rules Workshop") that I believe all participants found very beneficial as it helped to clarify why the GCUWCD wanted to modify some of its rules. We respectfully request that a similar type of Rules Workshop be held again for the current changes, as they are extensive and, in some cases, go well beyond the previous draft revisions. We request this Rules Workshop prior to the GCUWCD Board adopting any of the proposed rule changes.

Below are more specific comments and/or questions on the latest proposed set of rule amendments. If an amendment to a rule is proposed but not addressed in this letter, then Alliance Water does not have a specific comment on that rule amendment.

PROPOSED AMENDMENTS TO RULE 5 – EXEMPTIONS FROM PERMITTING

Comments

1. Why are the safeguards for the formation of the fracking water well being removed from 5.D?

AMENDED RULE 10 – APPLICATION FOR DRILLING AND OPERATING PERMITS

Comments:

1. The amendments to Rule 10.E.3 would require each permittee to submit their own mitigation plan, but the GCUWCD currently handles mitigation of existing wells. Is the GCUWCD no longer intending to mitigate wells? If this is not the case, Alliance Water suggests these changes be re-visited to ensure that it is clear that the GCUWCD will mitigate eligible wells and the mitigation is to be paid for by those with export permits.
2. How does the GCUWCD intend to terminate the existing Mitigation Agreements that those with export permits have with the GCUWCD?

AMENDED RULE 15 – EXPORTATION OF GROUNDWATER FROM THE DISTRICT

Background

The proposed amendment lists this as Rule 13 subsections A and F.3, but based on the previous submission Alliance Water believes this is actually intended to amend Rule 15.

Alliance Water made extensive comments on this rule amendment in our original letter dated June 27, 2024 – we feel that these comments still apply to this rule change. Below we reiterate our primary concerns.

Comments:

1. Alliance Water understands and agrees that the GCUWCD should consider raising the export fees, but respectively requests that the increase in fees be linked to anticipated annual expenditures as part of the GCUWCD annual budgeting process.
2. How does the GCUWCD intend to terminate the existing Negotiated Export Fee Agreements with those export permittees that have such agreements with the GCUWCD?

AMENDED RULE 18.B.6.b - PEAKING

Background

Alliance Water appreciates that the GCUWCD is seeking to clarify the peaking rule, but feels the language as currently written may lead to more confusion. Below is Alliance Water's proposed language to be utilized for this rule amendment.

Comments

1. Production from a well or aggregate well field shall not exceed 150% of 1/12th of the permitted annual production rate in any single month. For example, if the permitted annual production rate is 1,200 acre-feet per year, the maximum allowable monthly production from a permittee's well or aggregate well field is $(1,200 \times 1/12) \times 150\% = 150$ acre-feet. While this rule allows for monthly variations in production, a permittee's total annual pumpage may not exceed the permitted annual production amount.

AMENDED RULE 19 – MONITORING AND REGULATION UNDER DESIRED FUTURE CONDITIONS

Background

Alliance Water requests that the GCUWCD create a Stakeholder Group to discuss the proposed rule amendments related to regulation under Desired Future Conditions. Understanding the GCUWCD's regulatory scheme is critical to everyone impacted by the GCUWCD. Below are more specific comments on the proposed amendment.

Comment:

1. The methodologies to be employed to determine DFC compliance are not addressed in the rule amendment. For example, what specific monitoring data will the GCUWCD utilize to determine if the Carrizo aquifer water levels exceed the desired future conditions? Will outcrop water level declines continue to be prioritized? Will monitoring data from neighboring districts be included in the DFC analysis? Will average declines be calculated from all wells in the monitoring network or will exceedance of DFC limits at a single monitoring point trigger curtailment?
2. It is unclear what scientific information/modeling was used to determine the specific cutback amounts (5%, 10% and 20%) and the corresponding aquifer level triggers (2-

feet, 4-feet and greater than 4-feet). Were models developed to set these levels? If so, please share this information publicly.

3. What type of public process will be utilized to notify the public of the anticipated DFC exceedance and next steps by the GCUWCD? How much notice does the GCUWCD anticipate providing to permittees before enacting cutbacks?

DELETED RULE 28 – GRANDFATHERED OPERATING PERMITS

Comment:

1. Why is the GCUWCD proposing deletion of Rule 28?

Again, thank you for the opportunity to present these suggested clarifications to the GCUWCD's Rules. As noted in the letter Alliance Water requests that the GCUWCD Board of Directors not take action on the proposed rule amendments at the August 13, 2024 Regular Board Meeting and instead hold another Rule Workshop to discuss the proposed amendments in more detail. Should you have any questions or need clarifications on our comments, please do not hesitate to contact me at 512-294-3214 or at gmoore@alliancewater.org.

Sincerely,

ALLIANCE REGIONAL WATER AUTHORITY

By: _____



Graham M. Moore, P.E.
Executive Director
Alliance Regional Water Authority
630 E. Hopkins
San Marcos, TX 78666
(512) 294-3214
gmoore@alliancewater.org
www.alliancewater.org

cc: Trish Erlinger Carls, Special Counsel, *via email to* tcarls@tcarlslaw.com
James Bené, P.G., R.W. Harden & Associates, Inc., *via email to*
james.bene@rwharden.com

RECEIVED AUG 13 2024



August 13, 2024

Mr. Bruce Tieken
President, Board of Directors
Gonzales County Underground Water Conservation District
522 Saint Matthew Street
P.O. Box 1919
Gonzales, TX 78629

RE: Comments to Proposed Rule Revisions.

Dear Mr. Tieken and Directors:

Schertz Seguin Local Government Corporation, as an owner of land within the District's boundaries, in addition to the previously submitted written comments, submits the following:

While our initial comments are still considered valid and relevant to this rulemaking process, SSLGC wishes to support, in general, the comments provided by the other regional exporters.

Conclusion.

SSLGC continues to request that the District not adopt the previously described revisions to the District rules.

SSLGC reserves the right to submit additional comments during the public hearing, or after the public hearing if allowed, pursuant to District Rule 1 (A) (4).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew McBride".

Andrew McBride
General Manager

Cc (via email)

Laura Martin - Preston, General Manager

Directors and City Managers and Assistant Managers

RECEIVED AUG 13 2024



August 13, 2024

Via email to: generalmanager@gcirwcd.org

Ms. Laura Martin-Preston, General Manager
Gonzales County Underground Water Conservation District
522 Saint Matthew Street
Gonzales, Texas 78629

Re: Revised Proposed Amendments to the Gonzales County Underground Water Conservation District Rules – Second Round

Dear Ms. Martin-Preston:

Thank you for the opportunity to comment on the Gonzales County Underground Water District's ("District's") second, revised set of proposed rule amendments made available on July 24, 2024 (the "2nd Proposed Amendments"). These comments are submitted on behalf of the Canyon Regional Water Authority ("CRWA").

In several important ways, the 2nd Proposed Amendments differ substantially from the proposed rule amendments presented at the District's Board Workshop on May 18, 2024 (the "1st Proposed Amendments"), on which CRWA has already filed written comments. The language that is unchanged from the 1st Proposed Amendments remains problematic for the reasons previously articulated by CRWA and the many other commenters on the 1st Proposed Amendments. The 2nd Proposed Amendments present new concerns. The 2nd Proposed Amendments suffer imprecise drafting, internal inconsistencies, failures to consider the effects of the proposals on existing District contracts, references to non-existent (or at least non-public) manuals, and failure to ground the rules in science or the law. The persistent shortcomings of this rule revision process are extremely frustrating for all concerned.

Everyone benefits from rules that are well written, fair, and consistent with the law and science. To that end, CRWA respectfully re-requests that the District schedule a series of working meetings during which the District can articulate whatever problem the District is attempting to address with each proposed rule change, and the stakeholders

(and public) can provide informal feedback. Such a process has worked well in the past, making the subsequent formal rulemaking process much more coherent and streamlined.

In the meantime, a summary of CRWA's comments on the 2nd Proposed Amendments follows.

A. RULE 10.E.3.

1. CRWA opposes the proposed amendments to Rule 10.E.3.
2. Why is the District proposing to remove the reference to Mitigation Agreements (which do exist) but leave in place references to permittee-specific mitigation plans (which do not exist)? Does the District intend to abandon its current mitigation program as memorialized in its existing Mitigation Agreements and Mitigation Manual and instead require each individual well owner to sue each individual permittee directly for alleged harm?
3. If the District does not intend to terminate the existing Mitigation Agreements, the rule can be changed to better reflect actual practice by deleting subsections (a) – (e) and the clause introducing those subsections.
4. If the District does not intend to abandon its current mitigation program, the District should preserve the basic requirement that wells for which mitigation funds are sought need to be in compliance with the District's rules, which includes timely well registration. In addition, it is only fair that to be eligible for free or subsidized mitigation, the wells should also have been in existence prior to the date an application for production of 3,000 acre-feet/year or more was filed – after that date, landowners and well drillers are on notice that their new wells will have to be designed, constructed, and operated taking the new wellfield into account.
5. The existing Mitigation Agreements rely on the eligibility criteria currently stated in this rule and in the Mitigation Manual. The Mitigation Manual in effect at the time that the relevant Mitigation Agreement was signed should be the operative manual for that exporter. The District's intended effect of any changes to the rule or the Mitigation Manual on the existing Mitigation Agreements needs to be explained.
6. If the District intends to terminate the Mitigation Agreements, more information is needed regarding the future of the District's mitigation program (if any), the disposition of the funds currently on deposit in the District's Eastern Mitigation

Fund and Western Mitigation Fund, and the District's intent with regard to the six existing Mitigation Agreements.

B. RULE 10.H

1. CRWA opposes the proposed amendment to Rule 10.H.
2. The proposed rule could be interpreted to mean that the General Manager has the unilateral authority to impose a permitting moratorium of his or her own volition, without regard to actual water levels, trend analyses, studies to designate management zones, studies to determine whether production cutbacks are appropriate and if so how much and for how long, public notice, public hearing or even a public meeting. Although subject to overturning by the Board, the General Manager's initial decision to impose a permitting moratorium is likely to be challenged in courts. This rule is an unnecessary overreach.
3. This proposed rule contains multiple instances of poor drafting:
 - a. The "District" does not accept applications, the General Manager does (see Rule 10.C.)
 - b. The term "Desired Future Condition *goals*" is inexact and undefined. The term "Desired Future Condition" is a term of art and is legislatively defined in the Texas Water Code. The term "Desired Future Condition *goal*" is not a term of art, is not used in the Texas Water Code, and is not defined in this rule amendment. All references to "Desired Future Condition *goals*" anywhere in the Rules needs to be deleted.

C. RULE 13.A and 13.F.3

Item (9) on the District's list of proposed rule amendments is entitled "Amend Rule 13 by amending subsection A and F.3 to read as follows:" Rule 13 relates to Managed Aquifer Recharge Facility Permits. The language in Item (9) does not pertain to Rule 13.

D RULE 15.F.3 and APPENDIX D

1. CRWA opposes the proposed amendments to Rule 15.F.3 and Appendix D.
2. The District's decision to re-propose the same export fee language as in the 1st Proposed Amendments is disappointing. It still fails to address the District's (legally supportable) view of the effect of proposed new Appendix D on existing Negotiated Export Fee Agreements, if any. It remains completely disassociated from any budgetary justification. CRWA re-urges and reiterates the comments on this rule contained in its June 28, 2024 letter and accompanying memorandum.
3. This proposed rule contains multiple instances of poor drafting:
 - a. Item (9) on the District's list of proposed rule amendments is entitled "Amend Rule 13 by amending subsection A and F.3 to read as follows:" Rule 13 relates to Managed Aquifer Recharge Facility Permits. The language in Item (9) does not pertain to Rule 13. Instead the language in Item (9) pertains, in part, to Rule 15.
 - b. Although Item (9) seems to propose an amendment to subsection A of Rule 15, no such amendment to Rule 15.A. is set forth.
 - c. The highlighted sentences in Rule 15.F.3 conflict with each other. Are exporters subject to Rule 15.F. to pay an export fee set by Board resolution or the transportation export fees on Appendix D? (Proposed Rule 6.B suffers from this same drafting flaw.)
 - d. The amendment purports to adopt, via appendix to the Rules, a new Appendix D entitled "Production and Transportation Fee Schedule." However, the fee schedule included as Appendix D does not contain production fee schedule, only a transportation fee schedule.

E. RULE 18.B.6.b

1. CRWA opposes the proposed amendment to Rule 18.B.6.b.

2. The reason to amend this rule is still obscure. But as re-written for the 2nd Proposed Amendments, it is incomprehensible and thus impossible to apply. If the intent is to restrict peaking on a monthly basis, we would support the revision suggested by ARWA, which is substantially as follows:

Rule 18.B.6.b Production from a well or aggregate well field shall not exceed 150% of 1/12th of the permitted annual production rate in any single month. For example, if the permitted annual production rate is 1,200 acre-feet per year, the maximum allowable monthly production from a permittee's well or aggregate well field is $1,200 \times 1/12 \times 150\% = 150$ acre-feet. While this rule allows for monthly variations in production, a permittee's total annual pumpage may not exceed the permitted annual production amount.

F. RULE 19.A

1. CRWA opposes the proposed amendments to Rule 19.A.
2. The first new sentence does not accurately describe the Legislature's charge to groundwater districts regarding a district's duty to manage aquifers to achieve the specific DFCs established for each major aquifer in the district during the State-mandated joint planning process. The Texas Water Code is clear: "A district, to the extent possible shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve the applicable desired future condition under [Texas Water Code] Section 36.108." See Tex. Water Code § 36.1132(a). It could be inferred from the first new sentence that the Board can ignore the DFCs developed and adopted during the joint planning process and on which the TWDB has relied to develop the Managed Available Groundwater and Total Estimated Recoverable Storage, and choose instead to manage the aquifers some different standard. That is not correct. The first new sentence should be deleted.
3. The second new sentence, pertaining to the District's ability to place production limits on new "regular" permits or any permit amendments seeking to increase groundwater production should be deleted. First, it uses an undefined term "regular permits." There is no such thing as a "regular permit" in the Texas Water Code or the District's Rules. Second, Rule 18 is the

rule that sets production limits for all new permits. The second new sentence implies that the Board can, on an ad hoc, basis ignore Rule 18 and impose production limits different from those in Rule 18 for any reason or for no reason. This sentence seems to render Rule 18 meaningless, and its adoption will subject the District to petition on the grounds that the District's rules regarding production allocation are vague, arbitrary, and capricious and do not comport with the Texas Water Code or the District's Management Plan.

4. The third new sentence, pertaining to the Board's ability to issue conditional permits lacks context. Presumably it is meant to refer to the Board's authority to change production limits if the District has failed to manage to the DFC, but it does not so state. It is poorly drafted, lacks context, and should be deleted.

G. RULE 19.B.

1. CRWA opposes the proposed amendments to Rule 19.B.
2. It is not enough to say that the Board will determine DFC compliance every January. The proposed rule does nothing to clarify how the water level data it collects three times each year will be analyzed and used. Those technical issues are important, but are left wholly unaddressed in the proposed amendments to Rule 19.B.
3. The factors listed in Rule 19.B.(1)-(5) are erroneously copied from Texas Water Code § 36.1132(b) and are irrelevant to DFC compliance. Those factors pertain to permit issuance, not DFC compliance. The relevant parameters for DFC compliance are water level measurements. Subsections (1) – (5) need to be deleted since they are based on an irrelevant section of the Texas Water Code.

H. RULES 19.C. and 19.D.

1. CRWA opposes the proposed amendments to Rule 19.
2. With this amendment, the District removes all of the existing due process and iterative, geographically focused, and science-based DFC

compliance strategies currently in Rule 19. Instead, the District proposes to replace that language with verbiage conjured out of thin air and untethered from basic equity and science

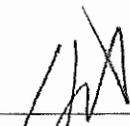
3. Rule 19 addresses an important topic. It must be well written (What is "goal level annual production?") It must be supported by science, or at least use the scientific method. (Where is the study showing the effect of the stated production cutbacks on the "aquifer levels" and the alleged resulting effect on DFC compliance? How, when, and by whom are "aquifer levels" determined? When and how will the Board make a determination to restore full permitted production limits?)
4. Every possible action that might be take in response to DFC non-compliance, especially but not limited to permitting moratoriums and production cutbacks, need to be preceded by due process and local studies of local conditions, and if implemented, need to be based on sound methodology, temporary, localized, and appealable.
5. Random water level declines and arbitrary cutbacks threatened at every permit renewal or "when the Board determines" are unjustifiable and will not withstand challenge.
6. CRWA recommends that the District schedule a series of stakeholder meetings focusing on Rule 19.

Thank you for the opportunity to submit these comments. If you have any questions or need additional information from me, please do not hesitate to contact me.

Respectfully,

CANYON REGIONAL WATER AUTHORITY

By: _____


Kerry Averyt P.E.,
General Manager

Ms. Laura Martin-Preston
General Manager, GCUWCD
August 13, 2024
Page 8 of 8

cc: (w/attachment):

Trish Erlinger Carls, Special Counsel, CRWA
Trey Wilson, Special Counsel, CRWA
Adam Telfer, CRWA
James Bene, P.G., RW Harden & Associates, Inc.

Haley Stakes

From: Ted Boriack <tedboriack@gmail.com>
Sent: Tuesday, August 13, 2024 11:39 AM
To: Gregory M. Ellis; Laura Martin; Haley Stakes
Subject: Fwd: Office of the Attorney General, Open Records Division ID# OR-24-027206-IC
Attachments: OR-24-027206-IC.pdf; Certification Form.pdf; Attachment.pdf

TO: Greg Ellis, GCUWCD General Manager and GCUWCD Board Members

SUBJECT: GCUWCD Rule Hearing August 13, 2024

Please receive this as public comment for the rule hearing to be held today.

I have received several versions of draft rules from the GCUWCD and have provided comments on several occasions.

I again raise concern about the lack of disclosure by the GCUWCD with regard to the source of the changes proposed by the GCUWCD. I have asked for this information on several occasions, and the attorney general is now asking for information from the GCUWCD about my open records request (see the email below from the attorney general with attachments). I received the latest version of the draft rules from the GCUWCD on July 24, 2024 -- but again it's being noticed without any information as to the source or basis for the rule changes. Further, my prior comments on rules are again ignored. I also noticed that the last set of rules issued by the GCUWCD has "final" in the file name -- it appears the GCUWCD drafted a new set of rules behind the scenes, had their own internal meetings, and is now ready to vote on whatever it determined without public disclosure.

Do not attempt to pass these rules without first making available to the public the information that I previously requested, and this includes the last version of rules issued by the GCUWCD which it appears might be voted on today. Further, the GCUWCD board members should take the time to read over the hearing transcripts from the GBRA contested case hearing held June 5-7 at the GCUWCD. There is much confusion and misunderstanding on the GCUWCD rules, and these issues are not being addressed by the latest round of draft rules noticed by the GCUWCD.

Again, it's not fair to block people from public comment or participation in the rule making hearing just because they can't travel physically to attend the meeting. That is my situation today -- GCUWCD has scheduled the rule hearing on the same day that closing arguments are due in the GBRA contested case hearing -- it's not possible to do both at the same time.

So I request that the GCUWCD not vote on the rules today, provide the information I requested to comply with the open records rules, and then a new hearing can be held. The GCUWCD has already violated the open meetings act by passing a resolution that was not noticed to the public to adopt the management plan. This type of voting by the board members should not continue.

Sincerely,

Ted Boriack

----- Forwarded message -----

From: **OpenRecordsAssistance** <OpenRecordsAssistance@oag.texas.gov>

Date: Thu, Jul 25, 2024 at 9:26 AM

Subject: Office of the Attorney General, Open Records Division ID# OR-24-027206-IC

To: generalmanager@gcuwcd.org <generalmanager@gcuwcd.org>

Dear Ms. Martin:

The Office of the Attorney General (the "OAG") has received a complaint from Ted Boriak alleging the Gonzalez County Underground Water Conservation District has failed to respond appropriately to a request for information. The complaint was assigned ID# OR-24-027206-IC. Please see the attached documents regarding the complaint.

A response may be submitted by fax to the Education and Enforcement Section of the Open Records Division at (512) 481-1992 or mail to P.O. Box 12548, Austin, Texas 78711.

To submit a response through the online form (<https://oag.my.site.com/OpenRecords/s/>), you must include the full complaint ID number provided above in order to submit your documentation.

Sincerely,

Education and Enforcement Section

Open Records Division

PLEASE NOTE: ORD does not respond to questions sent to this e-mail address. If you need further assistance, please contact the Open Government Hotline at 1-877-673-6839.

**PUBLIC INFORMATION ACT REQUEST CERTIFICATION FROM
GOVERNMENTAL BODY**

RE: OAG ID# OR-24-027206-IC

Please complete this form to indicate the manner in which the referenced request will be or has been answered. Include your signature and date.

I am the officer of public information, or the authorized representative, for the following governmental body (the "governmental body"): Gonzales County Underground Water Conservation District

I am aware of a public information request to the governmental body from the requestor (the "requestor"): "Ted Boriak" aka Ted Boriack

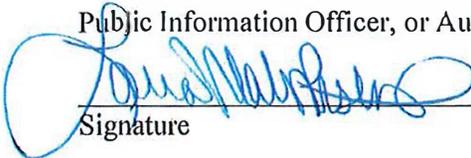
Please initial the certification that applies.

LMP I certify the governmental body has made available to the requestor all existing responsive information that this governmental body owns, controls, or has a right of access to.

LMP I certify the governmental body has conducted a good faith search of information that this governmental body owns, controls, or has a right of access to, and has found no such information that is responsive to the requestor's public information request.

LMP I certify the governmental body has supplied the requestor all existing responsive information for which the governmental body is not claiming an exception, and has requested an attorney general's decision regarding the responsive information the governmental body believes is excepted from disclosure.

Public Information Officer, or Authorized Representative


Signature

05/07/2024
Date

Laura Martin-Preston
Printed Name

General Manager
Title

Gonzales County Underground Water Conservation District

522 Saint Matthew Street

P.O. Box 1919

Gonzales, Texas 78629

Phone 830.672.1047

Dear General Paxton:

I'm attaching certification that the District responded to Mr. Ted Boriack's Public Information Request along with the email thread of that response. No records or District information exists beyond the response provided. Please let me know if you have any questions or require any additional information.

Sincerely,



Luan Martin-Preston

General Manager

Bruce Tieken
President

Mike St. John
Vice-President

Barry Miller
Secretary

Mark Ainsworth
Director

Glenn Glass
Director

Laura Martin

From: Laura Martin
Sent: Monday, July 1, 2024 8:37 AM
To: Ted Boriack; Haley Stakes; Gregory M. Ellis
Subject: RE: District Rules Public Comment

Ted,
Any of your "notes" in the margins on the rules did not come through on word or pdf.
Below is a screenshot of the "notes".

et and ensure drawdown
g water wells and historic
[Comment: future water
) groundwater is the same
riack

Irupdwwhg#l jkol jkw

Irupdwwhg#l jkol jkw

Thank you,

Laura Martin-Preston

General Manager
Gonzales County UWCD
522 Saint Matthew St.
P.O. Box 1919
Gonzales, TX 78629
830.672.1047
www.gcuwcd.org

From: Ted Boriack <tedboriack@gmail.com>
Sent: Sunday, June 30, 2024 5:05 PM
To: Laura Martin <generalmanager@gcuwcd.org>; Haley Stakes <admin@gcuwcd.org>; Gregory M. Ellis <greg@gmellis.law>
Cc: Ted Boriack <tedboriack@gmail.com>
Subject: Re: District Rules Public Comment

All -- attached is a pdf version of my comments on the rules, is to ensure that MS Word doesn't change the color of my comments which are in blue.

Ted Boriack
2984 FM1296
Waelder TX 78959
361-443-2547
tedboriack@gmail.com

On Sun, Jun 30, 2024 at 4:48 PM Ted Boriack <tedboriack@gmail.com> wrote:

To All:

Attached are my comments to the rules in word ..docx format. You should see my comments in blue font. I will print a pdf version and send it separately -- but I am sending this in now due to the 5:00 cutoff on Sunday.

Ted Boriack
2984 FM1296
Waelder TX 78959
tedboriack@gmail.com
361-443-2547

Landowner in Gonzales County.

On Thu, Jun 27, 2024 at 11:19 AM Laura Martin <generalmanager@pcuwcd.org> wrote:

Ted,

At the workshop on May 18th the board set the deadline for comments for June 30, 2024 at 5pm.

Thank you,

Laura Martin-Preston

General Manager

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

830.672.1047

www.gcuwcd.org

From: Ted Boriack <tedboriack@gmail.com>
Sent: Thursday, June 27, 2024 11:08 AM
To: Laura Martin <generalmanager@gcuwcd.org>
Cc: Haley Stakes <admin@gcuwcd.org>; Gregory M. Ellis <greg@gmellis.law>
Subject: Re: District Rules Public Comment

Laura,

I wanted to verify when exactly the public comments are due on the rule changes -- the info that I have (attached) says June 30 (Sunday) 5:00 pm, signed by Barry Miller. I don't think govt entities normally have deadlines for the public on a Sunday. I wanted to verify, please let me know.

Thanks,

Ted Boriack

361-443-2547

On Thu, Jun 27, 2024 at 10:46 AM Laura Martin <generalmanager@gcuwcd.org> wrote:

Ted,

The rule changes were presented in draft from myself-General Manager and the Rules Committee comprised of Mr. Miller and Mr. St. John. There is no other way to answer this question.

Rule changes were presented in the workshop on May 18th and will be in a public hearing not yet scheduled. Your opposition to the rule change process is noted, board notified, and legal counsel notified. This is the normal rule change process that the District is adhering to in accordance to state and district rules. Perhaps you could submit a comment during this process to request for those to be modified.

Thank you,

Laura Martin-Preston

General Manager

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

830.672.1047

www.gcuwcd.org

From: Ted Boriack <tedboriack@gmail.com>

Sent: Thursday, June 27, 2024 10:41 AM

To: Laura Martin <generalmanager@guwcd.org>

Cc: Haley Stakes <admin@guwcd.org>; Gregory M. Ellis <greg@gmellis.law>

Subject: Re: District Rules Public Comment

Laura,

The various changes to the rules had to be proposed by somebody -- who originally proposed each change?

And why are the GCUWCD's proposed rule changes not presented in a public meeting to explain the reasoning and origin of the rule changes prior to sending out for public comment?

Ted Boriack

361-443-2547

On Thu, Jun 27, 2024 at 8:30 AM Laura Martin <generalmanager@gcuwcd.org> wrote:

Ted,

All rule changes proposed are from the General Manager, Laura Martin-Preston and Rules Committee Mr. Barry Miller and Mr. Mike St. John.

Thank you,

Laura Martin-Preston

General Manager

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

830.672.1047

www.gcuwcd.org

From: Ted Boriack <tedboriack@gmail.com>

Sent: Tuesday, June 25, 2024 2:14 PM

To: Haley Stakes <admin@gcuwcd.org>; Laura Martin <generalmanager@gcuwcd.org>; Gregory M. Ellis <greg@gmellis.law>

Subject: Re: District Rules Public Comment

All,

I'm following up on my prior questions -- I can't find a response from GCUWCD to my email.

Please reply,

Thanks,

Ted Boriack

361-443-2547

On Wed, Jun 12, 2024 at 5:01 PM Ted Boriack <tedboriack@gmail.com> wrote:

TO: Haley, Laura, Greg

Can you send me the source of the rule changes that were proposed by GCUWCD in the draft rules please. I am not referring to the public comment, I am referring to the changes proposed by GCUWCD board members, staff, lawyers, etc. For example -- who exactly proposed the new rules 5.A and 10. H.? and who proposed the other rule changes? It would help to have in brackets the name of the individual proposing the change so we know what's going on. Such rule changes shouldn't be written into drafts without identifying the individuals that are proposing the change.

Just as my comments on the rules are made open to the public, the public should know who at GCUWCD is proposing the rule changes.

Also, the draft rules issued by GCUWCD for public comment appear to have substituted words or deleted words without showing the strikes -- all of the edits should be shown, including the deleted language. Also there is some highlighted language (Rule 16 A) but not sure what this is supposed to mean.

Thanks,

Ted Boriack

361-443-2547

On Wed, Jun 12, 2024 at 11:29 AM Haley Stakes <admin@gcuwcd.org> wrote:

Mr. Boriack,

Your public comment regarding the District Rules has been added onto our website. I have provided screenshots so you could see that they have been uploaded. If you have any questions, please feel free to contact me.

- 📄 [March 05, 2024 Special Called Meeting Agenda \(PDF / 54 KB\)](#)
- 📄 [March 05, 2024 Special Called Meeting Packet \(PDF / 453 KB\)](#)
- 📄 [March 05, 2024, Special Called Meeting Minutes \(PDF / 324 KB\)](#)
- 📄 [2024 Order of Election Notice Gonzales Co. \(PDF / 1,056 KB\)](#)
- 📄 [2024 Order of Election Notice Caldwell Co. \(PDF / 520 KB\)](#)
- 📄 [March 12, 2024, Regular Board Meeting Agenda \(PDF / 625 KB\)](#)
- 📄 [March 12, 2024, Regular Board Meeting Packet \(PDF / 10,321 KB\)](#)
- 📄 [March 12, 2024 Regular Board Meeting Minutes \(PDF / 391 KB\)](#)
- 📄 [April 09, 2024, Regular Board Meeting Agenda \(PDF / 1,132 KB\)](#)
- 📄 [April 09, 2024 Regular Board Meeting Packet \(PDF / 3,495 KB\)](#)
- 📄 [April 09, 2024, Regular Board Meeting Minutes \(PDF / 173 KB\)](#)
- 📄 [May 14, 2024 Regular Board Meeting Agenda \(PDF / 402 KB\)](#)
- 📄 [May 14, 2024 Board Packet \(PDF / 29,532 KB\)](#)
- 📄 [May 18th, 2024, GCUWCD District Rules Workshop Agenda \(PDF / 739 KB\)](#)
- 📄 [May 18th, 2024, GCUWCD District Rules Workshop Packet \(PDF / 778 KB\)](#)
- 📄 [June 11, 2024, Regular Board Meeting Agenda \(PDF / 523 KB\)](#)
- 📄 [June 11, 2024, Regular Board Meeting Packet \(PDF / 6,501 KB\)](#)
- 📄 [May 18, 2024, District Rules Workshop Public Comment \(PDF / 2,351 KB\)](#)

[View Less](#)

From: Ted Boriack <tedborlack@gmail.com>
Sent: Tuesday, June 11, 2024 4:13 PM
To: Laura Martin; Gregory M. Ellis; Haley Stakes
Subject: Boriack Public Comment on GCUWCD Proposed Rule Comment Remote

June 11, 2024

TO: GCUWCD Board Members
 Laura Martin, General Manager
 Greg Ellis, Attorney for the GCUWCD
 Haley Stakes, Administrative Assistant

Additional Comment on the District's proposed rule changes from

In addition to my prior comments on rules submitted on May 18, 20

Please also note the District's proposed rule change 10 acceptable, it reads as follows:

No new permits, and or an increase a be issued when the district has reached production of the current Modeled Available Groundwater (MAG) of measured acc for the previous calendar year.

First -- the grammar is a bit confusing.

But the intent seems to mean that once the production of groundwater reached 100% of the MAG that the District will not allow new permits as it would deny landowners (family farms and ranches) and owners that have not sold their water rights from installing wells to serve the agriculture. It would result in the exporters being granted the water (personal property) of farms and ranches. The future of Gonzales County District by denying groundwater to its own landowners and population outside the county grow simply because the District granted away to others.

Thank you,

Haley Stakes

Administrative Assistant

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

830.672.1047



RECEIVED AUG 20 2024

August 13, 2024

Via Email

Ms. Laura Martin-Preston
General Manager
Gonzales County UWCD
522 Saint Matthew Street
Gonzales, Texas 78629

Re: Proposed Revisions to the Gonzales County Underground Water Conservation District Rules

Dear Ms. Preston:

San Antonio Water System (SAWS) appreciates the opportunity to comment on the District's proposed amendments to the District's Rules. SAWS would also appreciate a workshop to discuss the proposed rules and provide for a question and answer opportunity between permit holders and the District.

Following a workshop on informally proposed rules of the District on June 10th SAWS provided written comments at the request of the District. However, there are significant differences between the initially proposed rules and the proposed rules posted on July 24, 2024. This letter is the first written response from SAWS regarding the rules as proposed, and, while SAWS has made every effort to thoroughly analyze the proposed rules, the comments below may not encompass the complete analysis by SAWS, and SAWS appreciates any opportunity to supplement these comments as the District proceeds through its rulemaking process.

SAWS respectfully asks the Gonzales County Underground Water Conservation District (GCUWCD) to consider the following:

Proposed Rule 19 Monitoring and Regulation Under Desired Future Conditions

Regarding proposed Rule 19.C establishing production limits of five percent, 10 percent and 20 percent based upon aquifer levels for all wells required to be metered, SAWS request the District provide the modeling and studies used to determine the proposed reduction values. Is this proposed rule based upon the primary DFC established by GMA 13 for the Carrizo-Wilcox, Queen City and Sparta aquifers that 75 percent of the saturated thickness in the outcrop at the end of 2012 remains at the end of 2080, or the secondary DFC of an average drawdown of 48

Ms. Laura Martin-Preston
August 13, 2024
Page 2

feet (+/-5 feet) for all of GMA 13 calculated from the end of 2012 conditions through the year 2080? This District should consider expressly stating this within Rule 19.B.

SAWS request the District facilitate a workshop with permit holders to review and discuss this proposed rule prior to adoption.

Proposed Rule 10 by amending subsection E.3 and adding a new subsection H

The proposed rule suggests the elimination of mitigation agreements. Does the District seek to terminate existing mitigation agreements? SAWS has significant investment based on its current mitigation agreement with the District and requests clarification regarding the impact of this rule change on current mitigation agreements.

Please provide additional information as to how the District will account for mitigation in the annual budget. Will the District continue to develop a separate Western and Eastern mitigation budget?

Proposed Rule 18 (B)(6)(b)

SAWS appreciates the District's revision to this proposed rule from the initial drafting and suggests additional clarification.

SAWS recommends revising Rule 18 (B) (6) (b) to read:

Permitted monthly production may apply a peaking factor of 1.5 or 150% of the annual production rate in a single month from a well or aggregate well field. Permitted annual production may not exceed the permitted annual production volume.

This change maintains operational flexibility and is aligned with the aggregated well field rule.

SAWS request the District facilitate a workshop with permit holders to review and discuss these proposed rules prior to adoption.

Ms. Laura Martin-Preston
August 13, 2024
Page 3

Thank you for the opportunity to provide these comments.

Sincerely,



Donovan Burton
Sr. Vice President
Water Resources & Governmental Relations

cc: Hope Wells, Vice President, Legislative & Regulatory Affairs
Linda Bevis, Director, Water Resources
Steven Siebert, Manager, Water Resources
Jennifer Windscheffel, Senior Corporate Counsel