

PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

OCTOBER 21, 2019

MINUTES OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO DISTRICT RULES

The Board of Directors of the Prairielands Groundwater Conservation District ("District") met in special session, open to the public, at 205 S. Caddo Street, Cleburne, TX, within the boundaries of the District on October 21, 2019.

The audio tape will serve as the official record for the Public Hearing on Proposed Changes to District Rules. The summary below is provided for convenience.

In the absence of President Charles Beseda and 1st Vice President Dennis Erinakes, 2nd Vice President Randy Kirk presided and called to order the Public Hearing on proposed changes to District Rules at 9:05 a.m.

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

Charles Beseda
Dennis Erinakes
Randy Kirk
Marty McPherson

Maurice Osborn
Tod Sandlin
Kent Smith
Paul Tischler

All members of the Board were present, with the exception of Director(s) Beseda, Erinakes, and Sandlin, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Kathy Turner Jones, General Manager; Brian Sledge, General Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comments cards received are attached hereto as Exhibit "A" to the Public Hearing on Proposed Amendments to District Rules Meeting minutes.*

PRESENTATION AND DISCUSSION OF PROPOSED AMENDMENTS TO THE DISTRICT RULES. THESE CHANGES, ALONG WITH ANY OTHER CHANGES TO THE DISTRICT RULES NOT REFERENCED IN THIS NOTICE, MAY BE CONSIDERED AND ADOPTED WITHOUT FURTHER NOTICE OF HEARING BASED ON COMMENTS RECEIVED AT THIS HEARING.

Vice-President Kirk called on Brian Sledge, General Counsel for the District, for a presentation of the proposed changes to the District Rules.

In brief, Mr. Sledge explained how prior to adoption of the Rules in December 2018, the Board apprised the public in multiple public meetings that the Rules would be a living document, and that further changes and tweaks to the rules should be expected as they are implemented and issues are identified on how they could be improved or corrections that need to be made. Mr. Sledge described how the District staff and directors have worked diligently to identify such needed rules improvements in the course of implementing the District Rules since December 17, 2018, and the

Board's Rules and Bylaws Committee has worked over the course of several months to develop recommended amendments to the District Rules to address such improvements.

Mr. Sledge said the proposed amendments to the District Rules address a number of issues, including increasing the initial annual groundwater production allowable per contiguous controlled acre to 50,000 gallons per acre for Operating Permits to better transition well owners and other landowners from an unregulated to a regulated environment for groundwater, and to treat permitted well owners more similarly to well owners exempt from the requirement to obtain a permit, as typical exempt domestic/household well owners subject to the two-acre minimum tract size produce approximately 50,000 gallons per acre per year.

Mr. Sledge explained that the Board finds the proposed amendments to Section 7 of the District Rules revising the fee payment structure for water use fees for non-exempt wells with an option to prepay annually or submit quarterly payment of fees for groundwater production based on the annual groundwater production authorization in the permit, as well as the imposition of the annual water use fee refund in lieu of non-exempt well owners paying water use fees at an 80 percent rate and paying a true-up after the end of each year, reduces confusion and simplifies the payment process for well owners and reduces administrative costs for District staff to process payments.

Mr. Sledge also highlighted the proposed amendments that revise the fee payment structure for water use fees for non-exempt wells with an option to prepay annually or submit quarterly payment of fees for groundwater production. He explained how this structure would help the District better monitor groundwater usage.

Mr. Sledge provided an overview of the reasoning for the delay of the implementation of the revised fee payment structure and revised reporting structure until January 1, 2021. He explained how the delay in imposing this structure will allow District staff to allow for time to make the transition and the District database to make the needed configurations for accepting the fee payments.

Regarding the review of Historic Use Permit applications, Mr. Sledge said there was additional language added about what type of evidence the District would consider, especially for wells that are eligible for Historic Use Permits, but weren't pumping because the wells were registered before the District adopted rules last December and weren't in the ground yet. Mr. Sledge discussed that the District would like to add provisions that applicants provide evidence of planning for that well such as preliminary platting and design documents.

Mr. Sledge also briefly discussed the proposed amendment eliminating the requirement for submission of well completion report deposits by well drillers, as well as other non-substantive clarifying and conforming changes.

PUBLIC COMMENT:

Two individuals who signed the sign-in sheet, Brady Ostrander and Joe Buchanan of Buena Vista-Bethel SUD, had marked that they were speaking, but later stated they had misread the sign-in sheet and did not in fact wish to provide comment on the proposed amendments.

Buck Benson, Barton Benson Jones PLLC, representing Martin Marietta/TXI. Mr. Benson stated he believes monthly reporting is not necessarily needed, but he would support quarterly reporting.

Mr. Sledge acknowledged the two written comments that were submitted to the District from Mr. Buck Benson on behalf of TXI Operations, L.P. and Mr. Christopher Smith, which both had the same request that they would like to see language in the District Rules that says when reviewing Historic Use Permit applications, the District may consider all relevant information regarding maximum historic use of individual wells and well systems. *Copies of the written comments are attached hereto as Exhibits "B" and "C".*

Director Osborn asked Mr. Sledge whether the written comments that were submitted had gone to the Rules and Bylaws Committee for review, to which Mr. Sledge confirmed that they had, and the committee had created suggested revisions to reflect the concerns addressed in those written comments.

Mr. Sledge recommended adoption of the proposed amendments to the District rules as necessary to support the District's efforts in managing the groundwater resources within the boundaries of the District.

Director Tischler made a motion to adopt resolution 19-011 to adopt the proposed amendments to the District Rules. Director Smith seconded the motion. The motion passed. *A copy of said Resolution #19-011 is attached hereto as Exhibit "D".*

Director McPherson made a motion to adjourn, which was seconded by Director Smith, and the Public Hearing on Proposed Amendments to District Rules was adjourned at 9:48 a.m.

PASSED, APPROVED, AND ADOPTED THIS 18th DAY OF NOVEMBER 2019.



Maurice Osborn, Board Secretary



Sign-In Sheet

**PRAIRIELANDS GROUNDWATER
CONSERVATION DISTRICT**

October 21, 2019

**** Note: If you are speaking, please limit to 3 minutes ****

[illegible]

EXHIBIT "B"



DEVIN "BUCK" BENSON, Member | Barton Benson Jones PLLC
O | 210.610.5335 bbenson@bartonbensonjones.com
D | 210.640.9146 745 E Mulberry Ave, Suite 550 | San Antonio, Texas 78212
F | 210.600.9796 bartonbensonjones.com

October 20, 2019

Via Email: kiones@prairielandsgcd.org

Kathy Turner Jones, General Manager
Prairielands Groundwater Conservation District
205 South Caddo Street
Cleburne, Texas 76033

Re: Comments on Proposed Prairielands Groundwater Conservation District
("PGCD") Rule Revisions

Dear Ms. Jones:

I write to you on behalf of my client, TXI Operations, LP, a Martin Marietta Company ("TXI") regarding the proposed revisions to the PGCD Rules that will be considered at the October 21, 2019 board meeting. TXI maintains it is necessary that PGCD staff have the authority to review all relevant information in considering Historic Use Permit applications. This is consistent with the intent of the current PGCD Rules and from our understanding of how Historic Use Permit applications were to be considered. We suggest the PGCD add the following language as a new Subsection 11.3(d)(C) or as an addition to Subsection 3.8(k):

In reviewing Historic Use Permit applications, the District may consider all relevant information regarding Maximum Historic Use of individual wells and well systems.

The addition of this language would simply confirm the PGCD staff's authority and not alter the intent of the proposed revisions to the PGCD Rules.

The proposed revisions to Rules 3.15 and 3.16 also require owners to submit water production reports on the PGCD on a monthly basis. We feel this additional reporting requirement is not necessary and could result in an undue recordkeeping burden on our staff. We would be supportive a quarterly reporting requirement.

EXHIBIT "B"



DEVIN "BUCK" BENSON, Member | Barton Benson Jones PLLC

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We appreciate your consideration and look forward to working with you and your staff in the upcoming months. Please let me if you have any questions regarding our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Devin 'Buck' Benson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Devin "Buck" Benson

EXHIBIT "C"

CHRISTOPHER D. SMITH
DIRECT LINE: 512-659-6912
EMAIL: CHRIS.SMITH@SMITHJOLIN.COM



SMITH JOLIN LLP
700 LAVACA STREET, STE. 1400
AUSTIN, TEXAS 78701

October 17, 2019

Kathy Turner Jones, General Manager
Prairielands Groundwater Conservation District
205 South Caddo Street
Cleburne, Texas 76033
Via Email: kjones@prairielandsgcd.org

Re: Chaparral Steel Comment on Proposed Rule Revisions

Dear Ms. Jones:

I write on behalf of my client Chaparral Steel Midlothian, LP regarding the proposed amendments to the Prairielands Groundwater Conservation District Rules that will be considered at the October 21, 2019 board meeting.

Chaparral believes it imperative that District staff have the authority to consider all relevant information in considering Historic Use Permit applications. This is consistent with the intent of the Rules, as adopted, and nothing the proposed amendments to the Rules is contrary to this concept. However, to avoid doubt and to expressly confirm this authority, Chaparral asks the District to consider the addition of the following language as a new Subsection 11.3(d)(C) or as an addition to Subsection 3.8(k):

In reviewing Historic Use Permit applications, the District may consider all relevant information regarding Maximum Historic Use of individual wells and well systems.

Chaparral thanks you and your staff for working with stakeholders as the Rules have been implemented and we look forward to a continued cooperative relationship with the District.

Very truly yours,

A handwritten signature in black ink, appearing to be "Chris Smith", written over a horizontal line.

Chris Smith

EXHIBIT "C"

cc: Dale Harman (*dale.harman@gerdau.com*)
Stephanie Rexrode (*stephanie@prairielandsgcd.org*)
Brian Sledge (*bsledge@sledgelaw.com*)

RESOLUTION NO #19-011

PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

RESOLUTION TO ADOPT AMENDMENTS TO THE DISTRICT RULES

THE STATE OF TEXAS

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PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

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WHEREAS, Prairielands Groundwater Conservation District (the “District”) was created as a groundwater conservation district by the 81st Texas Legislature under the authority of article XVI, Section 59, of the Texas Constitution, and in accordance with Chapter 36 of the Texas Water Code by the Act of May 31, 2009, 81st Leg., R.S., ch. 1208, 2009 Tex. Gen. Laws 3859, codified as Chapter 8855 of the Texas Special District Local Laws Code (the “District Act”);

WHEREAS, the District is a governmental agency and a body politic and corporate;

WHEREAS, the Board of Directors (the “Board”) adopted permanent rules (“Rules”) during a properly called and noticed regular meeting on December 17, 2018, in accordance with Sections 36.101 and 36.1071(f) of the Texas Water Code, which authorize the District to make and enforce rules;

WHEREAS, prior to adoption of the Rules, the Board apprised the public in multiple public meetings that the Rules would be a living document, and that further changes and tweaks to the rules should be expected as they are implemented and issues are identified on how they could be improved or corrections that need to be made;

WHEREAS, the District staff and directors have worked diligently to identify such needed rules improvements in the course of implementing the District Rules since December 17, 2018, and the Board’s Rules and Bylaws Committee has worked over the course of several months to develop recommended amendments to the District Rules to address such improvements;

WHEREAS, citing the need to address a number of issues, including without limitation the following: 1) increasing the initial annual groundwater production allowable per contiguous controlled acre; 2) changing the manner in which the number of contiguous controlled acres is calculated for a well or well system under an Operating Permit for retail public utilities; 3) revising the fee payment structure for water use fees for non-exempt wells with an option to prepay annually or submit quarterly payment of fees for groundwater production based on the annual groundwater production authorization in the permit; 4) providing an annual refund for payment of water use fees of up to 20 percent of the authorized groundwater production amount based on the actual

Exhibit "D"

amount of a well owner's annual groundwater production being up to 20 percent less than the amount in the permit; 5) providing a discount for annual prepayment of water use fees; 6) monthly submission of water production reports, meter readings, and meter logs for non-exempt wells; 7) delayed implementation of the revised fee payment structure until January 1, 2021; 8) delayed implementation of the revised reporting structure until January 1, 2021; 9) delayed implementation and enforcement of pumping limitations under Historic Use Permits or applications for such permits until January 1, 2020; 10) delayed implementation and enforcement of pumping limitations under Operating Permits until January 1, 2020; 11) new application fees for transfers of well ownership and compliance orders; 12) eliminating the requirement for submission of well completion report deposits by well drillers; 13) adding a petition process for additional production authorization, 14) evidentiary requirements for hearings on applications for Historic Use Permits; and 15) other non-substantive clarifying and conforming changes, the Board charged its Rules and Bylaws Committee with considering these issues and developing proposed amendments to the District Rules;

WHEREAS, after proper publication of the proposed amendments to the District Rules and public notice of a hearing on the consideration of the same in accordance with the requirements of Sections 36.101(d) and (e) of the Texas Water Code, the Board held a rulemaking public hearing on October 21, 2019, where the Board received and considered oral and written comments from the public on the proposed amendments to the District Rules;

WHEREAS, after taking up and considering the proposed amendments to the District Rules, the Board adopted the same during the regular meeting of the District on October 21, 2019;

WHEREAS, the Board finds that increasing the initial annual groundwater production allowable per contiguous controlled acre to 50,000 gallons per acre for Operating Permits is warranted to better transition well owners and other landowners from an unregulated to a regulated environment for groundwater, and to treat permitted well owners more similarly to well owners exempt from the requirement to obtain a permit, as typical exempt domestic/household well owners subject to the two-acre minimum tract size produce approximately 50,000 gallons per acre per year;

WHEREAS, changing the manner in which the number of contiguous controlled acres is calculated for a well or well system under an Operating Permit is warranted and within the District's authority under Section 36.116(c) of the Texas Water Code;

WHEREAS, the Board finds that the proposed amendments to Section 7 of the District Rules revising the fee payment structure for water use fees for non-exempt wells with an option to prepay annually or submit quarterly payment of fees for groundwater production based on the annual groundwater production authorization in the permit, as well as the imposition of the annual water use fee refund in lieu of non-exempt well owners paying water use fees at an 80 percent rate and paying a true-up after the end of each year, reduces confusion and simplifies the payment process for well owners and reduces administrative costs for District staff to process payments;

Exhibit "D"

WHEREAS, the Board finds that the District providing a ten (10) percent discount off the total fees due for groundwater produced during a calendar year for eligible permittees under proposed amendments to Section 7 incentivizes pre-payment of fees, financially benefits the permittee, allows for improved budgeting by the District, and is expressly authorized under the District Act;

WHEREAS, the Board finds that proposed amendments to Sections 3 and 8 of the District Rules requiring owners and operators of non-exempt wells to submit to the District a Water Production Report that includes meter readings and meter logs on a monthly basis are necessary and warranted to reduce confusion and simplify the reporting process for well owners and for District staff and to ensure proper management of the groundwater resources in the District;

WHEREAS, the Board finds that it is in the public interest to allow fees for groundwater produced between January 1, 2019, and December 31, 2020, to be paid in the manner set forth in the District's Temporary Rules for Water Wells, and to continue to operate under the rules set forth in that Section 7 and all enforcement provisions related to those rules for that purpose until January 1, 2021;

WHEREAS, the Board also finds that delaying implementation of the revised fee payment structure under Section 7 of the District Rules until January 1, 2021, provides adequate time for well owners and District staff to prepare for the transition;

WHEREAS, the Board finds that delaying implementation of the revised reporting structure until January 1, 2021, provides both well owners and the District staff sufficient time to transition to the new methods and deadlines for new reporting periods;

WHEREAS, the Board finds that delaying implementation and enforcement of the pumping limitations under Historic Use Permits or applications for such permits until January 1, 2020, is warranted because of the extensions of other deadlines, and will reduce confusion and the burden on landowners and the District staff while still allowing proper management of the groundwater resources and achievement of applicable desired future conditions for the aquifers;

WHEREAS, the Board finds that delaying implementation and enforcement of the pumping limitations under Operating Permits until January 1, 2020, is warranted because of the extensions of other deadlines, and will reduce confusion and the burden on landowners and the District staff while still allowing proper management of the groundwater resources and achievement of applicable desired future conditions for the aquifers;

WHEREAS, the Board finds that the fees authorized for certain applications to transfer well ownership or for a compliance order are authorized by Section 36.205 of the Texas Water Code and are set at rates that are less than the administrative costs incurred by the District in the imposition of such applications;

WHEREAS, the Board finds that the requirement in Rule 7.8 that well drillers submit a

Exhibit "D"

well completion report deposit is unnecessary and is therefore eliminated by the proposed rules;

WHEREAS, District Rule 5.8 establishes a petition process for additional production authorization to ensure that all landowners have an opportunity to petition the Board for an exception to the District Rules if the application of the rules to a particular landowner do not provide the landowner with an opportunity to attempt to produce the landowner's fair share of the groundwater resources owned by the landowner that are part of the common aquifer;

WHEREAS, the Board finds that the proposed amendments to the District Rules, attached hereto as "Attachment A," are each and all merited and necessary to support the District's efforts in managing the groundwater resources within the boundaries of the District in a manner consistent with the requirements of Chapter 36, Water Code, and the District Act, and that each proposed amendment to the District Rules is supportable under the laws of the State of Texas; and

WHEREAS, the Board finds that all provisions of the District Rules as amended are duly authorized by the powers and duties granted to the District under the District Act and Texas Water Code Chapter 36.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT THAT:

1. The above recitals are true and correct;
2. The Board of Directors hereby approves and adopts the proposed amendments to the District Rules;
3. The District Rules as amended and included with this resolution as "Attachment A" are the Rules of the Prairielands Groundwater Conservation District, adopted pursuant to the requirements of Section 36.101 of the Texas Water Code.
4. The attached amendments to the District Rules take effect October 21, 2019.
5. The District's Board, its officers, District staff, and legal counsel are further authorized to take any and all actions necessary to implement this Resolution;
6. The District's general manager and legal counsel are further authorized to make any typographical corrections, formatting, and other nonsubstantive changes to the amendments to the District Rules.

AND IT IS SO ORDERED

PASSED AND ADOPTED this 21st day of October 2019.

PRAIRIELANDS GROUNDWATER CONSERVATION DISTRICT

By: 

Randy Kirk, 2nd Vice President

ATTEST:

I, Maurice Osborn, certify that I am Secretary/Treasurer of the Prairielands Groundwater Conservation District organized and existing under the laws of the State of Texas, and that the resolutions on this document are a correct copy of the resolutions adopted at a meeting of the District duly and properly called and held on October 21, 2019. Said resolution appears in the minutes of this meeting and has not been rescinded or modified.


Maurice Osborn, Secretary