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September 12, 2013

***Via Email: Veronica.Larson@rrc.state.tx.us
and Leslie.Savage@rrc.state.tx.us***

Ms. Veronica Larson
Ms. Leslie Savage
RAILROAD COMMISSION OF TEXAS
P.O. Drawer 12967
Austin, Texas 78711-2967


RE: Comments to Informal Draft Rules 16 TAC § 3.9 and 16 § 3.46

Dear Ms. Larson & Ms. Savage:

The undersigned represents Lone Wolf Groundwater Conservation District (the "District"). Please find attached the District's comments to Informal Draft Rules 16 TAC § 3.9 and 16 § 3.46 as referenced above for consideration by the Railroad Commission.

Thank you in advance for your professional courtesies. Should you have any questions, or need additional information, please don't hesitate to contact me.

Best regards,



Amber S. Miller
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ASM/ljs
Enclosures

RAILROAD COMMISSION OF TEXAS

INFORMAL COMMENTS TO DRAFT RULES §3.9 AND §3.46

**By: LONE WOLF GROUNDWATER CONSERVATION DISTRICT
COLORADO CITY, TEXAS**

Date: September 12, 2013

Lone Wolf Groundwater Conservation District (hereinafter "Lone Wolf") is located in Mitchell County, Texas. As a Groundwater Conservation District, Lone Wolf possesses the powers and duties outlined in the Texas Water Code, Chapter 36. Groundwater conservation districts are the State's preferred method of groundwater management. *Sipriano v. Great Spring Waters of America, Inc.*, 1 S.W.3d 75, 79 (Tex. 1999).

Lone Wolf is aware of the increased oil and gas exploration and production activities across the state of Texas, including in Mitchell County, and recognizes the positive economic and community impact that a robust oil and gas sector has on rural areas. Even so, Lone Wolf is required to protect and conserve the only source of fresh potable drinking water in Mitchell County – the groundwater in the Santa Rosa aquifer, a component of the Dockum Group of aquifers. Lone Wolf is charged by the Legislature and the voters of Mitchell County, with protecting these groundwater resources under the provisions of Chapter 36, Water Code.

Lone Wolf has reviewed Commission staff's proposed draft amendments to 16 TAC §3.9, relating to Disposal Wells and proposed draft amendments to 16 TAC §3.46, relating to Fluid Injection into Productive Reservoirs, to determine if the proposed rules may impact water quality issues. Lone Wolf offers the following written comments to the Commission for its consideration prior to finalizing its formal draft proposal to file with the Texas Register.

Lone Wolf's brief comments to the proposed rules are addressed in three sections below. First, Lone Wolf sets out certain proposed rule changes regarding the disposal well permit application process and the injection well permit application process that Lone Wolf supports, as these changes provide more information for interested parties, including Lone Wolf, about the proposed new wells. Next, Lone Wolf provides additional suggested amendments to the proposed rule. Finally, Lone Wolf lists what appear to be typographical errors in the draft rules that should be corrected prior to submission of the proposed rules to the Texas Register.

Positive Changes

Lone Wolf supports the proposed rule changes highlighted below; these changes will improve disposal well and injection well permit application processes and provide groundwater conservation districts and other interested parties with more information about the proposed wells.

- Rule 3.9(d)(3)(B) – Applicant must first obtain a drilling permit and provide the drilling permit number with the disposal well permit application.
 - Lone Wolf supports this proposed change.
- Rule 3.9(e) and Rule 3.46(e) – Applicant must provide notice on or no more than 30 days before the date the application is submitted to the Commission to affected persons and local governments, including groundwater conservation districts. Applicant must include a map identifying the precise location of the proposed well.
 - Lone Wolf supports both of these proposed changes. By narrowing the time frame in which an applicant may provide notice to affected persons and local governments, the proposed rule should help to alleviate unnecessary confusion about whether and when the actual application has been filed with the Commission after an affected party receives notice of the application. In addition, the new requirement to provide a map identifying the exact location of the proposed well should assist groundwater conservation districts determine how the affected well may impact fresh water sources in the area. As indicated above, Lone Wolf is charged by the Legislature, under Chapter 36 of the Water Code, with protecting groundwater resources. As a result, Lone Wolf must evaluate each well application in concert with the historical data regarding the depth of the freshwater aquifer at that particular location, and determine

whether the applicant has satisfied its duty to protect underground sources of drinking water. By providing precise locations of proposed wells, groundwater conservation districts are better able to decipher whether the proposed well will impact underground sources of drinking water.

Additional Proposed Changes

Lone Wolf submits the following proposed amendments to Rules 3.9 and 3.46 in order to clarify certain provisions in the proposed rules and to add more certainty to the protest process.

- *Clarify the definition of local governments to include groundwater conservation districts.*

Rule 3.9(e)(5) and Rule 3.46(e)(6) provide that affected persons and local governments have standing to file a protest to a disposal well permit and an injection well permit, respectively. The term “local governments” is not otherwise defined in Rules 3.9 or 3.46. Rules 3.9(e)(2) and 3.46(e)(2) include groundwater conservation districts within a list of “local governments”; similarly, Rule 3.9(g)(4)(ii)(I) and 3.46(g)(2)(C)(ii)(I) include groundwater conservation districts in the lists of the “following...local governments.” However, Rule 3.9(g)(5) and 3.46(g)(5) refer to “local governments” separately from “groundwater conservation districts”, implying that groundwater conservation districts may not be included within the term “local governments.” Lone Wolf respectfully submits this comment and requests that the term “local governments” be defined to clarify that groundwater conservation districts are included when the term local governments is used.

- *Clarify when groundwater conservation districts are entitled to notice of a permit application filing.*

Rule 3.9(e)(4) requires an applicant for an amended disposal well permit to provide notice to groundwater conservation districts when the amended permit application does the following: amends injection interval; amends injection pressure; amends injection fluid type; amend to commercial. In proposed Rule 3.46(e)(4), however, the rule governing required notice for an amended injection well permit, an applicant is not required to notify a groundwater conservation district of a permit application amending injection interval or injection pressure. Lone Wolf is not aware of the basis for this different treatment of amended disposal well permit applications versus amended injection well permit applications and the respective requisite notice to groundwater conservation districts. Lone Wolf submits this comment and requests that the Commission alter the proposed rules, requiring applicants for amended injection well permits to provide groundwater conservation districts with notice of permit applications amending injection intervals or injection pressure.

o *Time to file protest.*

Rules 3.9(e)(5), 3.9(e)(6), 3.46(e)(6) and 3.46(e)(7) address the time frame in which an affected person or local government must file a protest to a permit application. Rules 3.9(e)(5) and 3.46(e)(6) preclude the director from approving any application “fewer than 15 days after notice has been given to all affected persons.” These Rules seem to set a deadline to file a notice of protest within 15 days of the date that all affected parties have received notice of the application. It is unclear whether all affected parties are informed of the date(s) that all other affected parties are served with the notice of the application. Despite the time frame set out in Rules 3.9(e)(5) and 3.46(e)(6), Rules 3.9(e)(6) and 3.46(e)(7) allow an affected person to file a protest up to “15 days from the date the commission receives the application, the date of the required individual notice, or the date of publication, whichever is later.” These rules appear to set a different deadline for filing a protest – the later of three events that, again, all affected parties may not be aware of.

In lieu these different time frames that are based off of events that all affected parties may not be aware of, Lone Wolf respectfully submits that one protest deadline be set in the rules and be based off of a date that all parties are aware of; e.g., 20 days after the application is received by the commission. In addition, Lone Wolf suggests that the rules require an applicant to serve the notice of application on the required parties and publish the notice of application on the same date that the application is filed, in order to provide all affected parties and local governments with the application date and sufficient time to review the application and determine if a protest should be filed.

Typographical Errors.

The following comments are provided to the Commission to point out what appear to be merely typographical errors in the proposed draft rules. Lone Wolf submits these comments and requests that the Commission edit the draft rules as appropriate prior to submission of the rules to the Texas Register.

o Rule 3.46 – Fluid Injection into Productive Reservoirs

- Proposed Rule 3.46(h) provides new provisions governing casing of injection wells. Sub-parts (h)(1) and (h)(4) refer to all “disposal” wells permitted under 3.46(h). However, based on the rest of the proposed rule, it appears that these references should instead be to “injection” wells.
- Proposed Rule 3.46(j) provides new provisions governing permit conditions. Sub-parts 3.46(j)(1)(K)(iii) and 3.46(j)(1)(K)(iii)(I) appear to contain duplicative language.