



**RED RIVER  
GROUNDWATER CONSERVATION DISTRICT  
FANNIN COUNTY AND GRAYSON COUNTY**



September 12, 2013

Rules Coordinator  
Railroad Commission of Texas  
Office of General Counsel  
P.O. Drawer 12967  
Austin, Texas 78711-2967

Re: Comments pursuant to rulemaking for 16 TAC § 3.9 and 3.46

To The Honorable Railroad Commission and Staff:

The Red River Groundwater Conservation District ("District") is appreciative of the opportunity given by Railroad Commission of Texas (the "Commission") to submit informal comments to Commission Rules 3.9 and Rule 3.46 (regarding "Disposal Wells" and "Fluid Injection into Productive Reservoirs"). I serve as the General Manager of the District, and I submit this letter and comments on the District's behalf. The District has experienced substantial oil and gas activity in recent years, including the drilling and operation of injection and disposal wells. Because the District is statutorily required to protect the groundwater, the District is responsible to ensure that the Commission's rules recognize and protect from contamination the groundwater resources that have been identified as useful. For this reason, we strongly encourage the Commission to consider the following comments:

- The Commission initially proposed in its first draft of the rules that Rule 3.9 be amended to state: "It is the intent of this section that the applicant demonstrates, and the director finds, that . . . all usable-quality water and underground sources of drinking water . . . will be isolated and sealed off to effectively prevent contamination and harm from migration of injected fluids or displaced formation fluids." However, the Commission posted online a second version of proposed amendments to Rule 3.9, which changed the intent of Rule 3.9 by removing the previous reference to "underground sources of drinking water" ("USDWs"). The District strongly recommends that the Commission adopt the intent it drafted for Rule 3.9 according to the first version of the proposed rule, which correctly requires that both USDWs and usable-quality water are isolated and sealed off to prevent contamination. The protection of USDWs, defined generally as aquifers or portions of aquifers containing up to 10,000 mg/L of total dissolved solids ("TDS"), is critical to the sustainability of water supplies in Texas and consistent with Federal groundwater protection standards provided by the Safe Drinking Water Act.
- The District also recommends that Rule 3.9(g)(1) be revised to protect USDWs. According to the current proposed rule, the applicant for a disposal well is required to demonstrate that existing wells penetrating the injection interval within ¼ mile of the proposed location are cased and cemented or plugged in a manner to prevent movement of fluids only into usable quality water. Based on the Commission's definition of usable-quality water, the proposed rule will only protect groundwater containing 3,000 or less mg/l of TDS. The potential use in our Region (and across the State) of groundwater with TDS levels in excess of 3,000 mg/l exemplifies the need to protect USDWs. Thus, the applicant should be required to ensure that such wells are properly cased and cemented or plugged to prevent migration of fluids into USDWs.
- The District and its consultants have determined that the area of review set forth in Rule 3.9(g)(1) for considering existing wells that may serve as pathways for contaminants into USDWs is too small. We

PO Box 1214  
Sherman, Texas 75091  
(800) 256-0935 fax: (903) 786-8211

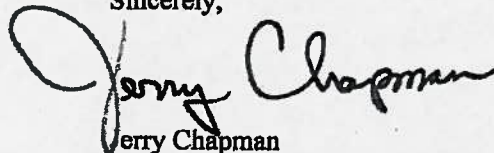
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recommend that the area of review be extended from ¼ of a mile radius to at least a 1 mile radius. There have been multiple instances across the state where viable groundwater resources were contaminated due to lateral migration by way of a defective well located more than ¼ mile from the disposal well site.

- The District is also concerned with the protection afforded to USDWs in the Groundwater Advisory Unit's Groundwater Protection Determination. While the District strongly supports the proposed change that prohibits injection intervals from being located in USDWs, the District encourages the Commission to revise the rules to give additional protection to USDWs to prevent potential contamination of the water due to later migration of waste fluids. In proposed Rule 3.9 subsections (c)(2) and (d)(3)(D), the Commission only requires that the Groundwater Advisory Unit make a Groundwater Protection Determination that states that the use of the proposed formation for waste disposal will not endanger usable- quality water in the area. The District strongly urges that the Groundwater Protection Determination require a finding that USDWs are not endangered. Not only will such a finding ensure better protection of USDWs, but protecting USDWs from oil and gas waste disposal is mandated by the Safe Drinking Water Act, in 42 U.S.C.A. § 300h-300h-8.
- The District is of the opinion that that the Groundwater Advisory Unit lacks sufficient information to make an educated Groundwater Protection Determination without obtaining relevant information from the local groundwater district in which a proposed well is to be drilled. It is a fact that neither the Groundwater Advisory Unit nor the Texas Water Development Board possesses the extensive information developed by the local groundwater districts relative to the location of USDWs and existing wells, which may be the difference between whether contamination of an USDW is prevented. For this reason, the rules should be revised to require the applicant to acquire this information prior to the issuance of a well permit, which is reasonable considering the applicant is risking the safety of the groundwater.
- The District strongly supports the proposed amendment to Rule 3.9(e)(2)(F), requiring notice to groundwater districts if the proposed well is to be located in an area covered by a groundwater district with an established mailing address. Such notification is critical in to provide the District the ability monitor potential waste disposal activity within its jurisdiction. However, the District is concerned that 15 days is an insufficient amount of time to assess whether filing a protest is needed. Accordingly, the District recommends that Rule 3.9(e)(5) be amended to prohibit the Commission from approving any application fewer than 30 days (rather than 15 days, as the proposed rule currently reads) after notice has been given to all affected persons.
- Finally, the District strongly supports proposed Rule 3.9(h)(2), which prohibits the approval of an application for a disposal well permit for any well in which the surface casing is not set and cemented from the ground surface to the base of usable-quality water as determined by the Groundwater Advisory Unit.

As a general note, the comments and recommendations provided herein regarding Rule 3.9 should also be applied to Rule 3.46, as applicable. Again, we greatly appreciate the opportunity to provide comments on the proposed rules. We look forward to working with the Commission to develop effective rules to protect the sustainability of the state's groundwater resources. Please do not hesitate to contact me if you have any question or concerns regarding the comments we have provided.

Sincerely,



Jerry Chapman  
General Manager

Red River Groundwater Conservation District