

SANTA RITA UNDERGROUND WATER CONSERVATION DISTRICT

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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 of Texas and Staff:

The Santa Rita Underground Water Conservation District ("District") appreciates the opportunity to provide these informal comments on the proposed changes by the Railroad Commission of Texas ("Commission") to Commission Rules 3.9 and Rule 3.46, regarding "Disposal Wells" and "Fluid Injection into Productive Reservoirs." The District's jurisdiction covers all but 65,350 acres of Reagan County, located in West Texas. As oil and gas activity continues to grow, so does the District's concern for groundwater protection from the associated increase of underground waste disposal. Perhaps most important to the District is for Rule 3.9 and Rule 3.46 to be amended to require necessary safeguards for brackish groundwater sources (in addition to freshwater formations). According to the 2011 Region F Water Plan, additional water supplies may be obtained from desalination of existing brackish or saline water sources. Many of the major and minor aquifers in Region F contain significant quantities of groundwater with Total Dissolved Solids ("TDS") concentrations ranging between 1,000 and 5,000 milligrams per liter. Preserving and protecting brackish portions of our aquifers from injection of waste is critical to meeting future water demands in West Texas and should be expressly stated as part of the intent of Rule 3.9 and 3.46.

While improvements are long overdue, the District is pleased that the Commission has proposed prohibiting injection of oil and gas waste into formations that are underground sources of drinking water ("USDWs"), which are defined generally as aquifers or portions of aquifers with 10,000 TDS or less. Unfortunately, a number of

other protections proposed by the Commission focus only on usable-quality water, which, by the Commission's definition, 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 underscores the importance for the Commission's rules to protect USDWs. For example, Rule 3.9(c)(1) requires an impermeable strata of 250 feet between the base of usable quality water and top of injection interval, but does not require the same 250 impermeable strata separating USDWs from the injection interval. If the Commission has determined that a minimum of 250 feet of impervious strata is a necessary to ensure protection of usable quality water, which the District agrees with, then requiring similar protections for USDWs is also important. Moreover, 250 feet of impermeable strata should be required between any USDW, not just USDWs that are located above the injection interval. As currently proposed, Rule 3.9(c)(1) appears to allow for injection of waste disposal even if there is not 250 feet of impermeable strata separating the injection interval from usable quality water or USDW that is below the injection interval.

Similarly, Rule 3.9(c)(2) and Rule 3.9(d)(3)(D) only require that the Groundwater Advisory Unit make a Groundwater Protection Determination that states 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 required by the Safe Drinking Water Act, in 42 U.S.C.A. § 300h-300h-8. This Federal statute makes clear that "underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or *can reasonably be expected to supply* any public water system of any contaminant..." See 42 U.S.C.A. § 300h(d)(2) (emphasis added). These statutes that govern Texas' underground injection control program do not distinguish usable quality water from that of USDWs, but instead afford the same protections to groundwater with 10,000 TDS or less.

Rule 3.9(g)(1) is another example where the Commission has proposed less protections for USDWs than what is provided for usable quality water. 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. The applicant should be required to ensure that such wells are properly cased, cemented or plugged to prevent migration of fluids into USDWs. Moreover, the area of review requirement of ¼ mile is entirely too small as migration of formation fluids can exceed a ¼ mile in a geologically short amount of time. Such migration has been documented to occur in Texas.

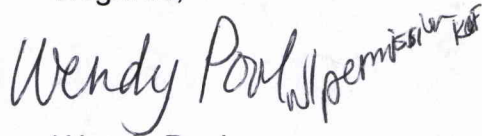
The District also encourages the Commission to amend Rules 3.9 and 3.46 to include a process for the Groundwater Advisory Unit to utilize the information possessed by the District (and groundwater districts state-wide) when making its Groundwater Protection Determination. Requiring the applicant or Groundwater Advisory Unit to collaborate with the District will ensure that Groundwater Protection

Determinations are not made without considering a substantial amount of important information that the District may have that the Commission and Texas Water Development Board does not have at their disposal.

Finally, while the District is grateful that the Commission has proposed amending Rule 3.9 to include 3.9(e)(2)(F), requiring notification to groundwater districts of any application filed for a disposal well, the District is concerned that 15 days is an insufficient amount of time to assess whether filing a protest is needed, and therefore does not provide adequate due process to an affected person. Accordingly, the District recommends that Rule 3.9(e)(5) be amended to prohibit the Commission from approving any application fewer than 30 days after notice has been given to all affected persons.

Thank you again for the opportunity to provide these comments and to take part in the rulemaking process. We look forward to working with the Commission towards protecting our precious groundwater resources.

Regards,

Handwritten signature of Wendy Pool in cursive script. The signature includes the name "Wendy Pool" and the title "General Manager" written in smaller letters below it.

Wendy Pool
General Manager
Santa Rita Underground Water Conservation District