



September 12, 2013

Veronica Larson
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Railroad Commission of Texas
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via electronic transmission

RE: Comments on informally proposed rule amendments to 16 TAC §§ 3.9, 3.36, and 3.46

Dear Ms. Larson:

Thank you for the opportunity to comment on the above-referenced informally proposed rules at the Railroad Commission of Texas. The Texas Alliance of Groundwater Districts (TAGD) is a non-profit organization composed of Texas groundwater conservation districts (GCDs) with the powers and duties to manage groundwater as defined in Chapter 36 of the Texas Water Code. We appreciate being able to participate in this process during the pre-publication period.

Overall, TAGD supports many of the changes reflected in the draft rules, including efforts to achieve consistency among various terms and notice to GCDs of certain permit applications. Our goal in participating in this process is to ensure the protection of groundwater as it is used currently and may be used in the future, as well as to provide for the use of GCD technology and expertise in making determinations about groundwater quality and well construction requirements. The following comments address more specific areas where TAGD may have additional questions or observations, and apply equally to rules 9, 36, and 46, as applicable, though only rule 9 is cited throughout. We also support comments filed by our individual member GCDs, which may be specifically tailored to each GCD's unique circumstances.

Notice to GCDs

We strongly support notice to local GCDs of all disposal well permit applications and appreciate the addition of section 3.9(e)(2)(F). We recommend additional time for evaluation of the application (from 15 to 30 days) and suggest that the notice requirements be consistent throughout the rules, including GCDs and applying in all instances where water quality may be a concern. At this time, there are 97 confirmed GCDs and two subsidence districts in the State. All have established office addresses that can be found on the websites of the individual GCDs, TAGD, the Texas Water Development Board, and the Texas Commission on Environmental Quality. We recommend omitting the reference to "that has an established mailing address" in section 9(e)(2)(E) and anywhere else it occurs and replacing it with a requirement that notice be mailed to the address on file at the Texas Water Development Board. A list of GCD addresses is readily available and regularly updated on the Texas Water Development Board website.

Protection of Usable-Quality water and USDWs

As mentioned, we believe these rules should be designed to protect the State's groundwater resources for current and future use. Though it is true that most large desalination projects currently fall within areas of usable-quality water, it is probable that technological advances and groundwater

needs may accelerate the use of water with a higher amount of total dissolved solids (TDS) for desalination purposes in the future. Indeed, Texas Water Development Board's "Desalination Plant Database" includes plants that are currently treating water with a TDS level of greater than 3,000 mg/L.

A previous version of these proposed rules were out for public comment in December 2012. At that time, section 3.9(a)(1)(B)(ii) of the rules stated 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." In the currently released version, the section has been changed to delete the reference to the underground sources of drinking water (USDWs). TAGD strongly supports the previous language and is concerned that the current language is not strong enough to afford adequate protection of USDWs.

Provisions in the rules and the Groundwater Advisory Unit letter requiring only that wastes not be injected into USDWs are insufficient to prevent contamination and harm of groundwater sources that may be important in the future. To that end, TAGD also supports the comments filed last year on the first-draft of these proposed rules by the Texas Ground Water Association on groundwater protection and well construction standards that should be used to protect both usable-quality water and USDWs. Specifically, TAGD recommends applying the 250 feet impermeable strata requirement in section 3.9(c) to the USDW, expanding the area of review in section 3.9(g) to ensure protection of the USDW, and ensuring adequate casing requirements in section 3.9(h) to protect usable-quality water and USDWs.

Coordination between Groundwater Advisory Unit and local GCDs

TGAD also supports coordination among the Railroad Commission, GCDs, and permit applicants to verify the quality of the water and well locations surrounding an area proposed for disposal or injection. Often, the local GCD has the most recent water quality and well registration data, so coordination with local GCDs to determine the base of usable-quality water and the USDW, as well as additional well locations, makes sense, saves agency resources, and affords better protection for landowners and water quality. Additionally, Groundwater Protection Determinations should be conducted at least annually and should identify protection depths for USDWs.

Thank you again for the opportunity to participate in this process. We appreciate the Railroad Commission staff and their efforts to work with all stakeholders and afford multiple opportunities for participation. We look forward to continuing to work with the Railroad Commission on ensuring our groundwater resources are adequately protected now and into the future.

Sincerely,



Stacey A. Steinbach
Executive Director