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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 on proposal to amend 16 T.A.C. § 3.9 and 3.46 – “Disposal Wells”
and “Fluid Injection into Productive Reservoirs”

To The Honorable Railroad Commission of Texas and Staff:

We appreciate the opportunity to provide comments on proposed changes to Rules 3.9 and 3.46 (regarding “Disposal Wells” and “Fluid Injection into Productive Reservoirs”). I am the General Manager of the Upper Trinity Groundwater Conservation District (the “District”), and on behalf of the District I submit the enclosed comments for your review and consideration. As mentioned in our comments previously submitted on the recently adopted amendments to Rule 3.13, the statutory function of the District is to protect the groundwater resources underlying the District’s boundaries. To this end, the District has seen a substantial increase in applications for disposal wells to be located within its jurisdiction. Each proposed disposal well is of interest as we strive for protection of our groundwater resources. Currently, the District expends substantial resources to monitor on a daily basis whether any applications for disposal wells within the District’s jurisdiction are being filed with the Railroad Commission. The District is pleased to see a proposed rule change requiring an applicant to provide notice of an application if the proposed disposal well is in an area covered by a groundwater district. However, the District has additional concerns associated with the vast increase of waste disposal activity.

As indicated in previous correspondence; providing underground sources of drinking water, which are also referred to as USDWs, the same protection that the Commission affords to “usable-quality water” is consistent with federal standards set by the Safe Drinking Water Act. Perhaps more importantly, it is simply good policy to ensure the protection of USDWs as demands for brackish groundwater increase across the State.

- 1) On August 12, 2013, the Commission posted online a second version of proposed amendments to Commission Rule 3.9. The second version changed the intent of Rule 3.9 initially proposed for adoption. The District strongly urges the Commission to adopt the intent for Rule 3.9 initially proposed, stating the intent of Rule 3.9 was for the director to find that all usable quality water and USDWs will be isolated and



sealed off to effectively prevent contamination and harm from migration of injected fluids or displaced formation fluids. The current proposed intent of Rule 3.9 affords less protection to USDWs than usable-quality water, which is inappropriate given the current demand for freshwater and continuing increase in demand for brackish water.

- 2) The District recommends that as part of a Groundwater Protection Determination made pursuant to 3.9(c)(2), the Groundwater Advisory Unit shall make a finding that use of the proposed formation will not endanger USDWs.
- 3) The District is of the position that it is critical that prior to the Groundwater Advisory Unit making its determination, the Groundwater Advisory Unit reach out to any groundwater district with jurisdiction over the location of the proposed disposal well. There is simply far too much information that a groundwater district may have that the Groundwater Advisory Unit or Texas Water Development Board may not possess. Additional information from a groundwater district will help identify locations of USDWs and existing wells, which may be the difference between whether contamination of an USDW is prevented. The burden of acquiring this information prior to issuing an injection well permit should rest with the applicant of the proposed disposal well since it is the applicant risking the safety of the groundwater.
- 4) The Groundwater Protection Determination contemplated by proposed Rule 3.9(d)(3)(D) should state the depth to which USDWs (not just usable quality water) must be protected.
- 5) The area of review established in Rule 3.9(g)(1) for assessing existing wells that may serve as pathways for contaminants into USDWs should be extended from ¼ of a mile radius to at least a 1 mile radius.
- 6) The District strongly supports the proposed amendment to 16 T.A.C. § 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. This proposed amendment is critical in to provide the District the ability monitor potential waste disposal activity within its jurisdiction. Currently, notice is only required to be given to groundwater districts pursuant to 16 T.A.C. §3.9(7)(D)(ii)(I), which applies when an applicant seeks an aerial variance from the area of review.
- 7) Fifteen days is an insufficient amount of time for the District to review the application and determine whether a protest is warranted. Accordingly, the District recommends that 16 T.A.C. § 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

as required by 16 T.A.C. § 3.9(e) and no fewer than 30 days after the application has been filed with the District.

- 8) The District strongly support proposed amendment 16 T.A.C. § 3.9(h)(2), prohibiting the Commission from approving an application for a disposal well permit under this section 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.
- 9) The District comments that all recommendations above to the proposed language of Rule 3.9 should be equally applied to 3.46, as applicable. For example, the intent described in 3.46(a)(1)(B)(ii) should include isolation and sealing off of USDWs; applicants should be required to provide notice to groundwater districts pursuant to 3.46(e)(2)(F) just as notice is required to be provided to groundwater districts pursuant to 3.9(e)(2)(F); and the area of review required pursuant to 3.46(g)(1) should be extended to at least 1 mile.

We thank you again for the opportunity to take part in the rulemaking process and hope you will contact me with any questions or if you would like any additional information.

Sincerely,



Bob Patterson
General Manager