

**COASTAL BEND GROUNDWATER CONSERVATION DISTRICT
BOARD OF DIRECTORS MEETING**

AGENDA PREPARED AND POSTED: April 07, 2016
DATE OF MEETING: April 12, 2016
TIME OF MEETING: 8:00 A.M.

PLACE WHERE MEETING WAS HELD: Wharton County Extension Office, 315 E. Milam, WHARTON, TEXAS 77488.

- I. **In Attendance:**
See Attached
- II. **Call to Order:**
The meeting was called to order at 8:20 A.M.
- III. **Public Comments:**
None
- IV. **Approval of Minutes:**
Secretary Weinheimer made a motion to accept the meeting and permit hearing minutes for March 08, 2016 as presented. Director Wittig seconded. All voted for; motion carried.
- V. **Manager's Report:**
Financial Report – Mr. Hudgins reported a checking account balance of \$231,439.32; a money market balance of \$382,356.43; and CD balance of \$500,000.00. A budget vs. actual and the balance sheet for April was also presented. After discussion and review, Director Wittig made a motion to approve the financials as presented. Secretary Weinheimer seconded. All voted for; motion carried.
Quarterly Investment Report – Mr. Hudgins presented the board with the current investments of CBGCD funds. After discussion and review, Secretary Weinheimer made a motion to approve the investments as presented. Director Wittig seconded. All voted for; motion carried.
Well Monitoring Update – Mr. Hudgins presented the board with the monitor well levels as of March 01, 2016. Report shows a 3 foot increase from the previous month on the CBGCD monitor wells and 2.5 feet increase on the wells in the critical depletion area.
Upcoming Meetings – None
- VI. **Consider Proposed Amendments to the CBGCD Rules:** The Chairman opened the public hearing on the proposed rules. Mr. Ellis presented the Board with the current draft proposed rule change, see attached. There were no public comments. Following a discussion, Director Wittig moved to approve the proposed rule amendments as proposed. Secretary Weinheimer seconded. All voted for; motion carried.
- VII. **Update from City of Wharton on Proposed New Well Locations:** Mr. Garza with City of Wharton and Wes Birdwell with Halff and Associates presented the board with a map with the possible well locations for a new production well that will be added to the current city water system.
- VIII. **Discussion of Open Carry Policies During CBGCD Open Meetings:** After board discussion, Mr. Hudgins will discuss the building's open carry policy with the property owner. No action was taken.
- IX. **Update on Conroe et al v Lone Star GCD (Montgomery County District Court:** Mr. Ellis updated the Board on the status of the suit against the Lone Star Groundwater

Conservation District (“LSGCD”) and the Amicus brief filed by several area groundwater conservation districts. Following the initial hearing, most of the claims against LSGCD, its Directors and General Manager have been dropped. Only one claim remains against the directors and the Court has not yet ruled on the Directors’ Plea to the Jurisdiction.

- X. **Discussion of Intera Subsidence Report and Follow Up Proposal:** Mr. Hudgins presented the board with the summary letter of the Intera subsidence report and follow up proposal. After discussion, it was decided to invite Steve Young to explain the report and follow up proposal in more detail at the next meeting.
- XI. **Public Comments/Announcements:** None.
- XII. **Date of Next Meeting:** The next CBGCD board meeting was set for Tuesday, May 10, 2016 at 8:00 am.
- XIII. **Adjournment:** Secretary Weinheimer made a motion to adjourn. Director Wittig seconded. All voted for; motion carried. Adjournment at 9:39 p.m.

Wednesday, April 10, 2019

Mindi Snyder City of El Campo

Clay Harris City of El Campo

Wade Wendt City of Wharton

Arthur Etheridge Lissie

Nes Birdwell Half

SUSAN HARRISON - Landowner

Andre Garza City of Wharton

Judge Spennath

Ronald Gertson CBGLD
board

Edmund Weinheimer "

Leonard Wittig "

Neil Hudgins "

Jaime Bosch "

1) Rule 2.2 is amended by amending subsections (15), (37), (38) and (78), and inserting a new subsections to define “average annual use,” “contiguous acre,” “minimum MAG derived amount,” “retail public utility” and “waste” (and renumbering subsequent subsections accordingly) to read as follows:

(??) “Average annual use” means the total amount of groundwater withdrawn and put to a beneficial use, without waste, over the most recent three calendar years divided by three.

(15) “Commercial Use” - a well used to supply water to properties or establishments in business to provide goods or services or repairs and use water either in those processes; in the production of primary goods or services provided by industrial, manufacturing or commercial facilities and used primarily in the building, production, manufacturing, or alteration of a product or goods; used to wash, cleanse, cool, or heat goods or products; used in or incidental to the maintenance of the property or establishment including landscape irrigation; or ~~a well~~ used to supply water to a business establishment primarily for employee and customer sanitary purposes.

(??) “Contiguous Acre” means an acre of land within the District and all additional acreage within the District, which is either (a) abutting acreage that physically touches, including corner-to-corner, or (b) non-abutting acreage if the two properties are connected by a water delivery system owned by the permittee. In addition, the same person shall have the right to produce groundwater from the contiguous acreage through deed, easement, contract, lease, or any other legally recognized agreement.

(37) “Historic User” - a permittee who owns an existing well and operated that well for a beneficial use prior to December 31, 2014-2012.

(38) “Historic Use Period” - January 1, 2005 through December 31, 2014-2012.

(??) “Minimum MAG-derived amount” means a groundwater withdrawal amount per acre equal to the Modeled Available Groundwater divided by the total acreage in the District.

(??) “Modeled available groundwater” means the amount of water that the Texas Water Development Board executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(78) “~~Transportation Permit~~Export Permit” - a permit issued by the District authorizing transfer of groundwater outside the District’s boundaries.

(??) “Retail Public Utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(??) “Substantive Violation” means a failure to perform a required duty or meet a requirement of a permit or the rules that could impact the District’s ability to meet any requirement of the District’s Management Plan or achieve the Desired Future Condition. Substantive violations include failure to pay required fees, or exceeding the authorized

pumping limit, rate of withdrawal, or authorized export limit. A substantive violation does not include technical or procedural violations.

(??) "Waste" - means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205.

2) Rule 3.19(b) is amended to read as follows:

(b) Amendment Types:

(1) Minor amendments are include-a request to:

(A) change the name or address of the well owner;

(B) decrease the maximum authorized withdrawal;

(C) increase the maximum authorized withdrawal by ten percent or less of the total permitted pumpage for users permitted for more than 12,000,000 gallons annually;

(D) increase the maximum authorized withdrawal by up to 2,000,000 gallons annually for users permitted for 12,000,000 gallons or less;

(E) convert two or more wells individually permitted by the same permittee into an aggregate system under one permit; and

(F) transfer of a permit in its entirety to a new landowner, well owner or well operator.

(2) Major All other amendments are requests not listed as a minor amendment, including all amendments to permits involving the export of groundwater, are major amendments.

3) Rule 3.24 is amended to read as follows:

§3.24 APPLICABILITY

Contested case hearings may be requested in connection with the following applications:

- (1) drilling permits;
- (2) operating permits;
- (3) export transportation permits; ~~and~~
- (4) major amendment to any existing permit; ~~and~~
- (5) appeals of proposed desired future conditions.

4) Rule 36.325(a) is amended to read as follows:

- (a) Applicants filing applications subject to a contested case hearing may respond to the proposed action of the General Manager in the following manner:
 - (1) if the applicant agrees with the proposed action, and no other protests are filed against the application-affected person requests a contested case hearing, ~~and~~ the matter will be taken directly to the Board for final action as an uncontested matter;
 - (2) if the applicant disagrees with the proposed action, and no other protests are filed against the application-affected person requests a contested case hearing, the applicant may offer to settle the matter. If the matter is settled, the application may be taken directly to the Board for final action. If the matter is unable to be settled, the application may be taken directly to the Board for final action as a contested matter, although one not referred to contested case hearing. The applicant, General Manager, and other affected persons may present their respective positions to the Board and allow the Board to take final action at the Board meeting without a contested case hearing; or
 - (3) file a notice of request for contested case hearing.

5) Rule 3.28 is amended by amending subsection (c) and adding new subsection (f) to read as follows:

- (c) Potential parties ~~Affected persons~~ may submit a written response to the hearing request no later than 10 days before a Board meeting at which the Board will evaluate that request. Responses must be filed with the District and served on the General Manager, the applicant and any other persons who timely filed a hearing request in connection with that matter.

(f) The presiding officer at the hearing shall determine how to apportion among the parties the costs related to:

- (1) a contract for the services of a presiding officer; and
- (2) the preparation of the official hearing record.

6) Rule 3.6(a) and (e) are amended to read as follows:

(a) A well owner or well operator of an existing, non-exempt well that was completed and operational prior to December 31, ~~2014~~ 2012 will be granted historic user status for the well.

(e) The District shall issue the following types of permits:

- (1) Drilling Permits;
- (2) Operating Permits; and
- (3) ~~Export Transportation~~ Permits.

7) Rule 3.11(b)(2) and (e)(3) are amended to read as follows:

(2) **Additional Requirements.** An application for ~~an export a transportation~~ permit shall include the following additional information:

* * *

(3) the export of groundwater that occurs as a result of the distribution of water within a single, aggregate system of a retail public ~~utility water system~~ that overlaps the District boundary.

8) Rule 3.15(a)(3) is amended to read as follows:

(3) ~~Export Transportation~~ Permits are effective for a term of three years if construction of a conveyance system has not been initiated prior to the issuance of the permit; or 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit. A permit issued for a 3-year permit term shall automatically be extended to 30 years if construction of a conveyance system is begun before the expiration of the initial 3-year term.

9) Rule 3.18 is amended to read as follows:

§3.18 PERMIT RENEWAL

(a) Well owners or well operators shall make application to renew permits required under these Rules prior to the expiration of the current permit term. A permit expires on the date the permit term ends unless the permit is renewed prior to that date. The Board may continue a permit while considering an application to renew that permit, ~~and an Operating Permit subject to automatic renewal under subsection (c) remains in effect until the final settlement or adjudication on the matter of the substantive violation.~~ **and an Operating Permit subject to automatic renewal under subsection (c) remains in effect until the final settlement or adjudication on the matter of the substantive violation.** An application to renew a permit must be filed on a form provided by the District. The well owner or well operator shall indicate on the renewal application form whether any changes to the well, well operations, purpose of use, or special conditions are requested.

(b) ~~Operating~~ Permit renewals ~~shall may~~ be approved by the General Manager without notice or hearing if ~~the amount of authorized withdrawal remains the same or decreases and the terms~~

~~and conditions of operation listed in the permit have not change. The General Manager may refer any application to renew a permit to the Board.~~

- ~~(1) the application is submitted in a timely manner and accompanied by any required fees in accordance with district rules; and~~
- ~~(2) the permit holder is not requesting a change related to the renewal that would require a permit amendment under district rules.~~

~~(c) The General Manager may not approve an Operating Permit renewal application if the applicant:~~

- ~~(1) is delinquent in paying a fee required by the district;~~
- ~~(2) is subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a final adjudication; or~~
- ~~(3) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule.~~

~~(ed) If the well owner or well operator seeks, as part of the renewal application, to increase the amount of authorized withdrawal, or otherwise change any of the permit terms or conditions that would require a permit amendment in the renewal application, the application will be scheduled for a hearing and consideration by the Board under Section 3.12. If the requested changes or amendments are denied, the permit shall be renewed under the original permit conditions as it existed before the permit amendment process, unless the district proposes an amendment under subsection (e). During consideration of the permit renewal process, the permit, as it existed before the permit amendment process, remains in effect until the later of:~~

- ~~(1) the conclusion of the permit amendment or renewal process, as applicable; or~~
- ~~(2) final settlement or adjudication on the matter of whether the change to the permit requires a permit amendment.~~

~~(de) The district may initiate an amendment to an Operating Permit, in connection with the renewal of a permit or otherwise, in accordance with these rules. If the district initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable. If aquifer conditions at or near the well or well field indicate excessive drawdown or subsidence, or if aquifer conditions indicate the need for groundwater withdrawal rate reduction, the Board may renew the permit at a lower authorized withdrawal amount or with additional special provisions either limiting the rate of withdrawal or requiring other adjustments to mitigate the impact of the groundwater withdrawals. The Board may consider waivers signed by landowners affected by the aquifer drawdown in setting the special permit provisions.~~

10) Rule 3.46(b)(3) is amended to read as follows:

- (3) the export of groundwater that occurs as a result of the distribution of water within a single, aggregate system of a retail public ~~utility water system~~ that overlaps the District boundary.

11) Rule 6.11 is amended by amending subsections (c) and (d) to read as follows:

(c) ~~When aquifer levels drop below the desired future condition level the~~ Board shall review the considerations in subsection (b) ~~the~~ prior to renewing permits under Section 3.18. If the Board determines aquifer conditions require ~~permit~~ adjustments to achieve the desired future

condition, ~~the permits the board~~ will establish production limits for all wells required to be metered be renewed according to the following schedule:

(1) if aquifer levels are more than one foot but less than two feet below the goal level annual production :

~~(A) for historic users the portion of the permit that represents historic use~~ shall be reduced by 5 percent from the greater of the historic use amount authorized by the permit or the average annual use prior permitted amount;

~~(B) for interim historic users, the portion of the permit that represents historic use shall be reduced by 10 percent from the prior permitted amount; and~~

~~(C) for a regular permit or any portion of a permit over and above the amount granted historic use, shall be reduced 20 percent from the prior permitted amount;~~

(2) if aquifer levels are more than two feet but less than four feet below the goal level annual production :

~~(A) for historic users the portion of the permit that represents historic use~~ shall be reduced by 10 percent from the greater of the historic use amount authorized by the permit or the average annual use prior permitted amount;

~~(B) for interim historic users, the portion of the permit that represents historic use shall be reduced by 20 percent from the prior permitted amount; and~~

~~(C) for a regular permit or any portion of a permit over and above the amount granted historic use, shall be reduced 40 percent from the prior permitted amount;~~

(3) if aquifer levels are more than four feet below the goal level annual production :

~~(A) for historic users the portion of the permit that represents historic use~~ shall be reduced by 20 percent from the greater of the historic use amount authorized by the permit or the average annual use prior permitted amount.;

~~(B) for interim historic users, the portion of the permit that represents historic use shall be reduced by 40 percent from the prior permitted amount; and~~

~~(C) for a regular permit or any portion of a permit over and above the amount granted historic use, shall be reduced 80 percent from the prior permitted amount.~~

(d) Under no circumstances will production be limited to an amount less than the Minimum MAG-derived amount for that property. Production limits Permit reductions implemented under subsection (c) may be restored when ~~permits are next renewed if~~ the Board determines aquifer conditions warrant allowing restoration. Production limits Permits will be restored to the ~~maximum~~ level the Board determines will achieve the desired future condition.

12) Rule 7.8(b) is amended to read as follows:

(b) The spacing ~~and screening~~ requirements of Subsection (a) do not apply to a replacement well that is drilled within 100 feet of the original well, or a water well authorized under a permit

issued by the Railroad Commission of Texas under Natural Resources Code Chapter 134 if the well is exempt under Section 3.5(a)(3).

REPEALERS

Rule 2.2 (47) (Definition of Interim Historic User) is repealed.

Rule 3.7 is repealed.