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Texas Commission on Environmental Quality
Cari-Michel La Caille, Director – Water Division
Kim Nygren, Deputy Director - Water Availability Division
Abiy Berehe, P.G., Groundwater Planning and Assessment Team
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*Via email to: Cari-Michel.LaCaille@tceq.texas.gov, Kim.Nygren@tceq.texas.gov,
Abiy.Berehe@tceq.texas.gov*

RE: Implementation of SB 2440 and Groundwater Availability Certification Rulemaking

Dear Ms. La Caille, Ms. Nygren, and Mr. Berehe:

I am writing on behalf of the Texas Alliance of Groundwater Districts (TAGD) to provide the enclosed suggested revisions to the rules contained in 30 Texas Administrative Code (TAC) 230. TAGD is a membership organization representing 91 of the 98 groundwater conservation districts (GCDs) and 44 associate members from the professional groundwater community. TAGD works to promote good groundwater management based on sound science and local conditions.

As you know, SB 2440, authored by Senator Charles Perry, was enacted during the 88th legislative session and took effect on January 1, 2024. This bill mandates that counties and municipalities require groundwater availability certifications (GACs) in the platting of certain subdivisions utilizing groundwater as the source of water supply, with limited exceptions. Previously, counties and municipalities had the option to require these GACs. The process and content for groundwater availability certifications is set forth in 30 TAC 230, and TCEQ must update these rules to reflect the new requirement and limited exceptions contained in SB 2440.

TAGD and its membership have a keen interest in ensuring that groundwater availability certifications are conducted in a thorough, consistent and accurate manner. As authorized by Chapter 36 of the Texas Water Code, GCDs are responsible for regulating the production of groundwater and well spacing, among other things. As such, districts frequently work with individuals who have purchased a home that relies on groundwater only to discover that there is not, in fact, sufficient groundwater available at a reasonably accessible well depth or that a well cannot be constructed at the proposed density without violating a district's spacing rules and causing well-to-well interference. Unfortunately, situations like these are only increasing in frequency as growth in Texas continues at a rapid pace and continues to move further out of urban areas with municipal water supplies. SB 2440 aims to avoid precisely these types of outcomes. While districts stand ready to engage with and serve as a resource to counties and municipalities



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during the groundwater availability certification process, GCDs do not have a formal role in this process under current law and regulation.

The rules contained in 30 TAC 230 were originally adopted in 2001 and have undergone only minor modifications in 2009. Experiences of counties and municipalities that have required GACs – often in coordination with their local groundwater conservation district – highlight needed improvements to the both the GAC process and content that would increase the effectiveness of this tool. TAGD has worked with its membership to draft suggested revisions to this effect. Key goals of the suggested revisions include:

- implementing SB 2440 and the limited exceptions contained in that bill;
- providing additional guidance on conducting pump tests and evaluating results;
- encouraging coordination with the local groundwater conservation district throughout the process and ensuring compliance with GCD rules;
- improving the quality of the data and reports generated, including additional critical water quality information and information on how the proposed water supply can be provided under GCD rules;
- providing consistency in the format that data is provided to allow for integration and comparison of data; and
- streamlining the process to ensure that all data is, in fact, submitted to the county, the Texas Water Development Board and the local GCD (which is required but frequently not complied with under the current rules).

In addition, TCEQ may want to consider removing the form from the text of the rules. This would allow TCEQ to more easily make minor updates to the form without requiring a rulemaking. Finally, creation of an online system to submit both certifications and underlying/supporting data would improve user experience, ensure complete data transmission, and ease access to the data.

Thank you for your consideration of the enclosed suggestion revisions to 30 TAC 230. TAGD looks forward to working with TCEQ throughout the rulemaking process to implement SB 2440 and improve these rules. In the meantime, please do not hesitate to contact me if you have any questions or would like to discuss this matter.

Sincerely,

Leah Martinsson
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