

Shauna Sledge

Ms. Ricco,

The Prairielands Groundwater Conservation District has asked me, as its legal counsel, to submit written comments on its behalf on the proposed amendments to 30 Texas Administrative Code Chapter 230, in the above-referenced rule project.

Thank you,
Shauna F. Sledge
Attorney at Law

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June 20, 2024

COMMENTS SUBMITTED VIA TCEQ
ECOMMENTS SYSTEM

Ms. Gwen Ricco
Texas Commission on Environmental Quality
MC 205
Office of Legal Services
P.O. Box 13087
Austin, TX 78711-3087

RE: Comments on Proposed Amendments to Chapter 230, Title 30, Texas
Administrative Code, Rule Project No. 2024-006-230-OW

Dear Ms. Ricco:

The Prairielands Groundwater Conservation District (“the District”) has asked me, as its legal counsel, to submit written comments on its behalf on the proposed amendments to 30 Texas Administrative Code Chapter 230 in the above-referenced rule project. The purpose of this rulemaking is to implement Senate Bill 2440 (“SB 2440”) from the 88th Regular Session of the Texas Legislature, regarding Groundwater Availability Certifications (“GACs”). The District appreciates the opportunity to be part of this rulemaking process by submitting comments to the Texas Commission on Environmental Quality (“TCEQ”).

The District is comprised of a four-county region adjacent to and south of the Dallas-Fort Worth Metroplex on the Interstate 35 growth corridor and which includes Ellis, Hill, Johnson, and Somervell counties. The District is statutorily charged with regulating and managing the groundwater resources within its jurisdiction. As population growth continues to rise, the proposed amendments are of great interest to the District to ensure proper consideration and certification of groundwater availability as a requirement of the platting process for certain subdivisions that rely on groundwater as a source of water supply.

The District often works with property owners who have purchased homes in a subdivision that relies on groundwater only to later discover groundwater supplies are insufficient, either at a specific location or at a certain depth, or that a well cannot be constructed without violating the District’s well spacing or minimum tract size requirements. Thus, while the passage of SB 2440 is a step in the right direction to address this ongoing problem, it will be important for municipalities and counties to work closely with their local groundwater conservation district

(“GCD”) to confirm that, not only are proper methodologies being followed in the preparation of GACs, but also that the proposed subdivision is eligible under the GCD’s rules for the drilling and operation of water wells at locations and in quantities that will support the proposed project in the plat application.

With respect to TCEQ’s proposed amendments to Chapter 230 to implement SB 2440, the District is pleased to see that the previous forms imbedded in the rules have been removed and replaced with updated forms available on TCEQ’s website. The new Certification of Groundwater Availability for Platting Form created by TCEQ is much more user friendly and easily accessible. The District also strongly supports the separate, updated Plat Attesting Form created by TCEQ, in which the plat applicant must attest to sending the applicable GCD(s) the completed Certification of Groundwater Availability for Platting Form as well as all supporting information, estimates, data, calculation, determinations, and statements. Moreover, these changes will allow TCEQ to make minor updates to the forms in the future, as necessary, without requiring a rulemaking. The District greatly appreciates these proposed changes to the formatting of the rules and the development of the new Certification of Groundwater Availability for Platting Form and Plat Attesting Form.

The proposed amendments in Chapter 230 should include the waiver language in SB 2440. SB 2440 mandates that counties and municipalities require GACs in the platting of certain subdivisions utilizing groundwater as the source of water supply, with certain limited exceptions – referred to in the legislation as a “waiver.” While the current proposed amendments to Chapter 230 make a number of changes to account for the fact that GACs are now mandatory, the proposed amendments fail both to set forth the mandate from SB 2440 in plain language, and to include the limited instances a waiver to the GAC requirements may be authorized. As many of the platting authorities and affected professional geoscientists and engineers will be looking only at TCEQ’s rules in implementing the provisions of SB 2440, it would be better to simply regurgitate the new mandate from the statute in the rules than to omit it and risk that those platting authorities and professionals are not aware of, or aware of where to find, the mandates related to GACs in the state statutes.

Similarly, according to SB 2440, a municipal or county authority may waive the mandated GAC requirement if:

- (1) based on the credible evidence of groundwater availability in the vicinity of the proposed subdivision, the municipality [or county] authority determines that sufficient groundwater is available and will continue to be available to the subdivided tract; and
- (2) either:
 - A. the entire tract proposed to be subdivided by the plat will be supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer; or
 - B. the proposed subdivision divides the tract into not more than 10 parts.

See LOCAL GOVERNMENT CODE §§ 212.0101(a-1), 232.0032(a-1)

The statute further provides that a person subject to a waiver authorized by Subsection (a-1)(2)(B) regarding a subdivided tract of land must comply with the GAC requirements if:

- (1) the tract is subsequently divided in a manner that results in the original tract being subdivided into more than 10 parts; or
- (2) the municipal [or county] authority determines that the proposed subdivision is part of a series of proposed subdivisions from an original tract that collectively includes more than 10 parts.

See LOCAL GOVERNMENT CODE §§ 212.0101(a-2), 232.0032(a-2)

During the regular session of the 88th Texas Legislature, there was much discussion as to what set of circumstances should allow for a waiver of the GAC requirement. In an effort to gain consensus on SB 2440, certain elements of the bill were left open-ended, including what qualifies as “credible evidence” to determine sufficient groundwater availability and the means of defining the bounds of the Gulf Coast and Carrizo-Wilcox aquifer, which may enable a plat applicant to be exempt from the GAC requirement. The expectation was that such outstanding issues would be addressed by the TCEQ in this rulemaking.

The proposed amendments to Chapter 230 should establish a minimum statewide standard for “credible evidence” of groundwater availability that would allow for a waiver under the statute. Additionally, and perhaps most importantly, it is necessary for TCEQ’s rules to clarify or define what qualifies as “credible evidence” to allow for a waiver of the GAC requirement. It is important for there to be consistency statewide on this issue and for TCEQ to establish a statewide minimum standard for what qualifies as credible evidence. Without a statewide minimum standard for “credible evidence,” we will likely end up in instances where counties and municipalities are lobbied by plat applicants to bypass costly GAC requirements and provide insufficient evidence of groundwater availability, leaving homeowners without adequate groundwater supplies, which is exactly the problem the passage of SB 2440 sought to solve and prevent.

“Credible evidence” of groundwater availability should be defined in TCEQ’s rules and require, at a minimum, a pump test, conducted on the tract proposed to be subdivided, utilizing a well that is no more than 6 months old. Similar to the parameters established in Rule 230.8 for conducting aquifer testing, the rules should establish certain parameters for conducting pump tests, the results of which may be considered as “credible evidence” of groundwater availability. These parameters should, at a minimum, include measuring and reporting initial water levels prior to pumping and measuring and reporting flow rate, drawdown, and recovery conditions at 5 minute increments (or less) for the entirety of the pump test and until water levels have recovered to at least 95% of static water levels.

The proposed amendments to Chapter 230 should clarify how to determine the boundaries of the Gulf Coast and Carrizo-Wilcox aquifers under the waiver qualifications in the statute. Finally, the District recommends that TCEQ’s rules clarify that a waiver for subdivisions supplied with groundwater from the Gulf Coast Aquifer or Carrizo-Wilcox Aquifer

shall be determined based on the boundaries of those aquifers as delineated by the Texas Water Development Board.

To account for these comments, please consider the District's proposed amendments to the rules below:

§ 230.1 Applicability [~~Applicability~~]

(a-1) Waiver. A municipal or county authority responsible for approving plats may waive the groundwater availability certification requirement prescribed by Subsection (a) and this chapter if:

(1) based on credible evidence, which shall include, at a minimum, the results of pump test, the municipal or county authority determines that sufficient groundwater is available and will continue to be available to the subdivision tract of land; and

(2) either:

(A) the entire tract proposed to be subdivided by the plat will be supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer as those aquifers are delineated by the Texas Water Development Board; or

(B) the proposed subdivision divides the tract into not more than 10 parts.

(a-2) Exceptions to Waiver. A person subject to a waiver authorized by Subsection (a-1)(2)(B) regarding a subdivided tract of land must comply with the requirements of Subsection (a) and this chapter if:

(1) the tract is subsequently divided in a manner that results in the original tract being subdivided into more than 10 parts; or

(2) the municipal or county authority determines that the proposed subdivision is part of a series of proposed subdivision from an original tract that collectively includes more than 10 parts.

§ 230.2 *Definitions*

(10) Pump test – a test in which a well, drilled within 6 months of the date of the plat application on the tract proposed to be subdivided, is pumped at a controlled rate to assess hydraulic properties of an aquifer system, the results of which shall include water-levels prior to pumping and flow rate, drawdown, and recovery conditions at 5 minute increments (or less) for the entirety of the pump test and until water-levels have recovered to at least 95% of static water-levels.

Thank you for this opportunity to provide comments on the proposed rule amendments. Please contact me if you have any questions or concerns regarding the proposed rule amendments or the comments provided herein.

Comments on Proposed Amendments to Chapter 230, Title 30, Texas Administrative Code,
Rule Project No. 2024-006-230-OW

Respectfully,

A handwritten signature in black ink, appearing to read "Sledge". The signature is fluid and cursive, with the first letter being a large, stylized capital 'S'.

Shauna F. Sledge
Attorney at Law

cc: Kathy Turner Jones, General Manager
Prairielands Groundwater Conservation District