



P. O. BOX 1749
1859 W. HWY 199
SPRINGTOWN, TX 76082

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June 21, 2024

SUBMITTED VIA TCEQ ECOMMENTS SYSTEM

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

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

Dear Ms. Ricco,

I am writing on behalf of the Upper Trinity Groundwater Conservation District (District) to provide suggested revisions to the rules contained in 30 Texas Administrative Code (TAC) Chapter 230, specifically related to the question posed in the Notice of whether to include a definition for "credible evidence," as it relates to the waiver requirements defined by Local Government Code §§212.0101(a-1)(1) and 232.0032(a-1)(1), and what that definition would be.

The District is a groundwater conservation district and was created by the passage of Senate Bill 1983 by the 80th Texas Legislature under the authority of Section 59, Article XVI, of the Texas Constitution, and in accordance with Chapter 36, by the Act of May 25, 2007, 80th Leg., R.S., Ch. 1343, 2007 Tex. Gen. Laws 4583, codified at TEX. SPEC. DIST. LOC. LAWS CODE ANN. Ch. 8830, as amended.

The Mission of the District is to develop rules to provide protection to existing wells, prevent waste, promote conservation, provide a framework that will allow availability and accessibility of groundwater for future generations, protect the quality of the groundwater in the recharge zone of the aquifer, insure that the residents of Montague, Wise, Parker, and Hood counties maintain local control over their groundwater, and operate the District in a fair and equitable manner for all residents of the District. Additionally, the District 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 regular session of the 88th Texas Legislature, 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

(817) 523-5200 PHONE

(817) 523-7687 FAX



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in 30 TAC Chapter 230, and TCEQ must update these rules to reflect the new requirement and limited exceptions contained in SB 2440.

The District has a keen interest in ensuring that groundwater availability certifications are conducted in a thorough, consistent and accurate manner. Over the last 15 years, growth in our District, especially in Parker and Wise counties, has seen an overwhelming number of developments that depend on individual private water wells located on each lot. Furthermore, more private domestic water wells have been drilled in Parker County during that time than in any other county in Texas. Additionally, our District is located on the outcrop of the Trinity Aquifer, and as you move west across the District the aquifer becomes thinner and less productive, which has led to the platting of properties without GACs where sufficient water did not exist below the property.

Beginning in the fall of 2023, District staff began visiting with the platting authorities within the boundaries of the District. Since that time, the District has entered into interlocal agreements with three of our four counties (Montague, Parker, and Wise) and multiple cities. Because of our unique situation, the District has five staff members that are Professional Geoscientists, licensed through the Texas Board of Professional Geoscientists, these interlocal agreements include not only that the District review the GACs for compliance with 30 TAC Ch. 230, but staff also validates all of the estimates, calculations, projections, and recommendations included in the GAC. Additionally, the District creates a thorough report, which is submitted to the platting authority, that provides a detailed review of the groundwater resources in the area and additional modeling to estimate potential impacts that the proposes subdivision my cause on local groundwater resources.

As part of these interlocal agreements, District staff also provides guidance to both the platting authorities and the plat applicants and their engineers/geoscientists. One of the primary issues that the District has encountered is the ability of platting authorities to waive the requirement for a GAC, if the development is less than 10 lots, based on “credible evidence”. Because the law and any existing rules are silent with regard to “credible evidence,” the platting authorities in the District are hesitant to provide any waivers. This has led to much frustration with non-developer landowners within the District. For example, based on the law, if a landowner had a 10-acre tract of land and desired to subdivide the property to sell one or two 2-acre tracts from the original 10-acre tract, they would have to complete a full GAC, which could cost \$30,000 or more.

Although the District believes that information should be provided to ensure that sufficient water is available for all new subdivisions of land, for subdivisions of land similar to the example mentioned above, the District feels that something less than the requirements set forth in Ch. 230 for a GAC would suffice. To that end, District staff has been working to prepare recommendations for the type of data that could be used as “credible evidence” and would like the opportunity to work with TCEQ staff in developing criteria that would



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provide potential landowners with information that would ensure that the property they purchase has sufficient water below the property to support domestic activities while not creating an undue economic burden on the plat applicant. For example, rather than a full aquifer test and projections set forth in Ch. 230, perhaps a single-well pump test, measuring flow rate, drawdown, and recovery throughout the entirety of the test could provide evidence of the availability of groundwater for a small number of homes.

District staff has visited with TCEQ staff and would like the opportunity to discuss options in greater detail after the Hearing. To many areas of the state, this is an important decision and allowing for stakeholders to work together to identify what could be submitted as “credible evidence” would lead to the best long-term solution that would benefit landowners.

In addition, the District is happy to see that the TCEQ is considering the removal of 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.

The District also requests that TCEQ correct a statement in the “Background and Summary of the Factual Basis for the Proposed Rules” section of the rulemaking, in which TCEQ stated in pertinent part that the GAC requirements apply to proposed subdivisions of land “when the groundwater beneath the land serves as the **primary** (emphasis added) source of water supply.” There is no requirement in the relevant statutes that groundwater be the “primary” source of water supply. Subdivisions of land may have multiple sources of water supply, and if groundwater from beneath the land is one of them, the provisions of SB 2440 should apply.

Thank you for your consideration of the enclosed suggestion revisions to 30 TAC 230. The District 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.

These comments have also been uploaded to <https://tceq.commentinput.com/comment/search>

Thank you,

A handwritten signature in blue ink, appearing to read "Doug Shaw".

Doug Shaw
General Manager