

## MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

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February 4, 2025

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

RE: Public Comments of Middle Pecos Groundwater Conservation District regarding the Leaking Water Wells Grant Program – Rule Project Number 2025-008-353-OW; Docket No. 2024-1676-RUL.

Ms. Ricco:

Please accept these formal Public Comments regarding the proposed creation of the new 30 Texas Administrative Code (“TAC”), Chapter 353 implementing the Leaking Water Wells Grant Program, submitted on behalf of the Middle Pecos Groundwater Conservation District (the “District”). The District appreciates Commission staff’s work and preparation of these draft rules and the opportunity to provide oral and written comments.

The District is charged by Section 59, Article XVI of the Texas Constitution and Chapter 36 of the Texas Water Code to conserve, manage, and protect the groundwater resources in Pecos County, Texas. The proposed rules advance the District’s mission and House Bill 4256’s intent to ensure Pecos County groundwater is protected. The District offers these comments to achieve clarity and to ascertain expectations with respect to the grant process envisioned by the proposed rules.

The District offers the following recommendations to and comments on the Commission’s proposed rules under 30 TAC Chapter 353:

- 30 TAC § 353.2 (Definitions): The District supports adding a clear and specific definition of “leaking water well” to ensure that wells originally drilled for oil and gas purposes are eligible for the Leaking Water Well Grant Program (“Program”) if water is present in the wellbore or at the well head, such that one can reasonably conclude that water is leaking from or into the wellbore. This would ensure that wells colloquially known as “P-13” wells or wells for which no known records are available—but which meet the definition—are eligible for the Program’s grant funding.
- 30 TAC § 353.5 (Restrictions on Use of the Grant): The District supports clarifying what constitutes “administrative costs” under § 353.5(a). The District anticipates incurring expenses related to identifying and assessing project eligibility and commencement, including site evaluation and preparation, downhole investigation to determine project eligibility and plugging cost estimates, preliminary engineering, hydrogeological

assessments, and other related expenses associated with preliminary fieldwork at the project site. These activities are necessary for the plugging process. As such, the District requests that the Commission provide clear guidance as to whether these necessary pre-plugging expenses are included in “the cost of eligible projects” or are otherwise considered non-recoverable “administrative costs” under the propose rules. This would assist the District’s budgeting efforts in future fiscal years, and would provide more certainty with respect to recoverable costs for eligible projects.

- General Comments: The District encourages the Commission to include more clarity on the grantmaking process. For instance, will grant funds be issued prior to the commencement of an eligible project, or alternatively, will grant funds be reimbursed to the District after completion of an eligible project, or after certain thresholds are met under the grant terms and conditions. The costs for plugging leaking water wells can vary greatly and somewhat unpredictably. The District supports a grant distribution process that relieves the District of the considerable costs associated with permanently plugging eligible wells, and which does not burden the District with carrying the costs of eligible projects for a prolonged period of time—if at all.

The District understands that the Commission will publish proposed grant terms and conditions, which may address some of the aforementioned comments. The District looks forward to reviewing those proposed grant terms and conditions, and offering formal comments on those as well.

The District’s proposed rule revisions to 30 TAC Chapter 353 are attached. Thank you for your diligence in this rulemaking effort, and please do not hesitate to contact me should you have any questions.

Sincerely,



Ty Edwards  
General Manager  
Middle Pecos GCD

Cc:  
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**Middle Pecos Groundwater Conservation District's Proposed Revisions to  
TCEQ's Proposed 30 TAC, Ch. 353 Rules**

**§353.2 Definitions.**

When used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Approved well plugger--is a Railroad Commission of Texas approved cementer as defined in 16 TAC §3.14.

(2) District--means a groundwater conservation district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, which has the authority to regulate the spacing of water wells, the production of water wells, or both.

**(3) Leaking water well—means a well leaking water, or a mix of water and other substances such as oil, gas, or minerals and/or substances, either at the surface or subsurface portions of the wellbore, irrespective of the purpose for which the well was originally drilled.**

~~(3)~~ (4) Leaking Water Wells Fund (Fund)--means the leaking water wells fund created under TWC, §28.103 that provides funds to certain Districts to plug leaking water wells.

~~(4)~~ (5) Leaking Water Wells Grant Program (Program)--means the Texas Commission on Environmental Quality (commission or TCEQ) program established under TWC, §28.104 that provides funds to certain Districts to plug leaking water wells.

**§353.5. Restriction on Use of the Grant.**

(a) A District receiving a grant provided under the Program may use the grant only to pay the cost of eligible projects. A District may not use the grant to pay administrative costs associated with a project. **Administrative costs include costs associated with preparing a grant application, but specifically do not include those costs associated with preliminary fieldwork required to develop overall project cost estimates. All costs associated with necessary preliminary fieldwork, which are first approved by the Commission, shall be recoverable costs under the Program.**

(b) When contracting or subcontracting for work on a project for which a grant is provided under the Program, a District shall engage in a bid process to select and hire a contractor or subcontractor.

(c) A contract for work on a project for which a grant is provided under the Program:

(1) must be awarded to a contractor or subcontractor selected from a list of approved well pluggers maintained by the Railroad Commission of Texas; and

(2) may be awarded to the contractor or subcontractor whose bid or proposal provides the best value for a District, as determined by the District based on the selection criteria published by the District in the bid solicitation documents.

(d) The amount of a grant provided under the Program that is not spent for the completion of a project must be returned to the commission for deposit to the credit of the Fund. TCEQ may choose to credit the funding to other projects under the grant.