
MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

**Proposed Amendments to Rules
(Set for Public Hearing and Public Comment on July 20, 2010)**

Proposed additions reflected in ***bold, italics***, and proposed deletions reflected in ~~strike-out~~.

Proposed Amendment #1

Objective: Clarify procedures for continuance of hearings and requesting reconsideration of decisions of the Board.

Proposed Rule: Move Rules 6.5 and 6.6 from Section 6 (Rulemaking Hearings) to Section 4 (General Procedural Provisions) by renumbering current Rule 6.5 to new Rule 4.8, and renumbering current Rule 6.6 to new Rule 4.9. The following sentence is proposed to be added to Rule 4.8: ***This rule does not apply to permit hearings governed by Rule 11.10.7.***

Rule 11.10.7 is proposed to be modified as follows:

11.10.7 Continuanace: The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding which shall include the date, hour, place and subject of the meeting will be provided by regular mail at a reasonable time to the parties, ~~persons who submitted a hearing registration form under this Section,~~ and any other person the Presiding Officer deems appropriate, but it is not necessary to post or publish a notice of the new setting, except as required by the Texas Open Meetings Act. ***This rule applies only to permit hearings.***

Proposed Amendment #2

Objective: Clarify how District would limit permitted withdrawals in the event of necessary cutbacks (to avoid impairing Desired Future Conditions). Edit rules in Section 10 (Production Limits) to clarify that the District designates the quantity of groundwater that may be produced on an annual basis in permits, and factors in permitted quantities in imposing production permit limits, and that proportional adjustment applies on an aquifer by aquifer basis, and Management Zone by Management Zone basis.

Proposed Rule: Section 10 is proposed to be modified as follows:

RULE 10.1 HISTORIC AND EXISTING USE PERMITS

The District shall designate the quantity of groundwater *that may be* produced on an annual basis in each Historic and Existing Use Permit issued by the District, and each permit shall be subject to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity that may be withdrawn shall not exceed the Maximum Historic and Existing Use demonstrated by the applicant, and determined by the Board, *except as may be reduced if the District imposes restrictions under these rules and/or permit conditions.*

RULE 10.2 PRODUCTION PERMITS

The District shall designate the quantity of groundwater *that may be* produced on an annual basis under a Production Permit pursuant to the conditions of the District Act, Chapter 36 of the Texas Water Code, and these rules, provided, however, that the quantity shall not exceed an amount demonstrated by the applicant and determined by the Board to be necessary for beneficial use during the permit term, except as may be reduced if the District imposes restrictions under *these rules* ~~this section~~.

RULE 10.3 AQUIFER-BASED PRODUCTION LIMITS

10.3.1 The District may limit the total *amount of authorized* annual production and maximum annual rate of groundwater withdrawal for any aquifer within the District as the District determines to be necessary based upon the best available hydrogeologic, geographic, and other relevant scientific data, including but not limited to noted changes in the water levels, water quality, groundwater withdrawals, annual recharge, the loss of stored water in the aquifer, or future planning projections developed by or accessible to the District or to achieve Desired Future Conditions. In accordance with the District Management Plan, the total amount of authorized; annual production and the authorized rate of production from each aquifer shall be limited to ensure that groundwater may be used on a sustainable basis from each aquifer. Notwithstanding this “sustainable basis” standard, any limits under these rules for a particular aquifer shall be based upon consideration of the applicable Managed Available Groundwater and Desired Future Conditions at such time as the Managed Available Groundwater and Desired Future Conditions are final and unappealable. The District may also develop, utilize, and/or adopt groundwater availability models in support of the District’s management of the groundwater within its jurisdiction. The District may establish a series of index or monitoring wells to aid in this determination.

10.3.2 Using the best available hydrogeologic, geographic, and other relevant scientific information, the District will continue to study and accumulate data on the various aquifers located within the boundaries of the District and their subdivisions, and may amend from time to time the limit on total *authorized* annual production or the authorized rate of production either throughout the District or for a particular aquifer or its subdivisions, based upon this data and

the District's water resource management goals set forth in the District Management Plan and as necessary to *avoid impairment of* ~~achieve~~ Desired Future Conditions.

- 10.3.3 The Board may set the allowable production of each permitted well. The Board has the right to modify a permit at any time if monitoring wells within the source aquifer show an unacceptable level of decline in water quality of the aquifer, or as may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence, or to *avoid impairment of* ~~achieve~~ Desired Future Conditions.
- 10.3.4 As determined by the District, if the total amount of production within an aquifer is less than or equal to the annual sustainable amount available for withdrawal or final and unappealable Managed Available Groundwater ~~or Desired Future Conditions~~, as applicable for a particular aquifer *or its subdivisions, annual* production amounts authorized under Historic and Existing Use and Production Permits may remain the same or be increased, as set forth under these rules.
- 10.3.5 As determined by the District, if the total amount of *authorized annual* production within an aquifer is greater than the ~~or final and unappealable Desired Future Conditions or~~ Managed Available Groundwater available for withdrawal, production amounts may be decreased proportionally among all permit holders producing from that aquifer, with any necessary reductions being applied first to Production Permits and, subsequently, if production is still greater than availability after reducing Production Permits in their entirety, to Historic and Existing Use Permits, as specifically set forth under Rule 10.4.
- 10.3.6 Upon adoption of Desired Future Conditions and setting of the Managed Available Groundwater numbers for any aquifer *or its subdivisions* in the District, the District shall limit the total amount of authorized, annual production from each such aquifer in the District to ensure that groundwater production does not exceed the Managed Available Groundwater for each *such* aquifer *or its subdivision* in the District. If the total amount of production within an aquifer *or its subdivision, as applicable*, is less than the Managed Available Groundwater for the aquifer, production amounts authorized under Historic and Existing Use and Production Permits may remain the same or be increased, as set forth under these rules. As determined by the District, if the total amount of production within an aquifer exceeds the Managed Available Groundwater set for an aquifer, production amounts may be decreased proportionally among all permit holders producing from that aquifer. Any necessary reductions will first be applied to Production Permits, and, subsequently, if production still exceeds the Managed Available Groundwater set for an aquifer after reducing Production Permits in their entirety, to Historic and Existing Use Permits, as set forth under Rule 10.4.

RULE 10.4 PROPORTIONAL ADJUSTMENT

- 10.4.1 The Board, by resolution, may establish proportional adjustment reductions to alter the amount of production allowed if reductions are required under these rules. *These reductions may be imposed on an aquifer-by-aquifer basis and/or Management Zone-by-Management Zone basis, if applicable.*

* * *

Proposed Amendment #3

Objective: Incorporate Management Zone boundaries into rules (Section 10.5)

Proposed Rule: Delineation of Management Zone boundaries reflected by the coordinates below. These coordinates are proposed to be included in the rules.

Proposed Amendment #4

Objective: Consider adjusting threshold requirement for permit applicants having to prepare hydrogeological report.

Proposed Rule: Consider amending threshold requirements of 1,000 acre feet and 250 acre feet in Rule 11.9.2(f) as follows:

A hydrogeological report shall be attached to applications meeting the following conditions:

- (1) Requests to operate a nonexempt well *or wells* with an annual maximum permitted use of at least **1,000 [or different quantity]** acre feet; and
- (2) Requests to amend and increase by at least **250 [or different quantity]** acre feet the annual maximum permitted use of a Production Permit *from one or more wells*.

Proposed Amendment #5

Objective: Add to authority of Presiding Officer to set hearing procedure by adding protocols set forth in Texas Water Code § 36.418 and clarify that Presiding Officer's makes decision on allowing written testimony.

Proposed Rule: Rule 11.10.3 is proposed to be amended as follows:

11.10.3 Authority of Presiding Officer: The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular hearing. The Presiding Officer has the authority to:

- (a) set hearing dates, other than the initial hearing date for permit matters;
- (b) convene the hearing at the time and place specified in the notice for public hearing;
- (c) rule on motions;

- (d) ~~permit the receipt of and rule and~~ on the admissibility of evidence *consistent with Subchapter D, Chapter 2001, Government Code*;
- (e) establish the order for presentation of evidence;
- (f) administer oaths to all persons presenting testimony;
- (g) examine *and allow cross-examination of* witnesses;
- (h) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (i) conduct public hearings in an orderly manner in accordance with these rules;
- (j) recess any hearing from time to time and place to place;
- (k) *issue subpoenas, require depositions, or order other discovery consistent with Subchapter D, Chapter 2001, Government Code*; and
- (l) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.

Rule 11.10.4(f) is proposed to be amended as follows:

Written testimony: When *the Presiding Officer determines that* a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, *the Presiding Officer may allow* testimony ~~may to~~ be received in written form, *which testimony shall* ~~but may~~ be subject to cross-examination. *If the Presiding Officer allows written testimony,* ~~the~~ written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally.

Proposed Amendment #6

Objective: Adopt statutory procedure that a Hearing Report is only required when there is not a quorum of the Board during hearing. Reference Texas Water Code § 36.410.

Proposed Rule: Rule 11.10.9 is proposed to be amended as follows:

If the hearing was conducted by a quorum of the Board and if the Presiding Officer prepared a record of the hearing as provided by Rule 11.10.5(a), the Presiding Officer shall determine whether to prepare and submit a report to the Board under this rule. If a report is required, ~~the~~ Presiding Officer shall submit a report to the Board within 30 days after the date the hearing is finally concluded.- The report must include a summary of the subject matter of the hearing, the evidence or public comments received, and the Presiding Officer's recommendations for Board action on the subject matter of the hearing. A copy of the report shall be provided to the applicant, each designated party, and each person who provided a comment. Any person who receives a copy of the report may submit to the Board written exceptions to the hearing report. The Presiding Officer may direct the General Manager or another District representative to prepare the hearing report and recommendations required by this Rule.

Proposed Amendment #7

Objective: Clarify when Board may take action on permit applications and that Board must consider criteria in Texas Water Code §§ 36.113, 36.1131, and 36.122, and Board may immediately commence rehearing or schedule rehearing within 45 days after date request is granted.

Proposed Rule: Rules 11.10.10 and 11.10.11 are proposed to be amended as follows:

11.10.10 Board Action: ***On the final hearing date and no later than*** ~~Within~~ 60 calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing. In deciding whether or not to issue or amend a drilling permit, Production permit, or a Historic and Existing Use permit, and in setting the permitted volume and other terms of a permit, the Board must consider whether:

- (a) the application contains accurate information ***and conforms to the requirements prescribed by Chapter 36, Texas Water Code;***
- (b) the water well(s) complies with spacing and production limitations identified in these rules;
- (c) the proposed use of water does or does not unreasonably affect existing groundwater and surface water resources or existing permit holders;
- (d) the proposed use of water is dedicated to a beneficial use;
- (e) the proposed use of water is consistent with the District's water management plan;
- (f) the applicant agrees to avoid waste and achieve water conservation; and
- (g) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

The Board shall consider the relevant criteria and observe the relevant restrictions and may exercise the authority set forth in Section 36.113, 36.1131, and 36.122 of the Texas Water Code.

The District may not impose any restrictions on the production of groundwater for use outside of the District other than imposed upon production for in-district use, and shall be fair, impartial, and nondiscriminatory. The District may periodically review the amount of water that may be transferred out of District and may limit the amount.

11.10.11 Request for Rehearing and Appeal:

- (a) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions or a rehearing before the Board not later than the 20th day after the date of the Board's decision.

- (b) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments or each designated party, not later than the 35th day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the board may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.
- (c) A request for rehearing must be filed in the district office and must state clear and concise grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (d) If the Board grants a request for rehearing, the Board shall *immediately commence the rehearing or* schedule the rehearing not later than the 45th day after the date the request is granted.
- (e) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.
- (f) A decision by the board on a permit or permit amendment application is final:
 - (1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
 - (2) if a request for rehearing is filed on time, on the date:
 - (A) the board denies the request for rehearing; or
 - (B) the board renders a written decision after rehearing.
- (g) The applicant or party to a contested case hearing must exhaust all administrative remedies with the District prior to seeking judicial relief from a District decision on a permit or permit amendment application. An applicant or a party to a contested case hearing dissatisfied with the District's decision must file a written request for a rehearing or for written findings and conclusions within 20 days of the Board's decision in order to seek reconsideration of the District's decision. If an applicant or a party timely files a request for written findings and conclusions, the applicant or party must thereafter file a request for a rehearing within 20 days of the District's issuance of the written findings and conclusions. Once all administrative remedies are exhausted with the District, an applicant or a party to a contested case hearing must file suit in a court of competent jurisdiction to appeal the District's decision on a permit or permit amendment application within 60 days after the date the District's decision is final. An applicant or party to *a* contested case hearing is prohibited from filing suit to appeal a District's permitting decision if a request for rehearing was not timely filed.

Proposed Amendment #8

Objective: Include provisions for appointing a director if there is a vacancy on the Board.

Proposed Rule: The following language is proposed to be added to Rule 3.2:

If there is a vacancy on the Board, the remaining directors shall appoint a director to serve the remainder of the term. If at any time there are fewer than three qualified directors, the Pecos County Commissioners Court shall appoint the necessary number of persons to fill all the vacancies on the Board.