

Minutes of the Headwaters Groundwater Conservation District Public Hearing – Board of Directors – Rules Hearing on Wednesday January 17, 2024 at 1:30pm at the Guadalupe Basin Natural Resources Center – Boardroom 125 Lehmann Dr., Kerrville, Texas.

RECORDS MGMT.

PERMANENT DOCUMENT

1. Call to Order and Roll Call, Certification of Quorum in Compliance with Texas Open Meetings Law.

Directors Present: Tom Jones – Precinct 1, President
Chris Childs – Precinct 2, Vice-President
John Elliott – At-Large, Secretary/Treasurer
Kenneth Wilke – Precinct 3
Laurie Lowe – Precinct 4

Staff Present: Gene Williams, Monica Thibodeaux, Deneise Harris, Michael Mann
Other: Richard Mosty, HGCD Attorney

2. The Headwaters Groundwater Conservation District Board of Directors will receive public comments regarding the proposed changes to the HGCD District Rules titled “District Rules Revised January 17, 2024”. Comments may be submitted in writing until January 10, 2024, or orally at the hearing.

No written comments submitted by the January 10, 2024 deadline.

3. The proposed “District Rules Revision January 17, 2024” is posted on the District’s website at www.hgcd.org. A printed copy is available for viewing at the District’s office at 125 Lehmann Dr. Ste. 202, Kerrville, TX. Office hours are Monday thru Thursday 8:00 AM to 5:00 PM, and Friday 8:00 AM to 12:00 PM.

4. The Proposed Rule Changes are:

- a. HGCD Rule 3 to comply with HB No. 2443 enacted and required by the Legislature of the State of Texas Regular Session 88 (R) and Texas State Water 36. Section 1025, “Petition to Change Rules”.
- b. Revision of HGCD Rule 6, “Requirements for Administrative Completeness”.
- c. Revision of HGCD Rule 16, Drought Management.

Verbal Comments Received During the Meeting on January 17, 2024:

Madison Huerta – Lloyd Gosselink, Attorneys at Law (for City of Kerrville) Written comments regarding the District's Proposed Revisions to District Rule 6 and Rule 16:

January 17, 2024

City of Kerrville's Written Comments Regarding the District's Proposed Revisions to District Rule 6 and Rule 16

The City of Kerrville (the "City") submits these comments to the Headwaters Groundwater Conservation District's (the "District's") Board of Directors for consideration in the District's January 17, 2024, Rules Hearing. As a permit holder required to comply with the District's Drought Contingency Plan, the City will be directly affected by the proposed revisions to District Rule 6 and District Rule 16. Therefore, the City submits the following comments for consideration by the District's Board of Directors.

The City has been in communication with the District since August 2023 regarding its concern with the District's revised Drought Contingency Plan requirements. As provided in more detail below, the City takes notice that the District is proposing to revise two of its rules that have been crucial to these concerns.

(1) Concerns Regarding the Proposed Revision to District Rule 6

The District is proposing to strike language in Rule 6.B.6. that allows an applicant to submit their own drought contingency plan in lieu of an affidavit stating that the applicant will comply with the District's Drought Contingency Plan. By striking this language, and no longer allowing a permit applicant to rely on their own drought contingency plan, the District is attempting to apply a one-size-fits-all approach to drought management.

The City is supportive of Rule 6.B.6. as currently written because it allows an applicant to submit and to comply with a drought contingency plan that is tailored to its own water system. This is especially important for public water systems, like the City, that may rely on more than one source of water supply. Because the City's Conjunctive Use System relies on groundwater, surface water, aquifer-storage-and recovery water, and reuse water, the City must implement a drought contingency, or management, plan that accounts for all four sources of water supply. In contrast, the District's Drought Contingency Plan is focused solely on groundwater supply.

Further, Section 36.113 of the Texas Water Code encourages the submission of individual drought contingency plans by allowing groundwater conservation districts to require permit applicants to submit their own drought contingency plan. For these reasons, the City requests that the District not adopt the proposed revisions to Rule 6.B.6.

The City notes that this proposed revision comes after the City submitted its own drought contingency plan (its Drought Management Plan, as approved by the Texas Commission on Environmental Quality) with its permit renewal application and the City rejected it without cause and in contravention of the current District Rules, which do not allow the District to reject a permit holder's plan. Now, the District seeks to revise Rule 6.B.6 and repeal this option all together.

City of Kerrville's Written Comments Regarding Proposed Rules Revisions
Headwaters GCD Rulemaking Hearing, January 17, 2024
Page 2

(2) Concerns Regarding the Proposed Revision to District Rule 16

The District's proposed revision to District Rule 16 requires all permit holders to comply with and administer the District's Drought Stage levels when they are initiated by the District. The City understands and appreciates the need for permit holders to comply with the District's Drought Stage levels. However, as written, the proposed rules are unclear as to how a permit holder must "administer" the District's Drought Stage level.

If the proposed revision is intended to require permit holders to be in their own drought stage with the same numerical Drought Stage level as the District's current drought stage, then the City is opposed to this revision. Such number classifications are arbitrary. How a permit holder regulates its individual-customer users in a particular drought stage may not align with how the District regulates percentage cutbacks for its permit holders. For example, a permit holder may meet the District's percentage cutback requirements by imposing water use restrictions associated with their own Drought Stage even though the drought stage's numerical classification does not match the District's currently in effect drought stage numerical classification.

Section XI.A.2. of the District's Drought Contingency Plan acknowledges that the District's authority is "at the well and not at the individual connection" and it is the responsibility of the individual permit holder to implement drought restrictions. Accordingly, it should be the individual permit holder's responsibility to designate drought stages and impose water use restrictions that allow it to meet the District's current drought stage requirements. The City notes that the District recently amended its Drought Contingency Plan to require the City to move into and initiate drought stage notices that "correspond" with the District's current drought stage. Is the District's intent to abandon the requirement that the City's plan "correspond" with the District's plan, and to instead require that the City "comply with and administer" the District's plan?

If so, this proposed rule change indicates either (1) that the District recognizes the logic in the City's current position (that the City is effectively implementing its Drought Management Plan in a way that corresponds with the District's drought stages) or (2) that the District's current rules are not clear and do not achieve the District's apparent objective of requiring adherence to its own plan. Regardless, the City seeks further clarification from the District regarding its expectations for compliance with this proposed revision.

For these reasons, the City requests the District not adopt this new requirement. Instead, the City requests that the District continue to work with the City and other regional partners to develop drought contingency plan requirements that make sense for both the District and its individual permit holders and are practical in their effectiveness at improving aquifer levels.

Thank you for your consideration of the City's concerns regarding the proposed revisions to District Rule 6 and District Rule 16.

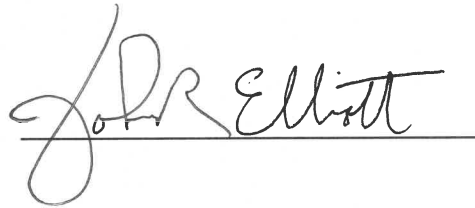
5. **Adjournment**

Director Jones asked for any additional comments or business. No Objections. Hearing Adjourned by Consensus.

APPROVED:

A handwritten signature in black ink, appearing to be 'Tom Jones', written over a horizontal line.

Tom Jones
Board of Directors, President

A handwritten signature in black ink, appearing to be 'John Elliott', written over a horizontal line.

John Elliott
Board of Directors, Secretary