

Final Summary Report on groundwater conservation district enforcement of substantial compliance with rules regarding the Carrizo-Wilcox Aquifer

1.0 Introduction and Background

This is a report to summarize information regarding district enforcement of substantial compliance with district rules regarding groundwater management over the Carrizo-Wilcox Aquifer. There are 21 groundwater conservation districts (GCDs) that have jurisdictional authority over the management and conservation of the Carrizo-Wilcox Aquifer.

Throughout the report, italicized text indicates language lifted directly from the surveys developed and utilized for this Carrizo-Wilcox Aquifer Study (the Study).

1.1 Online Survey

Task 2 of the Study directs the Bureau of Economic Geology (BEG) to:

“Evaluate each groundwater conservation district for enforcement of substantial compliance with its rules. Tabulate number of enforcement actions since September 1, 2007. This information will be obtained from the groundwater conservation districts (GCDs) using an online survey.”

The BEG developed two online surveys: one for GCDs with jurisdictional authority over the Carrizo-Wilcox Aquifer, and another for parties identified as having an interest in the management of the Carrizo-Wilcox Aquifer (Interested Parties Survey).

Of the 21 GCDs with jurisdictional authority over the management and conservation of the Carrizo-Wilcox Aquifer, 16 responded to the survey (Table 1). Thirteen of the 16 indicated that they did not pursue either formal or informal enforcement actions for violations of their rules. Three GCDs indicated that they had carried out formal enforcement action under their rules since September 1, 2007.

In the survey to the 21 GCDs with jurisdictional authority over the Carrizo-Wilcox Aquifer, the specific information request stated:

“#19. Provide a list of all substantial enforcement actions taken for violations of district rules since September 1, 2007. The district should include in this list the dates, nature of violations, citation to rules violated, enforcement actions taken by the district, resolution actions taken by violators, and dates of compliance.”

Table 1. The 21 GCDs with jurisdictional authority over the Carrizo-Wilcox Aquifer		
#	Groundwater Conservation Districts	Groundwater Conservation Districts That Responded to Survey
1	<i>Anderson County GCD</i>	<i>Bluebonnet GCD</i>
2	<i>Bee County GCD</i>	<i>Brazos Valley GCD</i>
3	<i>Bluebonnet GCD</i>	<i>Evergreen UWCD</i>

4	Brazos Valley GCD	Fayette County GCD
5	Evergreen UWCD	Gonzales County UWCD
6	Fayette County GCD	Lost Pines GCD
7	Gonzales County UWCD	Medina County GCD
8	Guadalupe County GCD	Mid-East Texas GCD
9	Live Oak UWCD	Neches & Trinity Valleys GCD
10	Lost Pines GCD	Panola County GCD
11	McMullen County GCD	Pineywoods GCD
12	Medina County GCD	Plum Creek GCD
13	Mid-East Texas GCD	Post Oak Savannah GCD
14	Neches & Trinity Valleys GCD	Rusk County GCD
15	Panola County GCD	Uvalde County UWCD
16	Pineywoods GCD	Wintergarden GCD
17	Plum Creek GCD	
18	Post Oak Savannah GCD	
19	Rusk County GCD	
20	Uvalde UWCD	
21	Wintergarden GCD	

The Interested Parties Survey contained a similar request:

“#5. Provide a list of any substantial enforcement actions, regardless of ultimate resolution, taken for violations of district rules since September 1, 2007. In as much detail as possible, include the dates, nature of violations, citation to rules violated, enforcement actions taken by the district, resolution actions taken by violators, and dates of compliance.”

A variety of stakeholders responded to the survey including 49 concerned citizens and landowners. Further, 11 other entities responded to the survey including: the Gonzales-Carrizo Management, Inc. landowners association, the Plum Creek Group, the City of Bryan, the San Antonio Water System, Aqua Water Supply Corporation, Bexar Metropolitan Water District, Environmental Stewardship, the Brazos River Authority, the Schertz-Seguin Local Government Corporation, the Canyon Regional Water Authority, and the Lavaca County GCD.

Only respondent information provided through these two surveys are included in this report.

1.2 GCD Rules and Regulations

GCDs are authorized through their enabling legislation to promulgate rules and regulations necessary to manage and conserve groundwater resources within their jurisdictional boundaries. Moreover, GCDs are provided the ability to construct policies and rules that may aid the GCD in meeting goals established in the GCD's management plan. GCDs are directed by statute to develop rules and regulations that will facilitate compliance with broader policy goals within their jurisdictional boundaries.

Enforcement actions that promote current and future compliance with GCD rules are considered positive enforcement actions. Alternatively, enforcement actions where violators simply choose to pay a fine and continue to be in non-compliance are considered by the Study team to be negative enforcement actions. That is, the enforcement approach is not a deterrent to future violations. The following section details positive and negative enforcement actions identified as part of the Study.

2.0 Survey responses from Carrizo-Wilcox GCDs

There are 21 confirmed GCDs with jurisdictional responsibilities for the Carrizo-Wilcox Aquifer. Of the 21 GCDs, 16 submitted at least partial responses to the GCD survey questionnaire developed for the Study. Six GCDs included a response to the survey request “*to provide a list of all substantial enforcement actions taken for violations of district rules since September 1, 2007.*” Three of the six GCD’s stated that they had carried out formal enforcement actions since September 1, 2007.

Pineywoods Groundwater Conservation District cited nine enforcement actions since September 2007. Eight of the nine violations were resolved through positive enforcement actions. Table 2 details violations including: failing to register a well, well contamination, and well construction without a permit. Fines and fees were assessed by the Pineywoods GCD and paid by the violators. The violations were resolved resulting in compliance with the rules.

Table 2: Violations from the Pineywoods Groundwater Conservation District				
Date	Violations	Rules Violated	Enforcement Actions	Violators Actions
7/10/07	Jeanine Butler Deteriorated Well	TOC§1901.255	Notice of Violation	Compliance, Well Capped
5/20/08	Melrose No Permit	Water Code§36.001 (8)(B)(E), 1.1(s), 2(a)(b)(d)	Notice of Violation	Compliance, Permit Fee Paid & Permits Renewed
1/8/09	ETTL Engineering No Permit	District Rule 3.1 TAC§76.700(1)	Notice of Violation	Compliance
1/22/09	Keithville, Drilling Without Permit	District Rule 3.1 TAC§76.700(1)	Notice of Violation	Compliance
1/30/09	Smithers, Drilling Without Permit	District Rule 3.1, 3.4, 5.1, 6(a)(b) TAC§76.700(1)	Notice of Violation, board action penalties	Compliance, Penalties Paid \$2,750.00
4/24/09	Cotton Thompson No Permit	District Rule 3.1Water Code §36.115(a), §36.119(a)	Notice of Violation	Compliance
8/5/09	Emmett Luman, Possible Contamination	District Rule 3.1, 3.4, 5.1, 6(a)(b) TAC§76.700(1)	Notice of Violation	Compliance
1/4/10	Jimmy Cordova, Rehabilitation of Well Without Registering	District Rule 3.1Water Code §36.115(a), §36.119(a)	Notice of Violation	Compliance
1/28/10	Kenneth Mechell Contamination	TAC§76.1000(a)(4)	Notice of Violation	On-Going

Neches & Trinity Valley Groundwater Conservation District reported two enforcement actions that had been ongoing or resolved since September 1, 2007. In both enforcement actions the Neches & Trinity GCD was able to bring the violators into compliance through the use of the courts and assessing fines. These actions may be considered positive enforcement actions as the violators did not simply elect to pay the fees and continue to violate district rules.

In the first enforcement, the Neches & Trinity Valley GCD reported that:

“Lakeshore Utilities Co. had drilled two wells without drilling permits and had not submitted operating permit applications or quarterly pumping report. They also had not paid any fees due to these violations. In February 2008 Lakeshore agreed to a settlement agreement to pay District legal fees and all back pumping fees. They had previously completed the drilling and operating permit applications and begun reporting and paying for current pumping. The settlement was reached out of court.”

In the second enforcement action, the Neches & Trinity Valley **GCD reported:**

“Eagles Bluff County Club (AKA Lake Palestine Associates, LP) was operating a well when the District began operating in 2003 and did not register the well, obtain an operating permit, nor submit quarterly pumping reports and pay the required fees. A settlement agreement was reached in December 2008 with Lake Palestine Associates, LP agreeing to pay back pumping fees and District legal expenses. They had previously submitted an operating permit application and began submitting quarterly pumping reports and paying current pumping fees.”

Post Oak Savannah Groundwater Conservation District made a total of six positive enforcement actions, for which a total of \$1,700 in fines was assessed from April 8, 2008 through February 9, 2010. The following Post Oak Savannah GCD rules were violated: one infraction of Rule 7.12, Drilling Permits; two infractions of Rule 7.13, Drilling or Altering a Well; two infractions of Rule 7.3, Records, Reports, and Drillers Logs; and one infraction of Rule 8.2, Application for Transport Permit. The fines assessed per violator ranged from \$100 to \$900. Table 2, below, is reproduced in its entirety from materials submitted by Post Oak Savannah GCD, and details the five various violators and six infractions of the rules. One violation was from the oil and gas sector and all other violators were from the commercial and residential water supply sector.

Table 3: Summary of Post Oak Savannah Groundwater Conservation District Enforcement Actions
1.) April 8, 2008 – Chucks Oilfield Service - Violation of District Rules – Producing groundwater from a non-exempt well without a permit from the District. Fine \$250.00
<i>The owners of Chuck’s Oil Field Service, upon notice from the District, immediately filed permit applications to become compliant with District Rules and paid all fees associated with the amounts of water which had been produced as well as application fees and the fine. Chuck’s also became compliant with all other Rules of the District as directed by the Board.</i>
RULE 7.12. DRILLING PERMITS.
1.) A landowner, well owner, or any other person acting on their behalf, must obtain a drilling permit before a new non-exempt well may be drilled, equipped, or completed. Such permit must also be obtained before re-drilling, replacing or altering a new or existing well that is not exempt under Rule 7.10(2)(a)(b) or

(c). Except as otherwise provided in these rules, wells that are to be used for domestic use, or for poultry or livestock purposes, and that are located on a tract of land that is less than ten acres in size, including wells that will be equipped so as not to be able to produce more than 25,000 gallons per day (GPD), must comply with the requirements set forth in these rules.

2.) April 15, 2009 – Siegert Water Wells – Violation of District Rules – Drilling exempt water wells for oil and gas use (Chapter 36.117, TWC) without filing appropriate reports to the District. Fine \$900.00

Upon notice from the District Siegert filed all necessary reports and became compliant with all Rules.

RULE 7.3. RECORDS, REPORTS, AND DRILLER'S LOGS. The driller of a well shall keep an accurate driller's log for each new well. The driller shall file a copy of each log and a report detailing the drilling, equipping, and completing of the new well with the District within 60 days after the date the new well is completed. The report shall include all information submitted by the driller to any agency of the State of Texas.

3.) July 14, 2009 – James Eugene Luce - Violation of District Rules – Drilling a well without a license and registration and failure to file reports to the District. Fine \$200.00

The District required Mr. Luce to file all necessary reports with the District and then to plug the well. The reports were filed and the well was duly plugged, and the fine was paid within 60 days.

RULE 7.13. DRILLING OR ALTERING A WELL. No person may drill a new non-exempt well without first obtaining a drilling permit from the District. A new well described in Rule 7.10(1) must obtain a drilling permit and be registered.

RULE 7.3. RECORDS, REPORTS, AND DRILLER'S LOGS. The driller of a well shall keep an accurate driller's log for each new well. The driller shall file a copy of each log and a report detailing the drilling, equipping, and completing of the new well with the District within 60 days after the date the new well is completed. The report shall include all information submitted by the driller to any agency of the State of Texas.

4.) August 6, 2009 – Brien Water Wells – Violation of District Rules – installing pump in existing well without well owner obtaining a permit – Fine \$100.00

Brien Water Wells, after putting a pump in an existing water well, prior to property owner obtaining a permit, filed all necessary reports with the District and then assisted the District in obtaining compliance from the property owner to permit the well. The fine was paid and compliance achieved within 30 days.

RULE 7.13. DRILLING OR ALTERING A WELL. No person may increase the production rate or the size of a non-exempt well or well pump to exceed the production rate, well or well pump size authorized in the permit, and no person may increase the production rate or size of a well or well pump of a well that is exempt under Rule 7.10(1)(a) or (b), or Rule 7.10(2)(a) to increase the production capacity of the well to more than 25,000 GPD, without first applying for and obtaining a permit from the District.

5.) February 9, 2010 – Blue Water Systems – Violation of Permit – Fine \$250.00

Upon notice from the District that Blue Water Systems (BWS) was not compliant with the Rules and terms of their permit, BWS forwarded to the District the necessary documents and amended their contracts with their customers to become compliant with the Rules and requirements and paid the fine within 60 days.

RULE 8.2. APPLICATION FOR TRANSPORT PERMIT. If the water is to be resold to others, provide a description of the applicant's service area, metering, leak detection and repair program for its water storage, delivery and distribution system, drought or emergency water management plan, and information on each subsequent customer's water demands, including population and customer data, water use data, water supply system data, alternative water supply, water conservation measures and goals, conjunctive

use, and the means for implementation and enforcement of all applicable rules, plans, and goals.

GCDs are authorized to implement rules including the assessment of fees and levying legal charges against violators. However, 13 of the 16 GCDs that responded to the Study's survey questionnaire reported that they had neither formal enforcement actions nor informal enforcement actions (informal enforcement actions being GCD actions such as communications from GCD staff to a potential violator that a problem exists and if no corrective action is taken, the potential violation will be taken to the Board of Directors for formal enforcement action).

For instance, **Rusk County Groundwater Conservation District** stated that:

"There have been no enforcement actions taken for violations of district rules. When developed, the rules were reviewed with all local entities involved, TWDB, TCEQ, TDLR, and Railroad Commission of Texas. Because of this collective approach, applicability of our rules has been reinforced through occasional communication between local entities and State enforcement agencies. This cooperative effort has led to positive acceptance by all parties of our rules. The District has also been successful in working with violators to ensure compliance, suspending the need to enter into formal enforcement procedures."

Brazos Valley Groundwater Conservation District and **Fayette County Groundwater Conservation District** reported that:

"The District has followed up on many complaints and violations for alleged waste, illegal drilling of a well, drilling of a well in violation of spacing requirements, producing over permitted amount, and abandoned wells; but to date, communications (written and oral) with the District's board, staff and attorney have resolved the issues without having to pursue formal enforcement measures. As all of the issues were resolved, the District does not consider these occurrences "substantial violations."

3.0 Survey responses from interested parties

Of the 65 responses to the Interested Party Survey, there were no responses regarding enforcement actions taken by the GCDs with jurisdictional authority over the Carrizo-Wilcox Aquifer.

4.0 Conclusions

Twenty-one GCDs have jurisdictional authority over the management and conservation of the Carrizo-Wilcox Aquifer. Of those 21, three GCDs or less than 15 percent of the 21 GCDs, reported substantial enforcement actions stemming from violations of groundwater conservation district rules. All enforcement actions were instances of positive enforcement (intentionally

punitive), as there were no instances of negative enforcement reported as part of this Study. Based on a review of other documentation submitted as part of the Carrizo-Wilcox Aquifer Study such as GCD Board meeting minutes, it appears that there have been numerous violations of rules within certain GCDs, but in all but one case, based on the meeting minutes, it appears that violations were resolved informally.