



Groundwater Conservation District Permitting

Summary

The Texas Water Code (TWC) provides Groundwater Conservation Districts (GCDs) with the statutory authority to adopt rules that establish groundwater permitting frameworks. Those rules guide permit applications so that a GCD is able to evaluate applications for production of groundwater in a consistent way. Requirements within a permitting framework might include well spacing standards, production limitations, aquifer testing, and hydrogeological studies. The purpose of permitting application requirements is to elicit the information necessary for the GCD board to evaluate and consider the proposed location, rate of withdrawal, operation, and total production of the proposed well to ensure that it complies with the rules adopted by the GCD, and the possibility of unreasonable impacts to existing groundwater users or the aquifer. This document provides a summary of some important permitting considerations:

Application Requirements and Processing (TWC Sections 36.113- 36.114)

GCDs support efforts to improve administrative efficiency and nondiscriminatory treatment in permitting frameworks. It is important, however, that those efforts do not preclude a GCD from requesting appropriate application requirements needed to make sound, science-based decisions. Synchronization of groundwater applications for operating and export permits is permissible under current law and provides for appropriate consideration of permit terms, automatic approvals, transported volumes, and groundwater ownership.

Permit Considerations (TWC Sections 36.113, 36.1132, and 36.116)

In adopting the well spacing and groundwater production rules that comprise the regulatory framework in which permitting decisions are made, a GCD must select a method that is appropriate and based on hydrogeological conditions and local needs. In permitting decisions, a GCD must consider its management plan, adopted DFCs, and water availability. In making those permitting decisions and in adopting its rules, a GCD may consider factors listed in TWC Sections 36.113, 36.1132, and 36.116, which include well spacing, production limits, surface acreage ownership, beneficial use, historic or existing use, the service needs or service area of a retail water utility, and unreasonable effects on groundwater and surface water resources. These considerations allow GCDs to make permitting decisions based on differing local needs and aquifer conditions.

Export Permits (TWC Section 36.122)

Some GCDs require separate permits for groundwater exports from the standard operating permit. Typically, the separate permit is an administrative step. Unlike most operating permits, there are certain application considerations, including but not limited to whether a permit is subject to fees, that a GCD

must review in order to take action on an export permit. For those GCDs with separate export and operating permits, a GCD may consider an export permit contemporaneously with an operating permit.

Fees & Revenue (TWC Section 36.205)

GCDs are statutorily authorized to collect fees for their operations. GCDs without taxing authority rely exclusively on fees as their sole source of revenue. One application requirement that is unique to a groundwater export is a GCD's ability to assess export fees. In some cases, these fees exist in order to fund GCD operations necessary to monitor the impact of the withdrawal and manage the resource, or to mitigate impacts to local landowners.

Special Permit Conditions

Special permit conditions are an important management tool used to address unique factors, facilitate permit approvals, and to negotiate agreements of terms. Special conditions are usually applied in permitting situations where the groundwater production impacts are not known or may be significant. In these cases, a GCD can issue a permit with special conditions to allow for monitoring of those impacts and adjustment of the permit. The use of special permit conditions provides an important mitigation tool that can be used by GCDs to ensure efficient permit processing, utilization of science and site-specific hydrogeological conditions, as well as a way to stay out of the courts.

Moratoriums

Moratoriums, in certain instances, can be a helpful and effective tool for GCD's to accomplish their statutory objectives. Two instances in which a moratorium is a helpful tool include: 1) when relatively little is known about an aquifer and studies are needed to reasonably assess a permit, or 2) where a high volume of applications are filed on the same resource and additional time could help facilitate negotiation between competing users. In both of those scenarios, a 90-day timeline could accommodate additional studies or effective stakeholder engagement to avoid litigation.

Consideration of a Water Supplier's Service Area (TWC Section 36.116(c))

TWC Section 36.116(c) currently grants GCDs the permissive authority to consider the service needs or service area of a retail public utility when regulating groundwater production by tract size or acreage. The current statute provides flexibility for a GCD to consider the interplay and balance between limited groundwater availability, best available science, private property rights associated with the groundwater, requirement of public water suppliers to provide water within their service area, and takings liability. Current statute allows GCDs to consider retail public utilities' service needs and service area, and allows GCDs to:

- 1) base their regulations on the best available science,
- 2) consider *all* the relevant factors for permitting,
- 3) treat all groundwater producers fairly, and
- 4) protect and balance the private property rights of both private landowners and retail public utilities.