

**NOTICE OF PUBLIC HEARING
OF
GONZALES COUNTY UNDERGROUND
WATER CONSERVATION DISTRICT**

Proposed Amendments to the District's Rules

The Gonzales County Underground Water Conservation District (the "District") will hold a public hearing for the purpose of receiving comments on proposed amendments to District Rules.

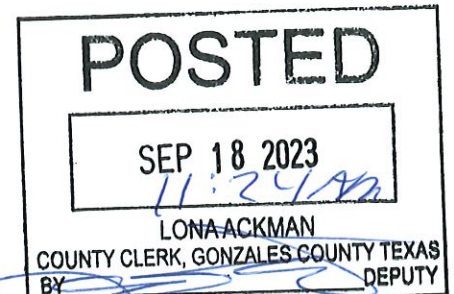
The Board of Directors will take public comments on these proposed rules on October 10, 2023 at the Gonzales County Underground Water Conservation District office at 522 Saint Matthew Street, Gonzales, Texas. The public hearing will begin at 5:30 p.m.

Agenda is as follows:

1. Call to order.
2. President of the Board to make comments.
3. Receive comments from the public on proposed amendments to the District's rules.
4. Adjourn.

Copies of the current rules of the District and the proposed amended rules are available at the offices of the Gonzales County Underground Water Conservation District, 522 Saint Matthew, Gonzales, TX from 8:00 a.m. to 5:00 p.m. until October 10, 2023, Monday through Friday and are also available on the District website, www.gcuwcd.org, or by telephone request to (830) 672-1047.

Written comments should be submitted to the General Manager, P.O. Box 1919, Gonzales, TX 78629 or presented at the hearing. The deadline for submission of written comments is October 10, 2023 at 12:00 p.m.



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Filed this 19th day of Sept 2023
1:53 P M

TERESA RODRIGUEZ
COUNTY CLERK, CALDWELL COUNTY, TEXAS
By Sandra Guerra Deputy
Sandra Guerra

**Draft Amendments to the Gonzales County
Underground Water Conservation District rules**

(1) Amend Rule 1 A. by adding Subsection 11 as follows:

11. A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule.

a. Petitions must be submitted in writing to the District office and must comply with the following requirements:

(1) Each rule requested must be submitted by separate petition;

(2) Each petition must be signed and state the name and address of each person signing the petition;

(3) Each petition must include:

(A) a brief description of the petitioner's real property interest in groundwater in the District;

(B) a brief explanation of the proposed rule;

(C) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule; and

(E) signed by at least 50 persons at least 18 years of age with a real property interest in groundwater in the District.

b. The General Manager may reject any petition for failure to comply with the requirements of Subsection (a) of this section and shall provide notice to the petitioner of the reason for the rejection.

c. Within 60 days after submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36.101, Water Code.

(2) Amend Rule 15 F. 3. to read as follows:

3. Permittees shall pay a fee to the District in accordance with Water Code section 36.122(e-2). The export fee rate will be established by Board resolution, and the fee rate will be included in the District's fee schedule. Export fees will be assessed monthly based on the amount of groundwater equal to 2.5 cents per one thousand gallons for the water exported from the District in the preceding month. Monthly fees are due in the District office by the 30th day of the following month. If the amount of groundwater produced and exported is not metered during the month reported, or if any meter fails during that month, the fee shall be based on 1/12 of the annual authorized export permit amount.

(3) Amend Rule 25 T. 4. to read as follows:

4. If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed. If the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than one hundred twenty 120 days after the ~~date that the proposal for decision is presented at a final hearing is concluded~~, unless the Board determines that there is good cause for extending the deadline. For contested case hearings conducted by SOAH, the Board decision on a Proposal for Decision must be made no later than the 180th day after the date the District received the final Proposal for Decision from SOAH. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by:

(1) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or

(2) issuing revised findings of fact and conclusions of law.

(4) Amend Rule 25 V to read as follows:

1. For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing. A person who withdraws as a party in a contested case proceeding no longer has the rights of a party after withdrawing and does not have the right to request a rehearing or to appeal the decision. The motion shall be filed with the District by no later than the 20th day after the date of the Board's decision. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District. The Board must consolidate requests for rehearing filed by multiple parties to one contested case hearing, but only one rehearing may be held per application. The motion shall contain:
 - a. The name and representative capacity of the person filing the motion;
 - b. The style and official docket number assigned by the hearing's examiner;
 - c. The date of the decision or order; and
 - d. The grounds for the motion, including a concise statement of each allegation of error.
2. Only a party to the contested case proceeding may reply to a motion for rehearing. A reply must be filed with the District within twenty (20) days after the date the motion for rehearing is filed.
3. The motion for rehearing will be scheduled for consideration during a Board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it deems necessary. If the Board grants a motion for rehearing, District staff shall schedule the rehearing not later than the 45th day after the date the motion is granted, and the Board shall make a final decision on the application not later than the 90th day after the date of the decision by the Board that was subject to the motion for rehearing. Thereafter, the Board shall render a decision or order.
4. The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law.

GCUWCD

Draft Rule Changes

Public Comments

General Manager

From: James Harris <jbhandlah2@icloud.com>
Sent: Thursday, October 5, 2023 9:58 AM
To: General Manager
Subject: Re: News from Gonzales County UWCD

Ms. Martin,

I would like to submit the following written comments on the Draft Amendments to the GCUWCD rules that you issued for comment on 9/19/23.

First, regarding new rule 11.a (1), *"Each rule requested must be submitted by separate petition"*. The meaning of "rule" in this context should be clarified. I can see requiring a separate petition for each of the 28 major sections listed in the current Table of Contents, or for any completely new section. However, if a person wanted to request multiple changes within a major section (e.g., Rule 17 A, C and D) that should only require a single petition.

Second, regarding new rule 11.a (3)(D), *"an allegation of injury or inequity that could result from the failure to adopt a proposed rule, and"*. This should be deleted; a proposed rule change could be driven by any number of reasons other than "injury or inequity". If there is alleged harm resulting from failure to adopt the proposed change it could be included in the explanation required by 11.a(3)(B). Alternatively, you could add the qualifying phrase, "if applicable" to the end of the proposed 11.a (3)(B).

Lastly, regarding rule 11.a (3)(E), I think that requiring 50 signatures is excessive. I think a more reasonable number would be 12.

I respectfully request that you provide these comments to the Board for their consideration.

Thank you,
James B. Harris

On Sep 26, 2023, at 11:44 AM, General Manager <generalmanager@gcuwcd.org> wrote:

Mr. Harris,

An email is accepted for public comment.

Thank you,

Laura Martin

General Manager

Gonzales County UWCD

522 Saint Matthew St.

P.O. Box 1919

Gonzales, TX 78629

Draft Amendments to the Gonzales County
Underground Water Conservation District rules

(1) Amend Rule 1 A. by adding Subsection 11 as follows:

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(2) Each petition must be signed and state the name and address of each person signing the petition;

(3) Each petition must include:

(A) a brief description of the petitioner's real property interest in groundwater in the District;

(B) a brief explanation of the proposed rule;

(C) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule; and

(E) signed by at least 50 persons at least 18 years of age with a real property interest in groundwater in the District.

b. The General Manager may reject any petition for failure to comply with the requirements of Subsection (a) of this section and shall provide notice to the petitioner of the reason for the rejection.

c. Within 60 days after submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36.101, Water Code.

d. Nothing in this section may be construed to create a private cause of action for a decision to accept or deny a petition filed under this section.

(2) Amend Rule 15 F. 3. to read as follows:

3. Permittees shall pay a fee to the District in accordance with Water Code section 36.122(e-2). For fees set per Water Code Section 36.122(e)(2), effective January 1, 2024 or on a later date stated in the Board resolution setting the export fee, the export fee rate will be established by as stated in the Board resolution adopting the export fee rate, and the export fee rate will be included in the District's fee schedule. Such export fees will be assessed monthly based on the amount of groundwater equal to 2.5 cents per one thousand gallons for the water exported from the District in the preceding month. Monthly fees are due in the District office by the 30th day of the following month. If the amount of groundwater produced and exported is not metered during the month reported, or if any meter fails during that month, the fee shall be based on 1/12 of the annual authorized export permit amount. For fees set per Water Code Section 36.122(e)(1), the export fee

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Commented [TE1]: Greg - The Board can only act in a properly noticed public meeting, so they must state their reasons for denial in the minutes. They may also sent the petitioner a letter with the reasons for denial as a courtesy, but not as an alternative to taking action in an open meeting. Suggest deleting the language about the letter.

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Commented [TE2]: Greg - Suggest adding this section from the statute too, to have the information about this process all in one place.

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Commented [TE3]: Greg - Recommend revising to make it clear how this applies to exporters under the two different scenarios applicable to the District - those who have a negotiated export fee agreement with the District and those that do not. The new statutory max in 36.122(e)(2) does not apply to permittees under a negotiated export fee agreement per 36.122(e)(1). Also, you might consider adding language re notice of a proposed rate change for those that are not under an export fee agreement.

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rate or amount (or formula for calculating the export fee rate or amount) and the payment schedule shall be as stated in the negotiated export fee agreement.

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(3) Amend Rule 25 T. 4. to read as follows:

4. If a contested case is presided over by a majority of the Board, then the Board's decision shall be rendered not later than the 60th day after the date on which the hearing is finally closed.

5. ~~If the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than one hundred twenty (120) days after the date that the proposal for decision is presented at a final hearing is concluded, unless the Board determines that there is good cause for extending the deadline.~~ For contested case hearings conducted by SOAH, the Board decision on a Proposal for Decision must be made no later than the 180th day after the date the District received the final Proposal for Decision from SOAH. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by: (1) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or (2) issuing revised findings of fact and conclusions of law. In a proceeding for a permit application or amendment in which a district has contracted with the State Office of Administrative Hearings for a contested case hearing, the board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, GOVERNMENT CODE.

- Commented [TE4]: Greg - Recommend amending #4 to address contested case hearings conducted by the Board, and moving all the information pertaining to contested case hearings conducted by SOAH to #5.
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- Commented [TE5]: Greg - I think this sentence conflicts with the following sentence and can be deleted per the new provisions in the Water Code.
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(3) Amend Rule 25 V to read as follows:

1. ~~For any matter considered during a contested case hearing, only a party to the contested case proceeding may file a motion for rehearing. A person who withdraws as a party in a contested case proceeding no longer has the rights of a party after withdrawing and does not have the right to request a rehearing or to appeal the decision.~~ The motionMotions for rehearing shall be filed with the District by no later than the 20th day after the date of the Board's decision. On or before the date of deadline for filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District. The Board must consolidate requests for rehearing filed by multiple parties to one contested case hearing, but only one rehearing may be held per application. The motion shall contain:

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- a. The name and representative capacity of the person filing the motion;
- b. The style and official docket number assigned by the hearing's examiner;
- c. The date of the decision or order; and
- d. The grounds for the motion, including a concise statement of each allegation of error.

- Commented [TE6]: Greg - The first sentence is duplicative of #2. Also, seems like the second sentence can also be moved to #2. since it relates to #2.
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2. Only a party to the contested case proceeding may reply to a motion for rehearing. A person who withdraws as a party in a contested case proceeding no longer has the rights of a party after withdrawing and does not have the right to request a rehearing or to appeal the decision. A reply must be filed with the District within twenty (20) days after the date the motion for rehearing is filed.

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decision on the application not later than the 90th day after the date of the decision by the Board that was subject to the motion for rehearing. Thereafter, the Board shall render a decision or order.

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Texas Water Code

Chapter 36

Section 36.101

Rulemaking Power

SUBCHAPTER D. POWERS AND DUTIES

Sec. 36.101. RULEMAKING POWER. (a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district shall:

- (1) consider all groundwater uses and needs;
- (2) develop rules that are fair and impartial;
- (3) consider the groundwater ownership and rights described by Section [36.002](#);
- (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section [59](#), Article XVI, Texas Constitution;
- (5) consider the goals developed as part of the district's management plan under Section [36.1071](#); and
- (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

(b) Except as provided by Section [36.1011](#), after notice and hearing, the board shall adopt and enforce rules to implement this chapter, including rules governing procedure before the board.

(c) The board shall compile its rules and make them available for use and inspection at the district's principal office.

(d) Not later than the 20th day before the date of a rulemaking hearing, the general manager or board shall:

(1) post notice in a place readily accessible to the public at the district office;

(2) provide notice to the county clerk of each county in the district;

(3) publish notice in one or more newspapers of general circulation in the county or counties in which the district is located;

(4) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Subsection (i); and

(5) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the district has a website, post an electronic copy on a generally accessible Internet site.

(e) The notice provided under Subsection (d) must include:

(1) the time, date, and location of the rulemaking hearing;

(2) a brief explanation of the subject of the rulemaking hearing; and

(3) a location or Internet site at which a copy of the proposed rules may be reviewed or copied.

(f) The presiding officer shall conduct a rulemaking hearing in the manner the presiding officer determines to be most appropriate to obtain information and comments relating to the proposed rule as conveniently and expeditiously as possible. Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.

(g) A district may require each person who participates in a rulemaking hearing to submit a hearing registration form stating:

- (1) the person's name;
- (2) the person's address; and
- (3) whom the person represents, if the person is not at the hearing in the person's individual capacity.

(h) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.

(i) A person may submit to the district a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the district. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the district establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the district.

(j) A district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.

(k) Failure to provide notice under Subsection (d)(4) does not invalidate an action taken by the district at a rulemaking hearing.

(l) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. [2729](#)), Sec. 15(2), eff. September 1, 2019.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.44, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. [1763](#)), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1207 (S.B. 332), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(2), eff. September 1, 2019.

Sec. 36.1011. EMERGENCY RULES. (a) A board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the board:

(1) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

(2) prepares a written statement of the reasons for its finding under Subdivision (1).

(b) Except as provided by Subsection (c), a rule adopted under this section may not be effective for longer than 90 days.

(c) If notice of a hearing on the final rule is given not later than the 90th day after the date the rule is adopted, the rule is effective for an additional 90 days.

(d) A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(3), eff. September 1, 2019.

Added by Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1135 (H.B. 2729), Sec. 15(3), eff. September 1, 2019.