TRANSPARENCY IN THE GROUNDWATER PERMITTING PROCESS

Groundwater conservation districts (GCDs or districts) are governed by Chapter 36, Water Code, which includes the authority to issue groundwater permits, as well as requirements to ensure transparency in the permitting process. Notice of permit applications filed with the district is an important part of a transparent permitting process. Under current law, the notice provided by districts when a permit hearing is required must include: (1) the name of the applicant, (2) the address or approximate location of the well, (3) a brief explanation of the proposed permit, (4) and any other relevant information. At least 10 days prior to a hearing on the permit application, the district must provide such notice as follows: (1) post notice at the district office, (2) provide notice to the county clerk of each county in the district, (3) provide notice to the applicant, (4) provide notice to anyone that has requested notice, and (5) provide notice to anyone that is required to receive notice under the district's rules. In addition, some districts have adopted rules that provide for additional notice of permit applications be provided to nearby landowners.

In 2020, the Farm Bureau raised a concern that notice required under Chapter 36 may be insufficient in districts that have adopted certain well spacing requirements. Pursuant to their statutory authority, districts often adopt well spacing rules to manage and regulate groundwater production and prevent interference between wells. Such well spacing rules may include minimum well spacing requirements from property lines and/or existing wells. The Farm Bureau's concern is related to the situation where a district has adopted rules that require new wells, or existing wells that are reworked to increase their size, to be spaced a certain distance from other existing wells. Depending on the exact rules and the specific well involved, this can result in a situation where a neighboring landowner's right to drill a well in the future is impacted because of the district's approval of the first well. In those situations, the Farm Bureau believes additional notice should be provided to the neighboring landowner to ensure they are aware of and have an opportunity to protect their rights.

During the 2020 interim, a subcommittee of the Texas Water Conservation Association, comprised of diverse interests, including but not limited to the Farm Bureau and districts, worked on a possible legislative solution to this concern. While significant time and effort were put towards this initiative, the group was unable to reach consensus on proposed legislation. Some of the primary concerns raised during those discussions included: (1) significant costs associated with direct or personal notice; (2) difficulties associated with identification of who should be entitled such notice, as proper notice is a jurisdictional issue that can be raised on a legal challenge at any time in the future; and (3) landowner/permit applicants' disdain for additional notice that may delay the permitting process or fear of future claims raised by disgruntled neighbors.

During the 87th Regular Session, SB 152/HB 668 (Perry/Harris) (the bill) was filed that included a section to address this notice issue. With significant input from various stakeholders, revised language was agreed to that was reflected in the House committee substitute for the bill. The bill included the following generally accepted concepts:

- In those districts that have adopted rules requiring well spacing from other existing wells, notice of a permit application is to be provided to any neighboring landowner who owns land within the spacing distances from other existing wells whose right to drill his or her own well on their property would be impacted under the spacing rules if the district approves the application for which the notice is provided.

- No special notice is required for an emergency well or a replacement well that is not larger than the well being replaced.

- If the applicant is a groundwater lessee, then the applicant is not required to provide notice to the lessor, since it is the lessee who has the right to produce the groundwater.

- Flexibility in how districts provide the notice. Some districts currently require the applicant to provide the notice while in others the districts themselves provide the notice. The bill allowed districts to determine this, as well as the manner in which notice is provided—which could be by individual mailed notice or by posting the application information on the main webpage of the district's website and at a place readily accessible to the public at the district office.

The Texas Alliance of Groundwater Districts (TAGD) expressed support for this revised section of SB 152/HB 668, as it addressed concerns that had been voiced by some districts. While the bill passed both the Senate and the House, it died when the Senate and House were unable to come to terms on an unrelated portion of the bill. Any future bill filed on this notice topic should similarly address the above-identified issues so as to ensure that a modified notice provision is workable for districts while providing greater transparency.