

**NOTICE OF MEETING**  
**BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT**  
**By virtual means and at the**  
**Brush Country GCD Building**  
**732 West Rice**  
**Falfurrias, Texas**  
**Tuesday, August 25, 2020 at 9:30 am**  
**Public Meeting Agenda**

An urgent public necessity exists requiring the Brush Country Groundwater Conservation District (District) to alter its meeting procedures due to COVID-19 pandemic. Notice is hereby given that a meeting of the Board of Directors (Board) of the District will be held Tuesday, August 25, 2020 at 9:30 a.m. in the District Office, 732 West Rice St., Falfurrias, Texas. A quorum of the Board may be present in person at the physical location or may participate via audio and video conference call. Likewise, members of the public may participate in person at the physical location or via audio or videoconference call. The meeting will be conducted pursuant to Texas Government Code, Sections 551.125, 551.127 and 551.131, and as modified by the Governor of Texas who ordered suspension of various provisions of the Open Meetings Act, Chapter 551, Government Code, effective March 16, 2020, in accordance with the Texas Disaster Act of 1975 (see the Governor's proclamation on March 13, 2020 as renewed, certifying that the COVID-19 pandemic poses an imminent threat of disaster and declaring a state of disaster for all counties in Texas). The audio and videoconference information for the Board and public to participate in the meeting described below follows the Governor's guidance for conducting a public meeting and ensures public accessibility. The Board and members of the public not attending in person may call in or participate via videoconference as follows:

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/812600253>

You can also dial in using your phone.

(For supported devices, tap a one-touch number below to join instantly.)

United States: +1 (786) 535-3211

- One-touch: <tel:+17865353211,,812600253#>

Access Code: 812-600-253

This meeting will be recorded and the recording will be available on the District's website [www.brushcountrygcd.com](http://www.brushcountrygcd.com) after the meeting. A copy of the agenda packet for this meeting will be available on the District's website [www.brushcountrygcd.com](http://www.brushcountrygcd.com) at the time of the meeting.

1. Call to order, declare meeting open to the public, and take roll.
2. Pledge of Allegiance

3. Public Comment
4. Discuss, consider, and possibly act on Minutes of the Regular Meeting on July 28, 2020.
5. Discuss, consider, and possibly act on General Manager's Report:
  - a. Report on KCGCD August 19, 2020 & DCGCD August, 2020
  - b. Tuned in to Texas Water Development Board (TWDB) hearing August 5, 2020 related to HB722 Brackish Groundwater Production Zones- Key points added two new definitions "brackish groundwater production zone operating permit" and "designated brackish groundwater production zone", On the applications for brackish production zones, the TWDB will do the technical reviews to make sure that safeguards are in place to make sure that there is no negative impacts on aquifer levels, water quality and subsidence.
  - c. Region N Robstown via teleconference September 3, 2020 @ 1:30 pm.
  - d. Region M Regional Water Planning via teleconference September 16, 2020 @ 10:30
  - e. General manager and general manager trainee worked on 2020 BCGCD water level monitoring.
  - f. Submitted 2<sup>nd</sup> Quarter 941 report for Employer's Quarterly Federal Tax Return
  - g. Well registrations were 8, in August and we have 11 pending, well plugging 0, pending 2. Total of 3,417 wells registered.
  - h. Update on recent case law affecting GCD's.
6. Discuss, consider, and possibly act on request of withdrawal of the Jose Ricardo Gonzalez's production permit application.
7. Discuss, consider, and possibly act on \$3,000 payment of Aqua Veo Hosting of BCGCD Water Well Database for period of August 2020 through February 2021.
8. Discuss, consider, and review and act proposed 2020 BCGCD No New Tax Rate and 2020 Voter-Approval Tax Rate and approve publishing of public notice in local newspapers and/or mailing notice. Select date for adopting 2020 local tax rate by resolution.
9. Discuss, consider, and possibly act on appointing general manager trainee Luis Pena as BCGCD's new investment officer.
10. Discuss, consider, and possibly act on 3<sup>rd</sup> quarter investment report.
11. Discuss, consider, and possibly act on July 2020 monthly financial statement.
12. Discuss, consider, and possibly act on legislative report from Robert Howard.
13. Discuss, consider, and possibly act on correspondence received:
  - a. Alta Mesa LLC submitted an application to the Texas Commission on Environmental Quality (TCEQ) dated July 13, 2020 for permit renewals for the continued operation of underground injection wells for disposal of noncommercial nonhazardous waste.

b. Notice of the intention of Jim Hogg County, Texas to designate a reinvestment zone as part of Barranca Wind Energy, LLC for a tax abatement pursuant to Chapter 312 of the Texas Tax Code.

c. Attorney General Notification of Opinion: KP-0326 (appointed board members not required to have cybersecurity training)

d. San Diego Municipal Utility District submitted an application to the Texas Commission on Environmental Quality (TCEQ) dated July 30, 2020 for a water quality permit renewal.

14. Discuss, consider, and possibly act on new business and select date for next meeting.

15. Adjourn.

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time. These public meetings are available to all persons regardless of disability. If you require special assistance to attend the meeting, please call (361) 325 5093 at least 24 hours in advance of the meeting to coordinate any special physical access arrangements. At any time during the meeting and in compliance with the Texas Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the Brush Country Groundwater Conservation District Board may meet in executive session on any of the above agenda items or other lawful items for consultation concerning attorney-client matters (§ 551.071); deliberation regarding real property (§ 551.072); deliberation regarding prospective gift (§ 551.073); personnel matters (§ 551.074); and deliberation regarding security devices (§ 551.076). Any subject discussed in executive session may be subject to action during an open meeting

**MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS**

THE STATE OF TEXAS	§
	§
BRUSH COUNTRY GROUNDWATER	§
CONSERVATION DISTRICT	§

The Board of Directors of Brush County Groundwater Conservation District (the “District”) met in special session, open to the public, on July 28, 2020 at the Brush Country Groundwater Building 732 W. Rice Falfurrias, Texas, in accordance with the duly posted notice of said meeting.

1. The meeting was called to order at 9:30 a.m. and the roll was called of the members of the Board of Directors. Eight Board members were present at the meeting:

David Kelly in person  
Bill Botard virtual  
Mario Martinez virtual  
Robert Scott in person  
William P. Goranson virtual  
A.C. Jones IV virtual  
Jesse Howell virtual  
Mauro Garcia virtual

This month’s meeting was conducted via Telephone & Videoconference due to Covid-19 pandemic. Eight Board members were present thus constituting a quorum for agenda items where action was taken by the Board, all Directors present voted. BCGCD General Manager Felix Saenz was present as was the legal counsel Bill Dugat virtual, administrative assistant Maggie Castillo, BCGCD General Manager Trainee Luis Pena either in person or by videoconference. Guests in attendance were Kenedy County General Manager Andy Garza in person, Mr. Robert Howard Consultant in person, George Gonzalez in person Duval County General Manager. Rohit Goswami & James Beach virtual, WSP Consultants, Monica Jacobs legal counsel for Bass Brothers virtual.

2. Pledge of Allegiance  
The Pledge of Allegiance was recited.
3. Public Comment: None
4. Review, discuss, and act on minutes of the May 26th, 2020 meeting.  
Motion made by Paul Goranson, second by A.C. Jones to approve the minutes, motion carried, unanimous vote to approve.

5. Discuss, consider, and act on General Manager's Report:
  - a. Report on KCGCD June 17/July 15, 2020 & DCGCD June 24/July 29, 2020 Meetings
  - b. TAGD Meeting via teleconference May 27, 2020
  - c. Public Funds Investment Training May 28, 2020
  - d. Region N Robstown via teleconference June 2, 2020
  - e. Region M Regional Water Planning via teleconference July 1, 2020 @ 10:30
  - f. Teleconference discussion with WSP consultants, Robert Howard, brackish groundwater rules, Friday June 12, 2020
  - g. Mesteno Summer Program, Falfurrias High School Monday June 15, 2020
  - h. BCGCD Budget committee meeting
  - i. Follow up on BCGCD employee Insurance
  - j. Port of Corpus Christi/Harbor Island Desalination Project Preliminary Virtual SOAH Hearing on July 9, 2020
  - k. 2020 Certified Tax Values
  - l. SB 2 Section 26.18 Posting of Tax Rate and Budget Information by Taxing Unit on Website
  - m. Well registrations, well plugging

For information only. Mr. Dugat mentioned that we need to add Louie's name as the investment officer

6. Discuss, consider, and possibly act on developing brackish groundwater rules with assistance from WSP Consultants James Beach and Rohit R Goswami. Motion was made by Robert Scott to wait on developing Brackish Rules until somebody makes application for a brackish water production permit and at that point proceed in developing the brackish rule; second by Paul Goranson, unanimous vote to approve.
7. Discuss, consider, and possibly act on BCGCD Production Permits in Jim Wells County
  - a. Jose Ricardo Gonzalez (contested case by City of Premont)
  - b. Zelaya Brothers
  - c. City of Orange Grove (turned in well schematics, still offline)General manager reported that Jose Ricardo Gonzalez registered new non-exempt water well and submitted production permit for pumping 15,000,000/yr. Water from this well would be used in the Premont Hwy 281 by pass project. GM also mentioned he had published public notice on the Gonzalez Permit application. Attorney Mark Wilkins tuned in to virtual meeting and stated he represented City of Premont and they were in process of submitting contested case hearing on the Gonzalez Permit application. No action taken by the board on the Gonzalez Permit application. GM reported that Zelaya Bros talked about submitting a request for changing registration of their well from exempt to non-exempt to sell water to Zachry Construction for by pass construction. Zelaya changed his mind upon learning he would need to apply for production permit. City of Orange Grove new well still not operational. Will request permit amendment when well becomes operational.

- No vote needed on this item
8. Discuss, consider, and possibly act on payment of Aqua Veo Hosting of BCGCD Water Well Database for period of December 2019 through May 2020.  
This item was tabled pending contact with Royd Nelson.
  9. Discuss, consider and possibly act on Palmer Drought Report for 3<sup>rd</sup> Quarter.  
For information only.
  10. Discuss, consider, and possibly act on 2020-2021 BCGCD Preliminary Budget.  
Mr. Saenz presented the budget, mentioned we had budget committee workshop.  
Motion to accept the preliminary budget was made by Paul Goranson, second by A.C. Jones, unanimous vote to approve.
  11. Discuss, consider and possibly act on payment of bills.  
Mr. Saenz mentioned that the price for publication of the production permit went up, motion to pay the bills made by A.C. Jones, second by Robert Scott, unanimous vote to approve.
  12. Discuss, consider and possibly act on legislative assistance contract for 2020- 2021 fiscal year.  
Motion made by Paul Goranson to hire Robert Howard for another year, second by Jesse Howell, unanimous vote to approve.
  13. Receive report on BCGCD Tax Collection Summary.  
Mr. Saenz gave report, for information only.
  14. Discuss, consider, and possibly act on legislative report from Robert Howard.  
Mr. Howard gave his report. For information only.
  15. Discuss, consider, and possibly act on GMA 16 issues:
    - a. July 28, 2020 meeting details/Jevon Harding Discussion 9 factors of DFC.Motion was made by Robert Scott to make General Manager Felix Saenz as the voting delegate for the GMA 16, second by Mario Martinez, unanimous vote to approve.
  16. Discuss, consider, and possibly act on correspondence received:
    - a. TWDB Exempt Water Use – BCGCDFor Information only.
  17. Discuss, consider, and possibly act on new business and select date for next meeting.  
Items on the agenda for next meeting on August 25, 2020 are to approve budget, effective tax rate, financial plan, production permits. Motion made by Robert Scott to approve next meeting date and new items on agenda, second by Mauro Garcia, unanimous vote to approve.
  18. Adjourn.  
Motion to adjourn made by Robert Scott @ 11.47 second by A.C. Jones, unanimous vote to approve.

Passed and approved this 25<sup>th</sup>, day of August 2020.

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President, Board of Directors

Attest by:

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Secretary, Board of Directors

[District Seal]

## Notes Kenedy County Meetings

August 7<sup>th</sup>, 2020 Meeting with General Manager Andy Garza and Legal Counsel Leo Villarreal to discuss possible request from James Clement to be annexed by Kenedy County Groundwater District. Mr. Felix Saenz and Louie Pena traveled to Sarita, Mr. Villarreal showed us that the property that Mr. James Clement had purchased (Los Hermanos) after reviewing maps and deeds, Mr. Villarreal mentioned that the property was under Brush Country Groundwater conservation district and the previous owners had been paying taxes to Brooks.

August 19, 2020, listened to virtual meeting online, Chuck Burns opened meeting @10.42 am. Started the meeting with Dr. Udamari on agenda item #7 the update on the boundaries of the Upper Lagarto BGPZ. He mentioned that he looked at GIS data from the TWDB, shapefiles and GAM report, the total square miles is 142.43 upper Lagarto formation occupies 92.7% in Kenedy County, .627 square miles .44% in Brush Country GCD. 3 % in white area in Kenedy County, 2 areas that are not annexed as part of Kenedy County 2.7 square miles 1,800 acres is in white area big discrepancy, little sliver in Brush Country because of projections, in terms of what the TWDB boundaries, for Brackish Production Zones.

On agenda item #6 on submitting comments to the House Natural Resources Committee, Ms. Sahs exclaimed “we need clarification on “significant use”. Also would like to comment on HB 807 regional planning council, planning groups, we also would like an update on the new GAM for GMA16 by the TWDB. Andy Garza mentioned Brush Country and Kenedy County doing water levels, also Lonnie Stewart doing water levels.

On agenda item #4, Andy Garza also mentioned that he spoke to Cody Fry, mentioned that he had shut off solar well that was gushing when he was doing water levels, while checking water well levels he had bees, ticks, and chiggers. On communications, had mentioned that Robert Williams had placed photos and short bios on board members. Spoke about attending Brush Country meeting, that Brush Country consultants would wait on brackish rules until we received an application. Mentioned that he attended Duval County’s meeting, that they were in chaos, that the legal counsel walked out, Duval now looking for new legal counsel. Spoke about the GMA 16 meeting, mentioned the hydrological conditions, estimated amounts, water supply needed. Mr. Garza mentioned subsidence left by the Saxet oil and gas near Clarkwood before you get to airport coming in from Robstown. Mr. Garza spoke about 4-h ambassadors recipient from Harris County who had sent a thank you letter for sponsorship. Mr. Garza mentioned that the City of Corpus Christi received monies for their desalination plant from the TWDB swift funds.

On agenda item #9 Kenedy county canceled the election regarding directors of precinct 3 and precinct 4.

On agenda item #10 Kenedy County GCD had their tax and budget workshop. On agenda item #11, adopted 1.28 cents per \$100, kept the same tax rate as last year. #12, acted on to publish as required by law tax rate. Will have two meetings in September on the 16<sup>th</sup>, and on 29<sup>th</sup>.



# Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.  
Austin, TX 78711-3231, [www.twdb.texas.gov](http://www.twdb.texas.gov)  
Phone (512) 463-7847, Fax (512) 475-2053

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
John T. Dupnik, P.G., Deputy Executive Administrator, Water Science and Conservation  
Ashely Harden, General Counsel  
Rebecca Trevino, Chief Financial Officer

**FROM:** Erika Mancha, Manager, Innovative Water Technologies  
Kevin Kluge, Director, Conservation and Innovative Water Technologies

**DATE:** July 20, 2020

**SUBJECT:** Proposed rulemaking on brackish groundwater production zones

## **ACTION REQUESTED**

Consider authorizing the Executive Administrator to publish proposed amendments 31 Texas Administrative Code (TAC) 356 relating to brackish groundwater production zones.

## **BACKGROUND**

In 2019, the 86th Texas Legislature passed House Bill 722 and created a framework for groundwater conservation districts (GCDs) to establish rules for a person interested in producing brackish groundwater from the Texas Water Development Board (TWDB) designated brackish groundwater production zones for a municipal drinking water project or an electric generation project. To date, the TWDB has identified and designated 31 local and regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that met certain criteria as directed in House Bill 30 by the 84th Texas Legislature in 2015.

House Bill 722 directed the TWDB to conduct technical reviews of operating permit applications and, when requested by a GCD, investigate the impacts of brackish groundwater production as described in the annual reports of the permitted production. House Bill 722 does not apply to a district that (1) overlies the Dockum Aquifer and (2) includes wholly or partly 10 or more counties, which is the High Plains Underground Water Conservation District No. 1.

For technical reviews of brackish groundwater production zone operating permit applications, the TWDB will submit to the GCD a report that includes (1) the findings regarding the compatibility of the proposed well field design with the designated brackish groundwater

**Our Mission**  
Leading the state's efforts in ensuring  
a secure water future for Texas

### **Board Members**

Peter M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member  
Jeff Walker, Executive Administrator

production zone and (2) recommendations for the monitoring system. The TWDB does not have a required timeline to conduct their technical reviews and prepare reports for GCDs.

For requests from GCDs for technical reviews of associated annual production reports, the TWDB will submit to the GCD a report that addresses whether the brackish groundwater production from the permitted project is projected to cause: (1) significant, unanticipated aquifer level declines or (2) negative impact on water quality in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum. The report will also include analysis of subsidence caused by brackish groundwater production during the permit term, if the brackish groundwater production zone is in the Gulf Coast Aquifer. The TWDB has 120 days after receiving a request to conduct the technical investigations and return the report to the GCD.

## KEY ISSUES

To implement the directive, the TWDB is proposing rulemaking to implement the technical reviews by adding two new definitions in Section 356.10 and creating a new Subchapter G in TAC Chapter 356, relating to brackish groundwater production zones. We propose adding two terms that will be used in the new subchapter: ‘brackish groundwater production zone operating permit’ and ‘designated brackish groundwater production zone.’

The proposed new Subchapter G would include three sections. Section 356.70 will clarify how the agency identifies and designates local or regional brackish groundwater production zones in areas of the state that meet specific criteria and the information required to be provided for each zone. Section 356.71 will outline how the agency will conduct an assessment and technical review of a brackish groundwater production zone operating permit applications, upon request by a GCD. Section 356.72 will outline how the agency will investigate and conduct a technical review of annual reports, upon request by a GCD. The last two sections will also discuss the information required to conduct the technical reviews and the information contained in the reports that the agency will return to the requesting GCD.

## RECOMMENDATION

In order to clarify the technical reviews of operating permit applications and associated annual reports as required by House Bill 722, the Executive Administrator recommends publishing procedural rules as proposed.

Attachment(s): Preamble for rulemaking  
Fiscal Note for rulemaking  
Proposed Rulemaking Memorandum

ATTACHMENT

Preamble for rulemaking

The Texas Water Development Board (“TWDB” or “board”) proposes an amendment to 31 Texas Administrative Code (TAC) §356.10 and proposes a new Subchapter G, 31 TAC 356, relating to brackish groundwater production zones requirements by statutory amendments to Chapter 36 of the Texas Water Code.

## BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Through House Bill 722 of the 86th Texas Legislature, 2019, the Legislature created a framework for groundwater conservation districts to establish rules for a person interested in obtaining a permit from a groundwater conservation district to authorize producing brackish groundwater from a designated brackish groundwater production zone for (1) a municipal drinking water project and (2) an electric generation project. The Legislature directed the TWDB to conduct technical reviews of operating permit applications and, when requested by a groundwater conservation district, conduct technical reviews of annual reports and summarize findings in a report.

The TWDB is proposing rules to implement the technical reviews by adding two new definitions in Section 356.10 and creating a new subchapter in Chapter 356, relating to brackish groundwater production zones.

## SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §356.10 contains definitions related to groundwater management. The proposed amendment to §356.10 adds definitions for the following two terms that will be used in the proposed new Subchapter G: “Brackish groundwater production zone operating permit” and “Designated brackish groundwater production zone”.

*Proposed Amendment to 31 TAC Chapter 356 by addition of a New Subchapter G (relating to brackish groundwater production zones)*

### *31 TAC §356.70. Brackish Groundwater Production Zone Designation of Subchapter G.*

Section 356.70 is proposed to clarify how the agency identifies and designates local or regional brackish groundwater production zones in areas of the state that meet specific criteria and the information required to be provided for each zone. A designated brackish groundwater production zone may span multiple groundwater conservation districts and statute does not clarify how groundwater conservation districts should coordinate with each other related to production volumes and sharing information.

### *31 TAC §356.71. Brackish Groundwater Production Zone Operating Permit Review.*

Section 356.71 is proposed to outline how the agency will conduct an assessment and technical review of a brackish groundwater production zone operating permit applications. The section also discusses the information required to conduct the technical review and the report the agency will provide the groundwater conservation district that submitted the application.

### *31 TAC §356.72. Annual Report Review*

Section 356.72 is proposed to outline how the agency will investigate and conduct a technical review of an annual report(s), upon request by a groundwater conservation district. The section

also discusses the information required to conduct the technical review and the technical report the agency will issue to the groundwater conservation district that sends the request.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for implementing these amendments and adding a new subchapter. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Water Code; and are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules will clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports and groundwater conservation districts will be able to receive these technical reviews and reports.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify the agency’s role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any standard set by any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§16.060 and 36.1015. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify the agency’s role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports. The proposed rule would substantially advance this stated purpose by proposing new rules for brackish groundwater productions zone designation and guiding groundwater conservation districts in the technical review process of permit applications and annual reports.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that identifies and designates brackish groundwater production zones.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

## GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

## SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the Texas Register. Include Chapter 356 in the subject line of any comments submitted.

## STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §§16.060 and 36.1015, which requires the board to designate brackish groundwater production zones and to conduct technical reviews of brackish groundwater production zone operating permit applications and annual reports.

Chapters 16 and 36 of the Texas Water Code are affected by this rulemaking.

<rule>

## CHAPTER 356. GROUNDWATER MANAGEMENT

### SUBCHAPTER A. DEFINITIONS

§356.10. Definitions.

(1) – (4) no change

(5) Brackish groundwater production zone operating permit--a permit issued by a district under Texas Water Code §36.1015.

(6) [(5)] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(7)~~(6)~~ Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(8) Designated brackish groundwater production zone – an aquifer, subdivision of an aquifer, or geologic stratum designated under Texas Water Code §16.060(b)(5).

(9)~~(7)~~ Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(10)~~(8)~~ District--Any district or authority subject to Chapter 36, Texas Water Code.

(11)~~(9)~~ Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(12)~~(10)~~ Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.

(13)~~(11)~~ Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.

(14)~~(12)~~ Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.

(15)~~(13)~~ Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(16)~~(14)~~ Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(17)~~(15)~~ Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(18)~~(16)~~ Office--State Office of Administrative Hearings.

(19)~~(17)~~ Petition--A document submitted to the groundwater conservation district by an affected person appealing the reasonableness of a desired future condition.

(20)~~(18)~~ Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.



~~(21)~~~~(19)~~ Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

~~(22)~~~~(20)~~ Relevant aquifer--An aquifer designated as a major or minor aquifer.

~~(23)~~~~(21)~~ State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

~~(24)~~~~(22)~~ Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

~~(25)~~~~(23)~~ Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

\*n

## STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §§16.060 and 36.1015, which requires the board to designate brackish groundwater production zones and to conduct technical reviews of brackish groundwater production zone operating permit applications and annual reports.

Chapters 16 and 36 of the Texas Water Code are affected by this rulemaking.

<rule>

## SUBCHAPTER G. BRACKISH GROUNDWATER PRODUCTION ZONES.

### §356.70. Brackish Groundwater Production Zone Designation.

(a) The agency will identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(1) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(2) are not located in:

(A) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(B) the boundaries of the:

(i) Barton Springs-Edwards Aquifer Conservation District;

(ii) Harris-Galveston Subsidence District; or

(iii) Fort Bend Subsidence District;

(C) an aquifer, subdivision of an aquifer, or geologic stratum that:

(i) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(ii) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(D) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Texas Water Code Chapter 27.

(b) In designating a brackish groundwater production zone under this section, the agency shall:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by Paragraph (a)(1); and

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by Paragraph (1); and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone.

(c) Areas of the state that are not designated as brackish groundwater production zones are not precluded from development of brackish groundwater or from future designation of zones.

#### §356.71. Brackish Groundwater Production Zone Operating Permit Review.

(a) This section does not apply to a district that overlies the Dockum Aquifer and includes wholly or partly 10 or more counties.

(b) When a district submits an application for a brackish groundwater production zone operating permit to the agency, the agency will conduct a technical review of the application, subject to subsections (c) and (d).

(c) Upon receipt of such an application, the agency will assess the application to determine whether a proposed production well is located within a designated brackish groundwater production zone. If a proposed production well is not located within a designated brackish groundwater production zone, the agency will not conduct the technical review of the application. If a proposed production well is located within a designated brackish groundwater production zone, the agency will conduct the technical review of the applicable permit application or applicable portions of a permit application in accordance with subsections (d) – (f).

(d) Upon receipt of an application for a brackish groundwater production zone operating permit for a proposed production well located within a designated brackish groundwater production zone and that includes all of the information required by Texas Water Code §36.1015(g), the agency will conduct a technical review of the application. If the agency does not receive all of the information required by Texas Water Code §36.1015(g), the agency will notify the district of the missing information. The agency will not conduct a technical review of an incomplete application until all required information is received.

(e) After conducting the application assessment and required technical review of a complete application, the board shall provide a report of the technical review of the application to the district that submitted the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone, including:

(A) whether the proposed production exceeds the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period, as determined pursuant to Texas Water Code §16.060(e); and

(B) whether the parameters and assumptions used in the model described in Texas Water Code §36.1015(g)(4)(A) are compatible with the designated brackish groundwater production zone;

(2) recommendations for the monitoring system required by Texas Water Code §36.1015(e)(4) and (6), including whether the number of monitoring wells are adequate and in appropriate locations and aquifers, in accordance with recommendations established under Texas Water Code §16.060(e)(2)(B);

(f) The findings and recommendations included in subsection (e) will only be site-specific if the agency has received site-specific data and information from the district.

#### §356.72. Annual Report Review

(a) If a district makes a request under Texas Water Code §36.1015(j), the agency will investigate and issue a technical report to the district that sent the request, subject to subsection (b).

(b) Upon receipt of a request, the agency will determine whether it has received the applicable annual report and all of the information required under Texas Water Code §36.1015(e)(6), and for a project located in a designated brackish groundwater production zone in the Gulf Coast

Aquifer, the information required to be collected under Texas Water Code §36.1015(e)(5) related to subsidence. If the agency has not received all of the information required under Texas Water Code §36.1015(e)(6) or §36.1016(e)(5), as applicable, the agency will notify the district of the missing information and will not conduct a technical review of the reports until all required information is received.

(c) Not later than the 120th day after the date the agency receives all of the required information, the agency will investigate and issue a technical report on whether:

(1) brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause:

(A) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the agency in the designation of the zone;

(B) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(C) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term;

(2) not enough information is available to determine whether brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause the conditions listed in subsection (a)(1).

**ATTACHMENT**

Fiscal Note for rulemaking

**TO:** Rebecca Trevino, Chief Financial Officer

**THROUGH:** Chris Hayden, Budget Director

**FROM:** Erika Mancha, Manager, Innovative Water Technologies  
Kevin Kluge, Director, Conservation and Innovative Water Technologies

**DATE:** July 20, 2020

**SUBJECT:** Fiscal Analysis for Proposed Amendments to 31 Texas Administrative Code 356 regarding brackish groundwater production zones

## **BACKGROUND**

Your approval of the fiscal note portion of the proposed rulemaking relating to amendments to 31 Texas Administrative Code (TAC) 356 is required.

Through House Bill 722 of the 86th Texas Legislature, 2019, the Legislature created a framework for groundwater conservation districts to establish rules for a person interested in producing brackish groundwater from a designated brackish groundwater production zone for (1) a municipal drinking water project and (2) an electric generation project. The Legislature directed the TWDB to conduct technical reviews of operating permit applications and, when requested by a groundwater conservation district, conduct technical reviews of annual reports and summarize findings in a report.

The TWDB is proposing rules to implement the technical reviews by adding two new definitions in Section 356.10 and creating a new subchapter in Chapter 356, relating to brackish groundwater production zones.

## **FISCAL ANALYSIS**

The estimated fiscal implications of these proposed rule changes for the first five-year period they are in effect is as follows:

### **A. Costs to State and Local Government.**

These rules are not expected to result in reductions in costs to either state or local governments. These rules apply only to those entities interested in obtaining a brackish groundwater production zone operating permit from a groundwater conservation district. The intent of these

rules is to clarify the agency's role in the technical reviews of brackish groundwater production zone operating permit applications and associated annual reports.

These rules are not expected to have any impact on state or local revenues. These rules are applicable to designated brackish groundwater production zones in the State. An interested person may decide to apply for brackish groundwater production zone operating permit to withdraw brackish groundwater and construct desalination plant to treat the groundwater, that voluntary decision would create additional jobs for the duration of the construction and operation of the desalination plant and possible revenues. However, the adoption of these rules alone has no impact on state or local revenues.

<b>Effect on Government</b>					
<b>Effect on State Government (including TWDB)</b>					
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Estimated additional cost</b>	0	0	0	0	0
<b>Estimated reduction in cost</b>	0	0	0	0	0
<b>Estimated loss or increase</b>	0	0	0	0	0
<b>Effect on Local Government</b>					
<b>Estimated additional cost</b>	0	0	0	0	0
<b>Estimated reduction in cost</b>	0	0	0	0	0
<b>Estimated loss or increase</b>	0	0	0	0	0

B. Public Benefits and Costs: It is estimated that for the first five-year period the rules are in effect the public will benefit from the rulemaking. The public will benefit from the rulemaking as the rules will clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports and groundwater conservation districts will be able to receive these technical reviews and reports.

C. Small business, micro-business, and rural community assessment: The cost of compliance with the proposed amendments for small businesses, micro-businesses, and rural communities will be \$0 because the rules are not regulatory and are not directed at private small or micro-businesses.

D. Small business and rural community regulatory flexibility statement: These rules do not affect small businesses or rural communities because they apply only to those entities interested in obtaining a brackish groundwater production zone operating permit from a groundwater conservation district. There is nothing in the rules that is directed to private small businesses.

E. Local Employment Economic Impact Statement: Pursuant to Texas Government Code § 2001.022, these proposed rules have been examined and there will not be any direct effect on local employment. These rules are applicable to designated brackish groundwater production zones in the State. An interested person may decide to apply for brackish groundwater production zone operating permit to withdraw brackish groundwater and construct desalination

Board Members

July 20, 2020

Page

plant to treat the groundwater, that voluntary decision would create additional jobs for the duration of the construction and operation of the desalination plant. However, the adoption of these rules alone has no impact on local employment in any geographic region of the State.

---

Rebecca Trevino, Chief Financial Officer

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Date

*Return final, executed copy to the Office of General Counsel to be retained with the rulemaking file. This memo is not a part of the Board member notebook materials and is not posted to the website.*



ATTACHMENT

Proposed Rulemaking Memorandum

## **Proposed Rulemaking Memorandum**

To: Fisher Reynolds, Policy advisor

From: Ashley Harden, General Counsel

Date: July 20, 2020

Subject: Proposed rulemaking for designated brackish groundwater production zones

The Texas Water Development Board proposes a rulemaking for an amendment to 31 Texas Administrative Code (TAC) §356.10 and a new Subchapter G, 31 TAC 356, relating to brackish groundwater production zones requirements.

- 1. Provide the draft Notice of Proposed Rule that you intend to submit to the Texas Register, including preambles, comments, notices, and any other text that will be submitted to the Texas Register**

See attachments.

- 2. Attach to this memorandum a complete copy of the following analyses:**

- a. The analysis supporting the draft government growth impact statement required by Texas Government Code § 2001.0221.**

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

- b. The analysis supporting the economic impact statement required by Texas Government Code § 2006.002.**

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for implementing these amendments and adding a new subchapter. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or

responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Water Code; and are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**c. The analysis supporting the regulatory flexibility analysis required by Texas Government Code § 2006.002.**

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. A “major environmental rule” is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify the agency’s role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any standard set by any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§16.060 and 36.1015. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**d. The analysis supporting the takings impact assessment required by Tex. Gov’t Code § 2007.043.**

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify the agency’s role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports. The proposed rule would substantially advance this stated purpose by proposing new rules for brackish groundwater

productions zone designation and guiding groundwater conservation districts in the technical review process of permit applications and annual reports.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that identifies and designates brackish groundwater production zones.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

**e. The analysis supporting the local employment impact statement required by Texas Government Code § 2001.024(a)(6).**

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

**f. The analysis supporting the cost-benefit analysis required by Texas Government Code § 2001.024(a)(5).**

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules will clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports and groundwater conservation districts will be able to receive these technical reviews and reports.

**g. The analysis supporting the fiscal note required by Texas Government Code § 2001.024(a)(4).**

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for implementing these amendments and adding a new subchapter. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Water Code; and are necessary to implement legislation. The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

**3. If Texas Government Code § 2001.0045(b) applies to the proposed rule, identify the proposed repeal or amendment that offsets the costs imposed by the proposed rule and explain the reasoning behind your estimates of the costs. If Texas Government Code § 2001.0045(b) does not apply to the proposed rule, explain why.**

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Water Code; and are necessary to implement legislation.

**4. Is there anything else you would like the Office of the Governor to know about this proposed rule?**

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §§16.060 and 36.1015, which requires the board to designate brackish groundwater production zones and to conduct technical reviews of brackish groundwater production zone operating permit applications and annual reports.

Through House Bill 722 of the 86th Texas Legislature, 2019, the Legislature created a framework for groundwater conservation districts to establish rules for a person interested in obtaining a permit from a groundwater conservation district to authorize producing brackish groundwater from a designated brackish groundwater production zone for (1) a municipal drinking water project and (2) an electric generation project. The Legislature directed the TWDB to conduct technical reviews of operating permit applications and, when requested by a groundwater conservation district, conduct technical reviews of annual reports and summarize findings in a report.

The TWDB is proposing rules to implement the technical reviews by adding two new definitions in Section 356.10 and creating a new subchapter in Chapter 356, relating to brackish groundwater production zones.

Form **941 for 2020: Employer's QUARTERLY Federal Tax Return**  
(Rev. April 2020) Department of the Treasury — Internal Revenue Service

950120  
OMB No. 1545-0029

Employer identification number (EIN) 3 7 - 1 5 8 8 5 3 0

Name (not your trade name) Brush Country GCd

Trade name (if any)

Address 732 West Rice  
Number Street Suite or room number

Falfurrias Tx 78355  
City State ZIP code

Foreign country name Foreign province/county Foreign postal code

**Report for this Quarter of 2020**  
(Check one.)

- ☐ 1: January, February, March  
☒ 2: April, May, June  
☐ 3: July, August, September  
☐ 4: October, November, December

Go to [www.irs.gov/Form941](http://www.irs.gov/Form941) for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

1	Number of employees who received wages, tips, or other compensation for the pay period including: <i>June 12</i> (Quarter 2), <i>Sept. 12</i> (Quarter 3), or <i>Dec. 12</i> (Quarter 4)	1	<span>3</span>
2	Wages, tips, and other compensation	2	<span>37,279</span> <span>44</span>
3	Federal income tax withheld from wages, tips, and other compensation	3	<span>4,622</span> <span>65</span>
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6.	

	Column 1		Column 2
5a	Taxable social security wages <span>37,279</span> <span>44</span>	$\times 0.124 =$	<span>4,622</span> <span>65</span>
5a (i)	Qualified sick leave wages <span></span>	$\times 0.062 =$	<span></span>
5a (ii)	Qualified family leave wages <span></span>	$\times 0.062 =$	<span></span>
5b	Taxable social security tips <span></span>	$\times 0.124 =$	<span></span>
5c	Taxable Medicare wages & tips <span>37,279</span> <span>44</span>	$\times 0.029 =$	<span>1,081</span> <span>10</span>
5d	Taxable wages & tips subject to Additional Medicare Tax withholding <span></span>	$\times 0.009 =$	<span></span>
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d	5e	<span>5,703</span> <span>75</span>
5f	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5f	<span>10,233</span> <span>75</span>
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	<span></span>
7	Current quarter's adjustment for fractions of cents	7	<span></span>
8	Current quarter's adjustment for sick pay	8	<span></span>
9	Current quarter's adjustments for tips and group-term life insurance	9	<span></span>
10	Total taxes after adjustments. Combine lines 6 through 9	10	<span>10,233</span> <span>75</span>
11a	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11a	<span></span>
11b	Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1	11b	<span></span>
11c	Nonrefundable portion of employee retention credit from Worksheet 1	11c	<span></span>

► You MUST complete all three pages of Form 941 and SIGN it.

Next ►

Name (not your trade name)

Employer identification number (EIN)

**Part 1: Answer these questions for this quarter. (continued)**

- 11d Total nonrefundable credits. Add lines 11a, 11b, and 11c . . . . . 11d
- 12 Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10 . . . . . 12
- 13a Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter . . . . . 13a
- 13b Deferred amount of the employer share of social security tax . . . . . 13b
- 13c Refundable portion of credit for qualified sick and family leave wages from Worksheet 1 . . . . . 13c
- 13d Refundable portion of employee retention credit from Worksheet 1 . . . . . 13d
- 13e Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d . . . . . 13e
- 13f Total advances received from filing Form(s) 7200 for the quarter . . . . . 13f
- 13g Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e . . . . . 13g
- 14 Balance due. If line 12 is more than line 13g, enter the difference and see instructions . . . . . 14
- 15 Overpayment. If line 13g is more than line 12, enter the difference  Check one: ☐ Apply to next return. ☐ Send a refund.

**Part 2: Tell us about your deposit schedule and tax liability for this quarter.**

If you're unsure about whether you're a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

- 16 Check one: ☐ Line 12 on this return is less than \$2,500 or line 12 on the return for the prior quarter was less than \$2,500, and you didn't incur a \$100,000 next-day deposit obligation during the current quarter. If line 12 for the prior quarter was less than \$2,500 but line 12 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you're a monthly schedule depositor, complete the deposit schedule below; if you're a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

- ☒ You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

Tax liability: Month 1  Month 2  Month 3  Total liability for quarter   Total must equal line 12.

- ☐ You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941. Go to Part 3.

▶ You MUST complete all three pages of Form 941 and SIGN it.

Next ▶

Name (not your trade name)

Employer identification number (EIN)

**Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.**

- 17 If your business has closed or you stopped paying wages . . . . . ☐ Check here, and enter the final date you paid wages  /  /  ; also attach a statement to your return. See instructions.
- 18 If you're a seasonal employer and you don't have to file a return for every quarter of the year . . . . . ☐ Check here.
- 19 Qualified health plan expenses allocable to qualified sick leave wages . . . . . 19  .
- 20 Qualified health plan expenses allocable to qualified family leave wages . . . . . 20  .
- 21 Qualified wages for the employee retention credit . . . . . 21  .
- 22 Qualified health plan expenses allocable to wages reported on line 21 . . . . . 22  .
- 23 Credit from Form 5884-C, line 11, for this quarter . . . . . 23  .
- 24 Qualified wages paid March 13 through March 31, 2020, for the employee retention credit (use this line only for the second quarter filing of Form 941) . . . . . 24  .
- 25 Qualified health plan expenses allocable to wages reported on line 24 (use this line only for the second quarter filing of Form 941) . . . . . 25  .

**Part 4: May we speak with your third-party designee?**

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

☐ Yes. Designee's name and phone number

Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

☐ No.

**Part 5: Sign here. You MUST complete all three pages of Form 941 and SIGN it.**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

**X**

Sign your name here

*David Kelly*

Print your name here

David Kelly

Print your title here

President

Date

8/14/2020

Best daytime phone

**Paid Preparer Use Only**

Check if you're self-employed . . . . . ☐

Preparer's name

PTIN

Preparer's signature

Date

/  /

Firm's name (or yours if self-employed)

EIN

Address

Phone

City

State

ZIP code



**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 18-50994

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 29, 2020

Lyle W. Cayce  
Clerk

DAVID STRATTA; ANTHONY FAZZINO,

Plaintiffs - Appellants

v.

JAN A. ROE, in her individual and official capacity as director of the Brazos Valley Groundwater Conservation District; BILLY L. HARRIS, in his individual and official capacity as director of the Brazos Valley Groundwater Conservation District; BRYAN F. RUSS, JR., in his individual and official capacity as director of the Brazos Valley Groundwater Conservation District; JAYSON BARFKNECHT, in his individual and official capacity as director of the Brazos Valley Groundwater Conservation District; MARK J. CARRABBA, in his individual and official capacity as director of the Brazos Valley Groundwater Conservation District; GORDON PETER BRIEN, in his official capacity as director of the Brazos Valley Groundwater Conservation District; STEPHEN C. CAST, in his individual and official capacity as director of the Brazos Valley Groundwater Conservation District; BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT,

Defendants - Appellees

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Appeal from the United States District Court  
for the Western District of Texas

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No. 18-50994

Before JONES, SMITH, and HAYNES, Circuit Judges.

EDITH H. JONES, Circuit Judge:

A pair of landowners sued the Brazos Valley Groundwater Conservation District (“BVGCD”) and its Board of Directors. The BVGCD is a Texas political subdivision whose mission is to manage water resources within its two-county jurisdiction. One of them contends the BVGCD has allowed the City of Bryan to drain groundwater from under his property without compensation, violating the Constitution’s Equal Protection and Takings clauses. The other, a Board Member of BVGCD, alleges that the Board deprived him of First Amendment rights by preventing him from speaking at a public meeting. The district court dismissed their claims on the grounds of Eleventh Amendment immunity, ripeness, *Burford* abstention, and qualified immunity. Because the district court erred on all grounds except the dismissal of the First Amendment claim, we AFFIRM IN PART, REVERSE IN PART, and REMAND.<sup>1</sup>

### BACKGROUND

Appellants Anthony Fazzino and David Stratta are landowners with property within the territorial boundaries of the BVGCD. Stratta is also a member of the BVGCD Board of Directors. Fazzino owns 26.65 acres of real property in Brazos County Texas. Under Texas law, Fazzino also owns the groundwater beneath his land, including the groundwater located in the Simsboro aquifer. The City of Bryan, Texas, owns a 2.7-acre tract that is less than 3,000 feet distant from Fazzino’s property.

BVGCD is a Groundwater Conservation District (“GCD”) created under Section 59, Article XVI of the Texas Constitution and Chapter 36 of the Texas Water Code (“TWC”) for the purpose of managing groundwater resources. TEX.

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<sup>1</sup> Judge Haynes concurs fully in the reasoning as to the takings claim but concurs in the judgment only as to the class-of-one equal protection claim. Judge Jones dissents as to Part III.

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WATER CODE §§ 36.0015, 36.011. GCDs are statutorily tasked with developing groundwater management plans that regulate the production and conservation of water, govern its use, study the quantity of water flowing into and out of the aquifers within their territory, and minimize waste. Currently, nearly one hundred GCDs cover over 60 percent of the state's land and encompass approximately 72 percent of major and minor aquifers. The territorial boundaries of 60 GCDs coincide with a single county or less, while the remaining GCDs cover more than one county. BVGCD's boundaries are coextensive with Robertson and Brazos Counties.

Pursuant to its authority under TWC Chapter 36, BVGCD promulgates rules governing the production of groundwater from the Simsboro formation. On December 2, 2004, new rules ("Rules") took effect to regulate landowners' production of groundwater by establishing three categories of wells: 1) Existing Wells; 2) New Wells; and 3) Wells with Historic Use. The rules regulate "groundwater pumpage," i.e., how much water may be withdrawn from a well, through spacing requirements and production limitations.

The spacing and production requirements are designed to "minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to prevent waste." RULES OF THE BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT, Rule 6.1(a) (published Dec. 1, 2004).<sup>2</sup> As water is drawn from a well, it creates a "cone of depression" impact; when more water is withdrawn there is a larger cone of depression. Rule 7.1 established maximum allowable production regulations for New Wells according to a formula that calculates the "total number of

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<sup>2</sup> The most recent version of the Rules, amended September 12, 2019, retains that precise language.

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contiguous acres required to be assigned to the well site.”<sup>3</sup> The definition of “contiguous acreage” requires that the land be “owned or legally controlled . . . by the well owner or operator,” and that the land “shall bear a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science” and BVGCD’s formula. *Id.* at Rule 1.1(6). The formula thus requires 649 contiguous acres surrounding a New Well producing 3,000 gallons per minute (“GPM”), which equates to a circle around the well with a radius of 3,003 feet.

Historic Use wells are generally limited to producing the maximum amount of groundwater an owner can prove was beneficially used before the effective date of the new Rules. Rules 1.1(16), 8.3(g). In contrast to the other categories, the Rules define “Existing Wells” as those wells “for which drilling or significant development of the well commenced before the effective date of these Rules.” *Id.* at Rules 1.1(12). But the Rules do not establish clear production limits for Existing Wells that have no established Historic Use.

On December 8, 2004, six days after the Rules took effect, the City of Bryan began drilling Well No. 18 on its 2.7-acre tract of land and completed the well ten months later. In June 2006, the City applied for a permit to operate Well No. 18 at a production rate of 3,000 GPM. BVGCD conditionally granted a permit authorizing production of 4,838 acre-feet annually at a rate of 3,000 GPM. Subsequently, with no change in the amount of City land surrounding the well or the Rules’ formula, the City received an identical conditional permit in April 2013.

The basis for these permits under the Rules and constitutional law is hotly disputed. Because no groundwater was pumped from the well before the

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<sup>3</sup> The formula is: (the square of the product of the average annual production rate in gallons per minute times the District spacing requirement between wells) multiplied by pi, with the result divided by 43,560. Rules 7.1(2).

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Rules were promulgated on December 2, 2004, it could not be classified as a Historic Use Well. BVGCD granted the conditional permits under a classification of Well No. 18 as an Existing Well, although its only “existence” before the date of the Rules must have been in the form of “significant development,” at least on paper. Appellants assert, not unreasonably, that Well No. 18 is a New Well; consequently, the Rule 7.1 formula would have capped the maximum allowable production on the City’s 2.7-acre tract at 192 GPM. Not only did the City’s well far exceed the Rules’ limitation on acreage-based groundwater production for a New Well, but Fazzino’s property lies within 3,003 feet of Well No. 18 and therefore within its anticipated cone of depression. The City’s well may threaten to dissipate Fazzino’s groundwater.

Fazzino filed a complaint with BVGCD in January 2017, asserting that Well No. 18 was not a Historic Use or Existing Well and therefore must adhere to the production limitations imposed on New Wells. He asked BVGCD to initiate proceedings to reduce Well No. 18’s authorized production. After the State Office of Administrative Hearings (“SOAH”) found that Fazzino was not permitted to assert such a complaint, Fazzino applied for a permit to produce 3,000 GPM from a New Well on his 26-acre property in order to “offset” the production from Well No. 18. Twice, the District advised Fazzino that his application was administratively incomplete without proof that he owned or controlled sufficient acreage—649 acres—to support production of 3,000 GPM. Fazzino acknowledged this deficiency, but he renewed the permit request to offset production from Well No. 18, and requested a variance BVGCD’s spacing and production rules. Shortly afterward, BVGCD informed Fazzino both that his application had lapsed due to his failure to provide documentation of land

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ownership, and that BVGCD did not grant variances.<sup>4</sup> The Rules provide no mechanism to obtain Board action on an administratively incomplete permit.

Stratta is a member of the Board of Directors who became concerned by what he considered unequal application of the District's Rules. He requested that the agenda for the Board's March 8, 2018 meeting include discussion of whether Well No. 18 was a New Well or an Existing Well. The President of the Board told Stratta that no such discussion would take place because it might affect pending litigation. Another board member, Russ, echoed the President's view that Well No. 18 should not be discussed. Stratta attended the March 8 meeting, but he signed in as a member of the public and submitted a "Registration Form" in his capacity as a Brazos County landowner who wished to make a public comment on an "open" agenda item. Specifically, Stratta wanted to ask the Board to include the subject of the status of Well No. 18 at its next meeting. He was prohibited from voicing this small request, however, on the rationale that "Directors" may not discuss subjects that are not on the agenda, even though "Public Comment" on "non-agenda items" was specified as an agenda item.

Lacking other recourse, Fazzino sued BVGCD and its Directors in their individual and official capacities, alleging that their unequal application of BVGCD's Rules violated his right to equal protection under the law and constituted a taking of his property interest in subsurface water beneath his

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<sup>4</sup> Appellants dispute this conclusion, pointing out that the cities of Bryan and College Station, as well as Wickson Creek Special Utility District, Brazos Valley Water Supply Company, and OSR Water Supply Corporations, all maintain wells permitted to produce quantities of groundwater that would be disallowed due to inadequate tract size under Rules 6.1 and 7.1 without a variance from those rules. In fact, Appellants allege that BVGCD consistently ignores the production limitation rules for entities, like those listed, that are led or owned by, or employ, present or former Directors of BVGCD. **ROA.19; Blue Br. at 5.** Appellants, however, failed to plea specific facts—*e.g.* the dates when the wells were created, so as to establish them as "New Wells"—that would raise these allegations above being wholly conclusory. **ROA.19.**

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land. Stratta joined the suit and alleged violation of his First Amendment rights. In response, BVGCD and its Directors filed motions to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). BVGCD (hereafter, collectively including its Directors) moved for dismissal under 12(b)(1) for lack of jurisdiction because: BVGCD is an arm of the state that enjoys Eleventh Amendment sovereign immunity; Fazzino failed to exhaust state court remedies for his takings claim; and *Burford* abstention is required on the takings claim because Texas law is unsettled as to Fazzino's property interest in the groundwater. BVGCD asserted failure to state a claim because Fazzino's property interest in groundwater is not "clearly established," his claims against the Directors are barred by qualified immunity, and Stratta's right to speak, as a Board member, is regulated by the Texas Open Meetings Act ("TOMA") and in any event not clearly established.

The district court was persuaded by all of these arguments, granted the Rule 12(b)(1) dismissal without prejudice and the Rule 12(b)(6) motion with prejudice, and entered judgment. This appeal followed.

### STANDARD OF REVIEW

We review a district court's dismissal orders under Rules 12(b)(1) and 12(b)(6) *de novo*. *Griener v. United States*, 900 F.3d 700, 703 (5th Cir. 2018); *Meyers ex rel. Benzing v. Texas*, 410 F.3d 236, 240 (5th Cir. 2005); *Ysleta Del Sur Pueblo v. Laney*, 199 F.3d 281, 285 (5th Cir. 2000). When reviewing 12(b)(1) dismissals, "we take the well-pled factual allegations of the complaint as true and view them in the light most favorable to the plaintiff." *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). Applying the same standard as the district court, we may consider: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the

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complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

On appeal from a Rule 12(b)(6) dismissal, we consider the allegations set forth in the complaint and any documents attached to the complaint. *Kennedy v. Chase Manhattan Bank USA, NA*, 369 F.3d 833, 839 (5th Cir. 2004). A plaintiff’s complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Phillips v. City of Dallas, Tex.*, 781 F.3d 772, 775–76 (5th Cir. 2015) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (internal quotation marks omitted). A claim is facially plausible if the pleaded factual content “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

### DISCUSSION

Appellants filed suit under 42 U.S.C. § 1983 alleging that BVGCD violated Fazzino’s equal protection right and has taken his property without compensation, and Stratta asserts that BVGCD violated his First Amendment right to free speech. The district court held that it lacked jurisdiction over claims against BVGCD because the district is an “arm of the state” immune from federal suits as a sovereign under the Eleventh Amendment (and its Directors are derivatively immune), (2) Fazzino’s takings claim was not ripe according to *Williamson Cty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 194 (1985), and (3) the takings claim was subject to *Burford* abstention because exactly what protectible rights Fazzino has in groundwater subject to regulation by BVGCD is an unsettled question of Texas law. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). Granting the Rule 12(b)(6) motion to dismiss for failure to state a claim with prejudice, the



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court held that without clearly established rights to groundwater, Fazzino's equal protection claim cannot succeed on the merits and the Directors enjoy qualified immunity. Further, Stratta failed to show that BVGCD's conduct in prohibiting him from speaking was objectively unreasonable in light of clearly established law. We disagree with each of these conclusions.

## I.

### A.

Taking the jurisdictional issues first, as we must, the district court erroneously concluded that BVGCD is an arm of the State of Texas and therefore immune from suit in federal court under the Eleventh Amendment. Texas law counsels otherwise, and analytical inconsistencies in this circuit's precedent misled the district court.

Immunity under the Eleventh Amendment extends to any state agency that is deemed an "alter ego" or an "arm of the state" such that the State itself is the "real, substantial party in interest." *Vogt v. Bd. Of Comm'rs*, 294 F.3d 684, 688–89 (5th Cir. 2002) (internal quotation marks and citations omitted). The purpose of the Eleventh Amendment is to recognize state sovereignty by shielding states, absent their consent or an explicit act of Congress, from money judgments assessed in federal court. The Eleventh Amendment does not bar suit, though, "if the political entity possesses an identity sufficiently distinct from that of the State." *Vogt*, 294 F.3d at 689 (internal quotation marks omitted). "There is no bright-line test for" ascribing Eleventh Amendment Immunity, but the inquiry is meant to determine whether, "despite the presence of a state agency as the nominal defendant," the lawsuit is "effectively against the sovereign state." *Id.*

In *Clark v. Tarrant County*, this court identified six important factors that should be weighed in this inquiry: (1) whether the state statutes and case

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law view the agency as an arm of the state; (2) the source of funds for the entity; (3) the degree of local autonomy the entity enjoys; (4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. *Clark v. Tarrant Cty., Texas*, 798 F.2d 736, 744–45 (5th Cir. 1986). While no one factor is dispositive, the “second *Clark* factor—the source of the entity’s funding—is the weightiest factor” because “[t]he Eleventh Amendment exists mainly to protect state treasuries.” *United States ex rel. Barron v. Deloitte & Touche, L.L.P.*, 381 F.3d 438, 440 (5th Cir. 2004). We consider each of the factors.

### **1. Characterization in State Law and Case Law**

“The first factor we take into account is how the state, through its constitution, laws, judicial opinions, attorney general’s opinions, and other official statements, perceives the entity in question.” *Hudson v. City of New Orleans*, 174 F.3d 677, 683 (5th Cir. 1999). “If the state characterizes the [entity] as an arm of the state, this factor is counted in favor of Eleventh Amendment immunity.” *Id.*

Forty years ago, the Texas Supreme Court, ruling on the question whether navigation districts are state agencies or political subdivisions, clearly distinguished between the two in three ways. *Guaranty Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980). A political subdivision has jurisdiction over a portion of the state, while a state agency exercises its jurisdiction throughout Texas. The governing members of a political subdivision are elected or appointed by locally elected officials, but heads of state agencies are elected statewide or appointed by state officers. And political subdivisions may assess and collect taxes, a power that state agencies lack. The court concluded that “the legislature has consistently recognized

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these distinctions between departments, boards or agencies on the one hand and political subdivisions on the other.” *Id.* (footnote omitted). The navigation district was held to be a political subdivision.

*Guaranty Petroleum* is relevant here because the navigation district was created, exactly like BVGCD, pursuant to Art. XVI, Section 59 of the Texas Constitution and, parallel to BVGCD, the navigation district is defined as a “district” under the Texas Water Code. The Code defines a “District” as “any district or authority created under . . . Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.” TEX. WATER CODE § 36.001(1). Further, the TWC defines “political subdivision” to include “a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.” TEX. WATER CODE § 36.001(15). Finally, as was the case with the navigation district, the BVGCD is run by officials appointed by county officeholders, its jurisdiction is not statewide but covers only two counties, and it may assess and collect taxes.

Despite this guidance from the Texas Supreme Court, federal case law has diverged when analyzing the *Clark* factors. To be sure, “comparisons [between like entities] cannot substitute for a careful examination of the particular entity at issue.” *Sw. Bell Tel. Co. v. City of El Paso*, 243 F.3d 936, 938 (2001) (quoting *McDonald v. Board of Miss. Levee Comm’rs*, 832 F.2d 901, 908 (5th Cir. 1987)) (internal quotation marks omitted). In *Southwestern Bell*, a water improvement district unsuccessfully claimed Eleventh Amendment immunity by resting on faulty precedent—from this court. *Id.* at 938–39. This court had to explain that pursuant to *Clark*, and a line of cases preceding

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*Clark*, an entity is not an arm of the state “simply because it is a creature of state law and a political subdivision of the state;” such a “conclusion would entirely obviate the arm-of-the-state analysis” such that “every entity claiming Eleventh Amendment immunity is a ‘creature’ of some state law.” *Id.* at 939. Whether entities are created under the same law—e.g. the Texas Water Code or Article XVI, Section 59 of the Texas Constitution—cannot be the sole or sufficient factor when determining immunity. “[S]uch a test is no test at all.” *Id.* at 940.

Most political subdivisions, in fact, are “*not* entitled to Eleventh Amendment immunity.” *Sw. Bell*, 243 F.3d at 939. *Southwestern Bell* thoroughly criticized and rejected as fundamentally inconsistent with our earlier precedent the cases that Appellees here rely on for their conclusion that BVGCD is an arm of the state. *See Kamani v. Port of Houston Authority*, 702 F.2d 612 (5th Cir. 1983); *Pillsbury Co. v. Port of Corpus Christi Authority*, 66 F.3d 103 (5th Cir. 1995). The *Southwestern Bell* court explained that “*Kamani* was an admiralty action in which the court stated without analysis that the Port of Houston Authority was ‘a “creature of state law and a political subdivision of the State of Texas”’ entitled to Eleventh Amendment immunity,” and “*Pillsbury* was a breach-of-contract action in which the court held that the Port of Corpus Christi Authority was factually and legally indistinguishable from the Port of Houston Authority, and was thus entitled to immunity under *Kamani*”. *Sw. Bell*, 243 F.3d at 938–40 (internal citations omitted). In light of *Southwestern Bell*, those two cases may not be relied on.<sup>5</sup>

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<sup>5</sup> The district court’s citation of *Celanese Corp. v. Coastal Water Auth.*, 475 F.Supp. 2d 623 (S.D. Tex. 2007) is also inapt. While the authority in that case (the “CWA”) was created pursuant to Art. XVI, Sec. 59 of the Texas Constitution to regulate water resources, the CWA is critically distinguishable from the instant GCD because several members of its Board are appointed by the governor and confirmed by the state Senate, imparting considerable direct state influence on its operations. *Celanese*, 475 F.Supp. 2d at 634. Moreover, unlike BVGCD,

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The district court also relied on a Texas appellate case for the proposition that an underground water conservation district is “an arm of the state created to administer the enumerated governmental powers delegated to it.” *Lewis Cox & Sons, Inc. v. High Plains Underground Water Conserv. Dist. No. 1*, 538 S.W.2d 659, 662 (Tex. Civ. App.—Amarillo 1976). But the court overlooked what immediately followed: “[a]s constituted, the water district exists and functions as a governmental agency, a body politic and corporate, and stands upon the same footing as counties and other political subdivisions of the state.” *Lewis Cox*, 538 S.W.2d at 662 (internal citations omitted). Other case law besides *Guaranty Petroleum* characterizes water management entities, like that in *Lewis Cox*, as “political subdivisions” that “stand upon the same footing as a county.” *South Plains Lamesa R.R., Ltd. v. High Plains Underground Water Conservation Dist. No. 1*, 52 S.W.3d 770, 774 (Tex. App.—Amarillo 2001, no pet.); see also *Coates v. Hall*, 512 F.Supp.2d 770, 778 (W.D. Tex. 2007); *Sullivan v. Chastain*, 2005 WL 984348, at \*7 (W.D. Tex. Apr. 28, 2005). Counties, of course, are not entitled to Eleventh Amendment immunity. See, e.g., *Crane v. State of Texas*, 759 F.2d 412, 415 (5th Cir. 1985).

The application of this factor has been unfortunately complicated by our case law, but on balance, in light of our decision in *Southwestern Bell* and state law authority, this factor suggests BVGCD is not an arm of the state.

## **2. Source of Funding**

The second *Clark* factor looks at the source of BVGCD’s funding. We have consistently held that the “second factor is given the greatest weight because one of the principal purposes of the Eleventh Amendment is to protect state treasuries.” *Vogt*, 294 F.3d at 693; see also *Cozzo v. Tangipahoa Par.*

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the CWA has the power to operate outside of its geographic boundaries. Act of May 17, 1967, 60<sup>th</sup> Leg., R.S., ch. 601 Section 3, Tex. Gen. Laws 1381, 1385.

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*Council--President Gov't*, 279 F.3d 273, 282 (5th Cir. 2002); *Hudson*, 174 F.3d at 687 (“It bears repeating that this is the most important factor in our Eleventh Amendment arm of the state analysis.”). “In assessing this second factor, we conduct inquiries into, first and most importantly, the state’s liability in the event there is a judgment against the defendant, and second, the state’s liability for the defendant’s general debts and obligations.” *Hudson*, 174 F.3d at 687. “The state’s liability for a judgment is often measurable by a state’s statutes regarding indemnification and assumption of debts.” *Vogt*, 294 F.3d at 693. The Texas Water Code does not explicitly render the state liable for judgments against GCDs or their general debts and obligations.

GCD’s are funded by locally assessed taxes and fees. TEXAS WATER CODE §§ 36.201–250. BVGCD points out that GCDs may receive grants or loans from the state, TEXAS WATER CODE §§ 36.158–61, 36.3705–374, and urges that state funds may thus be implicated in an action against the district. This observation ignores the limited statutory purposes for such infusions of state money.<sup>6</sup> None of these provisions permit state funds to indemnify or assume the debts of BVGCD, nor is there evidence that such grants or loans have ever been used to satisfy a judgment.

Indeed, the law speaks to satisfaction of judgments against a GCD in only one way, by an order requiring the district’s board “to levy, assess, and collect taxes or assessments to pay [judgments].” TEX. WATER CODE § 36.066(b). No parallel provision references the state treasury. On the contrary, in *Edwards Aquifer Authority v. Bragg*, the court held that the Edwards Aquifer Authority (“EAA”) was responsible for its permitting decisions and liable for any judgment. 421 S.W.3d 118, 126–131 (Tex. App.—

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<sup>6</sup> Some provisions strictly proscribe the use of certain funds while others are largely related to startup and research costs. TEXAS WATER CODE §§ 36.158–61. The state is under no obligation to provide such funding.

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San Antonio 2013, pet. denied). A judgment was later entered against the EAA for over \$4.5 million. The EAA satisfied this judgment in full without any portion being paid by the state of Texas. And in *Edwards Aquifer Authority v. Day*, the State disclaimed takings liability for the actions of the EAA. 369 S.W.3d 814, 821 n.24 (Tex. 2012). In *Day*, the State took the position that a takings judgment entered against the EAA would have to be satisfied from the EAA's own coffers. *Id.*

As a last resort, BVGCD relies on a provision which states, “[t]he Texas Water Development Board, the commission, the Parks and Wildlife Department, the Texas Agricultural Extension Service, and institutions of higher education may allocate funds to carry out the objectives of this chapter.” TEXAS WATER CODE § 36.160. Coupled with the statutory statement of purpose—GCDs may be created “to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district”—the district argues that the Texas Legislature created a mechanism for GCDs to obtain funding in the event of an adverse judgment. *Id.* § 36.0015.

At best, this argument suggests that state agencies may volunteer to pay off a judgment debt by means of a grant.<sup>7</sup> But the second *Clark* factor concerns whether the state is “directly responsible for a judgment” or “indemnif[ies] the defendant.” *Ex rel. Barron*, 381 F.3d at 440. Evaluated against the position that similar entities are responsible for their own judgments, this contention is virtually frivolous. *See Bragg*, 421 S.W.3d at 130–31; *Day*, 369 F.3d at 821 n.24. In the absence of any meaningful financial relationship between GCDs

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<sup>7</sup> Loans could not be used to satisfy a judgment because their statutorily stipulated uses are limited to start-up expenses. TEXAS WATER CODE §§ 36.3705, 36.371–374.

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and the Texas treasury, the second factor weighs heavily against finding Eleventh Amendment immunity.

### 3. Degree of Autonomy

“The third factor we look to focuses on the degree of local autonomy the entity at issue enjoys.” *Pendergrass v. Greater New Orleans Expressway Comm’n*, 144 F.3d 342, 346 (5th Cir. 1998). “In our circuit, . . . the determination of an agency’s autonomy requires analysis of the “extent of the [entity’s] independent management authority” . . . [as well as] the independence of the individual commissioners’ who govern the entity.” *Vogt*, 294 F.3d at 694 (quoting *Jacintoport Corp. v. Greater Baton Rouge Port Comm’n*, 762 F.2d 435, 442 (5th Cir. 1985)). Thus, we examine “the scope of the entity’s authority over its day-to-day activities” and the “appointment process” of its directors. *Id.* at 695.

The Code grants GCDs broad authority to “make and enforce rules” governing groundwater production, preservation, and usage within their geographic boundaries. TEX. WATER CODE § 36.101(a). Referring to this delegation, the Texas Supreme Court added that districts’ “activities remain under the local electorate’s supervision,” and they “have little supervision beyond the local level.” *Day*, 369 S.W.3d at 834. The state’s highest court has also observed that the localized GCD structure “permits the people most affected by groundwater regulation in particular areas to participate in democratic solutions to their groundwater issues.” *Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75, 80 (Tex. 1999). BVGCD Directors are appointed by the commissioners courts of Robertson and Brazos counties, and are thus indirectly accountable to local constituents. The state supreme court in *Guaranty Petroleum* associated this fact with the existence of an independent political subdivision. 609 S.W.2d at 531; see *Pendergrass*,



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144 F.3d at 347. This court has held that local accountability evidenced autonomy. *McDonald v. Board of Mississippi Levee Comm'rs*, 832 F.2d 901, 907 (5th Cir. 1987). Nevertheless, “the appointment process is given less weight than the scope of the entity’s authority,” *Vogt*, 294 F.3d at 695.

From another perspective, the primary responsibility of GCDs is to develop a local groundwater management plan. TEXAS WATER CODE §§ 36.0015, 36.1071. In creating this plan, the Texas Water Development Board and the Texas Commission on Environmental Quality “provide technical assistance” and the Water Development Board must approve the plan. §§ 36.1071–1072. Each GCD is obligated to “review the plan annually . . . and readopt the plan with or without revisions at least once every five years.” § 36.1072(e). Notably, in *Day*, the Texas Supreme Court listed these interactions while still affirming the essentially local autonomy of GCDs. *Day*, 369 S.W.3d at 834.

But in addition, the state auditor and Legislature are required to audit GCDs’ operations periodically. TEXAS WATER CODE §§ 36.061, 36.302. If the auditor determines that the GCD is not appropriately managing its groundwater, the auditor may deem the GCD non-operational and the Commission on Environmental Quality must take over to ensure comprehensive management of the district. §§ 36.302–303; *see also Guitar Holding Co., L.P. v. Hudspeth Cty. Underground Water Conserv. Dist. No. 1*, 263 S.W.3d 910, 913 (Tex. 2008) (the state auditor had deemed a GCD to be non-operational under Chapter 36). The district court here took these relationships as an indication of significant state control.

Several Fifth Circuit cases have held, however, that audit and reporting requirements did not justify finding a lack of local autonomy. *See Vogt*, 294 F.3d at 694–95 (holding a lack of “supervisory control over the day-to-day

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operations . . . counsels against Eleventh Amendment immunity” (quotation marks omitted)); *Williams v. Dallas Area Rapid Transit*, 242 F.3d 315, 321 (5th Cir. 2001) (“audit requirements are some evidence of state oversight, but they are not dispositive with respect to the issue of local control”); *McDonald*, 832 F.2d at 907 (Levee Board’s obligation to make an annual report to the governor did not outweigh its predominately autonomous actions). It is not clear whether any of these cases involved a situation where, as with GCDs, the statutory oversight can and has resulted in the state’s exerting control over the entity.

When these facts are considered together, the degree of local control and potential state intervention at most merely offset each other.

#### **4. Scope of Activity**

The fourth factor “properly centers on ‘whether the entity acts for the benefit and welfare of the state as a whole or for the special advantage of local inhabitants.’” *Dallas Area Rapid Transit*, 242 F.3d at 321 (quoting *Pendergrass*, 144 F.3d at 347). “Limited territorial boundaries suggest that an agency is not an arm of the state,” and “most entities that are entitled to Eleventh Amendment immunity have statewide jurisdiction.” *Vogt*, 294 F.3d at 695.

This inquiry is largely geographic. In *Vogt*, the court held that even though flooding is a statewide problem, the levee board acted for the “special advantage of local inhabitants,” and its powers “may be exercised only within clearly defined territorial limits.” *Id.* And in *Hudson*, the court “found it highly useful to examine the geographic reach of the [entity’s] powers.” 174 F.3d at 690. In *Celanese*, however, it was an indication of statewide interest that the CWA was authorized to take significant actions inside and *outside* its territorial limits. 475 F.Supp.2d at 634.

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BVGCD's legal boundaries are coextensive with the boundaries of Robertson and Brazos Counties. TEX. SPECIAL DIST. LOC'L LAWS CODE § 8835.004. Groundwater conservation districts are authorized to exercise their authority only within their territorial boundaries. True, GCDs are expected to coordinate with each other and the Texas Water Development Board, *Day*, 369 S.W.3d at 834, but there is no evidence that these entities operate in conjunction for the "benefit and welfare of the state as a whole." *Vogt*, 294 F.3d at 695. Appellees' contention that water conservation is "undeniably a statewide concern" is unavailing because the scope of authority rather than the scope of concern is controlling. The fourth factor cuts against BVGCD's entitlement to Eleventh Amendment immunity.

### **5. Remaining Factors**

Both parties and the district court agree that the remaining factors—the authority to sue and be sued in its own name and the right to hold and use property—weigh against granting immunity. *See* TEX. WATER CODE §§ 36.251, 36.105.

On balance, five of the six *Clark* factors weigh against finding BVGCD is an arm of the state of Texas for which Eleventh Amendment immunity is appropriate. Most important, funds from the Texas treasury will not be used to satisfy a judgment against the entity. The Directors are likewise not entitled to assert such immunity. The district court erred in dismissing the landowners' action for lack of jurisdiction on this basis.

### **B.**

Relying on *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the district court dismissed Fazzino's takings claims as unripe because he had neither received a final decision regarding the application of the challenged regulations nor sought

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compensation for the alleged taking in state courts. This holding has become moot after the Supreme Court overturned *Williamson County*. In *Knick v. Twp. Of Scott*, 139 S. Ct. 2162 (2019), the Court held that “the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under § 1983 *at that time*.” *Id.* at 2168 (emphasis added). Further, “[t]he availability of any particular compensation remedy, such as an inverse condemnation claim under state law, cannot infringe or restrict the property owner’s federal constitutional claim.” *Id.* at 2171. The Court then explicitly disavowed *Williamson County* and its state litigation requirement: “*Williamson County* was not just wrong. Its reasoning was exceptionally ill founded and conflicted with much of our takings jurisprudence.” *Id.* at 2178.

Based on *Knick*, Fazzino’s takings claim is ripe for adjudication because Fazzino fully pursued the administrative remedies available to him before filing this action.

### C.

The district court held Fazzino’s takings claim subject to *Burford* abstention, but the following analysis will also necessarily apply to the equal protection claim that is not barred by Eleventh Amendment immunity. “[W]e review an abstention ruling for abuse of discretion, but ‘we review de novo whether the requirements of a particular abstention doctrine are satisfied.’” *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014) (quoting *Romano v. Greenstein*, 721 F.3d 373, 380 (5th Cir. 2013)). Because the exercise of discretion must fit within the specific limits prescribed by the particular abstention doctrine invoked, “[a] court necessarily abuses its discretion when it abstains outside of the doctrine’s strictures.” *Webb v. B.C. Rogers Poultry*,

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*Inc.*, 174 F.3d 697, 701 (5th Cir.1999); *see also Texas Ass’n of Bus. v. Earle*, 388 F.3d 515, 518 (5th Cir. 2004).

*Burford* abstention is an “extraordinary and narrow exception to the duty of the District Court to adjudicate a controversy properly before it.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728, 116 S. Ct. 1712, 1727 (1996). “*Burford* allows a federal court to dismiss a case only if it presents ‘difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar,’ or if its adjudication in a federal forum ‘would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.’” *Id.* at 726–27, 116 S. Ct. at 1726. The decision to exercise *Burford* abstention must be weighed against federal courts’ “virtually unflagging obligation . . . to exercise the jurisdiction given them” by Congress. *Colorado River Water Cons. Dist. v. United States*, 424 U.S. 800, 821, 96 S. Ct. 1236, 1248 (1976).

*Burford* itself involved a suit to enjoin the enforcement of an order of the Texas Railroad Commission, which at that time enforced a detailed regulatory scheme involving complicated oil and gas issues. *Burford*, 319 U.S. at 325–26, 63 S. Ct. at 1103. The Court admonished that federal courts should be reluctant to get involved in inherently local matters involving the management of state interests covered by a complex regulatory scheme, where the inevitable result would be “[d]elay, misunderstanding of local law, and needless federal conflict with the State policy.” *Id.* at 327, 63 S. Ct. at 1104.

Five factors govern a federal court’s decision whether to abstain under *Burford*: “(1) whether the cause of action arises under federal or state law; (2) whether the case requires inquiry into unsettled issues of state law or into local facts; (3) the importance of the state interest involved; (4) the state’s need

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for a coherent policy in that area; and (5) the presence of a special state forum for judicial review.” *Aransas Project v. Shaw*, 775 F.3d 641, 649 (5th Cir. 2014) (quoting *Wilson v. Valley Elec. Membership Corp.*, 8 F.3d 311, 314 (5th Cir. 1993)). The district court cited this standard correctly and found that all five factors militated in favor of abstention. We disagree.

The court had to acknowledge that because Fazzino’s § 1983 claims allege constitutional violations, the first factor is satisfied in favor of federal jurisdiction. *See Romano v. Greenstein*, 721 F.3d 373, 380 (5th Cir. 2013). But it joined this factor with the second factor and found the “unsettled issue” “that state courts, including the Texas Supreme Court, have been wrestling with for years,” as having to do with the applicability of Texas oil and gas common law to groundwater regulation by GCDs. As will be seen in the next section, we do not view this case in the same overgeneralized terms and find Fazzino’s claims sufficiently precise under federal and state law to move forward. In the briefest terms, the Texas Supreme Court reaffirmed in *Day* that groundwater is owned in place by the surface landowner, and the EAA’s (and by necessary implication, GCDs’) regulatory provision affording landowners a “fair share” of groundwater confers property rights that may be enforced in takings law and under doctrines of equal protection. *Day*, 369 S.W.3d at 830. In this highly analogous context, it is no extension of state law to echo *Day*’s conclusion.<sup>8</sup>

Regarding the third factor, “[t]he regulation of water resources is . . . a matter of great state concern.” *Sierra Club v. City of San Antonio*, 112 F.3d 789, 794 (5th Cir. 1997). In light of the severe droughts that periodically strike

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<sup>8</sup> The cases cited by the district court in favor of abstention for similar issues of “unsettled state law” predate *Day* and thus are of little support. *See Williamson v. Guadalupe Cty. Groundwater Cons. Dist.*, 343 F.Supp.2d 580 (W.D. Tex. 2004); *Coates v. Hall*, 512 F.Supp.2d 770, 780 (W.D. Tex. 2007) (“[T]he Texas Supreme Court has not addressed the scope of a landowner[']s cognizable property interest in groundwater beneath their [sic] land.” (quotation marks omitted)).

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the state and the anticipated growth in Texas's water needs, the state's interest is only increasing.<sup>9</sup> This factor favors abstention to the extent that, unlike our decisions in *Aransas Project* and *Romano*, there is no strong, countervailing federal interest. *Aransas Project*, 775 F.3d at 651; *Romano*, 721 F.3d at 380. Nevertheless, the relief Fazzino seeks diminishes the importance of this factor. In contrast to *Sierra Club*, in which the plaintiff sought to enjoin the EAA to reduce groundwater withdrawals, and *Wilson*, where the plaintiff sought refunds for unconstitutional rate increases on behalf of a class, Fazzino asks that BVGCD simply apply its rules equally to landowners within its purview or provide adequate compensation to him. Compare *Sierra Club*, 112 F.3d at 798 with *Wilson*, 8 F.3d at 313. His lawsuit therefore poses little threat to the general state interest.

The fourth factor looks at the state's need for a coherent policy in regulating groundwater. This factor "is intended to avoid recurring and confusing federal intervention in an ongoing state scheme." *Wilson*, 8 F.3d at 315. But *Burford* "does not require abstention whenever there exists [complex state administrative processes], or even in all cases where there is a potential for conflict with state regulatory law or policy." *NOPSI v. Council of City of New Orleans*, 491 U.S. 350, 362, 109 S. Ct. 2506, 2515 (1989) (quotation marks omitted). Nor would a federal judgment here interfere with the coherence of state policy. GCDs are designed to be decentralized and fragmentary in order to offer local control over groundwater resources. There are roughly 100 GCDs in Texas, but nearly two-thirds of them oversee territory coextensive with a single county. Each GCD designs and implements its own rules under a

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<sup>9</sup> The Texas House Committee on Natural Resources observed, "[i]n recent years . . . severe drought coupled with a growing population has caused pressure to grow on groundwater resources." H. Comm. on Nat. Res., Interim Rpt. 84th Leg. at 15 (Tex. Jan 2015). "What was once used mainly in times of emergency, is fast becoming the preferred method of water supply in this state." *Id.*

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general legislative framework subject ultimately to the local electorate. The existence of some coordination and state oversight does not transform a decentralized system of regulation into a comprehensive one, nor does Fazzino's lawsuit threaten this regulatory scheme any more than a takings judgment secured by the Braggs against EAA. *Bragg*, 421 S.W.3d at 131. This factor weighs against abstention.

Finally, we consider the state forum for judicial review. GCD decisions are reviewed in state court. Those lawsuits are filed against local GCDs, not a state agency, and maintained in the county where the district is located. TEX. WATER CODE § 36.251. Accordingly, "there is no special state forum for judicial review." *Romano*, 721 F.3d at 380.

The BVGCD is no Texas Railroad Commission, and the federal court should not have abstained from the constitutional issues raised by Fazzino. The claims do not delve into unduly complex issues of state law, the state concerns that are implicated are not overriding in light of the remedy sought, no state law would be usurped by a federal decision, and statewide processes or regulatory regimes would not be disrupted. The district court abused its discretion in deciding to abstain under *Burford*.

## II.

Having rejected the jurisdictional objections to this litigation, we turn to the merits. The district court dismissed Fazzino's takings and equal protection claims because it believed that they rested on unsettled questions about the application of oil and gas law to the landowner's rights in the groundwater beneath his property. As we noted above, this formulation of Fazzino's claim is at too high a level of generality. BVGCD's briefing compounds this error by asserting that to adopt Fazzino's position would require the federal court to completely assimilate Texas oil and gas law to groundwater regulation. This



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position is disavowed by Fazzino, unnecessary to adjudicate here, and amounts to a bright red herring.

It is correct, however, that Fazzino's rights as a property owner are a creature of state law. Thus, his property rights constitute whatever he has that the BVGCD may not constitutionally "take" without compensation, and they provide the baseline by which to determine whether he has been treated "unequally" by the district vis a vis the City's permit. Fortunately, Texas law is not unsettled as to the landowner's basic rights. The Texas Supreme Court plainly held in *Day* that a landowner's property rights include the ownership of groundwater in place beneath his acreage, and such ownership right is subject to takings claims. The court stated at the outset that it would decide "in this case whether land ownership includes an interest in groundwater in place that cannot be taken for public use without adequate compensation guaranteed [by the Texas Constitution]. We hold that it does." *Day*, 369 S.W.3d at 817. Further, as the court recognized, the TWC reinforces its conclusion by providing that "[n]othing in this code shall be construed as granting the authority to deprive or divest a landowner . . . of the groundwater ownership and rights described by this section." TEXAS WATER CODE § 36.002(c). With a cogent observation, the court rebuffed an argument, rather like BVGCD's argument here, that groundwater rights by their nature are "too inchoate" to merit constitutional protection: the intolerable extreme of that argument would allow a regulator to deprive the property owner of all his groundwater rights. *Day*, 369 S.W.3d at 832–33. The court instead restated that "[g]roundwater rights are property rights subject to constitutional protection, whatever difficulties may lie in determining adequate compensation for a taking." *Id.* at 833.

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What is “unsettled” about *Day*’s interpretation of the common law and statutory rights of groundwater owners? Indeed, it is BVGCD, not Fazzino, that would “unsettle” Texas law by asking the federal court essentially to reconsider *Day* and dramatically reduce the constitutional rights of landowners to the groundwater in place.

Neither the state Supreme Court nor the legislature is blind to differences between groundwater and oil and gas reserves that may require legal distinctions to be drawn. *See, e.g., id.* at 830–31, 840–41. Still, the court has explained, “[c]ommon law rules governing mineral and groundwater estates are not merely similar; they are drawn from each other or from the same source.” *Coyote Lake Ranch v. City of Lubbock*, 498 S.W. 3d 53, 64 (Tex. 2016). This common parentage led the court in *Day* to analogize the correlative rights as between landowners in common subsurface reservoirs, whether of minerals or water, as being recognized both at common law and more particularly through state regulation that “afford[s] landowners their fair share of the groundwater beneath their property.” *Day*, 369 S.W.3d at 830; *see also Elliff v. Texon Drill. Co.*, 210 S.W.2d 558, 562-63 (Tex. 1949).

Notably, the TWC “requires groundwater districts to consider several factors in permitting groundwater production, among them the proposed use of water, the effect on the supply and other permittees, [and] a district’s approved management plan.” *Day*, 369 S.W.3d at 841 (citing TEXAS WATER CODE § 36.113(d)(2)–(4)). Affording groundwater owners their fair share “must take into account factors other than surface area,” the historic metric for an oil and gas owner’s fair share. *Id.* But concerning Fazzino’s takings claim, it seems highly pertinent, notwithstanding the statutory list of factors, that BVGCD opted for Rules based on spacing and production limits plus the water’s proposed or historic use. Fazzino’s allegation is that by permitting the

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City of Bryan to drain water from an area with a 3003 ft. radius, far outside its surface ownership and including surface area of Fazzino's property, the BVGCD has "taken" his groundwater in place without compensation. The task of the district court will be to assess, as the state supreme court did in *Day*, whether the groundwater scheme effectuated by BVGCD's Rules promulgated in December 2004 has resulted in a taking of Fazzino's interest. *Id.* at 838. That this task may be challenging is not the same as concluding it is infeasible. *See Bragg*, 421 S.W.3d at 153 (affirming judgment against the Authority for "taking" of landowners' property).

Likewise, Fazzino's equal protection claim alleges sufficiently that BVGCD unequally applied its Rules by treating municipalities, like the City of Bryan, as exempt from the production limits required by the Rules' surface area formula while rigorously enforcing those limits against Fazzino. The district court discussed this claim only in terms of qualified immunity for the Board, and in that respect held that Fazzino's right to equal protection, if any, was not clearly established because GCDs have broad discretionary authority in framing and implementing groundwater production rules. The court dismissed the Board members for failure to state a claim on this basis. In light of our rejection of BVGCD's jurisdictional objections, and the preceding discussion of Fazzino's property rights, this analysis is wanting.

A class-of-one equal protection claim is based on two factors: whether the plaintiff was "intentionally treated differently from others similarly situated," and whether there was a "rational basis" for this difference. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Lindquist v. City of Pasadena*, 669 F.3d 225, 233 (5th Cir. 2012).

*Lindquist* disavowed any precise formula to determine whether a plaintiff is similarly situated to comparators, holding instead that "the full

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variety of factors that an objectively reasonable . . . decisionmaker would have found relevant” must be considered. 669 F.3d at 234. Further, “the plaintiff’s and comparators’ relationships with the ordinance at issue will generally be a relevant characteristic for purposes of the similarly-situated analysis.” *Id.* Pertinent here, when creating rules, GCDs must consider “groundwater ownership and rights”; “the public interest”; and “develop rules that are fair and impartial.” TEX. WATER CODE § 36.101(a)(2)–(4). *Day* held that one purpose of regulating groundwater is ensuring that owners in a common reservoir receive their fair share. *Day*, 369 S.W.3d at 840. BVGCD implicitly accepted this position by setting groundwater production limits based on a spacing and production formula. Thus, Fazzino’s equal protection claim is not judged against the backdrop of “unsettled” questions of Texas law, but against the precise regulations enacted and enforced by BVGCD in this case.

Fazzino alleges that BVGCD intentionally treated the City differently in two ways. First, the district mischaracterized Well No. 18 as an Existing Well although it was not completed for ten months after the Rules were promulgated. Fazzino contends the well had to be a New Well under the district’s Rules and therefore subject to its spacing and production limits. The Texas Supreme Court rejected a similar misapplication of a GCD’s regulations that deviated from the district’s enabling statute in *Guitar Holding Co. v. Hudspeth Cty. Underground Water Cons. Dist. No. 1*, 263 S.W.3d 910, 917–18 (Tex. 2008). Additionally, Fazzino alleges, BVGCD ignored its land ownership, spacing and production limits for Well No. 18 while enforcing them rigorously against him. The results of the preference for the City’s well are dramatic. Based on its land ownership, the City’s well should have been limited to pumping 192 GPM, not 3000 GPM as authorized, and its annual production should have been about 315 acre-feet, not 4,838 as authorized by BVGCD. In

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contrast, the district agreed to permit Fazzino a New Well under Rule 7.1 for 192 GPM and 315 acre-feet per year based on his 26-acre tract.

Fazzino additionally asserts there was no rational basis for the district's differential treatment of him, and he implies the intentionality of the district's efforts based on its preference for, and the relations of its Board members to, the cities within the BVGCD. These allegations of disparity and intentional conduct are sufficient to require further development rather than dismissal on the pleadings. Because neither BVGCD nor its Board was required to respond on the merits, the substance of these allegations must be tested in discovery and further proceedings. For now, the court's Rule 12(b)(6) dismissal must be reversed as to all defendants.

**III.**<sup>10</sup>

Stratta insufficiently pleaded that BVGCD and its Board of Directors (collectively, "Defendants") violated Stratta's First Amendment right to free speech. Given Stratta's status as a member of the Board, he was governed by the Texas Open Meetings Act ("TOMA"). As such, he did not have the same rights as the "public" under the particular circumstances. We therefore affirm the district court's judgment dismissing Stratta's First Amendment claims.

Stratta's First Amendment claim revolves around TOMA's notice requirement, TEX. GOV'T CODE ANN. § 551.041, and its notice exception provision, *id.* § 551.042. We have already upheld TOMA as a constitutional, content-neutral time, place, or manner restriction on an individual's First Amendment right. *Asgeirsson v. Abbott*, 696 F.3d 454, 462 (5th Cir. 2012).<sup>11</sup>

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<sup>10</sup> Judge Smith and Judge Haynes join Part III in full. Judge Jones writes separately in dissent.

<sup>11</sup> Because free speech restrictions under TOMA do not violate the First Amendment, free speech cases that arise under TOMA are distinguishable from free speech cases that do not. As such, cases holding that a governmental body violated a member's First Amendment right to free speech for non-TOMA reasons are inapplicable here. *See, e.g., Wilson v. Hous.*

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Thus, if TOMA prohibited Stratta from requesting during the Board meeting's public comment period on non-agenda items that the Board add a topic to the next meeting's agenda, then Stratta's First Amendment rights were not violated when he was barred "as a member of the public" from saying whatever he wanted at the Board meeting.

A governmental body, such as the Board, must give written notice before each meeting. *Id.* § 551.041. But such notice is not required in one instance:

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

*Id.* § 551.042. This exemption does not permit Stratta, as a member of a governmental body, to place an unnoticed issue before the Board.<sup>12</sup>

The exemption's "purpose is to authorize a governmental body to make a limited response to an inquiry about a subject not included on the posted notice and to prevent it from engaging in 'deliberation' or making a 'decision' about the subject matter of the inquiry." *Hays Cty. Water Planning P'ship v. Hays Cty.*, 41 S.W.3d 174, 181 (Tex. App.—Austin 2001, pet. denied); *see also* Tex. Att'y Gen. Op. No. JC-169 (2000), at 5.

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*Cnty. Coll. Sys.*, 935 F.3d 490, 497–500 (5th Cir. 2020), *petition for reh'g filed*, Case No. 19-20237 (5th Cir. April 7, 2020) (holding that a governmental body's censure of one of its members for violating its bylaws was an unlawful restriction on the member's free speech rights).

<sup>12</sup> Stratta himself thought so because he signed in as a "member of the public" to make this point.

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TOMA provides this exemption because “public comment sessions provide an opportunity for citizens to speak their minds on an unlimited variety of subjects” and a governmental body cannot be expected “to divine or foresee the myriad of matters its constituents wish to bring to its attention.” Tex. Att’y Gen. Op. No. JC-169, at 4. Section 551.042 provides an outlet for a governmental body to address the public’s concerns without violating the notice provision of § 551.041: instead, it may place the subject on the agenda for a future meeting. TEX. GOV’T CODE ANN. § 551.042; *accord id.* § 551.041 (requiring written notice before a meeting); *id.* § 551.001(4)(A) (stating that a deliberation is a type of “meeting”). It does not allow a member of a governmental body to bypass the notice requirements of TOMA by introducing a subject that has not been the subject of proper written notice during the public comment period of a meeting. Indeed, the court in *Hays County* held that a member of the governmental body in that case could not rely on § 551.042 to circumvent the notice requirement when the member “was not responding to an inquiry.”<sup>13</sup> 41 S.W.3d at 181. Similarly, Stratta was not responding to an inquiry; he was making one. Thus, the exemption does not apply.<sup>14</sup>

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<sup>13</sup> The dissent states that *Hays County* is distinguishable for a number of reasons. But none of those stated reasons mattered to the court’s exemption determination. *See Hays Cty.*, 41 S.W.3d at 181. The only fact that mattered was whether the member of the governmental body was responding to an inquiry; he was not. *Id.* Thus, the exemption in § 551.042 did not apply. *Id.*

<sup>14</sup> The dissenting opinion would hold that § 551.042 permits Stratta “solely to place a proposal before the Board that the issue be taken up at a future meeting” because “[i]t is not determinative . . . whether Stratta was ‘a member of the public or of the governmental body.’” Aside from the fact that Stratta presents his issue as based upon his status as a member of the public, the Texas appellate court’s holding in *Hays County* does not support this interpretation of § 551.042. *See Hays Cty.*, 41 S.W.3d at 181. When evaluating issues of state law, if there is no final decision on the issue by the state’s highest court, we “defer to intermediate state appellate court decisions, unless convinced by other persuasive data that the highest court of the state would decide otherwise.” *Temple v. McCall*, 720 F.3d 301, 307

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In his brief, Stratta acknowledges that he “intended to make a public comment requesting that the Board include the subject of the status of Well No. 18 on its next agenda,” and that the “Board prevented Stratta from making the request on the basis that they feared it would violate TOMA’s notice requirements.”

Although, he disagreed with this analysis, he acknowledges it. Thus, Stratta’s argument is based upon his contention that he inquired as a “member of the public.” At the meeting, he signed in as a member of the public. His brief states his appellate issue as: “Does Stratta have a clearly established right to address the board of directors as a member of the public during a period reserved for public comment on open agenda items?” Addressing this “member of the public” contention, the answer is clearly “no.” “Member of the public” is not defined in TOMA, or any other Texas statute. *See* TEX. GOV’T CODE ANN. § 551.001; *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240, 245 (Tex. App.—Austin 2016, no pet.) (stating that no Texas statute has defined “member of the public”). Texas courts have thus looked to the plain and common meaning of the term while considering its context. *See Leffingwell*, 490 S.W.3d at 245; *accord TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011). “When ‘member of the public’ is used in conjunction with an identified or identifiable group . . . —as it is here with ‘governmental body’—its meaning is contextually modified to mean a person who does not belong to the identified group.” *Leffingwell*, 490 S.W.3d at 246. Stratta is a BVGCD Board member. He thus is not a “member of the public” when he attends a BVGCD meeting.

Stratta cannot bypass TOMA’s notice requirement by attending a Board meeting as a “member of the public.” TOMA does not allow for such action

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(5th Cir. 2013) (internal quotation marks and citation omitted). We thus defer to the Texas appellate court’s interpretation of § 551.042. Federal courts should be reluctant to interfere in a city council’s conclusion about what Texas law means in contradiction to Texas case law.



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because Stratta is a Board member. TOMA is designed to protect the public by making open meetings, including notice of what will be discussed at the meetings, the norm. TEX. GOV'T CODE ANN. §§ 551.002, .041. In other words, it is designed to protect the public from Board member violations, not to allow Board members to circumvent its requirements by calling themselves “members of the public.” As a “member of the public,” a panel member could appear in the town square and endorse a candidate for public office. But as federal judges, we are barred from doing so. *See* ADMIN. OFFICE OF U.S. COURTS, CODE OF CONDUCT FOR UNITED STATES JUDGES, Canon 5(a)(2) (2019); *see also* MODEL CODE OF JUDICIAL CONDUCT Canon 4 (AM. BAR ASS'N 2010). Even candidates for judge are subject to limitations that “members of the public” are not. *Cf. Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 437 (2015). A “member of the public” could comment on a pending criminal trial, but a juror in the case could not. *See United States v. Albert*, 595 F.2d 283, 290 (5th Cir. 1979) (prohibiting prejudicial private communications between jurors and third persons); *Chambliss v. State*, 633 S.W.2d 678, 682 (Tex. App.—El Paso 1982), *aff'd*, 647 S.W.2d 257 (Tex. Crim. App. 1983) (stating the same). The list goes on. Thus, whatever Stratta’s rights otherwise may be, they were overcome by his status as a Board member, and the Board correctly prevented Stratta from speaking at the meeting.<sup>15</sup>

In accordance with TOMA’s notice requirement, the Board notified the public that the March 8, 2015, meeting would include a public comment period on open agenda items. TEX. GOV'T CODE ANN. § 551.041. That agenda item was limited to comments by the public, of which Stratta was not included.

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<sup>15</sup> As a result, there is no need to address the qualified immunity issue. But, assuming *arguendo* that the dissenting opinion is correct that there was a First Amendment violation, of course, we agree that Defendants are entitled to qualified immunity on that claim.

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Stratta thus was not permitted under § 551.042 to raise a new topic as an agenda item in a future meeting during the existing meeting. Accordingly, we affirm the district court's judgment dismissing Stratta's First Amendment claims.<sup>16</sup>

### CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment dismissing Stratta's First Amendment claim; **REVERSE** the dismissal of BVGCD for lack of jurisdiction, and **REVERSE and REMAND** the judgment dismissing all other claims and defendants.

**AFFIRMED IN PART, REVERSED IN PART, and REMANDED.**

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<sup>16</sup> The district court dismissed Plaintiffs' official-capacity claims against Defendants for lack of jurisdiction and their individual-capacity claims as barred by qualified immunity. However, "[w]e are free to uphold the district court's judgment on any basis that is supported by the record." *Zuspann v. Brown*, 60 F.3d 1156, 1160 (5th Cir. 1995).

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EDITH H. JONES, Circuit Judge, dissenting in part:

I respectfully dissent from the majority’s conclusion that Stratta was not permitted under § 551.042(a)-(b) to inquire about a new subject for the limited purpose of placing that subject on the agenda for a subsequent meeting. These provisions specify that if “a member of the public *or* of the governmental body inquires about a subject for which notice has not been given,” then “[a]ny deliberation of or decision about the subject shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.” (Emphasis added). The majority hold that (1) Stratta could not make an “inquiry” as a member of the governmental body, and (2) Stratta was not permitted to attend the Board meeting as a “member of the public.” The plain text of the statute contravenes the first conclusion and renders the second conclusion superfluous. By limiting the response to an inquiry by a member of the governmental body to placing that subject on a subsequent meeting agenda, the statute presupposes the permissibility of such an inquiry by a member of the governmental body.<sup>1</sup>

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<sup>1</sup> Statutory regulation of a response to an activity short of prohibition presupposes that the activity is permissible. The majority does not engage with this principle of statutory interpretation. Instead, my colleagues rely on *Hays Cty. Water Planning P’ship v. Hays Cty., Texas*, 41 S.W.3d 174 (Tex. App. 2001), for the proposition that an elected official could not rely on § 551.042 to circumvent the notice requirements when the member “was not responding to an inquiry.” *Id.* at 181. The majority omits the pertinent second half of that quotation, however. In full, the court stated that the commissioner “was not responding to an inquiry by either a member of the public *or a colleague on the commissioners court*,” implying once again that a member of the governmental body may make an inquiry. *Id.* In fact, the court held that “551.042 is clear and unambiguous and relates to ‘inquiries’ from members of the public or the governmental body.” *Id.*

Furthermore, *Hays Cty.* is distinguishable on numerous grounds. The central holding of *Hays Cty.* is that a commissioner gave a “presentation” for which notice was insufficiently given. *Id.* The commissioner’s remarks went far beyond getting an item placed on the agenda for a subsequent meeting. And the argument that the commissioner appeared as a member of the public was not even raised until litigation; indeed, the commissioner did not even attempt to speak during the public comment period. *Id.* at 176–77, 181. By contrast, Stratta signed into the meeting as a member of the public, attempted to speak during the public comment period, and intended only to inquire about the status of Well No. 18.

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Stratta made his request at the meeting either as a member of the governmental body or as a member of the public. Because he would have been permitted to inquire about placing the status of Well No. 18 on a future agenda in either capacity, it is not determinative under this statute whether he was “a member of the public or of the governmental body.” *Id.* Section 551.042(a)-(b) expressly supports Stratta’s strategy to place a proposal before the Board, which it was then required to debate, solely as to whether to take up this issue at a future meeting.

The purpose of TOMA is to guarantee openness in the operation of public bodies by reducing non-public discussion and deliberations and giving the public access to their activities. The Board members here, however, are interpreting TOMA to stifle and discriminate against “open” discussion of whether an important issue should be placed on an open meeting agenda. Yet “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828, 115 S. Ct. 2510, 2516 (1995). Stratta’s pleading makes a plausible argument that TOMA was applied here in a viewpoint discriminatory fashion. The Board members, sued in their official capacity, should be required to defend against Stratta’s charge.

Nonetheless, I would affirm the district court’s conclusion that the Board members are qualifiedly immune in their individual capacities from liability for any violation of Stratta’s First Amendment rights. The district court theorized they could have reasonably believed that denying him the right to speak in the public comment period of the meeting was sanctioned by TOMA. Under TOMA, a board may place items on an agenda for public discussion but may not discuss those items in advance. TEX. GOV’T CODE ANN. § 551.041. The district court interpreted this section to mean that if Stratta had debated with

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fellow Board members whether to discuss the status of Well No. 18 in the upcoming meeting, they had foreknowledge of his views such that taking them up during the public comment session would have failed the law's notice requirement. The court relied on a Texas Attorney General opinion stating that "the use of 'public comment' or similar term will not provide adequate notice if the governmental body is, prior to the meeting, aware or reasonably should have been aware, of specific topics to be discussed." Op. Tex. Att'y Gen. No. JC169 (2000) at 3–4.

For purposes of qualified immunity, the court's analysis suffices. "Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (quotation marks omitted).

In sum, I would affirm the court's grant of qualified immunity to the individual Board members but remand Stratta's claim for a First Amendment violation against the Board members in their official capacity.

August 7, 2020

Felix Saenz  
General Manager  
Brush Country Groundwater Conservation District  
732 West Rice St.  
Falfurrias, TX

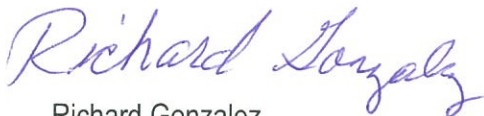
Cancellation of Water Well Permit # 0031-249-2020

Mr. Saenz,

Please accept this letter as a formal request that I, Richard Gonzalez, would like to withdraw my previously submitted water well operating permit application #0031-249-2020. The well pump that will be installed will be 1.5 HP that will provide approximately 23 gallons per minute. It is my understanding that a well of this capacity is exempt from the District's requirement to obtain an operating permit. We will coordinate with you and your office once we have a scheduled date to install the 1.5 HP water well pump for verification.

Feel free to contact me at (361)455-3841 if you have any questions.

Sincerely,



Richard Gonzalez  
Property Owner

RECEIVED  
8-7-2020  
by Maggie  
Castillo  
9:22 a.m.

Last year's tax rate:	
1 Last year's operating taxes	\$453,541
2 Last year's debt taxes	\$0
3 Last years total taxes	\$453,541
4 Last year's tax base	\$2,191,019,324
5 Last year's total tax rate	0.02070 / \$100

This year's effective tax rate:	
6 last year adjusted tax values	\$2,182,685,714
7 Last year's adjusted taxes (after subtracting taxes on lost property)	\$452,342
8 : This year's adjusted tax base (after subtracting value of new property	\$2,225,089,199
9 =This year's effective tax rate(no new revenue tax rate) (Maximum rate unless unit publishes notices and holds hearings)	0.020329 / \$100

This year's rollback tax rate:	
10 Last years adjusted operating taxes (after subtracting taxes on lost property and adjusting for any transferred function, tax increment financing, state criminal justice mandate, and/or enhanced indigent healthcare expenditures)	\$452,342
11 - This year's adjusted tax base	\$2,225,089,199 / \$100
12 -This year's effective operating rate(no new revenue tax rate)	0.020329 / \$100
13 x 1.08 - this year's maximum operating rate (voter approved tax rate)	0.021955 / \$100
- This year's debt rate	\$0 / \$100
14 = This year's total rollback rate (voter approved tax rate)	0.021955 / \$100

Statement of Increase/Decrease

If Brush Country Groundwater Conservation District adopts a 2020 tax rate equal to the effective tax rate of \$0.020329 per \$100 value, taxes would increase compared to 2019 taxes by \$5,343

Schedule A - Unencumbered Fund Balance

The following estimated balances will be left in the unit's property tax accounts at the end of the fiscal year. These balances are not encumbered by a corresponding debt obligation

Type of Property Tax Fund Balance	Balance
General Fund	\$574,254

Schedule B - 2020 Debt Service

The unit plans to pay the following amounts for long-term debts that are secured by properly taxes. These amounts will be paid from property tax revenues (or additional sales tax revenues, if applicable).

Description of Debt	Principal or Contract Payment to be Paid from Property Taxes	interest to be Paid from Property Taxes	Other Amounts to be Paid	Total Payment
None	\$0	\$0	\$0	0

- Total required for 2020 debt service
- Amount (if any) paid from Schedule A
  - Amount Of any) paid front other resources
  - Excess collections last year

**= Total to be paid from taxes in 2019**  
**- Amount added in anticipation that the unit will**  
**collect only 100.00% of its taxes in 2020**  
**= Total debt levy**  
**Name of person preparing this notice: Felix Saenz**  
**Title: General Manager**  
**Date Prepared: 8/25/2020**



# 2020 Tax Rate Calculation Worksheet

## Taxing Units Other Than School Districts or Water Districts

Form 50-856

Taxing Unit Name

Phone (area code and number)

Taxing Unit's Address, City, State, ZIP Code

Taxing Unit's Website Address

**GENERAL INFORMATION:** Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue (NNR) tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per \$100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submits the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

School districts do not use this form, but instead use Comptroller Form 50-859 *Tax Rate Calculation Worksheet, School District without Chapter 313 Agreements* or Comptroller Form 50-884 *Tax Rate Calculation Worksheet, School District with Chapter 313 Agreements*.

Water districts as defined under Water Code Section 49.001(1) do not use this form, but instead use Comptroller Form 50-858 *Water District Voter-Approval Tax Rate Worksheet for Low Tax Rate and Developing Districts* or Comptroller Form 50-860 *Developed Water District Voter-Approval Tax Rate Worksheet*.

The Comptroller's office provides this worksheet to assist taxing units in determining tax rates. The information provided in this worksheet is offered as technical assistance and not legal advice. Taxing units should consult legal counsel for interpretations of law regarding tax rate preparation and adoption.

### SECTION 1: No-New-Revenue Tax Rate

The NNR tax rate enables the public to evaluate the relationship between taxes for the prior year and for the current year based on a tax rate that would produce the same amount of taxes (no new taxes) if applied to the same properties that are taxed in both years. When appraisal values increase, the NNR tax rate should decrease.

The NNR tax rate for a county is the sum of the NNR tax rates calculated for each type of tax the county levies.

While uncommon, it is possible for a taxing unit to provide an exemption for only maintenance and operations taxes. In this case, the taxing unit will need to calculate the NNR tax rate separately for the maintenance and operations tax and the debt tax, then add the two components together.

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
1.	<b>2019 total taxable value.</b> Enter the amount of 2019 taxable value on the 2019 tax roll today. Include any adjustments since last year's certification; exclude Tax Code Section 25.25(d) one-fourth and one-third over-appraisal corrections from these adjustments. Exclude any property value subject to an appeal under Chapter 42 as of July 25 (will add undisputed value in Line 6). This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2) and the captured value for tax increment financing (will deduct taxes in Line 17). <sup>1</sup>	\$ _____
2.	<b>2019 tax ceilings.</b> Counties, cities and junior college districts. Enter 2019 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing unit adopted the tax ceiling provision in 2019 or a prior year for homeowners age 65 or older or disabled, use this step. <sup>2</sup>	\$ _____
3.	<b>Preliminary 2019 adjusted taxable value.</b> Subtract Line 2 from Line 1.	\$ _____
4.	<b>2019 total adopted tax rate.</b>	\$ _____ / \$100
5.	<b>2019 taxable value lost because court appeals of ARB decisions reduced 2019 appraised value.</b> <div> <b>A. Original 2019 ARB values:</b> ..... \$ _____  <b>B. 2019 values resulting from final court decisions:</b> ..... - \$ _____  <b>C. 2019 value loss.</b> Subtract B from A.<sup>3</sup> </div>	\$ _____
6.	<b>2019 taxable value subject to an appeal under Chapter 42, as of July 25.</b> <div> <b>A. 2019 ARB certified value:</b> ..... \$ _____  <b>B. 2019 disputed value:</b> ..... - \$ _____  <b>C. 2019 undisputed value.</b> Subtract B from A. <sup>4</sup> </div>	\$ _____
7.	<b>2019 Chapter 42 related adjusted values.</b> Add Line 5 and Line 6.	\$ _____

<sup>1</sup> Tex. Tax Code § 26.012(14)

<sup>2</sup> Tex. Tax Code § 26.012(14)

<sup>3</sup> Tex. Tax Code § 26.012(13)

<sup>4</sup> Tex. Tax Code § 26.012(13)

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
8.	<b>2019 taxable value, adjusted for actual and potential court-ordered adjustments.</b> Add Line 3 and Line 7.	\$ _____
9.	<b>2019 taxable value of property in territory the taxing unit deannexed after Jan. 1, 2019.</b> Enter the 2019 value of property in deannexed territory. <sup>5</sup>	\$ _____
10.	<b>2019 taxable value lost because property first qualified for an exemption in 2020.</b> If the taxing unit increased an original exemption, use the difference between the original exempted amount and the increased exempted amount. Do not include value lost due to freeport, goods-in-transit, temporary disaster exemptions. Note that lowering the amount or percentage of an existing exemption in 2020 does not create a new exemption or reduce taxable value. <p><b>A. Absolute exemptions.</b> Use 2019 market value: ..... \$ _____</p> <p><b>B. Partial exemptions.</b> 2020 exemption amount or 2020 percentage exemption times 2019 value: ..... + \$ _____</p> <p><b>C. Value loss.</b> Add A and B.<sup>6</sup></p>	\$ _____
11.	<b>2019 taxable value lost because property first qualified for agricultural appraisal (1-d or 1-d-1), timber appraisal, recreational/scenic appraisal or public access airport special appraisal in 2020.</b> Use only properties that qualified in 2020 for the first time; do not use properties that qualified in 2019. <p><b>A. 2019 market value:</b> ..... \$ _____</p> <p><b>B. 2020 productivity or special appraised value:</b> ..... - \$ _____</p> <p><b>C. Value loss.</b> Subtract B from A.<sup>7</sup></p>	\$ _____
12.	<b>Total adjustments for lost value.</b> Add Lines 9, 10C and 11C.	\$ _____
13.	<b>Adjusted 2019 taxable value.</b> Subtract Line 12 from Line 8.	\$ _____
14.	<b>Adjusted 2019 total levy.</b> Multiply Line 4 by Line 13 and divide by \$100.	\$ _____
15.	<b>Taxes refunded for years preceding tax year 2019.</b> Enter the amount of taxes refunded by the taxing unit for tax years preceding tax year 2019. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2019. This line applies only to tax years preceding tax year 2019. <sup>8</sup>	\$ _____
16.	<b>Taxes in tax increment financing (TIF) for tax year 2019.</b> Enter the amount of taxes paid into the tax increment fund for a reinvestment zone as agreed by the taxing unit. If the taxing unit has no 2020 captured appraised value in Line 18D, enter 0. <sup>9</sup>	\$ _____
17.	<b>Adjusted 2019 levy with refunds and TIF adjustment.</b> Add Lines 14, and 15, subtract Line 16. <sup>10</sup>	\$ _____
18.	<b>Total 2020 taxable value on the 2020 certified appraisal roll today.</b> This value includes only certified values or certified estimate of values and includes the total taxable value of homesteads with tax ceilings (will deduct in Line 20). These homesteads include homeowners age 65 or older or disabled. <sup>11</sup> <p><b>A. Certified values:</b> ..... \$ _____</p> <p><b>B. Counties:</b> Include railroad rolling stock values certified by the Comptroller's office: ..... + \$ _____</p> <p><b>C. Pollution control and energy storage system exemption:</b> Deduct the value of property exempted for the current tax year for the first time as pollution control or energy storage system property: ..... - \$ _____</p> <p><b>D. Tax increment financing:</b> Deduct the 2020 captured appraised value of property taxable by a taxing unit in a tax increment financing zone for which the 2020 taxes will be deposited into the tax increment fund. Do not include any new property value that will be included in Line 23 below.<sup>12</sup> ..... - \$ _____</p> <p><b>E. Total 2020 value.</b> Add A and B, then subtract C and D.</p>	\$ _____

<sup>5</sup> Tex. Tax Code § 26.012(15)<sup>6</sup> Tex. Tax Code § 26.012(15)<sup>7</sup> Tex. Tax Code § 26.012(15)<sup>8</sup> Tex. Tax Code § 26.012(13)<sup>9</sup> Tex. Tax Code § 26.03(c)<sup>10</sup> Tex. Tax Code § 26.012(13)<sup>11</sup> Tex. Tax Code § 26.012, 26.04(c-2)<sup>12</sup> Tex. Tax Code § 26.03(c)

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
19.	<b>Total value of properties under protest or not included on certified appraisal roll.</b> <sup>13</sup> <b>A. 2020 taxable value of properties under protest.</b> The chief appraiser certifies a list of properties still under ARB protest. The list shows the appraisal district's value and the taxpayer's claimed value, if any, or an estimate of the value if the taxpayer wins. For each of the properties under protest, use the lowest of these values. Enter the total value under protest. <sup>14</sup> ..... \$ _____ <b>B. 2020 value of properties not under protest or included on certified appraisal roll.</b> The chief appraiser gives taxing units a list of those taxable properties that the chief appraiser knows about but are not included in the appraisal roll certification. These properties also are not on the list of properties that are still under protest. On this list of properties, the chief appraiser includes the market value, appraised value and exemptions for the preceding year and a reasonable estimate of the market value, appraised value and exemptions for the current year. Use the lower market, appraised or taxable value (as appropriate). Enter the total value of property not on the certified roll. <sup>15</sup> ..... + \$ _____ <b>C. Total value under protest or not certified.</b> Add A and B.	\$ _____
20.	<b>2020 tax ceilings.</b> Counties, cities and junior colleges enter 2020 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing unit adopted the tax ceiling provision in 2019 or a prior year for homeowners age 65 or older or disabled, use this step. <sup>16</sup>	\$ _____
21.	<b>2020 total taxable value.</b> Add Lines 18E and 19C. Subtract Line 20. <sup>17</sup>	\$ _____
22.	<b>Total 2020 taxable value of properties in territory annexed after Jan. 1, 2019.</b> Include both real and personal property. Enter the 2020 value of property in territory annexed. <sup>18</sup>	\$ _____
23.	<b>Total 2020 taxable value of new improvements and new personal property located in new improvements.</b> New means the item was not on the appraisal roll in 2019. An improvement is a building, structure, fixture or fence erected on or affixed to land. New additions to existing improvements may be included if the appraised value can be determined. New personal property in a new improvement must have been brought into the taxing unit after Jan. 1, 2019 and be located in a new improvement. New improvements <b>do</b> include property on which a tax abatement agreement has expired for 2020. <sup>19</sup>	\$ _____
24.	<b>Total adjustments to the 2020 taxable value.</b> Add Lines 22 and 23.	\$ _____
25.	<b>Adjusted 2020 taxable value.</b> Subtract Line 24 from Line 21.	\$ _____
26.	<b>2020 NNR tax rate.</b> Divide Line 17 by Line 25 and multiply by \$100. <sup>20</sup>	\$ _____ / \$100
27.	<b>COUNTIES ONLY.</b> Add together the NNR tax rates for each type of tax the county levies. The total is the 2020 county NNR tax rate. <sup>21</sup>	\$ _____ / \$100

## SECTION 2: Voter-Approval Tax Rate

The voter-approval tax rate is the highest tax rate that a taxing unit may adopt without holding an election to seek voter approval of the rate. The voter-approval tax rate is split into two separate rates:

- Maintenance and Operations (M&O) Tax Rate:** The M&O portion is the tax rate that is needed to raise the same amount of taxes that the taxing unit levied in the prior year plus the applicable percentage allowed by law. This rate accounts for such things as salaries, utilities and day-to-day operations.
- Debt Rate:** The debt rate includes the debt service necessary to pay the taxing unit's debt payments in the coming year. This rate accounts for principal and interest on bonds and other debt secured by property tax revenue.

The voter-approval tax rate for a county is the sum of the voter-approval tax rates calculated for each type of tax the county levies. In most cases the voter-approval tax rate exceeds the no-new-revenue tax rate, but occasionally decreases in a taxing unit's debt service will cause the NNR tax rate to be higher than the voter-approval tax rate.

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
28.	<b>2019 M&amp;O tax rate.</b> Enter the 2019 M&O tax rate.	\$ _____ / \$100
29.	<b>2019 taxable value, adjusted for actual and potential court-ordered adjustments.</b> Enter the amount in Line 8 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____

<sup>13</sup> Tex. Tax Code § 26.01(c) and (d)

<sup>14</sup> Tex. Tax Code § 26.01(c)

<sup>15</sup> Tex. Tax Code § 26.01(d)

<sup>16</sup> Tex. Tax Code § 26.012(6)(B)

<sup>17</sup> Tex. Tax Code § 26.012(6)

<sup>18</sup> Tex. Tax Code § 26.012(17)

<sup>19</sup> Tex. Tax Code § 26.012(17)

<sup>20</sup> Tex. Tax Code § 26.04(c)

<sup>21</sup> Tex. Tax Code § 26.04(d)

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
30.	<b>Total 2019 M&amp;O levy.</b> Multiply Line 28 by Line 29 and divide by \$100	\$ _____
31.	<b>Adjusted 2019 levy for calculating NNR M&amp;O rate.</b> <b>A. 2019 sales tax specifically to reduce property taxes.</b> For cities, counties and hospital districts, enter the amount of additional sales tax collected and spent on M&O expenses in 2019, if any. Other taxing units, enter 0. Counties must exclude any amount that was spent for economic development grants from the amount of sales tax spent..... + \$ _____ <b>B. M&amp;O taxes refunded for years preceding tax year 2019.</b> Enter the amount of M&O taxes refunded in the preceding year for taxes before that year. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2019. This line applies only to tax years preceding tax year 2019. .... + \$ _____ <b>C. 2019 taxes in TIF.</b> Enter the amount of taxes paid into the tax increment fund for a reinvestment zone as agreed by the taxing unit. If the taxing unit has no 2020 captured appraised value in Line 18D, enter 0..... - \$ _____ <b>D. 2019 transferred function.</b> If discontinuing all of a department, function or activity and transferring it to another taxing unit by written contract, enter the amount spent by the taxing unit discontinuing the function in the 12 months preceding the month of this calculation. If the taxing unit did not operate this function for this 12-month period, use the amount spent in the last full fiscal year in which the taxing unit operated the function. The taxing unit discontinuing the function will subtract this amount in E below. The taxing unit receiving the function will add this amount in E below. Other taxing units enter 0. .... +/- \$ _____ <b>E. 2019 M&amp;O levy adjustments.</b> Add A and B, then subtract C. For taxing unit with D, subtract if discontinuing function and add if receiving function..... \$ _____ <b>F. Add Line 30 to 31E.</b>	\$ _____
32.	<b>Adjusted 2020 taxable value.</b> Enter the amount in Line 25 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____
33.	<b>2020 NNR M&amp;O rate (unadjusted).</b> Divide Line 31F by Line 32 and multiply by \$100.	\$ _____/\$100
34.	<b>Rate adjustment for state criminal justice mandate.</b> <sup>23</sup> <b>A. 2020 state criminal justice mandate.</b> Enter the amount spent by a county in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose. \$ _____ <b>B. 2019 state criminal justice mandate.</b> Enter the amount spent by a county in the 12 months prior to the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose. Enter zero if this is the first time the mandate applies..... - \$ _____ <b>C. Subtract B from A and divide by Line 32 and multiply by \$100.....</b> \$ _____/\$100 <b>D. Enter the rate calculated in C. If not applicable, enter 0.</b>	\$ _____/\$100
35.	<b>Rate adjustment for indigent health care expenditures.</b> <sup>24</sup> <b>A. 2020 indigent health care expenditures.</b> Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the period beginning on July 1, 2019 and ending on June 30, 2020, less any state assistance received for the same purpose. .... \$ _____ <b>B. 2019 indigent health care expenditures.</b> Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the period beginning on July 1, 2018 and ending on June 30, 2019, less any state assistance received for the same purpose..... - \$ _____ <b>C. Subtract B from A and divide by Line 32 and multiply by \$100.....</b> \$ _____/\$100 <b>D. Enter the rate calculated in C. If not applicable, enter 0.</b>	\$ _____/\$100

<sup>22</sup> [Reserved for expansion]<sup>23</sup> Tex. Tax Code § 26.044<sup>24</sup> Tex. Tax Code § 26.0442

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
36.	<b>Rate adjustment for county indigent defense compensation.</b> <sup>25</sup> <b>A. 2020 indigent defense compensation expenditures.</b> Enter the amount paid by a county to provide appointed counsel for indigent individuals for the period beginning on July 1, 2019 and ending on June 30, 2020, less any state grants received by the county for the same purpose..... \$ _____ <b>B. 2019 indigent defense compensation expenditures.</b> Enter the amount paid by a county to provide appointed counsel for indigent individuals for the period beginning on July 1, 2018 and ending on June 30, 2019, less any state grants received by the county for the same purpose. .... \$ _____ <b>C.</b> Subtract B from A and divide by Line 32 and multiply by \$100..... \$ _____/\$100 <b>D.</b> Multiply B by 0.05 and divide by Line 32 and multiply by \$100..... \$ _____/\$100 <b>E.</b> Enter the lessor of C and D. If not applicable, enter 0.	\$ _____/\$100
37.	<b>Rate adjustment for county hospital expenditures.</b> <sup>26</sup> <b>A. 2020 eligible county hospital expenditures.</b> Enter the amount paid by the county or municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2019 and ending on June 30, 2020. .... \$ _____ <b>B. 2019 eligible county hospital expenditures.</b> Enter the amount paid by the county or municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2018 and ending on June 30, 2019. .... \$ _____ <b>C.</b> Subtract B from A and divide by Line 32 and multiply by \$100..... \$ _____/\$100 <b>D.</b> Multiply B by 0.08 and divide by Line 32 and multiply by \$100..... \$ _____/\$100 <b>E.</b> Enter the lessor of C and D, if applicable. If not applicable, enter 0.	\$ _____/\$100
38.	<b>Adjusted 2020 NNR M&amp;O rate.</b> Add Lines 33, 34D, 35D, 36E, and 37E.	\$ _____/\$100
39.	<b>2020 voter-approval M&amp;O rate.</b> Enter the rate as calculated by the appropriate scenario below. <b>Special Taxing Unit.</b> If the taxing unit qualifies as a special taxing unit, multiply Line 38 by 1.08. <b>- or -</b> <b>Other Taxing Unit.</b> If the taxing unit does not qualify as a special taxing unit, multiply Line 38 by 1.035. <b>- or -</b> <b>Taxing unit affected by disaster declaration.</b> If the taxing unit is located in an area declared as disaster area, the governing body may direct the person calculating the voter-approval rate to calculate in the manner provided for a special taxing unit. The taxing unit shall continue to calculate the voter-approval rate in this manner until the earlier of 1) the second year in which total taxable value on the certified appraisal roll exceeds the total taxable value of the tax year in which the disaster occurred, and 2) the third tax year after the tax year in which the disaster occurred. If the taxing unit qualifies under this scenario, multiply Line 38 by 1.08. <sup>27</sup>	\$ _____/\$100
40.	<b>Total 2020 debt to be paid with property taxes and additional sales tax revenue.</b> Debt means the interest and principal that will be paid on debts that: (1) are paid by property taxes, (2) are secured by property taxes, (3) are scheduled for payment over a period longer than one year, and (4) are not classified in the taxing unit's budget as M&O expenses.  <b>A. Debt</b> also includes contractual payments to other taxing units that have incurred debts on behalf of this taxing unit, if those debts meet the four conditions above. Include only amounts that will be paid from property tax revenue. Do not include appraisal district budget payments. Enter debt amount. .... \$ _____ <b>B.</b> Subtract <b>unencumbered fund amount</b> used to reduce total debt. .... - \$ _____ <b>C.</b> Subtract <b>certified amount spent from sales tax to reduce debt</b> (enter zero if none) .... - \$ _____ <b>D.</b> Subtract <b>amount paid</b> from other resources .... - \$ _____ <b>E. Adjusted debt.</b> Subtract B, C and D from A.	\$ _____

<sup>25</sup> Tex. Tax Code § 26.0442<sup>26</sup> Tex. Tax Code § 26.0443<sup>27</sup> Tex. Tax Code § 26.04(c-1)<sup>28</sup> Tex. Tax Code § 26.012(10) and 26.04(b)

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
41.	<b>Certified 2019 excess debt collections.</b> Enter the amount certified by the collector. <sup>28</sup>	\$ _____
42.	<b>Adjusted 2020 debt.</b> Subtract Line 41 from Line 40E.	\$ _____
43.	<b>2020 anticipated collection rate.</b> <b>A.</b> Enter the 2020 anticipated collection rate certified by the collector. <sup>29</sup> _____ % <b>B.</b> Enter the 2019 actual collection rate. _____ % <b>C.</b> Enter the 2018 actual collection rate. _____ % <b>D.</b> Enter the 2017 actual collection rate. _____ % <b>E.</b> If the anticipated collection rate in A is lower than actual collection rates in B, C and D, enter the lowest collection rate from B, C and D. If the anticipated rate in A is higher than at least one of the rates in the prior three years, enter the rate from A. Note that the rate can be greater than 100%. <sup>30</sup> _____ %	
44.	<b>2020 debt adjusted for collections.</b> Divide Line 42 by Line 43E.	\$ _____
45.	<b>2020 total taxable value.</b> Enter the amount on Line 21 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____
46.	<b>2020 debt rate.</b> Divide Line 44 by Line 45 and multiply by \$100.	\$ _____ / \$100
47.	<b>2020 voter-approval tax rate.</b> Add Lines 39 and 46.	\$ _____ / \$100
48.	<b>COUNTIES ONLY.</b> Add together the voter-approval tax rates for each type of tax the county levies. The total is the 2020 county voter-approval tax rate.	\$ _____ / \$100

### SECTION 3: NNR Tax Rate and Voter-Approval Tax Rate Adjustments for Additional Sales Tax to Reduce Property Taxes

Cities, counties and hospital districts may levy a sales tax specifically to reduce property taxes. Local voters by election must approve imposing or abolishing the additional sales tax. If approved, the taxing unit must reduce its NNR and voter-approval tax rates to offset the expected sales tax revenue.

This section should only be completed by a county, city or hospital district that is required to adjust its NNR tax rate and/or voter-approval tax rate because it adopted the additional sales tax.

Line	Additional Sales and Use Tax Worksheet	Amount/Rate
49.	<b>Taxable Sales.</b> For taxing units that adopted the sales tax in November 2019 or May 2020, enter the Comptroller's estimate of taxable sales for the previous four quarters. <sup>32</sup> Estimates of taxable sales may be obtained through the Comptroller's Allocation Historical Summary webpage. Taxing units that adopted the sales tax before November 2019, skip this line.	\$ _____
50.	<b>Estimated sales tax revenue.</b> Counties exclude any amount that is or will be spent for economic development grants from the amount of estimated sales tax revenue. <sup>33</sup> <b>Taxing units that adopted the sales tax in November 2019 or in May 2020.</b> Multiply the amount on Line 49 by the sales tax rate (.01, .005 or .0025, as applicable) and multiply the result by .95. <sup>34</sup> <b>- or -</b> <b>Taxing units that adopted the sales tax before November 2019.</b> Enter the sales tax revenue for the previous four quarters. Do not multiply by .95.	\$ _____
51.	<b>2020 total taxable value.</b> Enter the amount from Line 21 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____
52.	<b>Sales tax adjustment rate.</b> Divide Line 50 by Line 51 and multiply by \$100.	\$ _____ / \$100
53.	<b>2020 NNR tax rate, unadjusted for sales tax.</b> <sup>35</sup> Enter the rate from Line 26 or 27, as applicable, on the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____ / \$100
54.	<b>2020 NNR tax rate, adjusted for sales tax.</b> <b>Taxing units that adopted the sales tax in November 2019 or in May 2020.</b> Subtract Line 52 from Line 53. Skip to Line 55 if you adopted the additional sales tax before November 2019.	\$ _____ / \$100

<sup>29</sup> Tex. Tax Code § 26.04(b)

<sup>30</sup> Tex. Tax Code §§ 26.04(h), (h-1) and (h-2)

<sup>31</sup> [Reserved for expansion]

<sup>32</sup> Tex. Tax Code § 26.041(d)

<sup>33</sup> Tex. Tax Code § 26.041(i)

<sup>34</sup> Tex. Tax Code § 26.041(d)

<sup>35</sup> Tex. Tax Code § 26.04(c)

<sup>36</sup> Tex. Tax Code § 26.04(c)

Line	Additional Sales and Use Tax Worksheet	Amount/Rate
55.	<b>2020 voter-approval tax rate, unadjusted for sales tax.</b> <sup>36</sup> Enter the rate from Line 47 or 48, as applicable, of the <i>Voter-Approval Tax Rate Worksheet</i> .	\$ _____ /\$100
56.	<b>2020 voter-approval tax rate, adjusted for sales tax.</b> Subtract Line 52 from Line 55.	\$ _____ /\$100

#### SECTION 4: Voter-Approval Rate Adjustment for Pollution Control

A taxing unit may raise its rate for M&O funds used to pay for a facility, device or method for the control of air, water or land pollution. This includes any land, structure, building, installation, excavation, machinery, equipment or device that is used, constructed, acquired or installed wholly or partly to meet or exceed pollution control requirements. The taxing unit's expenses are those necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality (TCEQ). The taxing unit must provide the tax assessor with a copy of the TCEQ letter of determination that states the portion of the cost of the installation for pollution control.

This section should only be completed by a taxing unit that uses M&O funds to pay for a facility, device or method for the control of air, water or land pollution.

Line	Voter-Approval Rate Adjustment for Pollution Control Requirements Worksheet	Amount/Rate
57.	<b>Certified expenses from the Texas Commission on Environmental Quality (TCEQ).</b> Enter the amount certified in the determination letter from TCEQ. <sup>37</sup> The taxing unit shall provide its tax assessor-collector with a copy of the letter. <sup>38</sup>	\$ _____
58.	<b>2020 total taxable value.</b> Enter the amount from Line 21 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____
59.	<b>Additional rate for pollution control.</b> Divide Line 57 by Line 58 and multiply by \$100.	\$ _____ /\$100
60.	<b>2020 voter-approval tax rate, adjusted for pollution control.</b> Add Line 59 to one of the following lines (as applicable): Line 47, Line 48 (counties) or Line 56 (taxing units with the additional sales tax).	\$ _____ /\$100

#### SECTION 5: Voter-Approval Tax Rate Adjustment for Unused Increment Rate

The unused increment rate is the rate equal to the difference between the adopted tax rate and voter-approval tax rate before the unused increment rate for the prior three years.<sup>39</sup> In a year where a taxing unit adopts a rate by applying any portion of the unused increment rate, the unused increment rate for that year would be zero.

For each tax year before 2020, the difference between the adopted tax rate and voter-approval rate is considered zero, therefore the unused increment rate for 2020 is zero.<sup>40</sup>

This section should only be completed by a taxing unit that does not meet the definition of a special taxing unit.<sup>41</sup>

Line	Unused Increment Rate Worksheet	Amount/Rate
61.	<b>2019 unused increment rate.</b> Subtract the 2019 actual tax rate and the 2019 unused increment rate from the 2019 voter-approval tax rate. If the number is less than zero, enter zero. If the year is prior to 2020, enter zero.	\$ _____ /\$100
62.	<b>2018 unused increment rate.</b> Subtract the 2018 actual tax rate and the 2018 unused increment rate from the 2018 voter-approval tax rate. If the number is less than zero, enter zero. If the year is prior to 2020, enter zero.	\$ _____ /\$100
63.	<b>2017 unused increment rate.</b> Subtract the 2017 actual tax rate and the 2017 unused increment rate from the 2017 voter-approval tax rate. If the number is less than zero, enter zero. If the year is prior to 2020, enter zero.	\$ _____ /\$100
64.	<b>2020 unused increment rate.</b> Add Lines 61, 62 and 63.	\$ _____ /\$100
65.	<b>2020 voter-approval tax rate, adjusted for unused increment rate.</b> Add Line 64 to one of the following lines (as applicable): Line 47, Line 48 (counties), Line 56 (taxing units with the additional sales tax) or Line 60 (taxing units with pollution control).	\$ _____ /\$100

#### SECTION 6: De Minimis Rate

The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate, the rate that will raise \$500,000, and the current debt rate for a taxing unit.<sup>42</sup>

This section should only be completed by a taxing unit that is a municipality of less than 30,000 or a taxing unit that does not meet the definition of a special taxing unit.<sup>43</sup>

Line	De Minimis Rate Worksheet	Amount/Rate
66.	<b>Adjusted 2020 NNR M&amp;O tax rate.</b> Enter the rate from Line 38 of the <i>Voter-Approval Tax Rate Worksheet</i>	\$ _____ /\$100

<sup>37</sup> Tex. Tax Code § 26.045(d)

<sup>38</sup> Tex. Tax Code § 26.045(i)

<sup>39</sup> Tex. Tax Code § 26.013(a)

<sup>40</sup> Tex. Tax Code § 26.013(c)

<sup>41</sup> Tex. Tax Code § 26.063(a)(1)

<sup>42</sup> Tex. Tax Code § 26.012(8-a)

<sup>43</sup> Tex. Tax Code § 26.063(a)(1)



Line	De Minimis Rate Worksheet	Amount/Rate
67.	<b>2020 total taxable value.</b> Enter the amount on Line 21 of the <i>No-New-Revenue Tax Rate Worksheet</i> .	\$ _____
68.	<b>Rate necessary to impose \$500,000 in taxes.</b> Divide \$500,000 by Line 67 and multiply by \$100.	\$ _____/\$100
69.	<b>2020 debt rate.</b> Enter the rate from Line 46 of the <i>Voter-Approval Tax Rate Worksheet</i> .	\$ _____/\$100
70.	<b>De minimis rate.</b> Add Lines 66, 68 and 69.	\$ _____/\$100

### SECTION 7: Total Tax Rate

Indicate the applicable total tax rates as calculated above.

**No-new-revenue tax rate.** ..... \$ \_\_\_\_\_/\$100  
As applicable, enter the 2020 NNR tax rate from: Line 26, Line 27 (counties), or Line 54 (adjusted for sales tax).

**Voter-approval tax rate.** ..... \$ \_\_\_\_\_/\$100  
As applicable, enter the 2020 voter-approval tax rate from: Line 47, Line 48 (counties), Line 56 (adjusted for sales tax), Line 60 (adjusted for pollution control), or Line 65 (adjusted for unused increment).

**De minimis rate.** ..... \$ \_\_\_\_\_/\$100  
If applicable, enter the de minimis rate from Line 70.

### SECTION 8: Taxing Unit Representative Name and Signature

Enter the name of the person preparing the tax rate as authorized by the governing body of the taxing unit. By signing below, you certify that you are the designated officer or employee of the taxing unit and have calculated the tax rates in accordance with requirements in Tax Code.<sup>44</sup>

**print  
here** ➡

\_\_\_\_\_  
Printed Name of Taxing Unit Representative

**sign  
here** ➡

\_\_\_\_\_  
Taxing Unit Representative

\_\_\_\_\_  
Date

<sup>44</sup> Tex. Tax Code § 26.04(c)



Statements required in notice if the proposed tax rate does not exceed the lower of the no-new-revenue tax rate or the voter-approval tax rate, as prescribed by Tax Code §26.061.

# NOTICE OF MEETING TO VOTE ON TAX RATE

A tax rate of \$\_\_\_\_\_ per \$100 valuation has been proposed by the governing body of \_\_\_\_\_.

PROPOSED TAX RATE \$\_\_\_\_\_ per \$100

NO-NEW-REVENUE TAX RATE \$\_\_\_\_\_ per \$100

VOTER-APPROVAL TAX RATE \$\_\_\_\_\_ per \$100

The no-new-revenue tax rate is the tax rate for the \_\_\_\_\_ tax year that will raise the same amount of property tax revenue for \_\_\_\_\_ from the same properties in both the \_\_\_\_\_ tax year and the \_\_\_\_\_ tax year.  
(preceding tax year) (current tax year) (name of taxing unit)

The voter-approval rate is the highest tax rate that \_\_\_\_\_ may adopt without holding an election to seek voter approval of the rate.  
(name of taxing unit)

The proposed tax rate is not greater than the no-new-revenue tax rate. This means that \_\_\_\_\_ is not proposing to increase property taxes for the \_\_\_\_\_ tax year.  
(current tax year) (name of taxing unit)

A PUBLIC HEARING ON THE PROPOSED TAX RATE WILL BE HELD ON \_\_\_\_\_  
(date and time)  
at \_\_\_\_\_.  
(meeting place)

The proposed tax rate is also not greater than the voter-approval tax rate. As a result, \_\_\_\_\_ is not required to hold an election to seek voter approval of the rate. However, you may express your support for or opposition to the proposed tax rate by contacting \_\_\_\_\_ of \_\_\_\_\_ at their offices or by attending the public meeting mentioned above.  
(name of governing body) (name of taxing unit)

YOUR TAXES OWED UNDER ANY OF THE TAX RATES MENTIONED ABOVE CAN BE CALCULATED AS FOLLOWS:

$$\text{Property tax amount} = (\text{tax rate}) \times (\text{taxable value of your property}) / 100$$

(List names of all members of the governing body below, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating absences.)

FOR the proposal: \_\_\_\_\_

AGAINST the proposal: \_\_\_\_\_

PRESENT and not voting: \_\_\_\_\_

ABSENT: \_\_\_\_\_

The 86th Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.

The following table compares the taxes imposed on the average residence homestead by \_\_\_\_\_ last year  
(name of taxing unit)  
to the taxes proposed to be imposed on the average residence homestead by \_\_\_\_\_ this year.  
(name of taxing unit)

	2019	2020	Change
<b>Total tax rate (per \$100 of value)</b>	2019 adopted tax rate	2020 proposed tax rate	(Increase/Decrease) of (nominal difference between tax rate for preceding year and proposed tax rate for current year) per \$100, or (percentage difference between tax rate for preceding year and proposed tax rate for current year)%
<b>Average homestead taxable value</b>	2019 average taxable value of residence homestead	2020 average taxable value of residence homestead	(Increase/Decrease) of (percentage difference between average taxable value of residence homestead for preceding year and current year)%
<b>Tax on average homestead</b>	2019 amount of taxes on average taxable value of residence homestead	2020 amount of taxes on average taxable value of residence homestead	(Increase/Decrease) of (nominal difference between amount of taxes imposed on the average taxable value of a residence homestead in the preceding year and the amount of taxes proposed on the average taxable value of a residence homestead in the current year), or (percentage difference between taxes imposed for preceding year and taxes proposed for current year)%
<b>Total tax levy on all properties</b>	2019 levy	(2020 proposed rate x current total value)/100	(Increase/Decrease) of (nominal difference between preceding year levy and proposed levy for current year), or (percentage difference between preceding year levy and proposed levy for current year)%

**(If the tax assessor for the taxing unit maintains an internet website)**

For assistance with tax calculations, please contact the tax assessor for \_\_\_\_\_  
(name of taxing unit)  
at \_\_\_\_\_ or \_\_\_\_\_, or visit \_\_\_\_\_  
(telephone number) (email address) (internet website address)  
for more information.

**(If the tax assessor for the taxing unit does not maintain an internet website)**

For assistance with tax calculations, please contact the tax assessor for \_\_\_\_\_  
(name of taxing unit)  
at \_\_\_\_\_ or \_\_\_\_\_.  
(telephone number) (email address)

## INVESTMENT REPORT

Brush Country GCD							For the period	4/1/2020 --	6/30/2020
Investment	Financial Institution	Maturity Date	Avg. Yield	Beginning Balance	Deposits	Debits		Ending Balance	Period earnings
Operating Account Checking Acct.	FNBFAL	Daily	2.63%	60,714.74	94,892.62	81,374.95		74,232.41	330.4
Tax Account Checking Acct	FNBFAL	Daily	2.63%	464,731.70	21,625.81	94,482.09		391,875.42	2,867.73
Reserve Acct	FNBFAL	Daily	2.63%	1,799,944.42	11,692.80	0.00		1,811,637.22	11,692.80
total FNBFAL Accounts				2,325,390.86	128,211.23	175,857.04		2,277,745.05	14,890.93
purchased CD 1/25/18	Greater Tx Bank CD	1/23/2019	1.60%	253,096.47	253,096.47 Cd plus 3,081.81 cashed in on 2/27/2020 and deposited in FNBFAL Reserve Acct				

### Totals

FNBFAL Financial Security Pledges as of February 19, 2019

CUSIP	maturity date	CUSIP	pledge amt
912828W63	3/15/2020		\$0
3133EKBW5	2/27/2024		\$850,000
313371U79	12/11/2020		\$1,000,000
3130AEWA4	10/1/2020		\$900,000

total \$2,750,000

The investment transactions of this period comply with the investment policy of the Brush Country Cons. District and the Public Investment Act.

This investment report is presented to the BCGCD Board of Directors at a meeting held on:

8/25/2020

Report Prepared By

Felix Saenz, General Manager Investment Officer		8/25/2020 Date
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**BRUSH COUNTRY GROUNDWATER CONSERVATION DISTRICT**  
**FINANCIAL STATEMENTS**  
**and**  
**SUPPLEMENTARY INFORMATION**  
**with**  
**ACCOUNTANT'S COMPILATION REPORT**  
**FOR THE MONTH AND THE TEN MONTHS ENDED JULY 31, 2020**

BANK ACCT (Op Acct. as of 6/30/2020)	\$74,232.41
CREDITS	\$29,539.11
DEBITS	\$45,679.53
BANK BALANCE (as of 7/31/2020)	\$58,091.97
UNCLEARED	\$16,816.57
JULY FINANCIAL STATEMENT	\$41,275.40
TAX COLLECTION ACCT BAL.	\$376,033.67
INTEREST EARNED	\$ 980.51
RESERVE ACCT BAL (as of June 30, 2020)	\$1,811,637.22
INTEREST EARNED IN JULY 2020	\$ 4000.49
RESERVE ACCT. BAL. (AS OF 7/31/2020)	\$1,815,637.71
BALANCE FOR ALL ACCOUNTS	\$2,250,743.90

**Brush Country Groundwater Conservation District**  
**Statement of Revenues, Expenses and Changes in Fund Balances**  
**For The Month Ended July 31, 2020**

	<u>Jul 20</u>
TCDRS Retirement & Life Insur.	1,722.29
Total Salaries	23,458.35
Tax Appraisal Fees	
Fees-Jim Hogg Co.	845.66
Fees-Jim Wells Co.	2,338.25
Total Tax Appraisal Fees	3,183.91
Telephone Expense	161.95
Vehicle Expense	
Auto Gas & Oil	56.00
Vehicle Insurance	549.78
Total Vehicle Expense	605.78
Total Conservation Expenses	43,924.52
Excess Expenditures Over Revenues	-26,226.67
Fund Balance - June 30, 2020	2,981,211.12
Fund Balance - July 31, 2020	2,954,984.45

See Accountant's Compilation Report

**Brush Country Groundwater Conservation District**  
**Statement of Revenues, Expenses and Changes in Fund Balances YTD**  
**For The Ten Months Ended July 31, 2020**

	<u>Oct 1, '19 - Jul 30, 20</u>
<b>Operating Revenue</b>	
<b>Income</b>	
Interest Income	48,035.92
Miscellaneous Income	3,589.60
<b>Tax Revenue</b>	
Brooks Co. Tax Levy	85,232.35
Jlm Hogg Co. Tax Levy	93,506.56
Jim Wells Co. Tax Levy	257,645.88
<b>Total Tax Revenue</b>	<u>436,384.79</u>
<b>Total Operating Revenue</b>	<u>488,010.31</u>
<b>Expense</b>	
Bank Fees	5.00
<b>Computer Support Services</b>	
Web Hosting & Homepage	2,161.50
Computer Support Services - Other	554.31
<b>Total Computer Support Services</b>	<u>2,715.81</u>
Contract Labor	62.17
Depreciation Expense	23,568.80
Directors Expenses	721.52
Dues & Subscriptions	1,388.00
Employee Benefit Programs Exp	3,624.72
<b>Insurance</b>	
Insurance - Building	2,009.00
Insurance - WC	543.44
Insurance Expense - D & O	1,456.38
Insurance Expense - GL	329.54
<b>Total Insurance</b>	<u>4,338.36</u>
Legal Notice	950.00
<b>Office Expense</b>	
Building Repairs	150.00
Misc. Office Expense	1,327.42
New Office Electricity	2,853.94
New Office Janitorial	8,881.87
New Office Water & Sewer	1,530.20
New Office Yard Maintenance	2,000.00
Office Supplies	2,039.24
Postage and Shipping Expense	1,271.70
<b>Total Office Expense</b>	<u>20,054.37</u>
Office Maintenance	813.76
<b>Other Misc Services &amp; Expenses</b>	
Equipment Purchase	457.69
Miscellaneous	419.48
School Education Material	350.00
<b>Total Other Misc Services &amp; Expenses</b>	<u>1,227.17</u>

See Accountant's Compilation Report

**Brush Country Groundwater Conservation District**  
**Statement of Revenues, Expenses and Changes in Fund BalancesYTD**  
**For The Ten Months Ended July 31, 2020**

	<u>Oct 1, '19 - Jul 30, 20</u>
<b>Professional Services</b>	
Accounting Services & Audit	3,340.65
Audit Expense	3,250.00
Engineering Services	13,423.00
Legal & Professional	19,651.65
Legislative Assistance	25,000.00
Water Quality Testing-New Wells	375.00
<b>Total Professional Services</b>	<u>65,040.30</u>
<b>Salaries</b>	
General Manager	53,599.48
Health Insurance	19,959.04
Staff Person	79,467.08
SUTA Tax Expense	386.08
Tax Expense-Payroll	10,377.37
TCDRS Retirement & Life Insur.	11,987.79
<b>Total Salaries</b>	<u>175,786.84</u>
<b>Tax Appraisal Fees</b>	
Fees-Brooks Co.	1,642.50
Fees-Hidalgo Co.	4.50
Fees-Jim Hogg Co.	2,536.98
Fees-Jim Wells Co.	9,256.32
<b>Total Tax Appraisal Fees</b>	<u>13,440.30</u>
<b>Tax Collection Fees</b>	
Brooks & Hidalgo Co.	6,751.88
Jim Hogg Co.	2,381.25
<b>Total Tax Collection Fees</b>	<u>9,133.13</u>
<b>Telephone Expense</b>	1,463.85
<b>Travel Expense &amp; Training</b>	
Conference Registration Fees	292.01
Meals & Entertainment Expense	246.96
Travel, Meals, and Lodging	862.94
Travel Expense & Training - Other	-144.48
<b>Total Travel Expense &amp; Training</b>	<u>1,257.43</u>
<b>Vehicle Expense</b>	
Auto & Truck Repair	41.00
Auto Gas & Oil	1,172.89
Vehicle Insurance	549.78
<b>Total Vehicle Expense</b>	<u>1,763.67</u>
<b>Total Conservation Expenses</b>	<u>327,355.20</u>
 <b>Other Income/Expense</b>	
<b>Other Expense</b>	
Water Well Plugging Program	4,500.00
<b>Total Other Expense</b>	<u>4,500.00</u>

See Accountant's Compilation Report

See Accountant's Compilation Report



**August 2020 Legislative Report**  
**Robert Howard**

**Elections**

In our area, the three state legislators who face general election challengers in November are Senators Chuy Hinojosa and Judith Zaffirini and Rep. Ryan Guillen. All are ramping up their fundraising and campaign planning efforts.

**Interim Charges**

On August 1st, Lyle Larson, Chair of the House Natural Resources Committee, put out a notice that said his committee will be taking written testimony on interim charges. The deadline for submitting testimony is September 25<sup>th</sup>. I think that our main participation will be in concert with TAGD, but I am happy to work with our staff and legal and hydrological experts if there is a desire for BCGCD to submit our own testimony on any topic. Our main areas of interest would be:

- HB 720, which relates to appropriations of water for recharge of aquifers and use in aquifer storage and recovery projects. The Committee is charged with monitoring the rulemaking process for the permitting of unappropriated flows for aquifer storage and recovery projects by the Texas Commission on Environmental Quality (TCEQ).
- HB 721, which relates to reports on aquifer storage and recovery and aquifer recharge projects. The Committee will monitor the implementation by the TWDB of legislation to encourage the development of aquifer storage and recovery and aquifer recharge projects, including the completion of a statewide study of the state's aquifers' suitability for aquifer storage and recovery and aquifer recharge projects.
- HB 722, which relates to the development of brackish groundwater. The Committee is monitoring the designation of Brackish Groundwater Production Zones by the TWDB and the adoption of rules by groundwater conservation districts for the production of brackish groundwater from those Zones.
- HB 807, which relates to the state and regional water planning process. The Committee will monitor the appointment of the Interregional Planning Council by the TWDB and the Council's progress toward increasing coordination among Regional Water Planning Groups. The Committee will also look at a joint planning process between Regional Water Planning Groups and Groundwater Management Areas and achieving desired future conditions for aquifers, topics on which TAGD will present a position.

- The Committee is studying the efforts of the TCEQ, the TWDB, and the Public Utility Commission of Texas to incentivize, promote, and preserve regional projects to meet water supply needs and encourage public and private investment in water infrastructure and identifying impediments or threats to “regionalization”.
- The Committee is also reviewing “An Audit Report on Selected Groundwater Conservation Districts” and is seeking written submissions on emerging issues in groundwater and surface water interaction and the status of water markets in Texas and the potential benefits of and challenges to “expanded markets for water”.

### **Preparing for the Legislative Session**

There is much speculation about how the Legislature will conduct its business next year in the face of the pandemic. I’m guessing the final solution will not come until much closer to the start date, given the ever-changing status of outbreaks. In the meantime, I am monitoring committee activity on interim charges, trying to maintain contact with key staff members, and participating in all three TAGD legislative subcommittees. I am now planning to have an in-person meeting with a new legislative assistant for Senator Lois Kolkhorst, whose district includes Victoria and who is a very influential member of the Senate Water and Rural Affairs Committee.

### **TAGD Water Summit**

The annual TAGD conference will be September 1<sup>st</sup>-3<sup>rd</sup> and will be totally virtual. There will be a legislative update by the Public Policy Analyst for the Texas Water Conservation Association, a legislative panel, and a keynote address by Chairman Larson.

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 30, 2020

Mr. Felix Saenz  
Brush Country Groundwater Conservation District  
P.O. Box 136  
Falfurrias, Texas 78355

Re: Transmittal of Copy of Class I Underground Injection Control Permit Application  
EFR Alta Mesa LLC  
Application for Renewal of Class I Injection Well Permits WDW365 and WDW366  
RN102360039/CN601237654

Dear Mr. Saenz:

EFR Alta Mesa LLC submitted an application to the Texas Commission on Environmental Quality (TCEQ) dated July 13, 2020 for permit renewals for the continued operation of underground injection wells for disposal of noncommercial nonhazardous waste. You are receiving a copy of this application because Texas House Bill 444 passed by the 82<sup>nd</sup> Texas Legislature in 2011 requires the TCEQ Executive Director to submit a copy of the application for the wells to the governing body of the groundwater conservation district if the proposed locations of Class I injection wells are in the territory of a groundwater conservation district.

TCEQ staff will conduct administrative and technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be mailed to any groundwater conservation district established in the county in which the existing injection well facility is located. That notice will contain the deadline for submitting public comments. The Executive Director will consider all timely-received comments in making a final decision on this application. If you have any questions, contact me at [farhaud.abbaszadeh@tceq.texas.gov](mailto:farhaud.abbaszadeh@tceq.texas.gov) or (512) 239-0779. If you will be responding by letter, please include mail code MC 233 in the mailing address.

Sincerely,

*Farhaud Abbaszadeh*

Farhaud Abbaszadeh, Project Manager  
Underground Injection Control Permits Section  
Radioactive Materials Division

FA/krh-d





**Juan Carlos Guerra  
County Judge**

102 E. Tilley Street  
Hebbronville, Texas 78361  
361-527-3015 Office

August 10, 2020

Brush Country Groundwater Conservation District  
Board of Directors  
Attention : Felix Saenz  
General Manager  
732 West Rice  
Falfurrias, Texas 78355

**NOTICE OF THE INTENTION OF JIM HOGG COUNTY, TEXAS TO DESIGNATE A  
REINVESTMENT ZONE; TO ESTABLISH THE BOUNDARIES THEREOF; AND TO  
PROVIDE FOR AN EFFECTIVE DATE.**

Dear Mr. Saenz:

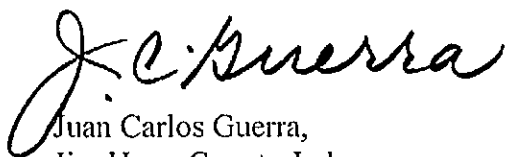
As part of the review of the application submitted by Barranca Wind Energy, LLC for a tax abatement pursuant to Chapter 312 of the Texas Tax Code, Jim Hogg County is required to establish a Reinvestment Zone, to be called the Barranca Wind Reinvestment Zone.

A public hearing before the Commissioners Court on the establishment of a reinvestment zone is scheduled for Wednesday, August 19, 2020 at 9:15 a.m. in the Jim Hogg County Courthouse, 102 E. Tilley, Hebbronville, Texas.

By Texas law, the County is required to provide written notice of the hearing on the establishment of the reinvestment zone to the presiding officer of each taxing entity which includes within its boundaries real property that is to be included in the proposed reinvestment zone.

Attached for your information, please find the legal description and map of the area to be included in the proposed reinvestment zone. Please let me know if need any additional information.

Sincerely,

  
Juan Carlos Guerra,  
Jim Hogg County Judge



**Juan Carlos Guerra**  
**County Judge**

102 E. Tilley Street  
Hebbronville, Texas 78361  
361-527-3015 Office

August 10, 2020

### **Acknowledgement of Receipt**

**I have received the following letter on** 8/11/2020

**Name of Taxing Entity:** Orish County GCD

**Signature of individual receiving letter:** [Signature]

NOTICE OF THE INTENTION OF JIM HOGG COUNTY, TEXAS TO DESIGNATE A REINVESTMENT ZONE; TO ESTABLISH THE BOUNDARIES THEREOF; AND TO PROVIDE FOR AN EFFECTIVE DATE.

Dear Mr. Saenz:

As part of the review of the application submitted by Barranca Wind Energy, LLC for a tax abatement pursuant to Chapter 312 of the Texas Tax Code, Jim Hogg County is required to establish a Reinvestment Zone, to be called the Barranca Wind Reinvestment Zone.

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Attached for your information, please find the legal description and map of the area to be included in the proposed reinvestment zone. Please let me know if need any additional information.

**Please return signed acknowledgment to**  
**Jim Hogg County Judge Juan Carlos Guerra**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN WATER QUALITY PERMIT RENEWAL

PERMIT NO. WQ0010270001

**APPLICATION.** San Diego Municipal Utility District No. 1, 200 South Doctor East E. Dunlap Highway, San Diego, Texas 78384, has applied to the Texas Commission on Environmental Quality (TCEQ) to renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010270001 (EPA I.D. No. TX0023361) to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 750,000 gallons per day. The domestic wastewater treatment facility is located at 709 County Road 111, San Diego, in Duval and Jim Wells County, Texas 78384. The discharge route is from the plant site to San Diego Creek; thence to San Fernando Creek; thence to Baffin Bay/Alazan Bay/Cayo del Grullo/Laguna Salada. TCEQ received this application on May 26, 2020. The permit application is available for viewing and copying at San Diego Municipal Utility District No. 1, 200 South Doctor East E. Dunlap Highway, San Diego, Texas, and Duval County Courthouse, 400 East Graves Avenue, San Diego, Texas. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd36of816825of&marker=-98.234166%2C27.753611&level=12>

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone**

RECEIVED  
8-14-20

who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.**

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at <https://www14.tceq.texas.gov/epic/eComment/>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address, and physical address will become part of the

agency's public record. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en Español, puede llamar al 1-800-687-4040.

Further information may also be obtained from San Diego Municipal Utility No. 1 at the address stated above or by calling Mr. Rudy Torres, General Manager, at 361-279-3357.

Issuance Date: July 30, 2020





The AG released an opinion that appointed board members are not elected officials and thus not required to take the cybersecurity training. The opinion is in the context of an appraisal district board, but the same rational applies to a GCD. It's consistent with what we had concluded.

**From:** Office of TX Attorney General <[TXAttorneyGeneral@public.govdelivery.com](mailto:TXAttorneyGeneral@public.govdelivery.com)>

**Sent:** Monday, August 10, 2020 3:16 PM

**To:** Bill Dugat <[bdugat@bickerstaff.com](mailto:bdugat@bickerstaff.com)>

**Subject:** Notification of Opinion: KP-0326

Re: Whether subsection 2054.5191(a-1) of the Government Code requires a member of the board of directors of an appraisal district to complete certified cybersecurity training (RQ-0332-KP)



KEN PAXTON  
ATTORNEY GENERAL *of* TEXAS

**KP-0326**

**Opinion: (KP-0326)**

Request for Opinion: ( [RQ-0332-KP](#) )

A court would likely conclude that appraisal district board members are appointed and are not required to complete the certified cybersecurity training program it mandated by Government Code subsection 2054.5191(a-1).

You are subscribed to Office of Texas Attorney General. This information has recently been updated, and is now available.



Brush Country Groundwater Conservation District 2021 FY Budget 10/1/2020 - 9/30/2021

Budgeted Begin Est    Cash Available for Op 10/1/2020

				2,313,731	file found on Z: brush country budget 2021									
				budget	actual 2019	budget	Actual	budget	Certi values					%
Income				2019		2020	thru June	2021	tax yr 2018	tax yr 2019	tax yr 2020	Change		
1	Tax Rate @ \$0.02070/\$100													
2	Jim Hogg Co. Tax Levy			104,017	106,158	93,775	91,236	92,203	433,402,743	453,021,236	445,424,216		-1.7%	
3	Jim Wells Co. Tax Levy			280,362	277,907	264,489	249,683	280,838	1,168,174,001	1,277,725,200	1,356,707,625		6.2%	
4	Brooks Co. Tax Levy			103,092	106,494	91,975	83,075	91,975	429,548,206	444,324,354	444,324,354		0.0%	
5	Hidalgo Co Tax Levy			455	455	512	512	570	1,897,636	2,475,181	2,752,308		1.1%	
6	total tax levies			487,925	491,014	450,752	424,505	465,586	2,033,022,586	2,177,545,971	2,249,208,503		3.3%	
7	Interest income from bank accts			23000	30,406	23,000	43,470	25,000	2,000	12,757 avg int./qtr in 2020				
8	Delinquent Tax Collect			17800	incl in levy	17,800	incl in levy	17,800		0				
9	Tax Penalty & interest			8910	incl in levy	8,910	incl in levy	8,910		0				
10	District Fee Revenue			2000	5,352	2,000	0	2,000		0				
11	Total Revenue			539,635	526,772	502,462	467,975	519,296	16,835					
Expenses														
12	Tax Appraisal Fees													
13	Jim Hogg Co.			4,404	4,155	4,404	1,691	4,404	0					
14	Jim Wells Co.			7,167	6,774	7,713	6,935	7,713	0					
15	Brooks Co.			2,542	2,377	2,542	1,643	2,542	0					
16	Hidalgo Co.			5	4	6	3	6	0					
17	Total appraisal fees			14,118	13,310	14,665	10,271	14,665	0					
18	Jim Hogg Co.			3,600	6,088.00	3,900	1,588	3,900	0					
19	Jim Wells Co.			2,071	2,200	2,189	2,338	2,189	0					
20	Brooks Co.& Hidalgo			6,805	6805	6,805	1,688	6,805	0					
21	total collection fees			12,476	15,093	12,894	3,276	12,894	0					
22	Total Collection & Appraisal fees			26,472	28,403	27,559	13,547	27,559	0					
Salaries														
23	General Manager			63345	63345	63345	43,854	30,000	-33,345					
24	Staff Person			33915	33915	33915	23,480	35,610	1,695					
25	Field Asst/GM Trainee Salary & Benefits			100,000	24,231	60,000	41,538	63,000	3,000					
26	Health Insurance			4,284	5,865	23,460	17,804	25,780	2,320					
27	TCDRS Retirement &life Insurance			0	994	12,400	8,298	7,857	-4,543					
Tx Municipal League Insurance														
28	Ins. Dir Liability/Errorr-Omission/Emp Dishon			849	821	849	0	904	55					
29	Ins Workmans Comp			360	368	570	0	578	8					
30	Vehicle Insurance			615	615	605	0	561	-44					
31	Director Bond			0	0	936	936	0	-936					
32	building Insurance			1,833	1,833	2,065	0	2,050	-15					
Payroll Taxes														
33	payroll tax expense			7,786	9,294	9,750	8,329	8,396	-1,354					
34	Suta Tax Exp			323	27	162	432	432	270					
35	Legal notices			1,500	900	1,500	0	1,000	-500					
36	phone & internet			2,160	2,522	2,160	1,302	1,740	-420					
37	Wireless / Mobil			650	668	650	505	672	22					
Computers Support Services														
38	computer & electronic Eqpt			4,000	4,047	4,000	2,520	3,000	-1,000					
39	Web hosting and Homepage			2,400	4,899	3,200	1,974	3,200	0					
40	Software			5,000	72	3,300	167	2,500	-800					
42	Printer expenses			1,900	1,327	1,900	miscellaneous	0	-1,900					
43	Dues & Subscriptions			2,000	1,421	1,200	1,388	1,388	188					
Office Expenses														
44	new office Electricity			5,600	2,686	4,800	2,601	4,800	0					
45	water & sewer min bill \$152/mon & garbage			1,788	1,768	1,824	1,377	1,860	36					
46	building maintenance - janitorial			10,500	10,912	11,000	7,981	11,500	500					
47	yard maintenance			3,000	1,800	4,200	1,700	3,600	-600					
48	building repairs			0	1,542	1,500	67	1,500	0					
50	Office Furniture			7,000	485	600	125	600	0					
51	Office Supplies			3,500	2,579	3,500	1,308	2,600	-900					
52	Postage & shipping expense			2,500	1,227	2,500	1,140	1,500	-1,000					
Professional Services														
53	Legal Services/Bickerstaff			60,000	37,001	60,000	17,837	40,000	-20,000					
54	Legislative Assistance/Howard - Gosselink			42,000	49,500	30,000	22,500	54,000	24,000					
55	Engineering Services			30,900	2,500	30,900	11,049	30,900	0					
56	Accounting Services & Audit			7,150	7,166	7,150	6,279	7,200	50					
57	Water Quality Testing			2,500	1,125	750	375	750	0					
58	Equipment Purchase			9,000	7,121	7,000	2,520	7,000	0					
59	Aquifer Monitoring Eqp. & GMA Expenses			10,000	4,500	10,000	0	4,500	-5,500					
60	Travel Exp & Training Cost													
61	Meals & Lodging			2,000	2,339	4,000	1,254	3,000	-1,000					
62	Conference Registration Fees			2,500	870	2,500	0	1,800	-700					
63	Director Expense Reimburse			1,000	1,067	1,200	722	1,200	0					
Other Miscellaneous Services & Expenses														
64	Miscellaneous Expenses			5,102	780	10,000	1,402	5,000	-5,000					
65	School Educational Material			550	795	790	350	790	0					
Vehicle Expenses														
66	Auto,Gas & Oil			2,500	1,519	2,000	1,117	2,000	0					
67	Auto & Truck Repairs			1,400	170	1,400	41	1,400	0					
68	Total Operating Expenses			469,882	325,019	451,140	281,751	403,727						
59	projected operating expenses through September 30, 2019									avg mon. exp				
60	Net Revenue over Operating Expenses			14,693	96,721	51,322	186,224	115,569	\$31,306					
61	Capital Improvement new office building			155,755	80,722	0			avg exp* 4 month=\$125,222					
62	Well Plugging Program - Use Plugging Re			25,000	25,000	25,000	4,500		ann exp =125,222+281751					=\$406,973
63	Bank Accounts thru 9/30/19						6/30/2020							
64	General Reserve Fund				821,120		1,611,637.00		revenue - annual expenses					
	Building Reserve Account balance			81,000					61,002 proj balance					
66	Well Plugging Program Reserve Fund				200,000		200,000.00		on 9/30/2020					
67	tax account Sept, 2019				221,197		403,880.00							
68	Bus acct sept 30, 2019				66,241		37,212.00							
69	Greater Texas Bank CD			0	252,302		0.00							
	FNBFAL CD				500,000		0.00		Projected total on 9/30/2020					
70			total all accts	81,000	2,060,860		2,252,729.00		all accts					
71	Cash Available Operations on 9/30/19				2,060,860	2,138,482	2,313,731.00		2,313,731					
75	*Total BCGCD Tax Levy for FY 2020 budget based on tax rate of \$0.02070/\$100 = \$450,752													

\_\_\_\_\_

\_\_\_\_\_