

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

OIL & GAS DOCKET NO. 03-0311102

APPLICATION OF WILDHORSE RESOURCES MNGT CO., LLC

STATEWIDE RULE 9 DISPOSAL PERMIT

GIDDINGS (EDWARDS, GAS) FIELD

BURLESON COUNTY, TEXAS

**MOTION FOR REHEARING BY
PROTESTANT POST OAK SAVANNAH GROUNDWATER
CONSERVATION DISTRICT**

On January 24, 2019, the Texas Railroad Commissioners signed an order granting the issuance of this permit. The Post Oak Savannah Groundwater Conservation District (hereinafter “District”) continues to believe that issuance of such order is invalid because it does not adhere to the agency’s own rules with regard to cementing.

The Commission is Bound by Its Own Rules

As found in *Rodriguez v. Service Lloyds Insurance Company*, 997 S.W.2e 248 (Tex. 1999), state agencies are bound by their rules and orders issues in violation of those rules are invalid. *See also Public Utility Commission v. GulfStates Util. Co.*, 809 S.W.2d 201, 207 (Tex. 1991). If the agency does not follow its own regulations, the courts are to “reverse its action as arbitrary and capricious.” *Rodriguez* at 255. It is a question of law as to whether an agency has followed its own rules and agency actions that fail to follow the agency’s own rules will be struck as “arbitrary and capricious.” *See, Texas Department of Public Safety v. Pierce* , 238 S.W. 3d 832, 835 (Tex. App. – Austin 2007, *no writ*) and *Myers v. State*, 169 S.W.3e 731 (Tex. App. – Austin 2005, *writ ref*). The District’s expert, Dr. Uliana, presented information related to the various aquifers that could be impacted by this disposal well, depending on the depth and possible

migration.¹ Dr. Uliana's report was admitted as Groundwater District Exhibit No. 1.² Even after both direct and cross-examination of Dr. Uliana and hearing the testimony of Applicant's expert, together with his review of the logs and the depths of the aquifers of concern to the District, Dr. Uliana still indicated that he didn't believe the variable density log showed that the well was completely sealed and cemented across the productive zones and there was free pipe from 3,700 to 7,180.³ The Applicant's own construction diagram does not appear to show the production casing annulus cemented to 6,000 feet. The construction diagram included in District's Exhibit 1 states there is free pipe; no cement in interval between 3,700 feet and 7,180 feet. Testimony from Applicant's own expert stated it was actually 7,200 feet.

Cementing Not In Conformance With Rules

Specifically, the District's concern is with the free pipe gap where it was noted that no cement exists in interval from 3,700 feet to 7,180 feet.⁴ The District noted in its closing statement and Exceptions filed that 16 TAC §3.13 Casing, Cementing, Drilling, Well Control, and Completion Requirements, subsection 1 did not seem to be adhered to:

Intent. The operator is responsible for compliance with this section during all operations at the well. It is the intent of all provisions of this section that casing be securely anchored in the hole in order to effectively control the well at all times, all usable-quality water zones be isolated and sealed off to effectively prevent contamination or harm, and all productive zones, potential flow zones, and zones with corrosive formation fluids be isolated and sealed off to prevent vertical migration of fluids, including gases, behind the casing. When the section does not detail specific methods to achieve these objectives, the responsible party shall make every effort to follow the intent of the section, using good engineering practices and the best currently available technology. In accordance with §3.17 of this title (relating to Pressure on Bradenhead), operators must notify the Commission of bradenhead pressure. The Commission will evaluate notices of bradenhead pressure on a case-by-case basis to determine further action and will provide guidance to assist operators in wellbore evaluation. (Emphasis added).

16 TAC §3.13(a)(4)(C) addresses the cementing across ***and*** above the actual injection zone for the well:

(C) Casing shall be cemented across and above all formations permitted for injection under §3.9 of this title (relating to Disposal Wells) at the time the well is completed, or cemented immediately above all formations permitted for injection under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) at the time the well is completed, in a well within one-quarter

¹ Hearing Tr. at 187:1-17

² Hearing Tr. at 218:1-4

³ Hearing Tr. at 211:2-15

⁴ District Exhibit 1, page 4.

mile of the proposed well location, as follows:

- (i) if the top of cement is determined through calculation, at least 600 feet (measured depth) above the permitted formations;
- (ii) if the top of cement is determined through the performance of a temperature survey conducted immediately after cementing, 250 feet (measured depth) above the permitted formations;
- (iii) if the top of cement is determined through the performance of a cement evaluation log, 100 feet (measured depth) above the permitted formations;
- (iv) at least 200 feet into the previous casing shoe (or to surface if the shoe is less than 200 feet from the surface); or
- (v) as otherwise approved by the district director. (Emphasis added)⁵

Lack of Adequate Protections

Texas Water Code sets out the terms and conditions under which the Commission may issue the permit if it finds:

- (1) that the use or installation of the injection well is in the public interest;
- (2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation;
- (3) *that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and*
- (4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073.⁶ (Emphasis added)

The District noted there were at least two ways to provide proper safeguards if this permit was granted: either run a new bond log to ensure adequate bonding across the areas or requiring the Applicant to install a monitor well in a location agreed upon and monitored by the District. The Commissioners are well within their powers to require such actions and were urged by Burleson County Judge Mike Sutherland at the Commissioner's meeting where they took this matter up. Judge Sutherland once again raised the issue of protection of the aquifers and requested a new bond log be run. The Judge was told by at least two of the Commissioners that "historically" there hadn't been any cases in which pollution had occurred, and thus his concerns were unfounded. Unknown are the reasons for such a good track record but *failing to adhere to their own rules cannot ensure continuance of such record*. The District at this point would urge the requirement of installation of a monitor well that would provide an "early warning" should this well ever begin to pollute the surrounding area aquifers since there are at least three productive zones that appear to have NO protection, NO safeguards. Seemingly overlooked by both the ALJ and the Commissioners is

⁵ 16 TAC §3.13(a)(4)(C)

⁶ See, Section 27.051(b), Texas Water Code.

that at least one of those aquifers will likely be relied upon over at least the next fifty years as one of the largest sources of water for the Central Texas region extending from Williamson County across through Milam and Burleson County down to Hays County and due to the purchase of such water and the current pipelines being built, into Bexar County, serving cities, towns and residents with *clean* groundwater if not polluted by wells such as this one that fails to adhere to the Railroad Commissions own rules.

The District respectfully requests that the Commission modify its order of January 24, 2019 to require a monitor well to be placed at a location jointly determined by Applicant and the District and thereafter monitored by the District with information being provided to the Commission. Such action would go adhere to the Commission's own rules and provide documented support for its bold claims that they have had no incidents of pollution due to the rules they have in place.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 15, 2019, a copy of the foregoing Exceptions of Protestant Post Oak Savannah Groundwater Conservation District was sent by **regular mail** or **email (where noted)** to the persons listed below.

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