

June 7, 2022

Mr. Gary Westbrook , General Manager
Post Oak Savannah Groundwater Conservation District
310 E. Avenue C
Milano, TX 76556

RE: SLR Property I, LP - Applications for ten temporary rig supply wells

Dear Gary:

Our office, as general counsel, has reviewed the SLR application dated May 31, 2022 for ten (10) temporary rig supply wells. Our office has also reviewed INTERA's review letter and would concur that the application appears to be administratively complete.

The SLR applications request waiver of the requirement for a public hearing on such applications. The applications do not reference or suggest under what authority this waiver may be granted. Based on the review letter from INTERA wherein it is stated that "all wells will use less than 500,000 gallons of water per day and have a maximum pumping rate of less than 100 gpm." A review of the provisions in Chapter 7.10 related to what wells are exempt illuminates the following similar wells that are exempt by law from the public hearing requirements:

RULE 7.10. EXEMPT WELL STATUS. [Amended February 20, 2014]

1. Wells exempted or partially exempted by local rule:

a. Wells exempted by local rule:

- i. A well that was in use prior to the effective date, that is used solely for domestic use, and that was drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per day is an exempt well.
- ii. A well that, after the effective date is drilled in full compliance with these rules, that is used solely for domestic use and that is completed, equipped and maintained so that it is incapable of producing more than 25,000 gallons of groundwater per day, shall be an exempt well from and after the completion. [Amended July 12, 2005]
- iii. A new or existing well which is used for the purpose of monitoring water levels and/or water quality and is not to be produced under any exemption or permit issued by the District shall be registered as an exempt well. [Added July 2, 2019]

b. Wells partially exempted by local rule:

- i. Wells that are not produced for 180 consecutive calendar days, or more, in any

twelve consecutive calendar months, that are less than 80 feet in depth, and that produce groundwater from the Brazos River Alluvium or the Little River Alluvium for the non-wasteful use by the Owner to raise livestock or agricultural crops, are exempt from production fees, and the public hearing and spacing requirements. [Amended May 12, 2020]

- ii. Wells that will produce groundwater for non-wasteful use by the owner for the purpose of raising domestic livestock or agricultural crops and that comply with the spacing and production requirements are exempt from the payment of production fees and the public hearing requirements.
 - iii. Wells previously permitted by the Railroad Commission and exempt under Rule 7.10(2)(b) that are to be re-drilled, replaced or altered for the purpose of supplying water to a rig or equipment engaged in drilling or exploration for oil and gas, without a new or amended permit issued by the Railroad Commission, are not exempt from these rules, but are exempted from the public hearing requirements if the well meets the qualification requirement provided in Rule 4.2(7). [Added April 8, 2008; Amended December 9, 2009] [Amended June 12, 2012]
 - iv. A well that is: (A) on a tract of land that is larger than 10 acres; (B) equipped so that it is incapable of producing more than 50,000 gallons of groundwater per day; and (C) used or will be used by a person or a household solely for a domestic activity is exempt from the requirements for a public hearing. The general manager may grant a permit for any such well without a public hearing; provided the well is fully compliant with these rules and shall not produce more groundwater than the maximum allowable per acre under these rules. [Added June 12, 2012]
2. Wells exempted by State law: As provided in *Chapter 36, Texas Water Code*, the following are exempt wells: [Amended April 8, 2008]
- a. A well, used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres, that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
 - b. The drilling of a well and production to supply water solely for a rig or equipment that is actively engaged in drilling an oil and gas well, that is permitted by the Railroad Commission, if: (i) the person holding the permit is responsible for the water well; and (ii) the water well is located on the lease on which the drilling rig is located, or within the boundaries of the field in which the drilling rig is located; (iii) the well is used with a rig that is actively engaged in drilling an oil and gas well ; (iv) the water is produced solely for the purpose of providing water that is necessary for the actual drilling of the oil and gas well; and (v) the rig has not been removed and the use of the well under a permit issued by the Railroad Commission has not terminated or otherwise expired; or [Rule 7.10(2)(b) Amended December 9, 2009] [Amended February 20, 2014]
 - c. The drilling of a well under a permit issued by the Railroad Commission under *Chapter 134, Texas Natural Resources Code*, or for production from such a well if the water produced or to be produced is necessary or will be necessary for mining purposes.

3. Railroad Commission Jurisdiction. A well drilled or operated with a rig engaged in drilling an oil and gas well, as authorized under a permit issued by the Railroad Commission, is under the jurisdiction of the Railroad Commission and is exempt from regulation by the District, except for spacing requirements according to these rules. The following provisions are applicable to wells permitted by the Railroad Commission: [Amended August 12, 2014]
 - a. Groundwater produced in an amount authorized by a Railroad Commission permit for the purpose of drilling an oil and gas well may be used within or exported from the District for the authorized purpose without a permit from the District; [Amended February 20, 2014]
 - b. To the extent groundwater is produced in excess of Railroad Commission authorization for use in the drilling of an oil and gas well, or for a purpose not authorized by a Railroad Commission permit, the holder of the Railroad Commission permit must apply to the District for the appropriate permit for the well and the production or the excess production, as applicable, and is subject to all applicable fees; [Amended February 20, 2014]
 - c. Groundwater that is produced, for the sole purpose of drilling an oil and gas well, from a well under the jurisdiction of the Railroad Commission is generally exempt from District fees, however, the District may impose a pumping fee and, as applicable, an export fee on groundwater produced from an otherwise exempt mine well that is used for either municipal purposes or by a public utility; and any fee imposed by the District under this Rule 7.10(3)(c) may not exceed the fee imposed on other groundwater producers in the District; and [Amended February 20, 2014]
 - d. Wells permitted by the Railroad Commission are exempt to the extent the water use operation and production is permitted and authorized by the Railroad Commission for the drilling of an oil and gas well. [Added February 20, 2014]
4. The District may require an exempt well to obtain an operating permit and comply with these rules if:
 - a. a well exempted under Rule 7.10(2)(b) above: (i) is no longer used to supply water for a rig or equipment that is actively engaged in drilling an oil and gas well permitted by the Railroad Commission; or (ii) is re-drilled, altered or replaced for that purpose without first obtaining a new or amended permit from the Railroad Commission; [Amended December 9, 2009] [February 20, 2014]
 - b. withdrawals from the exempted well are:
 - i. no longer necessary for mining purposes permitted by the Railroad Commission; or
 - ii. greater than the amount necessary for mining purposes permitted by the Railroad Commission under *Chapter 134, Natural Resources Code*;
 - c. the area of the tract of land on which the well is located is reduced, or the well is modified or operated improperly, such that the well is no longer qualified as an exempt well under Rule 7.10; or
 - d. the well is maintained, pumped, operated or used so as to no longer be qualified as an exempt well.
5. A person holding a permit, issued by the Railroad Commission under *Chapter 134, Texas Natural Resources Code*, that authorizes the drilling of a well, shall report monthly to the District the total amount of water withdrawn from the well, the quantity of water necessary

for mining purposes, and the quantity of water withdrawn for other purposes.

6. The District shall require all exempt wells to be registered in accordance with these rules. All exempt wells shall be equipped and maintained so as to conform to the rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from one aquifer to another and to prevent the pollution or harmful alteration of the character of the groundwater in any aquifer. A landowner, well owner, or any other person acting on their behalf, of an exempt well shall register the well with the District and comply with all applicable statutes, codes and regulations applicable to the drilling and opening up of the well.
7. A well to supply water for a subdivision of land for which a plat approval is required under *Chapters 212 or 232, Texas Local Government Code*, is not exempted under these rules.
8. Groundwater withdrawn from a well exempt from permitting or regulation under Rule 7.10 and subsequently transported outside the boundaries of the District shall be subject to all applicable water use and transport fees.
9. Wells permitted by the TCEQ pursuant to the Water Code or the Natural Resources Code are exempt only to the extent, if any, provided by State law for the water use and the operation and production permitted and authorized by the TCEQ. [Added April 8, 2008]
10. Excluding injection wells that receive a permit granted by the TCEQ or the Railroad Commission, which grant is upheld if judicially contested, this Rule 7.10 does not apply to nor exempt any injection well. [Added April 8, 2008] [February 20, 2014]
11. The exemptions and partial exemptions provided in this Rule 7.10 do not exempt a well from the requirements to register or to obtain a permit for the well. [Added June 12, 2012]
12. Permits issued by the Railroad Commission for the drilling of an oil and gas well may include a permit to produce water for the drilling of the oil and gas well. So long as the Railroad Commission permit for the water well remains in full force and effect and the groundwater is produced for the sole purpose of drilling an oil and gas well, the water well is an exempt well and the District will not issue permits for such wells or for the production of water from wells permitted by the Railroad Commission for the sole purpose of drilling an oil and gas well. [Added February 20, 2014]

While these exemptions do not directly allow a waiver from the hearing requirements, I do believe that they provide the District with guidance that an exemption *could* be allowed pursuant to Rule 1.3.

RULE 1.3. USES AND EFFECT OF RULES. The District will use these rules as a guide in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. These rules may not be construed as a limitation or restriction on the exercise of any discretion nor to deprive the Board of the exercise of any powers, duties or jurisdiction conferred by law, nor shall they be construed to limit or restrict the amount and character of data or information that may be required to be collected for the proper administration of the District Act. [Amended June 12, 2012]

Finally, as suggested by the Applicant and noted in the review by INTERA, these wells are being offered to the District after drilling and rig use is complete as monitor wells, in lieu of plugging:

“The well closure plan for all ten rig wells states that the wells will be plugged in accordance with POSGCD and State of Texas Requirements, or the monitoring program associated with the

SLR's Operating Permit 0148 will be amended to add the rig supply wells as a new. long-term monitoring well."

INTERA recommends that the District considers converting the rig well supply wells to monitoring wells. If the Districts is interested in using the wells as monitoring wells, INTERA recommends that a written agreement between POSGCD and SLR be in place prior to the District's approving the permit. The written agreement should include the type of monitoring equipment to be installed (if any), the frequency of monitoring, the schedule for delivery the data, well maintenance, and well access."

This office concurs with this recommendation completely. As set out in Rule 9.2:

RULE 9.2. APPLICATION, REGISTRATION, AND OTHER FEES. All fees, rates and charges provided for in these rules shall be charged and collected pursuant to a schedule of fees, rates and charges adopted by the Board.

The Board shall establish a schedule of fees, rates and charges for water use, transport, permits and administrative functions. The Board will attempt to set fees for permit applications and administrative functions that do not unreasonably exceed the costs incurred by the District of performing the administrative functions for which the fees are charged. **The District's monitor wells are exempt from application, registration, and well log deposits.** The general manager shall exempt District monitor wells from any other fees if the general manager determines the assessment of the fee would result in the District charging itself a fee. [Amended April 8, 2008]

All taken together, this office would support a waiver of such public hearing requirements so long as it included the recommendation from INTERA to obtain a written agreement prior to approval of the permit as to monitoring equipment and use, as well as allowance of the General Manager together with the Districts' Hydrogeologist to set the maximum gallons of water to be pumped per day together with an understanding of the number of wells being drilled per day.

I am available if there are any questions.

Respectfully,

Barbara Boulware-Wells
General Counsel