

**MINUTES OF THE AUGUST 27, 2019
BOARD OF DIRECTORS MEETING OF
NORTH PLAINS GROUNDWATER CONSERVATION DISTRICT**

The Board of Directors of North Plains Groundwater Conservation District met in regular session August 27, 2019, at 9:00 a.m. in the Conference Room of the Hampton Inn & Suites, 2010 South Dumas Avenue, Dumas, Texas 79029. The following persons were present:

Members Present at 9:05 a.m.:

Bob B. Zimmer, Vice-President;
Mark Howard, Secretary;
Gene Born, Director;
Harold Grall, Director;
Justin Crownover, Director; and
Zac Yoder, Director.

Staff Present during part or all of the meeting:

Steve Walthour, General Manager;
Dale Hallmark, Assistant General Manager — Hydrologist/Production Services;
Kirk Welch, Assistant General Manager — Outreach;
Kristen Blackwell, Executive Assistant;
Odell Ward, Program Coordinator — GIS/Monitor Wells;
Julia Stanford, Conservation Outreach Specialist; and
Paige Glazner, Conservation Outreach Assistant.

Others present during part or all of the meeting:

F. Keith Good, Attorney; and,
Ellen Orr, Paralegal.

Vice-President, Bob B. Zimmer declared a quorum present and called the meeting to order at 9:05 a.m. Director, Harold Grall, gave the invocation and Vice-President Zimmer led the pledge.

1 – Public Comment

No Public Comment was made to the Board.

2 – Consent Agenda

The Consent Agenda was discussed by the Board and consisted of: the review and approval of the Minutes of the regularly scheduled July 9, 2019 Meeting of the Board of Directors; the review and approval of un-audited District expenditures for July 1, 2019 through July 31, 2019, including the General Manager's expense and activity report; the review and approval of payment to Lemon, Shearer, Phillips & Good, P.C. for professional services and out-of-pocket expenses from July 1, 2019 through July 31, 2019, in the amount of \$5,132.46; the review and approval of the Dallam County Collection Contract for 2020-2021; the review and approval of the tax sale of all of Lot 93, Unit J, Double Diamond Estates, Moore County, Texas located at Schoenhals Lane, Fritch Texas; the review, approval and execution of a tax deed to R.B. Lynn to clear all ad valorem tax debt on multiple tracts of land in Hutchinson County, Texas; consider accepting bids on three properties in Hansford County, Texas that failed to sell at the Tax Sale; and consider Lipscomb Tax Assessor-Collector Corrected 2018 Tax Roll Reconciliation.

Gene Born moved to approve the Consent Agenda. Harold Grall seconded the motion and it was approved by the majority vote of the Board, with Justin Crownover being absent from the room.

At 9:09 a.m., Director Justin Crownover returned to the Conference Room to participate in the meeting.

Action Agenda 3.a. - Review draft of Proposed Order, finalize, adopt and enter the Order concerning the Prestage Farms of Oklahoma, LLC Application for Exception to District Rules 3.4; 3.7; 5.1.1.; 5.1.4.A.; and 5.1.5.

General Counsel, F. Keith Good presented a proposed NPGCD Board Order No. 019-002 concerning the concerning the Prestage Farms of Oklahoma, LLC's Application for Exception to District Rules 3.4; 3.7; 5.1.1.; 5.1.4.A.; and 5.1.5. as follows:

Recitals

On or about May 20, 2019, Marvin W. Jones, Esq., filed an Application for Exception to the North Plains Groundwater Conservation District's ("District") Rules 3.4; 3.7; 5.1.1.; 5.1.4.A.; and 5.1.5, on behalf of Prestage Farms of Oklahoma, LLC, an Oklahoma limited liability company ("Prestage"). In the Application for Exception, Prestage requested that the District grant Prestage an exception to District Rule 3.4, or alternatively grant Prestage an exception to District Rules 3.7 and 5.1.

District Rule 11.2.3 requires that any Application for Exception filed with the District shall be heard and considered by the Board at a Board meeting within sixty (60) days after submittal.

On June 11, 2019, the District set the Prestage Application for Exception for hearing at 9:00 a.m. Daylight Saving Time at the Hampton Inn & Suites Conference Room, 2010 South Dumas Avenue, Dumas, Texas 79029.

District Rule 11.2.3. identifies the parties who are to receive notice of the Prestage exception hearing from the District.

All required parties were timely provided notice of the Prestage exception hearing, in the manner specified and mandated by the Rules of the District.

At 9:00 a.m. on July 9, 2019, the District Board of Directors (Board) convened a formal hearing on the Prestage Application for Exception to District Rules 3.4; 3.7; 5.1.1.; 5.1.4.A.; and 5.1.5.

The following members of the District Board were present: Daniel L. Krienke, President; Bob B. Zimmer, Vice President; Mark Howard, Secretary; Gene Born, Director; Harold Grall, Director; Justin Crownover, Director; and Zac Yoder, Director.

Dana Moreland served as the Court Reporter for the hearing.

Prestage appeared at the hearing in person through Kelli Johnson, and through its attorney of record, Marvin W. Jones. The District appeared at the hearing in person through its General Manager, Steven D. Walthour, and through its General Counsel, F. Keith Good.

Board President, Daniel L. Krienke, served as the Presiding Officer for the hearing.

The hearing began at 9:17 a.m. Daylight Savings Time on July 9, 2019.

Witnesses Kelli Johnson and Steven D. Walthour were sworn by the Court Reporter, Dana Moreland.

Evidence offered at the hearing by Prestage and the District was admitted into evidence by the Presiding Officer.

The hearing was closed by the Presiding Officer at 10:36 a.m. Daylight Savings Time on July 9, 2019.

Findings

All matters in controversy, including questions of fact, were submitted to the Board. The Board, upon examining the Prestage Request For Exception on file with the District, hearing evidence and arguments of counsel, and reviewing the District Rules cited, finds as follows:

District Rule 3.4 – Replacement Well Spacing, provides: *A replacement Well, in order to be considered as such, must be drilled within fifty (50) yards of the Well being replaced and not elsewhere. It must not be located toward any other Owner's Well or Authorized Well Site that causes it to violate spacing Rules of the District.*

District Rule 3.7 – Maximum Permitted Well Density, provides: *The maximum permitted Well density of a Groundwater Production Unit, including Capped Wells, shall be:*

1. *Applied to the GPU acreage basis on a Section or part of a section within the GPU.*
2. *One Well for GPUs of acreages less than 64 acres.*
3. *One Well per each 64 acres of Groundwater Production Units of acreages greater than 64 acres. For GPUs comprised of acreages not evenly divisible by 64, the total maximum permitted Well density, including Capped Wells, shall be equal to the number of acres divided by 64 and the result rounded up to the next whole number.*

District Rule 5.1. – Water Well Flow Meters or Alternative Measuring Method Required, provides:

1. *All Owners of Wells in existence prior to October 14, 2003 which are reworked to increase production, and all Wells drilled after October 14, 2003 shall:*
 - A. *Install a Water Meter to measure the Groundwater production from the Well; and*
 - B. *Report Annual Production from the new Well and other Wells on the GPU in accordance with these Rules.*

District Rule 5.1.4.A. – Water Well Flow Meters or Alternative Measuring Method Required, provides: *Except as provided in Rule 5.1.4 B., the Owner must install Meters at the pump on all Wells in the GPU within 365 days after the date the permit or amended permit was approved.*

District Rule 5.1. – Water Well Flow Meters or Alternative Measuring Method Required, provides:

5. *The Metering System shall remain on the Well and be in proper operating condition at all times when Groundwater is being produced. If the Metering System ceases to operate*

correctly and/or it becomes necessary to remove the Metering System to make repairs and the Well is in operation, the Owner, or the Owner's legal representative shall within 30 days:

- A. Inform the District of the date the Metering System ceased to operate, the date the Metering System will be removed, and the totalizer reading of the Meter or the calculated Groundwater usage at the time the Metering System is removed;*
- B. Inform the District of the date the Metering System was replaced and the totalizer reading of the Meter at the time the Meter was replaced, if the Metering System utilizes an hour Meter, the number of hours on the Meter at the time of the replacement; and*
- C. Make a determination of the amount of Groundwater, which was produced during the time the Metering System was not in operation. The General Manager shall work with the Well Owner to select the determination method.*

Prestage Well SH-2009 ("Well SH-2009") was drilled on Section 117, Block 1-C, G.H.&H RR Survey, Sherman County, Texas ("Section 117") in 1997, before the District adopted well density rules in 2005.

The second Prestage Well in Section 117, SH-1919, was also drilled in 1997.

The original intent of Rule 3.4 was to protect a Well site that would otherwise be out of compliance with current District Rules, unless an easement was obtained from an adjacent owner.

A Replacement Well, under District Rule 3.4., changes an existing well site location and is not considered an additional well; therefore, if the well being replaced is plugged, the District well density rule (Rule 3.7) does not apply.

The Texas Commission on Environmental Quality ("TCEQ") also regulates the Prestage property in Section 117 as a Concentrated Animal Feeding Operation ("CAFO").

Prestage's TCEQ General Permit to Discharge Wastes No. TXG920000 (effective July 2014) requires that Prestage must not locate or operate retention control structures within one hundred fifty feet (50 yards) from wells used exclusively for private water supply.

A Prestage waste pond, which is a retention control structure, is located within 150 one hundred fifty feet (50 yards) of the Prestage Well SH-2009.

In order to comply with the TCEQ spacing rule, a replacement well cannot be located within fifty (50) yards of Prestage Well SH-2009.

The alternative location for the Prestage Replacement Well SH-10285 is properly located away from the property line of Section 117 and complies with well spacing Rule 3.1.

Prestage applied and received a permit for Well SH-10285 as an additional well since Prestage could not drill a replacement well within 50 yards of Well SH-2009 consistent with District Rule 3.4.

Well SH-2009 has been plugged. Plugging Well SH-2009 is the most effective method of preventing degradation of water quality consistent with Texas Water Code Section 36.101.

Well SH-10285 protects private property rights of adjacent owners consistent with Texas Constitution and Texas Water Code by moving the well site away from an adjacent owners' property line to an area consistent with Rule 3.1.

Well SH-10285 protects private property rights of Prestage Farms consistent with the Texas Constitution and the Texas Water Code by allowing Prestage to continue to use no more than two wells on the property as they have done since 1997.

Each Corner of Section 117 is solely owned and operated by Prestage.

Each Corner has two wells that supply the Prestage finishing operation.

Two wells on three additional acres in the northeast corner of Section 124, adjacent to Section 117, supply groundwater to the northwest corner of Section 117.

Each Corner uses a central collection point to measure all groundwater produced.

The four Corners of Section 117 have each annually produced less than 30 acre-feet of groundwater and annual groundwater withdrawals from any of the four corners of Section 117 have not exceeded the District's production limitations.

The four Corners collectively are less than the 640 acres and are solely owned by Prestage.

District Rule 5.1.4.B. provides for GPUs that are 640 acres or less and are not contiguous with the Owner's other GPUs, the Owner shall install a Meter on any new well and may continue to utilize an Alternative Metering System on the other Wells in the GPU.

Under District Rule 5.1.4.B., a meter is required at Prestage Well SH-10285 only, and not on the existing wells which are metered at central collection points.

Prestage, with the exception of Prestage Well SH-10285, is otherwise in compliance with District Rules.

Orders

IT IS THEREFORE ORDERED that the District hereby grants Prestage an exception to District Rule 3.4., adopted by the District on April 14, 2015, by waiving the requirement that a Replacement Well must be within fifty (50) yards of the well being replaced and thereby authorizing Prestage Well SH-10285 to qualify as a Replacement Well for the Plugged Prestage Well SH-2009.

IT IS FURTHER ORDERED that Prestage install a District-approved flow Meter on Prestage Well SH-10285.

IT IS FURTHER ORDERED that all relief not expressly granted herein is denied.

IT IS FURTHER ORDERED that all costs of this action shall be taxed against Prestage.

Mark Howard moved that the Board adopt NPGCD Board Order No. 019-002 as presented by the District's General Counsel. Gene Born seconded the motion and it was unanimously approved by the Board.