

**MINUTES OF THE OCTOBER 13, 2020
BOARD OF DIRECTORS MEETING OF
NORTH PLAINS GROUNDWATER CONSERVATION DISTRICT**

The Board of Directors of North Plains Groundwater Conservation District met in regular session on October 13, 2020, at 9:30 a.m. at the North Plains Conservation Center Barn, 6045 County Road E., Dumas, Texas 79029. The following persons participated in the Meeting:

Members Present at 9:38 a.m.:

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

Staff present during part or all of the meeting:

Steve Walthour, General Manager;
Kirk Welch, Assistant General Manager — Outreach;
Kristen Blackwell, Executive Assistant; and
Odell Ward, Field Supervisor.

Others present during part or all of the meeting:

Nich Kenny;
Laura West, Trust Officer, FirstBank Southwest, Perryton, Texas
Alan Meier;
Brandon A. Meier;
Mandi Boychuk, Natural Prairie & Northside Farmland;
Shelly C. Burnett;
Craig Custer, appearing via telephone, because of exposure to COVID-19;
F. Keith Good, General Counsel for the District; and
Ellen Orr, Paralegal.

Vice-President, Bob B. Zimmer, declared a quorum present and called the meeting to order at 9:38 a.m. Director, Mark Howard, gave the invocation and Vice-President Zimmer led the pledge.

At 9:40 a.m. Vice-President Zimmer recessed the regular Board meeting and called the following matters for hearing:

NPGCD Show Cause Hearing No. 020-003, regarding Lone Star Family Farms for the alleged violation of District Rule 9; and,

NPGCD 020-004, regarding Braden Gibson, doing business as Gibson Farms, for the alleged violation of District Rule 9.

At 11:54 a.m., Vice-President Zimmer closed the Show Cause hearings and reconvened into regular session at 11:56 a.m.

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 Board of Directors Meeting held on

September 8, 2020; the review and approval of un-audited District expenditures for September 1, 2020 through September 30, 2020, including the General Manager's expense and activity report; and the review and approval of payment to Lemon, Shearer, Phillips & Good, P.C. for professional services and out-of-pocket expenses incurred from September 1, 2020 through September 30, 2020, in the amount of \$7,200.85.

Harold Grall moved to approve the Consent Agenda. Mark Howard seconded the motion and it was unanimously approved by the Board.

Action Agenda 3.b. - Consider final compliance approval of water well permits as active and complete wells.

The General Manager reported that District Rule 2.13 provides, after the site inspection is complete, and it is determined that the Well (and all Wells within the Groundwater Production Unit) is/are in compliance with the Rules of the District, and the Well Permit application, the General Manager shall submit the Well Permit to the Board for final compliance approval.

The General Manager reported that the District staff had processed 35 Water Well Permits which are ready for Board consideration and approval. These permits, listed in the table below, represent completed Wells that have been inspected and are in compliance with District Rules. The inspections verify that the Wells were completed as required by the respective Permits, including proper Well location, Well classification, maximum yield, and proper installations of check valves and flow meters. Copies of the individual permits were presented to the Board.

| Well | Class | Section | Block | Survey | Yards N S | Yards E W |
|----------|-------|---------|-------|-----------------------|-----------|-----------|
| DA-10542 | C | 9 | 3 | CSS | 566 S | 345 W |
| DA-11022 | C | 41 | 6 | CSS | 180 S | 290 E |
| DA-11355 | C | 21 | 2 | B&B | 288 N | 9 E |
| DA-11356 | C | 6 | 0 | Day Land & Cattle Co. | 982 N | 427 E |
| DA-11357 | C | 6 | 0 | Day Land & Cattle Co. | 1219 N | 750 E |
| DA-11365 | B | 14 | 48 | H&TC | 109 N | 251 E |
| DA-11366 | C | 16 | 48 | H&TC | 777 N | 817 E |
| DA-9544 | A | 11 | 48 | H&TC | 292 S | 14 W |
| HA-10846 | B | 29 | 48 | H&TC | 457 S | 425 E |
| HA-11198 | D | 74 | 48 | H&TC | 260 S | 860 E |
| HA-11368 | C | 5 | 14 | CSS | 24 N | 569 E |
| HA-11370 | C | 5 | 14 | CSS | 575 N | 21 E |
| HA-11371 | C | 4 | 14 | CSS | 675 S | 4 W |
| HA-11373 | C | 5 | 14 | CSS | 74 S | 561 W |
| HA-11374 | C | 5 | 14 | CSS | 352 S | 856 W |
| HA-11375 | C | 5 | 14 | CSS | 898 N | 545 E |
| HA-11377 | C | 5 | 14 | CSS | 21 N | 494 W |
| HA-11378 | D | 5 | 14 | CSS | 310 N | 799 E |
| HN-0691 | D | 1 | 5-T | T&NO | 29 S | 197 W |
| HN-0940 | D | 133 | 45 | H&TC | 770 N | 733 W |
| HN-11340 | D | 166 | 2 | GH&H | 111 S | 115 E |
| HU-11070 | D | 1 | HC | H&OB | 848 S | 116 W |
| HU-11446 | D | 4 | M-23 | TC&RY | 866 N | 202 W |
| LI-11231 | D | 60 | 10 | HT&B | 760 S | 878 E |
| MO-11177 | B | 328 | 44 | H&TC | 684 N | 682 W |
| MO-11475 | D | 302 | 44 | HT&B | 779 N | 113 W |
| OC-10943 | D | 922 | 43 | H&TC | 548 S | 113 W |
| OC-10945 | D | 1009 | 43 | H&TC | 523 S | 879 W |
| OC-11575 | D | 75 | 4-T | T&NO | 765 S | 107 E |
| OC-11576 | D | 75 | 4-T | T&NO | 207 S | 480 E |

| Well | Class | Section | Block | Survey | Yards N S | Yards E W |
|----------|-------|---------|-------|--------|-----------|-----------|
| SH-10976 | D | 10 | 1 | PSL | 215 N | 42 E |
| SH-11398 | C | 446 | 1-T | T&NO | 223 S | 338 e |
| SH-11400 | B | 375 | 1-T | T&NO | 118 S | 638 W |
| SH-11409 | C | 223 | 1-C | GH&H | 332 N | 422 W |
| SH-11601 | B | 11 | 3-B | GH&H | 77 N | 644 W |

Harold Grall moved to approve all of the Well Permits on the Well Permit Schedule, with the exception of MO-11177 and MO-11475, noting that the Wells are properly equipped and otherwise comply with District Rules. Mark Howard seconded the motion, and it was unanimously approved by the Board.

Justin Crownover moved to approve Well Permits MO-11177 and MO-11475, noting that the Wells are properly equipped and otherwise comply with District Rules. Mark Howard seconded the motion and the motion passed by the majority vote of the Board with Harold Grall abstaining from the vote.

Executive Session - Section 551.071 of the Texas Government Code.

At 12:00 Noon, Zac Yoder moved to go into Executive Session in compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, §551.071, to obtain legal advice on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551. Mark Howard seconded the motion, and it was unanimously approved by the Board.

Executive Session: At 12:10 p.m., the Board went into Executive Session. At 1:14 p.m., Harold Grall moved that the Board reconvene into regular session. Zac Yoder seconded the motion, and it was unanimously approved by the Board.

The Board reconvened into regular session at 1:19 p.m.

Action Agenda 3.a. - Consider action regarding Show Cause Hearings.

Harold Grall moved to adopt the following Board Order regarding Show Cause Hearing No. 020-003 in re: Lone Star Family Farms:

NPGCD BOARD ORDER NO. 020-003

On October 13, 2020, at 9:30 a.m., the North Plains Groundwater Conservation District ("District") Board of Directors, under Presiding Officer, Bob B. Zimmer, convened a Show Cause Hearing ("Hearing") under District Rule 11.5. The Hearing was convened to permit Lone Star Family Farms, a Texas General Partnership, P.O. Box 540, Sunray, Texas 79086 ("Lone Star") to come before the Board and show cause as to why Lone Star should not be assessed a civil penalty, or why the District should not suspend, cancel, or otherwise limit Lone Star's operating authority or Well(s) permit(s) for violation of District Rule 9.2.6. The Hearing was duly recorded by Court Reporter, Shelly Burnett.

After hearing the evidence submitted by General Manager, Steve Walthour, Justin Crownover, Craig Custer, and Laura West, Trust Officer of FirstBank Southwest, Perryton, Texas, and comments by the District's General Counsel, Keith Good, the District's Board of Directors finds:

FINDINGS

Lone Star is a Texas general partnership, who is a Tenant of Duke Farm, LLC. Lone Star is producing Groundwater from the Southwest pivot in GPU No. 7032 located in Section One Hundred Fifty-one (151), Block Ten (10), SPRR Survey, Lipscomb County, Texas ("the Property");

On July 24, 2020, District staff observed and reported to Lone Star that Groundwater being produced from the Property was escaping the Property as irrigation tailwater and was entering onto adjacent real property West of the Property, specifically Section One Hundred Fifty (150), Block Ten (10), SPRR Survey, Lipscomb County, Texas ("Section 150"), which is owned by FirstBank Southwest, Trustee of the Harry M. Teare Trust, 201 South Main Street, Perryton, Texas 79070. Craig Custer, P.O. Box 130, Booker, Texas 79005, is the Tenant on Section 150;

Lone Star has failed to prevent Groundwater being produced from the Property from escaping the Property as irrigation tailwater and entering onto Section 150, in accordance with District Rules.;

There was no evidence presented at the hearing that showed Lone Star had permission from the Owner/Tenant of Section 150 to discharge groundwater from the Property onto Section 150;

The North Plains Groundwater Conservation District ("District") was established by the Texas Legislature under enabling legislation ratified on January 27, 1955. The District is authorized under Texas Water Code, Section 36.101, to make and enforce Rules to govern the conservation, preservation, protection, recharging, and prevention of waste of groundwater within the District. Further, under Sections 36.114, 36.115 and 36.117(h) of the Texas Water Code, the District is authorized to require the permitting and registration of water Wells;

District Rule 9.1., Waste of Groundwater Prohibited, precludes any Person from Wasting Groundwater.;

District Rule 9.2.6, Conditions Constituting Groundwater Waste provides in pertinent part: [Groundwater shall not be produced or used within the District in such a manner or under such conditions as to constitute waste. "Waste" means any one or more of the following: 1. withdrawal of Groundwater * * * 6. Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the Owner of the Well unless permission has been granted by the occupant of the land receiving the discharge; * * *];

The District issued its Order for a Show Cause Hearing to Lone Star on September 10, 2020 for violation of District Rule 9.2.6;

The District's Order for a Show Cause Hearing set the location of the Hearing at the North Plains Groundwater Conservation District Water Conservation Center Barn, 6045 County Road E, Dumas, Texas 79029-7201; set the date for October 13, 2020; and set the time at 9:30 a.m.;

Lone Star was submitted notice of the District's Show Cause Hearing Order by certified and regular U. S. mail delivery;

Pursuant to Texas Water Code, Section 36.102 and under District Rule 12.1.2, the District may assess a civil penalty against Lone Star for failure to comply with the District's Rules;

The violation of District Rule 9.2.6 may be enforced by the District by assessing a Class 1 civil penalty against Lone Star for the violation;

A Class 1 civil penalty shall not be less than \$50, nor more than \$10,000 per violation, and each day of a continuing violation shall be deemed a separate violation; and

All of Lone Star's administrative remedies have been exhausted in this matter under the District's Show Cause Rule number 11.5.