



MCELROY,
SULLIVAN,
MILLER &
WEBER, L.L.P.

Legal Update: Seismicity and Water Regulation

Permian Basin Water
In Energy Conference
2025

PAUL TOUGH AND ADAM FRIEDMAN

Agenda

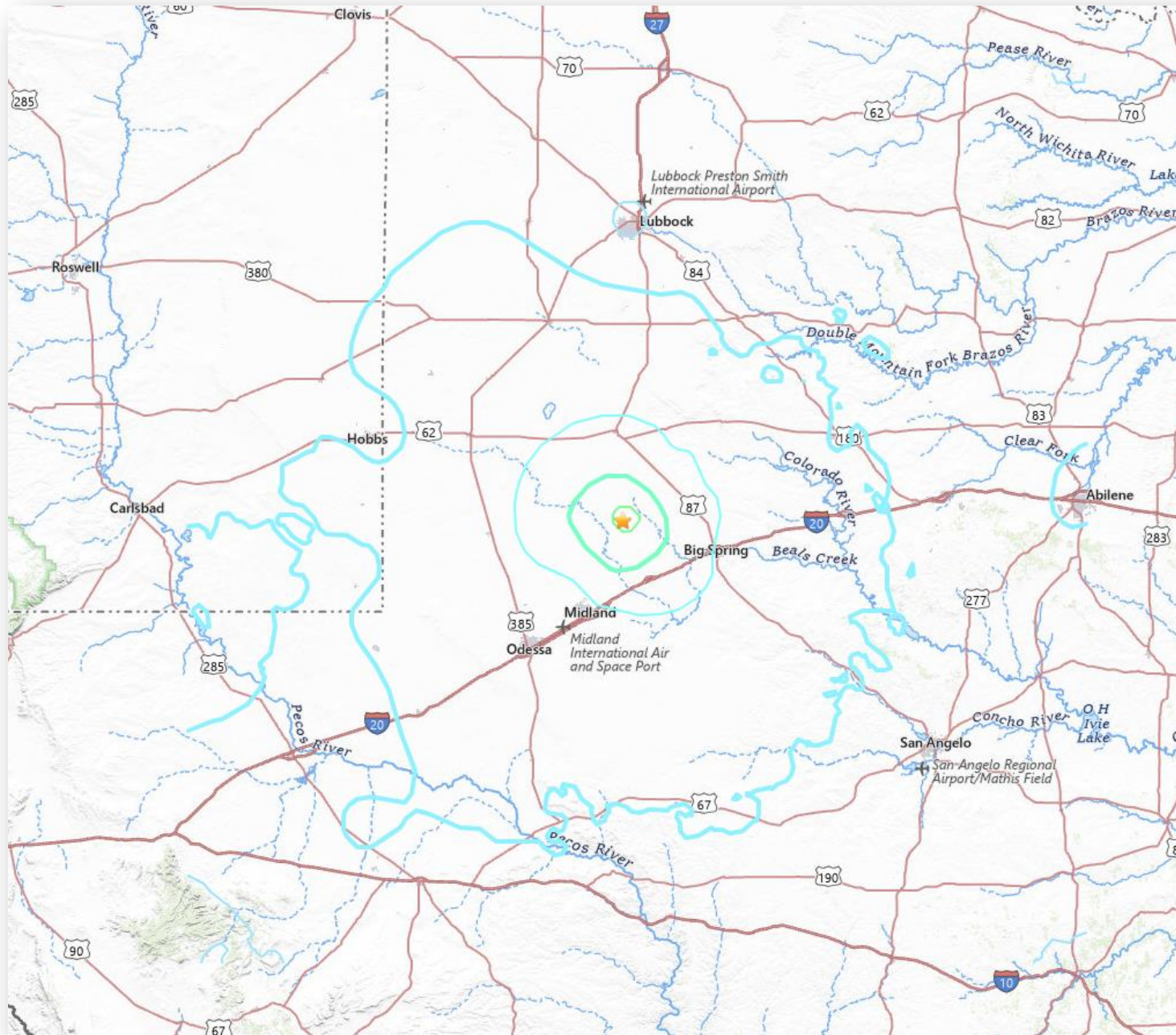
SEISMICITY UPDATE

STATEWIDE RULE 8 OVERHAUL

GEOHERMAL

P-13 WELLS

GROUNDWATER



M 4.8 - 26 km

SW of Ackerly, Texas

☀ 2025-02-28 19:33:24 (UTC)

☀ 32.370°N 101.926°W

☀ 6.8 km depth

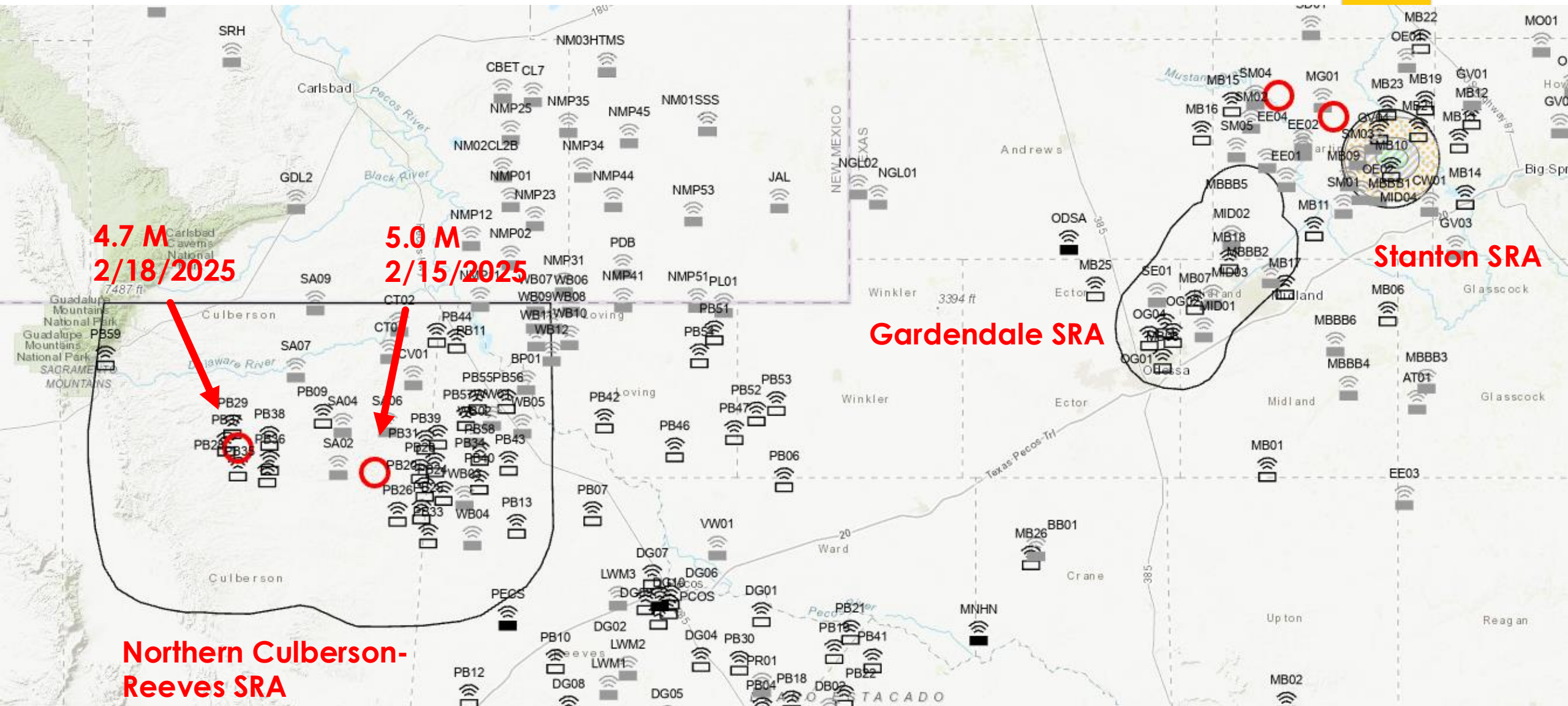
4.7 M
2/18/2025

5.0 M
2/15/2025

Northern Culberson-
Reeves SRA

Gardendale SRA

Stanton SRA



Statewide Rule 9

Same language in Statewide
Rule 46 for injection well
permits

- ▶ **A permit** for saltwater or other oil and gas waste disposal **may be** modified, **suspended**, or terminated by the commission for just cause **after notice and opportunity for hearing, if:**
- ▶ (vi) - injection is likely to be or determined to be contributing to seismic activity

Suspension Hearings

Seismicity

RRC Called Hearing to Show Cause Why the Injection Permit Should Not Be Suspended

- ▶ Burden of Proof
 - Operator
- ▶ Standard
 - Likely to be or determined to be contributing to seismic activity
- ▶ Relief
 - Suspend Permits

Railroad Commission Identifies Freshwater Deep Aquifer

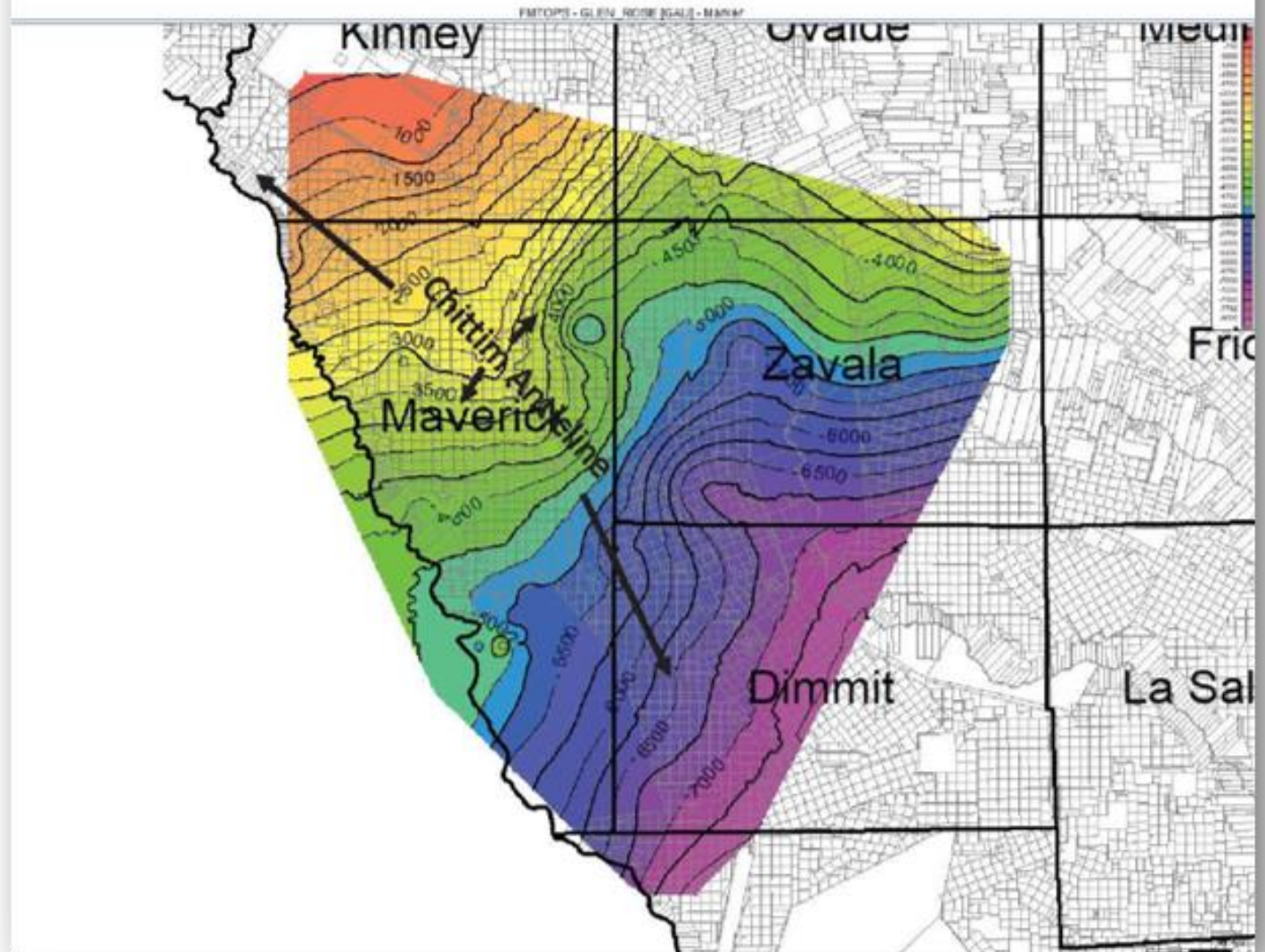
Resource Could Help Quench Parched Parts of
State

November 22, 2021

AUSTIN – Railroad Commission geologists have identified and mapped a deep aquifer in Texas that could yield appreciable volumes of freshwater in and around Eagle Pass, a semiarid region of the U.S.-Mexico border.

The Maverick Basin Aquifer, RRC's working name, has been located in the Glen Rose Formation, which is more than a mile under the surface in some places. Maverick, Dimmit, and Zavala Counties have deeper water, and Kinney and Uvalde Counties are somewhat shallower. So far, the aquifer is known to be at least 3,000 square miles in area and averages about 1,000 feet thick in most places.

Maverick Basin Aquifer





Statewide Rule 3.8

WATER PROTECTION

Statewide Rule 8 Overhaul

October 2023 – Draft Rules for Informal Comment

Rulemaking would impact SWR 8, SWR 57 and Chapter 4

RRC Accepting Informal Comments on Draft Amendments to Water Protection & Environmental Protection Rules

October 02, 2023


La Comisión de Ferrocarriles de Texas Aceptando Comentarios Informales sobre las Enmiendas Propuestas a las Normas de Protección del Agua y Protección Ambiental (/media/qkpkts0/rrc-accepting-informal-comments-on-draft-amendments-to-water-protection-and-environmental-protection-rules-sp.pdf)

The Railroad Commission of Texas (RRC) is accepting informal comments on draft amendments to 16 Texas Administrative Code (TAC) §3.8 (also known as Statewide Rule 8), relating to Water Protection; 16 TAC §3.57 (also known as Statewide Rule 57), relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials; and 16 TAC Chapter 4, Subchapter B, relating to Commercial Recycling; and new 16 TAC Chapter 4, Subchapter A, relating to Oil and Gas Waste Management.

16 TAC §3.8 has existed in its current form since 1984 with several minor modifications since then. The RRC is proposing to significantly revise this cornerstone waste management rule, as well as its existing rules for commercial recycling of oil and gas waste that can be found in 16 TAC Chapter 4, Subchapter B.

Formal Rulemaking

*Effective July 1,
2025*

- ▶ Formal Proposal Published – August 30, 2024
 - Rules Impacted
 - 3.8
 - 3.22
 - 3.30
 - 3.57
 - 3.91
 - 3.98
- ▶ Formal Adoption Published – January 3, 2025
 - Rule 8  New Subchapter A of Chapter 4

Rulemaking Highlights - Definitions

▶ Pit

- "A container for which earthen materials provide structure, shape, and foundation support. A container that includes a concrete floor or sidewall is a pit. A tank, as defined in paragraph (89) of this section, is not a pit."
- Tank - "A rigid, non-concrete, non-earthen container that provides its own structure and shape."
- Container - "A means of primary containment used for the management of oil and gas waste such as a pit, sump, tank, vessel, truck, barge, or other receptacle."

▶ Dewater

- Adds requirement to conduct a Paint Filter Liquids Test

▶ Produced Water

- Water that was present in a subsurface formation and was brought to the surface during oil and gas exploration activities



Authorized Disposal Methods

- ▶ Water Condensate → land application
- ▶ Inert Oil and Gas Waste → no discharge / no health safety hazards
- ▶ Low Chloride Water-Based Drilling Fluid → land farm
- ▶ Certain dewatered solids (drill cuttings, sand...) → burial

Low Chloride – 3,000 mg/l or less

- ▶ Written Permission
- ▶ 3% slope or less
- ▶ 500 feet PWS well / 300 feet surface water or well / 100 feet gw
- ▶ Remove hydrocarbons and no pooling, ponding or runoff
- ▶ pH between 6 and 9
- ▶ Waste-Soil Mixture
 - Electrical Conductivity does not exceed background or 4 mΩ/cm
 - Total TPH of 1% or less

Authorized Recycling

Also formalized authority for pilot recycling programs – 4.185

Produced water (treated or not) if used in a downhole operation



Authorized Pits

► Schedule A

- Reserve Pits
- Mud Circulation Pits
- Completion/Workover Pits
- Makeup Water Pits
- Fresh Mining Water Pits
- Water Condensate Pits

► Schedule B

- Produced Water Recycling Pits



Previously Authorized Pits



Any existing non-commercial fluid recycling pit:

- ▶ By January 1, 2026
 - Register the pit
 - File Financial Security
 - or
 - Close the Pit

Authorized Pits - Registration



- ▶ All authorized pits must be registered
 - Prior to operation
- ▶ Authorized pits existing on July 1, 2025 shall be registered or closed within one year

Authorized Pits - Liners



► Schedule A Pits

- If pit contains fluid with more than 3,000 mg/l of TDS

or

- If pit is located where groundwater is present within 50 feet of the bottom of the pit

► Schedule B Pits

- All

Authorized Pits – Closure



- ▶ Schedule A –
 - Dewater
 - Backfill
 - Compact

Produced Water Recycling Pits



- ▶ Financial Security Requirements
- ▶ Location Requirements
- ▶ Design and Construction Requirements
- ▶ Operating Requirements
- ▶ Closure Requirements
- ▶ Groundwater Monitoring Requirements

Financial Security

Produced Water Recycling Pits



- ▶ Operating 5 pits or less
 - \$1/barrel of total pit capacity

- ▶ Operating more than 5 pits
 - Greater of \$1/barrel of 10% of total pit capacity or \$1,000,000;
or
 - \$200,000 per pit, capped at \$5,000,000

Location Restrictions

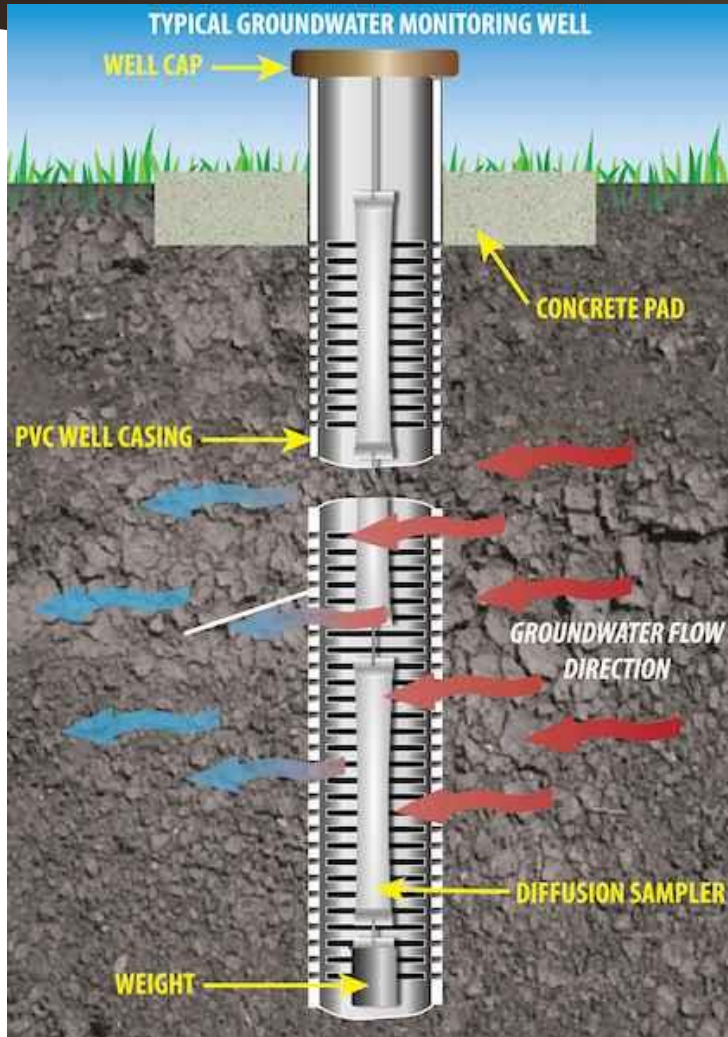


- ▶ 300 feet from surface water
- ▶ 500 feet from public water system well / intake
- ▶ 300 feet from water well except rig supply well
- ▶ 100-year flood plain
- ▶ 500 feet of a public area

Closure Requirements

- ▶ Dewater pit
- ▶ Remove all waste (unless meet additional requirements)
- ▶ Collect five-point composite soil samples (per acre)
 - Analyze and compare to limits
 - Background soil concentrations must be determined before or during pit construction
 - If limits are exceeded, then notify District Director within 24 hours
- ▶ Backfill
- ▶ Notify District Director a minimum of 7 days prior to closure

Groundwater Monitoring



► Groundwater Monitoring

- Is groundwater likely to be present within 100 feet of the ground surface?
 - Water well within one-mile producing from 100 feet or less
- Exception if:
 - Double synthetic liner with leak detection; or
 - Lined and pit has an active life of less than one year
- 3 groundwater monitoring wells

Geothermal Wells

*All Geothermal Wells
Now Under RRC
Jurisdiction*

- ▶ RRC adopted rules for shallow closed-loop geothermal systems effective January 6, 2025

February 25, 2025

RRC Reaches New Energy Milestone with First Permitted Geothermal Well

February 26, 2025

AUSTIN – The Railroad Commission of Texas has issued its first permit for a deep geo-pressured, geothermal well to Sage Geosystems in Atascosa County.

Located south of San Antonio in the Anaconcho Formation, this well permit marks a significant milestone in Texas' energy sector as the first deep geo-pressured, geothermal permit issued since the Texas Legislature transferred regulatory authority for these types of wells from the Texas Commission on Environmental Quality to the RRC.

The well will be utilized in electricity generation by the San Miguel Electric Cooperative to serve its customers. Sage Geosystems has entered into a land use agreement with the cooperative to develop a three-megawatt Geopressured Geothermal System energy storage facility.

CHRISTI CRADDICK, CHAIRMAN
WAYNE CHRISTIAN, COMMISSIONER
JIM WRIGHT, COMMISSIONER



DANNY SORRELLS
ASSISTANT EXECUTIVE DIRECTOR
DIRECTOR, OIL AND GAS DIVISION
PAUL DUBOIS, P.E.
ASSISTANT DIRECTOR, TECHNICAL PERMITTING

RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION SPECIAL INJECTION PERMITS

PERMIT TO INJECT FLUID INTO A RESERVOIR PRODUCTIVE OF GEOTHERMAL RESOURCES

SAGE GEOSYSTEMS INC. (P-5 # 100531)
515 W. GREENS ROAD STE 300
HOUSTON, TEXAS 77067

Project No: 58353

Authority is granted to inject into the well identified herein in accordance with Statewide Rule 46 of the Railroad Commission of Texas and based on the information contained in the application (Form GT-5, Forms H-1 and H-1A) dated December 13, 2024, for the permitted interval of the **Anacacho** Formation and subject to the following terms and special conditions:

SAGE GEOSYSTEMS SMECI LEASE WILDCAT FIELD ATASCOSA COUNTY, DISTRICT 01

WELL IDENTIFICATION AND PERMIT PARAMETERS:

Well No.	API No.	UIC No.	Permitted Fluid	Top Interval (feet)	Bottom Interval (feet)	Maximum Daily Injection Rate (bbl/d)	Maximum Surface Injection Pressure (psig)
1	013-36202	127007	Fresh Water	9,133	9,496	70,000	4,567

STANDARD CONDITIONS:

- The District Office must be notified at least 48 hours prior to:
 - beginning any workover or remedial operation
 - conducting any required pressure tests or surveys
- The wellhead must be equipped with a pressure observation valve.

P-13 wells:
"Water" or "O&G" wells?



Form P-13

Application of Landowner to Condition an Abandoned Well for Freshwater Production

RAILROAD COMMISSION OF TEXAS OIL AND GAS DIVISION		APPLICATION OF LANDOWNER TO CONDITION AN ABANDONED WELL FOR FRESH WATER PRODUCTION		FORM P-13 EFF 10/04	
1. Field Name (as per RRC Records or Wildcat):			2. Field No.:	3. RRC District No.:	
4. Operator Name (as shown on P-5):			5. Operator P-5 No.:	6. County:	
7. Lease Name:		8. RRC Lease/Gas ID No.:	9. API No.:	10. Well No.:	
11. Location (Section, Block, and Survey):			42-		
12. If the Operator has changed within the last 60 days, provide the name, the P-5 No., and the address of the former Operator:					
13. If the well has been worked over, provide the former Field name (and reservoir name) and number:					
14. Is this an Abandoned Producer or a Dry Hole? <input type="checkbox"/> YES <input type="checkbox"/> NO If this is a Dry Hole, or if the Operator did not file current completion data, <u>ATTACH</u> casing and cement data for casings penetrating groundwater depths.					
15. Type of Electric or other Log run:			16. Completion date of the well:		
17. Proposed Plug-Back Depth of well for fresh water production (ft):		18. Base of Usable Quality Water (ft):	19. Date of TCEQ letter:		

20. FOR COMPLETION BY LANDOWNER: Information concerning groundwater conservation districts may be found at www.texasgroundwater.org.

- ☐ I have permitted the well as a water well with the _____ Groundwater Conservation District.
- ☐ I have registered the water well with the _____ Groundwater Conservation District.
- ☐ The _____ Groundwater Conservation District does not require that the water well be permitted or registered.
- ☐ There is no groundwater conservation district for the area in which the well is located.

The undersigned Operator and Landowner hereby make application for the Operator to be authorized to plug the above well in such a manner that the well bore be left open to the above depth so that the Landowner may condition and equip such well bore to that depth for production of fresh water.

The undersigned Landowner further obligates himself, his heirs, successors, and assignees, as a condition to the Commission's approval of this application, to complete the plugging of the well if and when it is abandoned as a fresh water well, or when, because of the condition of the well is found to constitute a menace to any oil, gas, or fresh water strata in that area, such plugging is ordered by the Commission.

Under §89.011, Tex. Nat. Res. Code, the duty to properly plug the well ends only when the well has been properly plugged in accordance with Commission requirements up to the base of usable quality water stratum; the Commission has approved the application to condition the well for usable quality water production operations; and the landowner has registered the well with, or has obtained a permit for the well from, the groundwater conservation district, if applicable.

The authority to complete this well in the manner prescribed shall not be construed as authority for any party to produce fresh water from the well.

(type or print)	(type or print)
Street Address or P. O. Box:	Street Address or P. O. Box:
City, State, Zip Code:	City, State, Zip Code:
Telephone ()	Telephone ()
FILING INSTRUCTIONS	
1. The completed original of this form must be recorded in the county in which the well is located. SEE the back of this form.	
2. Form P-13 showing the recording data, along with the Notice of Intent to Plug and Abandon (Form W-3A) must be filed in the appropriate Commission District Office, along with a copy of the TNRC/TCEQ Surface Casing MC 151 letter (or other acceptable equivalent letter).	
3. After plugging back the well, the Operator shall file one copy of the Commission-approved Form P-13 with the original and one copy of Form W-3 (Plugging Record), in the appropriate Commission District Office.	
RAILROAD COMMISSION APPROVAL: _____ DATE OF APPROVAL: _____	
(Signature of RRC Representative)	
DISTRIBUTION: The Commission will mail a copy of the approved form to the: (1) Landowner; (2) Operator; (3) Texas Commission on Environmental Quality (TCEQ); (4) Ground Water Conservation District, if applicable; (5) Texas Department of Licensing and Regulation (TDLR); and (5) Commission District Office.	

Boehmer Lake



Mitch Borden / Marfa Public Radio

Lake Boehmer is a roughly 60 acre body of water that sprouted from a former oil well that's been allowed to leak for decades.

Boehmer Lake



Source - <https://www.texasmonthly.com/news-politics/lake-boehmer-hydrogen-sulfide-railroad-commission/>

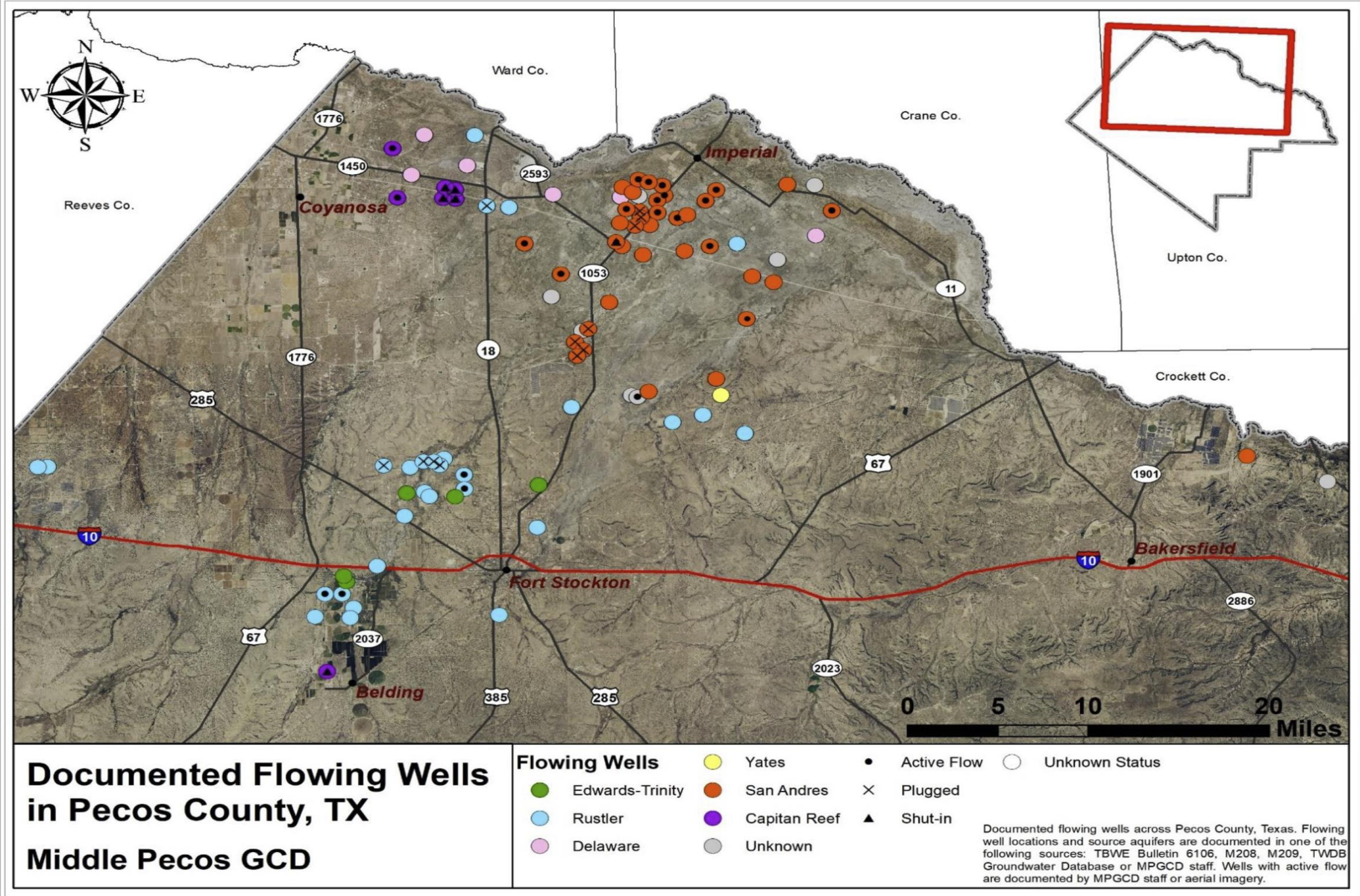
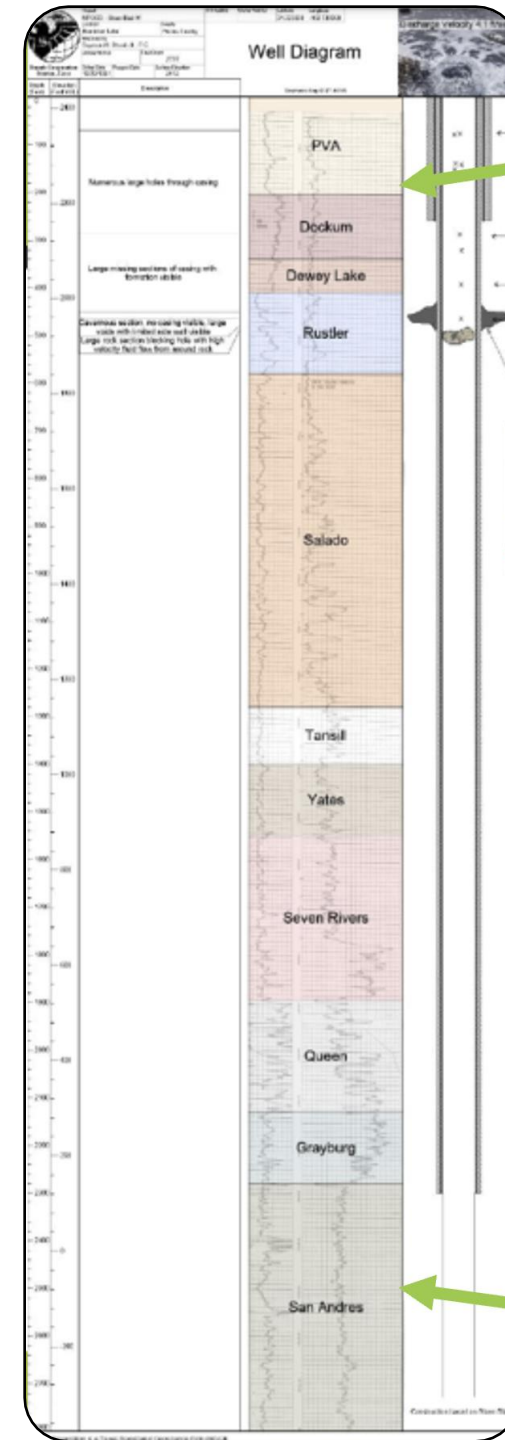


Figure 1 – Documented flowing wells across Pecos County, Texas. Flowing well locations and source aquifers are documented in one of the following sources: TBWE Bulletin 6106, M208, M209, TWDB Groundwater Database, MPGCD staff, or aerial imagery. See Table 1 for additional details.

Pecos County Water Formations

- Deteriorated Casing
- High Salinity Waters



May 24, 2023: 65,185 Chlorides



Complaint

April 5, 2023

Docket OG-23-00013093

FILED

1:52 pm, Apr 05, 2023
DOCKET SERVICES
RAILROAD COMMISSION OF TEXAS

RAILROAD COMMISSION OF TEXAS

DOCKET NO. _____

FORMAL COMPLAINT OF
MIDDLE PECOS GROUNDWATER
CONSERVATION DISTRICT AND
MOTION FOR A HEARING
PURSUANT TO TEXAS NATURAL
RESOURCES CODE § 89.041
TO DETERMINE PROPER
PLUGGING OF 12 ABANDONED
WELLS IN PECOS COUNTY

§
§
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§

BEFORE THE
RAILROAD COMMISSION
OF TEXAS

**FORMAL COMPLAINT OF MIDDLE PECOS GROUNDWATER CONSERVATION
DISTRICT AND MOTION FOR A HEARING PURSUANT TO TEXAS NATURAL
RESOURCES CODE § 89.041 TO DETERMINE PROPER PLUGGING OF 12
ABANDONED WELLS IN PECOS COUNTY**

The Middle Pecos Groundwater Conservation District (the “District”) files this formal complaint and requests that the Railroad Commission of Texas (the “Commission”) (1) exercise its statutory authority to hold a hearing under Texas Natural Resources Code (the “Natural Resources Code”) § 89.041 regarding the plugging of 12 leaking abandoned wells in Pecos County (the “Abandoned Wells”)¹ and (2) pursue plugging and remediating the Abandoned Wells as authorized under Natural Resources Code § 89.043, the Oil and Gas Regulation and Cleanup Fund (“OGRCF”),² and United States Infrastructure Investment and Jobs Act (“IIJA”)³ (the “Complaint”), and respectfully shows the following:

I. Introduction and Background

The legislature created the District by omnibus legislation in 1999, which was ratified by the legislature in 2001 thereby authorizing a local confirmation election. The local confirmation election was held on November 5, 2002, and was ultimately successful. As a groundwater conservation district, the District draws its statutory authorities and duties principally from its

¹ See Exhibit 1, Middle Pecos Groundwater Conservation District’s Inventory List of Abandoned San Andres Wells (“Exhibit 1”).

² See, TEX. NAT. RES. CODE § 81.068; *see also*, 16 TEX. ADMIN. CODE § 3.14(b)(3).

³ Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, 135 Stat. 1082.

Texas Natural Resources Code

- ▶ Sec. 89.041. DETERMINING PROPER PLUGGING. If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Dismissed for Lack of Standing

- TNRC § 89.043(a)&(b):
 - RRC “*may*” plug wells
- GCD cannot compel RRC’s discretionary action
- GCD lacks jurisdiction to file complaint

ALJ Ruling, p.10-11
May 31, 2024

Middle Pecos GCD cites to Tex. Nat. Res. Code § 89.043 as requiring the Commission to plug and remediate utilizing available funds. Tex. Nat. Res. Code § 89.043(a) and (b) state,

(a) If the commission determines at a hearing under Section 89.041 (Determining Proper Plugging) of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, **may** plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator nor nonoperator properly plugged the well, and

(A) neither the operator nor nonoperator can be found; or

²⁰ Tex. Water Code § 36.0015.

Oil and Gas Docket No. OG-23-00013093
Ruling Granting Commission Staff’s Motion to Dismiss
Page 11

(B) neither the operator nor nonoperator has assets with which to properly plug the well.²¹

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the commission, through its employees or agents, **may** direct the operator to take remedial action or to plug the well or **may** plug or replug the well without holding a hearing under Section 89.041 (Determining Proper Plugging) of this code or giving notice under Subsection (c) of this section.

The language does not require the plugging or replugging, as it does not state **shall**. The statute uses **may**. “The word ‘**may**’ is an expression of possibility, a permissive choice to act or not, and ordinarily implies a degree of discretion.” In contrast, “the word ‘**shall**,’ which is generally used to indicate a mandatory provision.”²² Middle Pecos GCD may not file a complaint to compel the Commission to take an action it is not statutorily required to do.

Given the preceding, the undersigned finds Middle Pecos GCD lacks standing to bring a complaint about the Commission to the Commission requiring it to plug, replug, remediate and to utilize specific funds to do so.

Jurisdiction over P-13 Wells

RRC: P-13 Wells are Water Wells under TCEQ Jurisdiction

Commission Staff explained that the Commission does not have continuing jurisdiction over P-13ed wells. Commission Staff argues the Legislature has stated that wells previously drilled for the production of oil or gas that are also used to produce groundwater are water wells and not oil and gas wells.¹⁸ Commission Staff cites to the Tex. Occ. Code § 1901.001(14) which defines water well as,

[A]n artificial excavation constructed to explore for or produce groundwater. The term does not include: (A) a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater.

Commission Staff specified the Texas Legislature created a fund to address leaking wells, including those converted to water wells using the P-13 process. In doing so, Staff indicates issues regarding P-13 wells are appropriately addressed with the TCEQ, who has authority over that fund.¹⁹

Dismissed for lack of Jurisdiction?

The plugging and remediation of water wells previously converted from oil and gas wells is not within the jurisdiction of the Commission. The Texas Legislature provided subject matter jurisdiction to plug and remediate water wells to the TCEQ.²³

²³ HB 4256, 2023, amending Tex. Water Code, Section 1, Chapter 28, creating Subchapter E creating a leaking water well program to be administered by the TCEQ.

ALJ Ruling
May 31, 2024

HB 4256 – Texas Water Code

Subchapter E. Leaking Water Wells Grant Program

Sec. 28.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a district in a county that:

- (1) has a population of 16,000 or less; and
- (2) is adjacent to at least seven counties with populations of less than 15,000.

Eligible Wells

Sec. 28.106. ELIGIBILITY OF PROJECTS FOR GRANTS; PRIORITIZATION. (a) To be eligible for a grant for a project, a district must:

(1) demonstrate that the project includes a leaking water well:

(A) that:

(i) is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or

(ii) has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system; and

(B) of which:

(i) the plug, casing, completion interval, or general integrity is known by the district to be deficient; or
(ii) the completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components;

(2) obtain any necessary approval from a surface owner for access to the property where the leaking water well is located; and

Dismissal Order

June 3, 2024

RRC Appeal Denied,
July 19, 2024

Docket OG-23-00013093

RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL AND GAS DOCKET NO. OG-23-00013093

COMMISSION CALLED HEARING AT THE REQUEST OF MIDDLE PECOS
GROUNDWATER CONSERVATION DISTRICT IN ACCORDANCE WITH TEX. NAT. RES.
CODE § 89.041 TO DETERMINE THE PROPER PLUGGING OF TWELVE WELLS, PECOS
COUNTY, TEXAS; DISTRICT 08

ORDER OF DISMISSAL

On March 20, 2023, Middle Pecos Groundwater Conservation District ("Middle Pecos GCD") filed its complaint against the Railroad Commission of Texas ("Commission") with the Commission's Oil and Gas Division ("Complaint"). In the original Complaint, Middle Pecos GCD requested the Commission exercise its statutory authority to hold a hearing under Tex. Nat. Res. Code § 89.041 regarding the plugging of 12 wells (later amended to four wells) and sought relief through plugging and remediation as authorized by Tex. Nat. Res. Code § 89.043, the Oil and Gas Regulation and Cleanup Fund, and the United States Infrastructure Investment and Jobs Act.

After notice, a prehearing conference was heard by Administrative Law Judge Kristi M. Reeve and Technical Examiner Tiffany Elliott on September 26, 2023, and February 6, 2024, for the purpose of establishing jurisdiction, considering any outstanding motions, establishing a hearing date, setting a procedural schedule, and addressing other preliminary matters as determined by the Examiners.

On May 31, 2024, Administrative Law Judge Kristi M. Reeve granted Commission Staff's Motion to Dismiss the Complaint, as amended, finding Middle Pecos GCD lacks standing to pursue its requested relief.

Accordingly, consistent with the ALJ's ruling, the Complaint is hereby **DISMISSED** without prejudice pursuant to Commission Rule § 1.23(f)(1).¹

This Order is appealable under Commission Rule § 1.38 (Interim Rulings and Appeals of Interim Rulings).²

Signed on June 3, 2024.



Case No. D-1-GN-24-008336
Oct. 11, 2024

- RRC Answer: Nov. 15, 2024
- Administrative Record Filed: Jan. 15, 2025
- Briefing Schedule: TBD

CAUSE NO. _____

**CHRISTI CRADDICK, WAYNE
CHRISTIAN, and JIM WRIGHT, in
their official capacities as
Commissioners of the Railroad
Commission of Texas; and THE
RAILROAD COMMISSION OF
TEXAS,
Defendants.**

.....

JUDICIAL DISTRICT

Plaintiff Middle Pecos Groundwater Conservation District (the “District”), by and through its Board of Directors, files this Original Petition, and for causes of action against the Railroad Commission of Texas (the “Commission”), and its individual Commissioners, Chairwoman Christi Craddick, Commissioner Wayne Christian, and Commissioner Jim Wright, in their official capacity as Commissioners of the Railroad Commission of Texas, and would respectfully show the Court as follows:

MPGCD Original Petition

49. First, the Commission erred by dismissing the District's request for a hearing on the grounds Natural Resources Code § 89.043 grants the Commission discretion to plug the Abandoned Wells. According to the Commission, since the Commission has discretion to plug any abandoned well, Natural Resources Code § 89.043 precludes the Commission from granting *any* request for a hearing to determine proper plugging, whether the requestor is a political subdivision, an operator, or a nonoperator-landowner or interest holder. This prevents the District—and all other parties injured from abandoned wells—from exercising its right to a hearing. The Dismissal Order therefore violates the District's due process rights and is arbitrary and capricious.

Groundwater District Jurisdiction: Water Well Registration / Permitting

20. FOR COMPLETION BY LANDOWNER: *Information concerning groundwater conservation districts may be found at www.texasgroundwater.org.*

- ☐ I have permitted the well as a water well with the _____ Groundwater Conservation District.
- ☐ I have registered the water well with the _____ Groundwater Conservation District.
- ☐ The _____ Groundwater Conservation District does not require that the water well be permitted or registered.
- ☐ There is no groundwater conservation district for the area in which the well is located.

The undersigned Operator and Landowner hereby make application for the Operator to be authorized to plug the above well in such a manner that the well bore be left open to the above depth so that the Landowner may condition and equip such well bore to that depth for production of fresh water.

The undersigned Landowner further obligates himself, his heirs, successors, and assignees, as a condition to the Commission's approval of this application, to complete the plugging of the well if and when it is abandoned as a fresh water well, or when, because of the condition of the well is found to constitute a menace to any oil, gas, or fresh water strata in that area, such plugging is ordered by the Commission.

Under §89.011, Tex. Nat. Res. Code, the duty to properly plug the well ends only when the well has been properly plugged in accordance with Commission requirements up to the base of usable quality water stratum; the Commission has approved the application to condition the well for usable quality water production operations; and the landowner has registered the well with, or has obtained a permit for the well from, the groundwater conservation district, if applicable.

The authority to complete this well in the manner prescribed shall not be construed as authority for any party to produce fresh water from the well.

Water Well Registration / Permitting:

Sec. 36.113. PERMITS FOR WELLS; PERMIT AMENDMENTS. (a) Except as provided by Section 36.117, a district shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps. A district may require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.

Exemptions:

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district by rule may provide an exemption from the district's requirement to obtain any permit required by this chapter or the district's rules.

(b) Except as provided by this section, a district shall provide an exemption from the district requirement to obtain a permit for:

(1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:

(A) located or to be located on a tract of land larger than 10 acres; and

(B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) drilling a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig;