

# MATHEWS & FREELAND, L.L.P.

## ATTORNEYS AT LAW

JIM MATHEWS  
JOE FREELAND

Westpark II, Suite 260  
AUSTIN, TEXAS 78759

(512) 404-7800  
FAX: (512) 703-2785

March 5, 2017

Ms. Jan Roe  
President, Brazos Valley Groundwater Conservation District  
1112 West 3<sup>rd</sup> St.  
Hearne, TX 77859

**Re: Proposed Rule 6.2(e)**

Dear Ms. Roe:

These comments are submitted to the Brazos Valley Groundwater Conservation District (BVGCD) on behalf of the City of Bryan in response to the District's legal notice inviting comments on a proposed District rule amendment "addressing exceptions to spacing requirements of new non-exempt wells from *existing wells* to allow the new well owner to produce their production based acreage".

- I. **The person who drills a well pursuant to this proposed exception to the spacing requirements should not be allowed to game the system by claiming that a well permitted and drilled before his new well interferes with such well.**

The District's rules 8.3(g) and 8.9(e) authorize it to amend a permit on grounds of interference. Spacing requirements are one of the traditional tools used by the District prospectively to avoid interference. The proposed rule would waive spacing requirements for certain new wells. It would be unfair and inequitable to allow a person who benefits from this waiver to be allowed to claim that a well that was permitted and drilled before his and for which he has claimed or been granted an exception from the spacing requirements is causing interference with his new well. This could be avoided by stating in the proposed rule that "the owner of a new well exempted from spacing requirements pursuant to this subsection shall not have grounds for relief for interference caused by a well that was permitted and drilled before such new well and for which he has been granted an exception from the spacing requirements".

- II. **The proposed rule deletes an important protection previously given to exempt wells that are registered with the District.**

The District's current Rule 6.2(e) provides:

- (e) “Well spacing rules do not apply to wells that are exempt under Rule 8.1. However, *non-exempt wells are required to observe spacing requirements from exempt wells that are registered with the District.*

The draft proposed amendment provides:

- (e) “Well spacing of new non-exempt wells completed in the District are exempted from complying with Rule 6.1(b)(2),(3) to the extent that the spacing does not allow the new well owner to produce their Production Based Acreage under Rules 7.1 (c).”

From its inception the District has provided protection in the form of spacing offset requirements to exempt wells, including domestic and livestock wells that register with the District. The new proposed 6.2(e) would remove this protection by exempting new wells from the spacing offset required for any permitted or *registered* exempt well. If the District intends to abandon this fundamental commitment to protect registered domestic and livestock wells it should more clearly communicate this intent and request comments.

III. **BVGCD’s notice conflicts with its proposed rule amendment.**

The notice of the District’s proposed amendment expressly provides that the proposed amendment is to address exceptions to spacing requirements of new non-exempt wells from “*existing wells...*” In contrast the proposed amendment would grant an exception from the spacing requirements imposed under Rule 6.2(b) (2) and (3) to protect *all* permitted or registered wells. The term “*existing well*” is defined in the District’s rules as “a groundwater well within the District’s boundaries, for which drilling or significant development of the well commenced before the effective date of these Rules.” This defined term does not encompass all permitted or registered wells. Accordingly the language of the proposed rule is much broader than the notice. The manner in which the District has issued notice causes significant unnecessary confusion. The District should either re-issue notice that conforms to the proposed amendment or re-issue the same notice and propose new rule language that conforms to the notice in order to avoid misleading.

Sincerely,



Jim Mathews  
Mathews and Freeland  
Attorneys for the City of Bryan