

March 29, 2011



TEXAS CATTLE FEEDERS ASSOCIATION

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Mr. Jim Conkwright
Manager
High Plains Underground Water Conservation District No. 1
2930 Avenue Q
Lubbock, TX 79411-2499

Dear Mr. Conkwright:

Thank you for hosting the public meetings March 23-25, 2011 and for the opportunity to submit oral and written comments on the initial draft rules (dated Feb. 22, 2011) being proposed by the High Plains Underground Water Conservation District No. 1 (HPWD).

Texas Cattle Feeders Association (TCFA) represents cattle feedyards and cattle feeders throughout the three state region of Texas, Oklahoma and New Mexico. All combined, our 200 feedyard members produce approximately 30% of the nation's fed cattle. In the service area of the HPWD, TCFA represents more than 60 feedyards. These feedyards are located in Bailey, Castro, Cochran, Deaf Smith, Floyd, Hale, Lamb, Lubbock, Parmer, Randall and Swisher Counties—all of which would be subject to new requirements if the proposed rules are adopted by the HPWD Board. The cattle feeding infrastructure in the Texas Panhandle and Southern High Plains includes other water users, such as beef packing plants and forage and grain producers. Any changes to water management rules in the region will impact all water users that are an integral part of the cattle feeding system.

General comments

- TCFA policy (last updated Jan. 2011) supports the rule of capture and believes that groundwater is the real, vested property of private landowners with limited, reasonable regulation, based on sound scientific principles, by locally elected groundwater conservation districts to ensure beneficial future use. Further, TCFA encourages application of proven water conservation practices and supports research to advance desalination and water reuse technologies.
- Since the 1950s, the Water District has managed groundwater by well spacing and size of wells. The draft rules represent a dramatic shift in groundwater management policy for the South Plains.
- The public comment period on these proposed changes ends April 1, 2011. The Water District should allow for a longer public comment period on this set of initial draft rules.
- The implementation timeline, with new restrictions beginning as early as May 31, 2011, does not allow adequate time to adjust business plans. We encourage the Water District to slow down and not set the effective date of any new rules prior to Jan. 1, 2015.
- As stated at the public meetings held by the HPWD in March 2011, an economic impact analysis is being conducted by the HPWD and six other water districts to the south. HPWD staff indicated that preliminary results from that study are expected in a week to 10 days and that a final report is due May 31. TCFA requests that the public have an opportunity to review and comment on the economic impact analysis prior to the HPWD taking action on the final rules.

- The proposed allowable pumping rate of 1.25 acre-feet/acre/year is a significant change from current policy. We encourage the Water District to start with an allowable production limit of not less than 2 acre-feet/acre/year in 2015 and provide for a gradual reduction of 0.25 acre-feet/acre/year in two to five year increments, with an allowable production rate “floor” of not less than one (1) acre-foot per acre per year.
- The rules appear to favor non-contiguous tracts for municipalities. These provisions need to be equitably applied to all water users. Some feedyards have made significant investments to secure water for the future by procuring land and/or water rights and installing water piping, pumps, storage tanks, etc. Many of these tracts are non-contiguous and the HPWD rules need to recognize these existing circumstances. In addition, TCFA requests the HPWD not preclude feedyards from securing land and/or water rights that are non-contiguous to meet the future needs of an existing, expanding or new livestock operation.
- The draft rules do not allow for water “banking” where “unused” water could be rolled forward from one year to the next. Water banking should be allowed under the rules.
- The well “registration” provisions will require time and resources to complete. A registration deadline of Jan. 1, 2012 is too short. We recommend a well registration deadline of Jan. 1, 2014.
- TCFA recommends that HPWD allow for a 60 day public comment period after issuing the final draft rules. In addition, we would request that the public hearings be held at least 2 weeks prior to the close of the public comment period.
- For those High Decline Areas where a 5% reduction per year in the allowable production rate will be implemented beginning in 2016, there is not a “floor” defined in the rules. Essentially, the rules will allow production rates to be ratcheted down to near zero. TCFA is opposed to this concept. Should the HPWD take final action to retain the concept of High Decline Areas and annual reductions in production, we request that HPWD establish an allowable production rate “floor” of not less than one (1) acre-foot per acre per year.
- It is unclear in the proposed rules how the recently annexed areas (i.e., Swisher County) will be treated under the rules, especially as it relates to 5-year average annual decline maps. We encourage the HPWD to clarify how these areas will be treated.

Specific rule-by-rule comments

Rule 1 – Definitions

(d) Allowable Decline Rate – to be set at the greater of one (1) foot per year or 1.4 percent of the average saturated thickness of the aquifer in each county.

COMMENT: TCFA encourages the HPWD to evaluate other options for establishing an allowable decline rate, in lieu of whole-county average saturated thickness. As proposed, this method would penalize those areas of a county that have saturated thickness greater than the average saturated thickness of a county.

(e) Allowable Production Rate – Beginning Jan. 1, 2012 will be set at 1.25 acre feet (15 inches) per “Contiguous Controlled Acre” per year, unless reduced in certain areas beginning in 2016 as specified in Rule 5. The rate shall be calculated by the District every five (5) years.

COMMENT: We recommend that any establishment of an allowable decline rate be established with an effective date not earlier than Jan. 1, 2015 and that HPWD create a phased-in system for a gradual reduction in the allowable production rate.

(l) Contiguous Controlled Acre – [a long definition in the rules] – means the one acre where a well is located and all land that is owned/controlled and attached/adjacent to that one acre.

COMMENT: TCFA has several concerns with this definition, especially as it relates to the treatment of non-contiguous tracts of land and/or water rights that have been acquired by a feedyard. Feedyards have installed costly infrastructure to allow for the pumping, collection, transfer and distribution of water. Many of these tracts of land and/or water rights are not contiguous to the feedyard production area. We recommend that the HPWD allow for these tracts to be treated as “contiguous,” especially where water is needed for animals. In addition, TCFA requests the HPWD not preclude feedyards or any entities from securing land and/or water rights that are non-contiguous to meet the future needs of an existing, expanding or new livestock operation.

We also recommend the HPWD address those land areas that are owned/operated/controlled/lease/rented by more than one person and/or entity, yet the areas are managed as one production unit. We believe those areas should be considered “contiguous.”

(v) High Decline Area – areas designated by the District based upon a five-year average of Winter Water Level Measurements (Dec.1 thru Feb. 28) that show an average annual decline of two (2) feet or more.

COMMENT: The concept of High Decline Areas appears to be more detrimental to those areas of the region where water is more plentiful. We urge the HPWD to consider elimination of this concept and instead focus resources on establishing, implementing, measuring and enforcing the Allowable Production Rate. This will allow all water users to be treated equally, regardless of geographic location.

In addition, the 5-year average decline maps for 2007-2011 have not been made available to the public for review and comment. As proposed, these maps would be used to set the boundaries of the “High Decline Areas” as early as May 31, 2011. It is impossible to understand the full ramifications of the proposed rules when the document to be used as the basis of decision-making by the HPWD has not been published.

(x) Livestock – does not include wildlife, nor does it include animals in feedyards.

COMMENT: Based on the draft definition proposed in the rule, it appears the HPWD wants to make it clear that Concentrated Animal Feeding Operations (CAFOs) are not eligible to claim “exempt well” status. TCFA understands this concern. However, water produced and supplied to a CAFO will already exceed the exempt well limitation of 25,000 gallons per day. We believe it is redundant to specifically modify the definition of “livestock” to exclude CAFOs. In addition, for purposes of other regulatory agency requirements, CAFOs and the livestock held at CAFOs are considered livestock. We request that the HPWD not create a new

definition that will further complicate CAFOs' ability to be considered "livestock," especially when the concern appears to already be addressed by the definition of "exempt well." TCFA urges the HPWD to delete the last sentence of the "livestock" definition.

(y) Livestock Use – the use of groundwater for the open-range watering of livestock.
COMMENT: Making the changes to the definition of "livestock" as requested above will allow the definition of "livestock use" to be deleted.

(vv) Well System – a well or group of wells tied to the same center pivot irrigation system or other water distribution system.
COMMENT: TCFA recommends that "livestock water supply systems" be included as an example of a "well system."

Rule 3.2 – Wasteful Use of Water Prohibited

(b) Beginning Jan. 1, 2012, no person shall operate a well producing groundwater from the Ogallala Aquifer within the District's boundaries in excess of the Allowable Production Rate.
COMMENT: As stated above, TCFA recommends an effective date of an allowable production rate not earlier than Jan. 1, 2015.

Rule 3.10 – Rules Enforcement

Imposes a maximum violation of \$10,000 for each day that a violation continues.
COMMENT: During the public meetings held by the HPWD in March 2011, it was stated that the penalty matrix would be developed as HPWD policy. We request that HPWD make the draft penalty policy available to the public for review and comment prior to taking action on the final rules.

Rule 5.3 – Allowable Production Rate for All Wells

Beginning Jan. 1, 2012 will be set at 1.25 acre feet (15 inches) per "Contiguous Controlled Acre" per year. The Allowable Production Rate may be adjusted as described under Rule 5.31.
COMMENT: We encourage the HPWD to start with an allowable production limit of not less than 2 acre-feet/acre/year in 2015 and provide for a gradual reduction of 0.25 acre-feet/acre/year in two to five year increments, with a "floor" of one (1) acre-foot/acre/year.

Rule 5.11 – Designation of High Decline Areas

HPWD Board, by resolution no later than May 31 of each year, shall designate the High Decline Areas, where average annual decline in water table is greater than or equal to two (2) feet based upon the most recent five years of Winter Water Level Measurements.
COMMENT: Refer to comment on definition of "High Decline Area."

Rule 5.12 – Transitional Provisions for Designation of High Decline Areas

(a) To prioritize resources, the first designations of High Decline Areas shall be made by May 31, 2011 where the average annual decline is greater than or equal to four (4) feet per year.

(b) No later than May 31, 2013, the designations of High Decline Areas will include all areas where the average annual decline is greater than or equal to two (2) feet per year.
COMMENT: Refer to comment on definition of "High Decline Area."

Rule 5.14 – Metering of Wells in High Decline Areas

No later than Jan. 1 of the calendar year after a High Decline Area is designated, a meter shall be installed on all wells or well systems.

COMMENT: TCFA encourages the HPWD to obtain the most accurate water production information by collecting data over the next several years. This may come in the form of in-line flow meters or alternate methods for water users to collect and report water use data to the HPWD each year.

Rule 5.15 – Production Reports Required for Wells in High Decline Areas

Beginning Jan. 1 of the second year after a High Decline Area is designated, water production reports must be filed with the District by March 1 of each year. Meters must be read between Dec. 15 and Jan. 15 each year.

COMMENT: Refer to comment on Rule 5.14.

Rule 5.16 – Notice of High Decline Area Designation

Within 45 days of a High Decline Area Designation, the District shall mail notice to all property owners and permitted well owners with the High Decline Area. The District will also publish notice in newspapers, the HPWD website and the HPWD newsletter.

COMMENT: Refer to comment on definition of “High Decline Area.”

Rule 5.30 – Calculation of Allowable Decline Rate

Beginning no later than Dec. 31, 2015, and every five years thereafter, the District shall calculate the average saturated thickness for each county. Using that thickness, the Allowable Decline Rate will be the greater of: one (1) foot per year or 1.4% of the average saturated thickness.

COMMENT: TCFA encourages the HPWD to evaluate other options for establishing an allowable decline rate, in lieu of whole-county average saturated thickness determinations.

Rule 5.31 – Adjustment of Allowable Production Rate in High Decline Areas

Beginning Jan. 1 of the calendar year following a determination that a High Decline Area has exceeded the Allowable Decline Rate, the District shall require all production within the High Decline Area to be reduced by five (5) percent per year until such time that the declines are less than or equal to the Allowable Decline Rate. This provision appears to begin on Jan. 1, 2016.

COMMENT: Refer to comments on the definitions of “High Decline Area” and “Allowable Production Rate.”

Rule 5.33 – Permitting Moratorium for High Decline Areas

The District will not issue any new permits for wells, other than replacement wells issued under Rule 4.4, in any portion of a High Decline Area where the decline was determined to be greater than or equal to four (4) feet.

COMMENT: TCFA is opposed to a moratorium on the drilling of new water wells. We support HPWD’s efforts to collect water use data through metering and alternate methods. We urge the HPWD to focus resources on establishing, implementing, measuring and enforcing the Allowable Production Rate. This will allow all water users to be treated equally, regardless of geographic location or historical water use.

Rule 5.41 – Transitional Provision – District Approved Alternate Measuring Methods

For calendar years 2012 and 2013 only, an alternate measuring method in lieu of installing a meter can be used. The District shall develop and publish a list of approved alternate methods by Sept. 1, 2011.

COMMENT: TCFA supports the use of alternate methods to allow transition to metering and reporting water use. Additionally, we would ask that the HPWD include an option to estimate water use utilizing the average annual inventory of animals maintained at a livestock operation. We have used this method successfully as part of the regional water planning process and believe it would also be appropriate for filing annual water use reports with the HPWD.

Rule 5.42 – District Approved Meters

(a) No later than Sept. 1, 2011, the District shall publish meter specifications and a list of approved meters.

(b) All meter installations shall be inspected and sealed by District staff prior to use.

COMMENT: During the public meetings held by the HPWD March 2011, it was stated that the metering manual would be developed as HPWD policy. We request that HPWD make the draft metering manual available to the public for review and comment prior to taking action on the final rules.

In Rule 5.42(b), the HPWD should allow for exceptions to the provision for inspection and sealing of water meters, especially in those cases where water wells are re-worked on short order and must be immediately returned to service to supply livestock or crops with water.

Rule 7.2 – Well Registration

(a) Well owners of all new and existing wells shall register with the District. Registration applications for existing wells shall be filed no later than Jan. 1, 2012.

(b) To register a well, a person must provide the (1) name, address and contact of applicant, (2) name, address and contact of land owner, (3) property lines, (4) location of the well, (5) aquifer name, (6) estimated gpm of well, (7) statement on the nature and purpose of use, (8) installation and completion date, and (9) other information that may be required by the Board.

COMMENT: It appears in the last sentence of 7.2(a) that all existing wells will have to be registered or re-registered with the HPWD, even if a well has been previously permitted by the HPWD. Please clarify this requirement.

Thank you again for the opportunity to submit these comments.

Sincerely,



Ben Weinheimer, P.E.
Vice President