APPLICATION OF LOWER COLORADO RIVER AUTHORITY FOR OPERATING AND TRANSPORT PERMITS FOR EIGHT WELLS IN BASTROP COUNTY, TEXAS	**§ § § § §**	**BEFORE THE LOST PINES GROUNDWATER CONSERVATION DISTRICT**

GENERAL MANAGER'S RESPONSE TO LCRA'S MOTION FOR REHEARING

James Totten, the General Manager of the Lost Pines Groundwater Conservation District (the "GM"), respectfully submits this Response to LCRA's Motion for Rehearing.

I. INTRODUCTION

This response in no way challenges the authority of the District Board to issue the Final Decision it entered on November 8, 2021. But the GM does have some suggestions regarding possible changes to the operating permits and the Final Decision for the District Board to consider.

II. RESPONSES TO LCRA'S 9 POINTS OF ERROR

A. Point 1 – Challenging the District's changes to the ALJs' Proposal for Decision.

LCRA's Point 1 is nothing more than a general, global challenge to any and all instances in which the District did not adopt the ALJs' Proposal for Decision (PFD). Such statements of generalities are insufficient to preserve error. A motion for rehearing must:

> set forth: (1) the particular finding of fact, conclusion of law, ruling, or other action by the agency which the complaining party asserts was error; and (2) the legal basis upon which the claim of error rests. *Burke v. Central Educ. Agency*, 725 S.W.2d 393, 397 (Tex.App-Austin 1987, writ ref'd n.r.e.). To preserve error, both elements must be present in the motion, but neither requires a briefing of the law and the facts. *Id.* The standard is one of fair notice. *See id.*

BFI Waste Systems of N. Am.. Inc. v. Martinez, 93 S.W.3d 570, 78 (Tex. App.—Austin 2002, pet. denied). In addition, it is not sufficient to set forth these two elements in generalities.

Burke, 725 S.W.2d at 397. LCRA's Point 1 fails to satisfy these basic requirements. Therefore, the GM does not respond to it.

In an abundance of caution, the GM recommends that the Board amend its Final Decision to set out the basis under Texas Water Code § 36.4165 for its elimination or modification of the ALJs' PFD, in particular their Findings of Fact and Conclusions of Law.

B. Point 2 – Claim that the Board violated the Open Meetings Act.

LCRA claims that, because the Board proceeded to a vote on modifications to its Findings of Fact and Conclusions of Law without a discussion at the open meeting, the Board must have violated the Open Meetings Act. LCRA cites no legal authority for this claim. It suggests that, because the Board conferred with its attorney before reconvening the open meeting and its vote on the matter that the Board must have conducted a discussion regarding how to vote during the session with its attorney. This suggestion is nothing more than rank speculation. The Open Meetings Act expressly authorizes boards to confer with their lawyers in closed sessions regarding "pending or contemplated litigation." *See* Tex. Gov't Code §551.071(1)(a). The Board was entitled to consult with its attorney regarding the legality of any action it might take regarding LCRA's permit applications. LCRA provides no evidence that any unauthorized discussions occurred during the closed session.

As the transcript shows, a motion was made, the motion was seconded, and the Board President asked whether any board members wanted to discuss the motion. No one did. The fact that the Board members had no interest in disputing or further discussing the motion does not mean that the Board violated the Open Meetings Act. On the contrary, Texas Government Code § 551.102 expressly contemplates that a board may legally consult and deliberate with its counsel regarding existing or anticipated litigation and merely requires that any "final action,

decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting." LCRA provides no evidence that the Board's discussions with its attorney went beyond seeking and receiving legal advice, both of which are expressly permitted under 551.071 and are not final actions required to be in open session. Moreover, "[e]ven if opinions were expressed by [the Board] in the closed session, such expression is not prohibited, as long as the final decision or vote was made in an open session." *Weatherford v. City of San Marcos*, 157 S.W.3d 473, 486 (Tex. App.—Austin 2004, pet. denied) (holding city council did not violate the Open Meeting Act). In accordance with the Open Meetings Act, the Board's vote was lawfully conducted in open session.

C. Point 3 – Challenge to Board's decision to reduce production to 8,000 acre-feet permit and to eliminate phased-in increases in production.

As set out in its briefing, the GM recognized that the evidence fully supported the initial production phase of pumping 8,000 acre-feet per year but that the GM's expert noted it is difficult to predict impacts for the last two production phases of 15,000 and 25,000 acre-feet per year. *See* GM Closing Brief at 31. The GM supported the PFD's allowance of those additional production phases based on the use of a DFC-based formula supported by monitoring data. The GM does not question the Board's decision to eliminate the last two production phases and the monitoring they would have required.

The sole error LCRA raises with respect to this decision is that it is contrary to certain discussion sections in the PFD as well as certain Findings of Fact (FF) and Conclusions of Law (CL) in the PFD. LCRA offers no detailed explanation of the problems it claims exists with respect to these changes.

The Final Decision makes no substantive changes to the discussion sections – Sections IV.A.4, IV.G.[1] The changes to those discussion sections merely changed some uses of the present tense to the past tense to accurately reflect the distinction between the ALJs' recommendations and the District's Final Decision.

The changes that the Board made to the PFD's FFs and CLs that LCRA challenges are set out below:

- PFD's FF 41. That finding was not changed, just moved to FF 45.
- PFD FF 45. That finding are moved to FF49 and changed a reference to "Special Condition 15" to simply "The Special Condition."
- PFD FFs 46-51, 54-57, 60-66. These findings addressed the phasing of additional production limits of 15,000 and 25,000 acre-feet per year. These findings were not changed but were, instead, deleted, since the Final Decision did not approve the phasing in of additional acre-feet.
- PFD FFs 54 – 57 and 60 were findings related to phasing and are no longer relevant because there is no phasing. Therefore, the Final Decision properly deleted them.
- PFD FFs 61-66 were related to monitoring wells pertinent to phasing and were no longer needed. Therefore, the Final Decision properly deleted them.
- PFD FF 78 addressed transportation of groundwater by use of a proposed bed-and-banks permit. The Final Decision deleted this as unnecessary because it addressed draft permits that were changed.

[1] LCRA describes the Section IV.G section as having subsections 1, 2, and 3. The PFD does not have those subsections.

- PFD CL 4 addressed compliance with the Water Code and District Rules. It was changed solely to reflect elimination of the phasing conditions.
- PFD CL 13 was changed to CL 12 and properly eliminated discussion pertinent to the eliminated phasing provisions.

All of these changes to the FFs and CLs are designed to implement the Board's decision to eliminate the phasing for production above 8,000 acre-feet per year and do not constitute a reweighing of the evidence.

D. Point 4 – Claim that District violated Texas Water Code § 36.122(c) by imposing more restrictive permit conditions in the Permits than it has imposed on existing in-district permittees.

LCRA claims that the Final Decision imposes more restrictive permit conditions on LCRA's permits than it has imposed on existing in-district permittees. LCRA complains of (1) the construction and maintenance of a monitoring well system and execution of a monitoring well agreement and (2) the monitoring well system itself. The GM recommended the monitoring well system and agreement in conjunction with the phasing for possible future increases in the permits. As the Board has eliminated phasing, the GM recommends that the monitoring well system and agreements be eliminated as no longer necessary. LCRA also complains about being required to submit data from the monitoring well system to the GM prior to a renewal. The GM addresses this issue under Point 5. Finally, LCRA complains about the requirement of a 36-hour pump test for each of the 8 wells in the well field. The GM recommends rejecting this complaint. The 36-hour pump test is needed because LCRA requested and was granted a variance from the requirement ordinarily imposed on permit applicants to do the pump test when an application is submitted, The GM granted the variance on the condition that LCRA do a pump

test before production for each well. LCRA should not be allowed to avoid the pump test altogether, which is what it appears to be seeking.

The GM attaches a proposed revised operating permit in light of the elimination of the phasing. *Attachment A* shows the redline changes to the operating permit, and *Attachment B* is a clean copy.

E. Point 5 – Claim that District erred by including Special Condition (3) in the Operating Permits.

LCRA argues that it is entitled to automatic approval of the renewal of an operating permit under the District's Final Decision and Texas Water Code § 36.1145, which provides that a District is to automatically approve renewal if the permit holder is not requesting a change that would require a permit amendment. LCRA notes that it consented to the language in Special Condition (3) in the operating permits because that condition was relevant to phasing. The GM agrees with LCRA that this additional condition is not necessary in light of the District's decision to eliminate the phasing stages. The GM attaches proposed revised operating permits and recommends that FF 51 be deleted as unnecessary in light of elimination of the phasing.

F. Point 6 – Claim that District cannot require a monitoring well system.

LCRA argues that the District lacks the authority to require LCRA to be subject to the monitoring well requirements in the Final Decision and asserts that its earlier agreement to inclusion of the monitoring well requirements was linked to its requests for permits to phase-in production of groundwater over and above the 8,000 acre-feet per year that the Final Decision permits. LCRA fails to point to any legal limitation on the District's authority to impose well monitoring. Chapter 36 of the Water Code requires the District to monitor wells. Imposing monitoring well obligations on LCRA is within the District's authority under Chapter 36 and does not require LCRA's "consent" in order for those requirements to be imposed. In addition,

LCRA fails to point to where it "specifically linked" its consent to participate in a monitoring well program to phasing.

Regardless of the District's authority to impose monitoring, however, the GM would not have recommended a draft permit with monitoring in a permit without phasing. Eliminating monitoring wells is consistent with the other non-phased permits issued by the District. The GM's revised draft permit eliminates the monitoring well agreement requirement as noted above.

G. Point 7 – Claim that District lacks authority to require LCRA to monitor surface water.

LCRA asserts that the District lacks the authority to require LCRA to monitor surface water. LCRA fails to identify any law that supports its argument. Chapter 36 requires the District to address surface water issues in several respects. *See, e.g.*, Tex. Water Code §§ 36.104, .1071, .108, .113. In particular, § 36.113(d)(2) requires the District to determine whether LCRA's pumping "unreasonably affects existing groundwater and *surface water resources* or existing permit holders." (Emphasis added.) The District has the authority to implement the Legislature's directives regarding surface water by requiring monitoring of surface water. The District's Rules track these same legislative directives. *See* District Rule 5.2.D(2).

H. Point 8 – Claim that the District treated LCRA's applications differently from other large permit operation and transport requests.

LCRA asserts that, because Recharge and Gatehouse obtained through settlements phased-in production, the District treated LCRA prejudicially. LCRA is mistaken. Those cases were settlements and, as such, cannot be fairly compared to the hotly contested case here and the evidence presented in opposition to allowing any permit for greater than the 8,000 acre-feet per year that the District allowed. LCRA's assertion that the ALJs found that LCRA's proposed production of the full 25,000 acre-feet per year "alone will not result in unreasonable impacts" is

not correct. LCRA omits the salient qualifier to this statement by the ALJs, which is that LCRA's proposed pumping, "standing alone," would not cause unreasonable impacts to surface water resources. PFD at 23. The ALJs went on to recommend changes to the draft operating permits so as to enable the District to monitor potential impacts to surface water resources. *Id.* Importantly, contrary to LCRA's assertions, the ALJs also never found that LCRA's proposed maximum pumping would not result in unreasonable impacts to existing groundwater resources or existing permittees. The ALJs recommended phasing precisely as a means of protecting against those circumstances. The District properly elected to eliminate phasing in this contested case.

I. Point 9 – Miscellaneous challenges to the Final Decision.

LCRA's Point 9 has three challenges: (1) to requiring LCRA to monitor impacts on surface water, (2) to requiring binding commitments for water sales, and (3) to requirements in the now deleted phasing formulas. As the phasing has been deleted, the third challenge is moot. The GM has addressed the District's authority regarding surface water in its response to LCRA's Point 7. The GM addressed the appropriateness of requiring LCRA to provide binding commitments for water sales on pages 20-21 of its Closing Brief filed on December 20, 2019. As set out therein, the District properly imposed this requirement as part of its duties to ensured compliance with Chapter 36 of the Texas Water Code.

III. CONCLUSION AND PRAYER

The GM respectfully requests that the District deny LCRA's Motion for Rehearing, save and except as to the recommendations the GM provides herein.

Respectfully submitted,

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ATTORNEYS FOR THE GENERAL
MANAGER OF THE LOST PINES
GROUNDWATER CONSERVATION DISTRICT

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on the 10th day of March, 2022, a true and correct copy of the above and foregoing document was forwarded via email or First Class Mail to the parties on the attached Service List.

/s/ *Natasha J. Martin*
Natasha J. Martin

SERVICE LIST

APPLICATION OF LCRA FOR OPERATING AND TRANSPORT PERMITS FOR EIGHT WELLS IN BASTROP COUNTY, TEXAS

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LOST PINES GROUNDWATER CONSERVATION DISTRICT
OPERATING PERMIT

District Well Number: 58-55-5-0032

Permit Approved: October 12, 2021

Permittee:

Lower Colorado River Authority (LCRA)
P.O. Box 220
Austin, Texas 78767-0220

Location of Well: Approximately eight (8) miles northeast of the City of Bastrop in Bastrop County (30.202285/-97.207107), Well No. 1

Permittee is authorized to operate Well No. 58-55-5-0032 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: 8,000 acre-feet per year in aggregate.

Maximum rate of withdrawal: 6,000 gallons per minute in aggregate.

Aquifer unit: Simsboro

Type of water use: All beneficial uses authorized by Texas Water Code § 36.001(9)(A)-(B).

Place of water use: LCRA Water Service Area in Bastrop, Lee, and Travis Counties

Standard Permit Provisions:

This Operating Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Operating Permit, this Operating Permit includes the following provisions:

(1) This permit is granted in accordance with District Rules, and acceptance of this permit constitutes an acknowledgement and agreement that Permittee will comply with the terms, conditions, and limitations set forth in this permit, the District rules, the orders of the Board, and the District Management Plan.

(2) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

(3) Water produced from the well must be measured using a water measuring device or method approved by the District that is within plus or minus 10% of accuracy.

(4) The well site must be accessible to District representatives for inspection, and permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.

(5) Permittee will use reasonable diligence to protect groundwater quality.

(6) Permittee will follow well plugging guidelines at the time of well closure.

(7) The application pursuant to which this permit has been issued is incorporated in this permit by reference, and this permit is granted on the basis of and contingent upon the accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for revocation of the permit.

(8) Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawals, may subject the permittee to enforcement action under District Rules.

(9) Whenever the special conditions in the permit are inconsistent with other provisions of the permit or the District Rules, the special condition will prevail.

Special Conditions:

This Operating Permit is granted subject to the following special conditions:

~~(1) Prior to construction of a well authorized by this permit, Permittee shall enter into a monitoring well agreement approved by the District Board and Permittee (the "Monitoring Well Agreement"). Permittee shall construct and maintain the New Monitoring Wells, in accordance with the terms and provisions of a Monitoring Well Agreement. The Monitoring Well System shall consist of any New Monitoring Wells, as defined in the Monitoring Well Agreement. Monitoring Well System may also include existing District monitoring wells or third-party wells used for Desired Future Condition compliance district-wide, county-wide or for any applicable existing or future District management zone that the General Manager and the Permittee agree meet the criteria set forth in this subsection (a). The Monitoring Well Agreement entered into between LCRA and the District shall include wells, gages, or any scientifically supported tool to monitor surface water. A well to be included in the "Monitoring Well System" shall meet the following criteria:~~

~~(a) The well is screened in the Simsboro formation;~~
~~(b) The well improves the spatial coverage of the Monitoring Well System;~~
~~(c) The well is easily accessible for regular measurements;~~
~~(d) For an existing well, records regarding the amount and schedule of pumping are available; and~~
~~(e) Any other criteria agreed upon by the General Manager and the Permittee.~~

~~(2)~~(1) The authorized annual withdrawal amount and the authorized maximum rate of withdrawal under this permit for this Well No. 58-55-5-0032 (Well No. 1) are hereby aggregated with the authorized annual withdrawal amount and the authorized maximum rate of withdrawal for the following designated wells: Well No. 58-55-5-0033 (Well No. 2); Well No. 58-55-4-0016 (Well No. 3); Well No. 58-55-4-0017 (Well No. 4); Well No. 58-55-4-0018 (Well No. 5); Well No. 5855-4-0019 (Well No. 6); Well No. 58-55-4-0020 (Well No. 7); and Well No. 58-55-4-0021 (Well No. 8). Well No. 58-55-5-0032 and the designated wells are collectively referred to as the "Aggregated Wells."

~~(3) If the Permittee files an application to renew the Permit, then the General Manager and Permittee shall evaluate the data collected from the Monitoring Well System prior to the date of the application to renew to determine whether LCRA's pumping has resulted in substantially different impacts to groundwater resources than those predicted by the modeling relied upon by the District when the Permit was issued and jointly propose revisions to the Permit based on that data. If the General Manager and the Permittee are unable to agree to joint proposed revisions within sixty (60) days of the date that the application to renew is filed, then the General Manager and Permittee will mutually agree upon a registered professional engineer or a certified groundwater professional with expertise in hydrology, hydraulics and hydrogeology to mediate the dispute. If the General Manager and Permittee are unable to resolve the dispute through mediation, then the General Manager may propose revisions to the Permit as provided in District Rules.~~

~~(4)~~(2) Before providing water withdrawn from the Aggregated Wells to any End User, Permittee shall submit to the District: (a) each End User's water conservation plan and drought contingency plan, if the Texas Water Code or Texas Commission on Environmental Quality rules require the End User to prepare a water conservation plan and drought contingency plan; or (b) if the Texas Water Code or Texas Commission on Environmental Quality rules do not require the End User to prepare a water conservation plan and drought contingency plan, a certification from the End User that the End User agrees to avoid waste and achieve water conservation. Any End User water conservation plans and drought contingency plans that are submitted must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

~~(5)~~(3) This Permit is not subject to the District's rules on time limits for the completion of a permitted well or the operation of a permitted well.

~~(6)~~(4) This permit is issued subject to any future production limits adopted by the District under the District Rules.

~~(7)~~(5) Production Fees charged to Permittee under this Permit shall be based upon amounts authorized to be produced under this Permit at the time that Production Fees are due.

~~(8)~~(6) Permittee is subject to the District Rules that require that all wells be completed within 100 feet of the location identified on the application pursuant to which this permit has been issued; provided that the well location complies with the applicable well spacing requirements under the District Rule 8.2.B.

~~(9)~~(7) Prior to operation of any new well authorized by this permit, Permittee shall, for each new well, complete a 36-hour pump test that complies with District Rule 5.1.B(5) and report the results of the test to the District.

(a) During the 36-hour pump test for each well, Permittee shall produce groundwater from the well at an instantaneous rate of withdrawal of at least 2,250 gallons per minute and not to exceed the aggregated maximum rate of withdrawal authorized by this permit.

(b) Permittee shall provide the District with not less than 30 days' prior notice of the earliest date the 36-hour pump test will begin and confirm the scheduled date by phone or email with the General Manager at least 3 days' prior to the test.

(c) Permittee shall pay all costs of the 36-hour pump test.

(d) Within ninety (90) days of the completion of the 36-hour pump test, Permittee shall provide the General Manager with the data gathered at all of the Aggregated Wells tested during the pump test.

(e) The General Manager will review the results of the 36-hour pump test. If the General Manager determines that the transmissivity of the aquifer (measured in ft^2/day) at the well is lower than the values included in the model grid cell in which the well is located, then the General Manager may reduce the authorized maximum rate of withdrawal under this permit. The General Manager will mail notice to Permittee no later than the 90th day after receipt of the information described in subsection (d) of his decision whether to reduce the maximum rate of withdrawal.

(f) Permittee may appeal the General Manager's decision under subsection (e) to the Board pursuant to the procedures set out District Rule 15.6.B. through 15.6.E.

~~(10)~~(8) At least thirty (30) days prior to drilling the well, Permittee shall provide the General Manager with the design specifications for the well that are required for registration of a well under the District rules, including the total depth of the well, the depth of the screened interval, the pump size, and any other well information required by the District's then-current well registration form.

Term:

(1) This Operating Permit shall be effective for a period of five (5) years from the date the permit is approved, unless terminated, amended, renewed, or revoked as provided in the District Rules.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

ISSUED:

_____
President, Lost Pines Groundwater
Conservation District Board of Directors

Date: _____

LOST PINES GROUNDWATER CONSERVATION DISTRICT
OPERATING PERMIT

District Well Number: 58-55-5-0032

Permit Approved: October 12, 2021

Permittee:

Lower Colorado River Authority (LCRA)
P.O. Box 220
Austin, Texas 78767-0220

Location of Well: Approximately eight (8) miles northeast of the City of Bastrop in Bastrop County (30.202285/-97.207107), Well No. 1

Permittee is authorized to operate Well No. 58-55-5-0032 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: 8,000 acre-feet per year in aggregate.

Maximum rate of withdrawal: 6,000 gallons per minute in aggregate.

Aquifer unit: Simsboro

Type of water use: All beneficial uses authorized by Texas Water Code § 36.001(9)(A)-(B).

Place of water use: LCRA Water Service Area in Bastrop, Lee, and Travis Counties

Standard Permit Provisions:

This Operating Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Operating Permit, this Operating Permit includes the following provisions:

(1) This permit is granted in accordance with District Rules, and acceptance of this permit constitutes an acknowledgement and agreement that Permittee will comply with the terms, conditions, and limitations set forth in this permit, the District rules, the orders of the Board, and the District Management Plan.

(2) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

(3) Water produced from the well must be measured using a water measuring device or method approved by the District that is within plus or minus 10% of accuracy.

(4) The well site must be accessible to District representatives for inspection, and permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.

(5) Permittee will use reasonable diligence to protect groundwater quality.

(6) Permittee will follow well plugging guidelines at the time of well closure.

(7) The application pursuant to which this permit has been issued is incorporated in this permit by reference, and this permit is granted on the basis of and contingent upon the accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for revocation of the permit.

(8) Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawals, may subject the permittee to enforcement action under District Rules.

(9) Whenever the special conditions in the permit are inconsistent with other provisions of the permit or the District Rules, the special condition will prevail.

Special Conditions:

This Operating Permit is granted subject to the following special conditions:

(1) The authorized annual withdrawal amount and the authorized maximum rate of withdrawal under this permit for this Well No. 58-55-5-0032 (Well No. 1) are hereby aggregated with the authorized annual withdrawal amount and the authorized maximum rate of withdrawal for the following designated wells: Well No. 58-55-5-0033 (Well No. 2); Well No. 58-55-4-0016 (Well No. 3); Well No. 58-55-4-0017 (Well No. 4); Well No. 58-55-4-0018 (Well No. 5); Well No. 5855-4-0019 (Well No. 6); Well No. 58-55-4-0020 (Well No. 7); and Well No. 58-55-4-0021 (Well No. 8). Well No. 58-55-5-0032 and the designated wells are collectively referred to as the "Aggregated Wells."

(2) Before providing water withdrawn from the Aggregated Wells to any End User, Permittee shall submit to the District: (a) each End User's water conservation plan and drought contingency plan, if the Texas Water Code or Texas Commission on Environmental Quality rules require the End User to prepare a water conservation plan and drought contingency plan; or (b) if the Texas Water Code or Texas Commission on Environmental Quality rules do not require the End User to prepare a water conservation plan and drought contingency plan, a certification from the End User that the End User agrees to avoid waste and achieve water conservation. Any End User water conservation plans and drought contingency plans that are submitted must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

(3) This Permit is not subject to the District's rules on time limits for the completion of a permitted well or the operation of a permitted well.

(4) This permit is issued subject to any future production limits adopted by the District under the District Rules.

(5) Production Fees charged to Permittee under this Permit shall be based upon amounts authorized to be produced under this Permit at the time that Production Fees are due.

(6) Permittee is subject to the District Rules that require that all wells be completed within 100 feet of the location identified on the application pursuant to which this permit has been issued; provided that the well location complies with the applicable well spacing requirements under the District Rule 8.2.B.

(7) Prior to operation of any new well authorized by this permit, Permittee shall, for each new well, complete a 36-hour pump test that complies with District Rule 5.1.B(5) and report the results of the test to the District.

(a) During the 36-hour pump test for each well, Permittee shall produce groundwater from the well at an instantaneous rate of withdrawal of at least 2,250 gallons per minute and not to exceed the aggregated maximum rate of withdrawal authorized by this permit.

(b) Permittee shall provide the District with not less than 30 days' prior notice of the earliest date the 36-hour pump test will begin and confirm the scheduled date by phone or email with the General Manager at least 3 days' prior to the test.

(c) Permittee shall pay all costs of the 36-hour pump test.

(d) Within ninety (90) days of the completion of the 36-hour pump test, Permittee shall provide the General Manager with the data gathered at all of the Aggregated Wells tested during the pump test.

(e) The General Manager will review the results of the 36-hour pump test. If the General Manager determines that the transmissivity of the aquifer (measured in ft^2/day) at the well is lower than the values included in the model grid cell in which the well is located, then the General Manager may reduce the authorized maximum rate of withdrawal under this permit. The General Manager will mail notice to Permittee no later than the 90th day after receipt of the information described in subsection (d) of his decision whether to reduce the maximum rate of withdrawal.

(f) Permittee may appeal the General Manager's decision under subsection (e) to the Board pursuant to the procedures set out District Rule 15.6.B. through 15.6.E.

(8) At least thirty (30) days prior to drilling the well, Permittee shall provide the General Manager with the design specifications for the well that are required for registration of a well under the District rules, including the total depth of the well, the depth of the screened interval, the pump size, and any other well information required by the District's then-current well registration form.

Term:

(1) This Operating Permit shall be effective for a period of five (5) years from the date the permit is approved, unless terminated, amended, renewed, or revoked as provided in the District Rules.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

ISSUED:

_____

President, Lost Pines Groundwater Conservation District Board of Directors

Date: _____