Questions on the Blue Water Vista Ridge Amendment Application

Submitted by Judith McGeary
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Background: Milam and Burleson County landowners raised multiple concerns about Vista Ridge's permit application during the hearing on March 28. Some of the concerns were based on information available before the hearing; some of the concerns (such as the too-close spacing of several wells) only became apparent during the presentations done by Vista Ridge and Steve Young.

Many of the concerns are due to the Applicant not providing sufficient information. I have compiled the questions below to reflect the additional information that would be needed for the Board to make a fair decision. The questions below also address the issue of the requested variance from the District's spacing requirements.

I solicited input from multiple landowners to meet the Board's request that the community provide a single, comprehensive list to the extent feasible. However, I do not intend for this list to foreclose any other interested stakeholder from bringing forth relevant concerns.

To address an initial issue: the Applicant said multiple times that it wasn't clear if it even needed to apply for a permit amendment. The implication was that the Board should treat the process as a mere formality that raises minimal concerns. However, District Rule 7.8 states that a permit amendment must be applied for and granted for any "substantial change" to a permit. District Rule 7.8(2) explicitly states that a substantial change includes "a change in the location of groundwater withdrawal."

I. LAND OWNERSHIP AND WATER RIGHTS

Documentation addressing the ownership of the land and water rights is required to be part of the application under District Rule 7.4(4)(b), (k), and (l). Not only is this a standard requirement, but the **quality** of the evidence that should be required for this application is important, given the multiple reports of questionable behavior by the Applicant's agent or business partner in procuring the leases, and the use of form letters clearly written by the Applicant itself and signed by absentee landowners (who provided their home addresses, without specifying which properties they own).

(1) Has the applicant provided copies of the actual water leases that underlie the proposed well sites, and:

   a. Identified the portion in each that conveys the necessary surface rights for the wells' current permitted locations and the requested new locations, and

   b. Provided confirmation that the person who signed the leases owns both the land and its water rights.

(2) It has been reported that the SAWS' water supply contract requires the applicant to acquire a 2-acre site for each well, although there are conflicting reports as to whether the land must be owned in fee simple or can be leased to meet this requirement. In addition, the Texas Commission on Environmental Quality (TCEQ) requires that public water supply wells have a 150-foot recorded sanitary control easement to prevent contamination, restricting the uses of the property around the wells. *See* Texas Administrative Code Title 30, Section 290.41(c)(1). *See also* District Rule 12.2 (well locations).

a. Has the Applicant provided documentation to the District that reflects whether it is required to have a 2-acre lease or a 2-acre fee simple ownership of the land around each well?

b. Do the Applicant's documents reflect that it has obtained the required land rights for the current permitted locations **and** the new proposed locations, sufficient to satisfy the requirements of the SAWS and TCEQ?

   If not, then the Applicant's statement that the wells will be drilled whether or not its amendment application is granted was misleading.

c. Have the landowners been made aware of and consented to the requirements either to sell their land or limit use of it under an easement?

d. If any of the existing and the new proposed locations are within 150 feet of the property line, or any other distance dictated for compliance with Rule 12.2 and/or TCEQ rules, has the Applicant obtained an easement from the neighboring landowner(s) sufficient to satisfy TCEQ and District Rule 12 requirements? Again, if not, then the Applicant's statement that the wells will be drilled whether or not its amendment application is granted was misleading.

II. REASONS FOR THE REQUESTED CHANGE IN LOCATION

The Applicant has submitted requests for 11 new sites with two wells at each one. Each proposed well site needs to be individually analyzed. For **each** changed location, the applicant needs to show good cause. *Cf.* District Rule 4.2(4) ("a public hearing will be held on **each request** for an exception to the spacing requirements.)

The burden is even higher for the new locations that would violate the District's spacing requirements; the applicant must show good cause **by clear and convincing evidence**. *See* District Rule 4.2(1).

The Applicant's statement at the hearing was that, for some of the wells, the landowners wanted the change. The only evidence of the landowners' wishes were form letters, all dated in the same week, all with identical typed language, and none providing any specifics of why the landowners supposedly requested the change. The letters were clearly written by the Applicant itself.

The Applicant also stated that, for the other wells, the topography was the reason for the change, but again no specifics were provided.

(1) For the new locations that allegedly are due to the landowner's request, has any evidence been provided other than the form letters? What specific reasons have been provided? Absent such evidence, it is reasonable to question whether the Applicant has an undisclosed reason for requesting the new locations, and simply solicited the lessors' letters to conceal the facts.

(2) For the new locations that are allegedly based on the topography, what information has been provided to show that (a) there is a topographical problem with the current location, and (b) the new location is more suitable?

   a. Wells must be located at sites not generally subject to flooding (District Rule 12.2(3)), yet the Applicant has stated that several of its current locations have "topographical problems." Does that mean they are prone to flooding? If not, what is meant by the term "topographical problems"? If they are subject to flooding, why was this not identified in the original permit application?

(3) Why is the Applicant only now asking to move these wells, when these permits were approved over ten years ago? Without a clear statement of a good reason for the requested change, how can the District and the community have confidence that additional changes will not be requested that could alter the impacts?

III. SPECIFIC INFORMATION NEEDED ON THE NEW LOCATIONS

The District's rules already provide significant flexibility for permit holders, who can move the location of the well up to 250 feet without having to apply for a permit amendment. *See* District Rule 12.1. The District has determined, however, that changes in location that are greater than 250 feet are "substantial changes." *See* District Rule 7.8(2).

The issue is both the impact on the aquifer as a whole and the impact on other landowners. Rule 4.2(1), addressing exceptions to spacing requirements, states that the Board may limit the production of the well "to prevent or limit injury to adjoining landowners, well owners or the aquifer" – an explicit recognition that the location of the well raises concerns for all three (landowners, well owners, and the aquifer). Rule 7.6, which applies to all permit applications, requires the District to consider the "impact on other landowners and well owners from a grant or denial of the permit, or the terms prescribed by the permit, including whether the well will interfere with the production of water from exempt, existing or previously permitted wells and surface water resources."

(1) Even for those wells that comply with the spacing requirements, the impact on neighboring landowners should be considered. Thus, for **each** new well location, the applicant needs to address:

a. Has it been moved closer to another landowner's property line? If so, whose land and by how many feet?

b. Given the rate of permitted pumping from these wells, how much greater drawdown would be expected to occur under the neighbors' properties due to the new location? The impacts on the neighbors should be considered, even if the total average drawdown of the aquifer remains the same.

c. Are there any faults or other geological formations between the new well locations and the neighbors' properties that could increase the chance of a breakthrough to the neighbor's well(s)?

IV. INFORMATION NEEDED FOR THE REQUEST FOR A VARIANCE ON SPACING

The rules contain very specific requirements on spacing. Rule 4.1(2) states that a new well in the Simsboro formation must be at least 1 foot per 1 gpm production capacity from any well existing in the same formation **and** not less than 1/2 foot per gpm from the property line of each adjoining neighbor.[1] Rule 4.1(3) states that a new well in the Carrizo formation must be at least 2 feet per 1 gpm production capacity from any well existing in the same formation **and** not less than 1 foot per one gpm from the property line of each owner of abutting land that is not owned or controlled by the owner of the new well.

A basic principle of statutory construction is that laws should be read to avoid redundancy; where one reading of a statute would make one or more parts of the statute redundant and another reading would avoid the redundancy, the other reading is preferred. Another applicable canon of construction is *expressio unius est exclusio alterius*; roughly translated, this phrase means that whatever is omitted is understood to be excluded. The District rules set out two separate spacing conditions that must be met for wells that draw from the Simsboro formation and two separate spacing conditions that must be met for wells that draw from the Carrizo formation. **One** of those four conditions includes consideration of whether the neighboring land is owned or controlled by the same entity; **the other three conditions do not.**

Mr. Young stated that 3 of the new proposed locations were less than 3,000 feet from each other (ranging from approximately 2,400 feet to 2,700 feet, which is a 10% - 20% reduction from the minimum required spacing). He also stated that the locations were for paired wells – one pumping from the Simsboro and one from the Carrizo. Yet the only discussion of the fact that the new locations violate the spacing requirements was to note that the 3 wells are all under the control of the same entity (Vista Ridge) and to **assume** that there would be no negative effects on the aquifer or other landowners.

[1] There is an alternative test based on GAM simulations that address specific drawdown of the hydraulic head, but there was no discussion of whether the Applicant's proposal has been tested to determine if it meets those alternative standards.

The amendment request violates at least two separate spacing requirements: The proposed wells are closer than 1 foot per 1 gpm to other wells in the Simsboro and closer than 2 feet per 1 gpm to other wells in the Carrizo. The District rules do not include consideration of common ownership or control for either of these spacing requirements.

It is unclear whether the requested locations also violate a third spacing requirement, regarding the distance from neighboring landowners for wells in the Simsboro.

(1) Are any of the new proposed locations within ½ foot per gpm from a neighboring property line, irrespective of who owns or controls the neighboring property? (Under the Rules, for the Simsboro, it is not relevant if the property is owned or controlled by the same entity)

(2) The notice to the public was very specific about what was not being affected, such as the amount of water withdrawn. Yet it was silent about the need for a variance to be given from the District's rules on spacing. This is not simply a change in the requested location, as was stated in the notice, but a request for the District to allow an exception to its rules. What is the justification for not including the fact that a variance was being requested?

(3) What is the "clear and convincing evidence" of "good cause" for moving these wells?

V. IMPACTS OF THE AMENDMENT

Mr. Young stated that he assumed that the only person harmed would be the applicant because its own wells would be interfering with each other. Yet the Water Code specifies that spacing requirements are intended to address multiple concerns: "In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate" the spacing of wells. Tex. Water Code sec. 36.116. The Water Code thus **recognizes six reasons for spacing requirements**, only one of which is to prevent interference between wells.

(1) Will the Applicant provide a copy of the GAM results on which the decision to move these wells is based?

(2) What analysis has been done to show that putting three wells closer together than the normal spacing requirements will not cause damage to the aquifer or to the neighboring landowners? The closer spacing means greater drawdown and pressure exerted in a concentrated area. An analogy suggested by another hydrologist is switching the attachment on a vacuum cleaner to increase the concentrated pulling power. Consider what happens when you change from an attachment that has a very large wide opening to one that has a narrow opening – the amount of suction increases significantly. The additional stress may lead to preferred pathways ("piping" or weak link connection) to neighboring properties. *See* http://gsabulletin.gsapubs.org/content/early/2016/12/22/B31460.1.abstract All of the

factors listed in the water Code -- drawdown of the water table, control of subsidence, interference between wells, degradation of water quality, and the prevention of waste -- must be addressed by the Applicant.

(3) What is the Applicant's evidence that, for each of these new locations, there is no additional impact on neighboring well owners, both during the drilling and during the production?

VI. FAILURE TO COMPLY WITH RULES UNDER CURRENT PERMIT

POSGCD's rules define waste to include: "Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or ditch that is not the property of the owner, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under *Chapter 26, Texas Water Code*." District Rule 1.1 (page 12-13). District Rule 13.1 prohibits the waste of groundwater.

District Rule 7.4(4)(h) requires the applicant to provide a statement that the groundwater withdrawn under the permit will be put to beneficial use "at all times."

More than one person has experienced the problem raised by Mr. Hurd at the hearing, namely the dumping of large quantities of water on the ground during drilling operations, which then infiltrated and flooded adjacent landowners, in at least some cases with the notoriously "hot" water from the Simsboro.

It is not the responsibility of the private landowner to have to bring a lawsuit, at his or her own expense, to prevent waste of water. It is the Applicant's responsibility to comply with the District's rules, and the District's responsibility to hold permittees responsible for failures to comply.

(1) Given that the Applicant has violated the commitment made in its original permit application under Rule 7.4(4)(h), what assurances has the Applicant in the amendment application given that this will not occur again?

VII. QUESTIONS FOR THE DISTRICT

All of the questions above are directed at the Applicant. They identify information that should be provided by the Applicant for the public's review and the Board's consideration before any action is taken on the application.

In addition, after this information is provided, a full analysis has been conducted, and the Board is prepared to make a ruling, we re-iterate that the District's Rule 7.6 requires consideration of the following factors in making decisions on permit applications:

(1) The management plan

(2) The quality, quantity, and availability of alternative water supplies

(3) The impact on other landowners and well owners from a grant or denial of the permit, **or the terms prescribed by the permit including whether the well will interfere with the provision of water from exempt, existing or previously permitted wells and surface water resources,**

(4) **Whether the permit will result in a beneficial use and not cause or contribute to waste, and**

(5) If the applicant has existing production permits that are underutilized and fails to document a substantial need for additional permits to increase production.

Section (3) and (4) have been bolded because they are particularly relevant with respect to this amendment application. Each individual Board member needs to have considered these factors, and the Board as a whole needs to document the basis for its decision on each factor.

Respectfully,
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ADDITIONAL QUESTIONS FOR THE BOARD'S CONSIDERATION

The questions below were also submitted by individuals for the Board's consideration. While not directly applicable to the specific issues raised by the amendment application, they are relevant to the broader issues surrounding this Applicant and its permit.

1. What will be the impacts on the community's infrastructure, including roads, from Applicant's equipment and personnel? Who will pay for damages to the roads and other infrastructure?

2. In addition to the waste issues noted above, does the Applicant's release of water from the drilling of previous wells count against the total acre feet allowed under the permit?

3. Does the District have a complete and verified record that specifies which Met Water/Blue Water leases support which permits? Have any leases allocated to the Vista Ridge permit terminated because of absence of production within a time certain, and if so, what demonstration to the District of continued contiguity of leases has been made?