



October 2, 2017

Dear Directors of the Post Oak Savannah Groundwater Conservation District:

The agenda for your October 3rd meeting includes consideration of a “request” by Vista Ridge for extension of its Transport Permit. Any consideration of an extension of a transport permit requires an application by the permittee, followed by proper notice to neighboring landowners and a hearing. None of these requirements have been met.

On behalf of the Farm and Ranch Freedom Alliance, and as a landowner in Milam County, I urge you to postpone the item until it can be considered in full compliance with the District rules.

A. District rules require that a public hearing be held on an application for extension of a transport permit with 10 business days public notice.

The original agenda for this week’s meeting did not include any mention of the Vista Ridge permit. An amended agenda was sent on Thursday, September 28, just three business days before the meeting, and Item 14 was added to consider a “request” for an extension of Vista Ridge’s transport permit.

The District’s rules state:

Rule 8.7. EXTENSION OF TRANSPORT PERMIT. A permittee may **apply** for an extension of the term of a transport permit granted under this Section 8. The District shall consider and grant or deny each **application** for extension of a transport permit **in the same manner** as is provided herein for the application for a permit.

This rule governs Vista Ridge’s so-called “request.” Vista Ridge must file an application, which is subject to the District’s normal rules for notice to potentially affected landowners and review by the public. The application would then have a hearing by the Board.

1. Rule 8.3 requires a hearing for all transport permits.

Section 8 of the District’s rules govern transport permits. Rule 8.3 requires a public hearing for transport permits. Rule 8.3(2) specifies the information that the hearing notice must contain, including the time and place of the hearing. The rule then states: “At the time and place stated in the notice, the District shall hold a hearing on the application in accordance with the provisions of Section 14.”

Rule 14.1(1)(a) provides that “The District will hold hearings on water well drilling permits, operating permits, *transport permits, permit renewals or amendments* and permit revocations or suspensions.” The District rules on hearings explicitly anticipate and mandate permit hearings on transport permits and permit renewals. Only “a drilling or operating permit for a limited production well” (or one that is limited at no more than 25,000 gallons of water per day) is exempt from the requirement for a hearing. *Id.*

As quoted above, Rule 8.7, which governs extensions of a transport permit, requires that the District consider such an application “in the **same manner** as provided herein for the application for a permit.” Thus, this “request” by Vista Ridge must go through the normal procedures.

2. The Vista Ridge transport permit extension is a substantial change.

The agenda labels the extension request as “non-substantial,” presumably in an effort to downplay the importance of public notice and a hearing. But that term is not accurately applied to this issue.

First, the term “non-substantial change” does not even appear in Section 8 of the District Rules, which govern transport permits. Again, Rule 8.7 explicitly requires a permittee to apply for an extension of the term of a transport permit, and requires the District to consider the application in the same manner as the original application for a permit.

Second, even if one were to ignore the rules for transport permits and look instead to the rules governing other types of permits, Vista Ridge’s request still does not qualify as “non-substantial.”

The only place in the district rules where a “substantial change” is mentioned is in Rule 7.8, “Amendment of a Permit.” Thus, by even trying to invoke this section, the General Manager is agreeing that this is a permit amendment, despite the language in the agenda about a “request.” Rule 7.8 requires that a “substantial change” to a permit be approved only after an application has been filed with the District and the amendment approved by the Board. “A substantial change to a permit includes, *but is not limited to*, an increase in the instantaneous rate or the annual quantity of groundwater authorized to be withdrawn, a change in place or purpose of use or a change in the location of groundwater withdrawal.” Rule 7.8(2) (emphasis added).

While Rule 7.8 directs the General Manager to decide which other changes are “substantial,” such decision must be in accordance with the rules. Trying to claim that an extension of a transport permit is non-substantial contradicts multiple provisions and is in defiance of the history of this permit and the law.

Extending Vista Ridge’s transport permit for an additional ten years effectively changes the place and purpose of use for its operating permit. As it stands now, the transport permit expires ten years before the operating permit – such that, absent a transport permit for those ten years, Vista Ridge can only use the water produced within the District. Extending the transport permit changes the place and purpose of use for that time period.

The Applicant previously tried to extend the terms of the Vista Ridge transport permit in September 2014, and the Board vote ended in a tie.¹ Nothing has changed since then that would provide the basis for extending the transport permit 17 years before it expires and before any transport has occurred.

Indeed, the only thing that has changed is that the Texas Legislature clarified that the current law does **not** provide for automatic extensions of transport permits, contrary to Vista Ridge's representations to this District. Rather, the Legislature passed a bill that would have changed the current law so as to provide for automatic extensions of transport permits in certain circumstances – and the bill was vetoed by the Governor.

In his veto statement, Governor Abbott stated:

Excluding the public, potentially in perpetuity, from the decisions of a groundwater conservation district will reduce transparency and inhibit the district's ability to respond to changed circumstances over time. <https://gov.texas.gov/news/post/governor-abbott-vetoes-hb-2378>

It is wholly inappropriate for the District to effectively exclude the public from this issue by failing to give notice and hold a hearing. Moreover, one cannot logically argue an issue that created a split in the Board three years ago, and that has been the subject of intense dispute at the state government level, is “non-substantial.”

- 3. Even if the Vista Ridge transport permit extension application constituted a “non-substantial change,” it does not void the requirement for notice and a hearing.**

While Rule 7.8 discusses what amendments are substantial, it does not void the requirements for notice and a hearing generally. Rule 7.8 identifies just **one** situation in which the general manager may grant an amendment without notice, hearing, or further action by the Board: when the permit amendment would **decrease** the authorized withdrawal. Rule 7.8(3).

By specifying that lone exception to the requirements for notice, hearing, and Board action, Rule 7.8 implicitly requires that all other permit amendments, whether substantial or non-substantial, must still meet the requirements for notice and a hearing.

Again, this permit application should be governed by Rules 8.7 and 8.3, quoted above, which govern extensions of transport permits. But whether one looks at Section 8 or Section 7, the result is the same. Rule 7.5 mirrors Rule 8.3, requiring the District to schedule a hearing on an application for a transport permit or permit amendment, and public notice must be given at least ten business days before the hearing. Rule 7.5 specifics just two situations in which a hearing is not required: for a drilling or operating permit for a limited production well.

¹ Meeting minutes from Post Oak Savannah Groundwater Conservation District Board of Directors (Sept. 9, 2014), available at: http://www.posgcd.org/wp-content/uploads/2015/02/09.09.2014_Minutes.pdf

Neither Rule 7.5, nor Rules 8.3 or 14.1, limit notice and hearings to amendments that are “substantial.” Therefore, the District rules require the District to issue 10-business day notice of, and to conduct a public hearing on the application by Vista Ridge to extend its transport permit.

B. The Board has the power to request a public hearing if it is in the public interest or simply postpone the agenda item to allow time for further review.

Finally, the District rules allow the Board to hold a public hearing “on any matter within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.” Rule 14.1. Knowing the public interest in this particular permit, the amendment to the Vista Ridge transport permit would unquestionably justify a hearing on these grounds alone.

To the extent that there is ambiguity in the District’s rules, they should be interpreted in a light most favorable to the public. In this case, that would mean granting a public hearing on the Vista Ridge application for an amendment to the transport permit.

Any member of the board can request a postponement of an agenda item to allow the public and the Board more time to consider the applicant’s request.

I therefore urge the District to postpone Item 14 on the upcoming agenda, to allow for a public hearing on the application by Vista Ridge for extension of its transport permit, and to provide the requisite 10-business day notice of such public hearing.

Respectfully,

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