



NOTICE OF APPEAL INFORMATION

**Austin City Code 25-1-181 Appeals, Variances, Special Exceptions, and Adjustments
(Administrative Decision Appeal Process on Page 2)**

Address of Property in Question 3704 Ranch Creek Drive	Permit Number PR 2017015962
Appellant Filing Appeal Michael Rooney	Relationship to Property: Interested Party representing Owner Yvonne Nacu
Appellant's Status as Interested Party: Interested Party Representing Owner Yvonne Nacu	
Appellant Contact Information	Permit Holder Contact Information
Name Michael Rooney	Name Michael Rooney
Street 3672 Ranch Creek Drive	Street 3672 Ranch Creek Drive
City Austin State TX Zipcode 78730	City Austin State TX Zipcode 78730
Telephone 512-917-0733	Telephone 512-917-0733
E-Mail michael.rooney99@gmail.com	E-Mail michael.rooney99@gmail.com
Date of Decision Being Appealed March 13, 2017	Date Appeal is Filed March 17, 2017
Decision Being Appealed (use additional paper as required): Please refer to attachment 1, including attached exhibits	
Reason the appellant believes the decision does not comply with the requirements of the Land Development Code (Title 25) For detailed explanation of reasons why Austin Water (AW) Director should not have denied my request under Article 6 of Austin City Code Chapter 25-12 (161.1.1) Water System Connection Required please refer to Attachment 1 including the attached Exhibits.	
BELOW FOR CITY USE ONLY	
Hearing Date:	Board or Commission:
Action on Appeal	Date of Action

The applicant must complete page 1 of 2 and sign before this application of appeal is complete. The application will not be processed unless the applicant reads and signs page 2.



APPEAL PROCESS

You may appeal this "**ADMINISTRATIVE DECISION**" in accordance with Land Development Code section **25-1-181** by following these requirements.

ARTICLE 7. APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS.

Division 1. Appeals.

§ 25-1-181 STANDING TO APPEAL.

- (A) A person has standing to appeal a decision if:
- (1) the person is an interested party; and
 - (2) a provision of this title identifies the decision as one that may be appealed by that person.
- (B) A body holding a public hearing on an appeal shall determine whether a person has standing to appeal the decision.

Source: Section 13-1-250; Ord. 990225-70; Ord. 030828-65; Ord. 031211-11.

§ 25-1-182 INITIATING AN APPEAL.

An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 031211-11.

§ 25-1-183 INFORMATION REQUIRED IN NOTICE OF APPEAL.

The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

By signing this document, I attest to having read and understand my rights as granted by the Land Development Code for the process for appealing a stop work order, remove or restore order, revocation, or suspension.

Signature:

Date: 3/17/2017

ATTACHMENT 1—NOTICE OF APPEAL

Summary:

The Property at issue is building lot 73 of the Glenlake Subdivision Phase 2. This parcel has never been improved and was purchased by Ms. Nacu in 2013. In September of 2015 a well was drilled by Whisenant and Lyle to a depth of 980 feet (Exhibit D) and an abundant supply of potable water was the result. We have made personal use of the water from the well for over a year.

In January of 2017 Ms. Nacu and I applied for a building permit to construct our new residence on this lot. During the plan review process Yvonne decided that it was not in her best interest health wise to use the public water supply. Yvonne is a cancer survivor and when I informed her I had discovered the main water line for the Glenlake water supply was made of asbestos and cement she became animate about using our own water supply. Additionally we decided to include a rain water capture system in our construction plans. When I contacted AW I was referred to Article 6 of the plumbing code (25-12-601.1.1)

My written request of Austin Water on behalf of Ms. Nacu indicating her desire to forgo connection to the public water system per Land Development Code ("LDC") Section 25-12-153 (601.1.1) was denied by both the Assistant Director (Exhibit A) and ultimately by the Director himself (Exhibit C).

This Addendum is intended to provide details for issues raised in my appeal filed with the City of Austin on March 17, 2017 and in support of the upcoming hearing scheduled for April 25, 2017 at 1:30 PM, before the Mechanical Plumbing and Solar Board.

Objections:

1. Appellant's request under Code Section 25-12-153 (601.1.1) should be **approved** because the language of the code is **very** specific and item (3) in the mitigating circumstances of the above cited section completely supports appellant's request in every aspect thus negating the condition precedent (i.e. Requirement to connect to the public water system). See my appeal letter regarding staff interpretation which was emailed to the Director and dated March 4, 2017 (Exhibit B). In the appeal I refer to Title 1 of the Austin City Code. I specifically reference Chapter 1-1 General Provisions: Section 1-1-2 General Definitions and Section 1-1-3 Words and Phrases. In short, the code language means exactly what it says and must be interpreted in this way. The code was written by, reviewed by, and signed off on by, attorneys including the written exceptions to the rule or condition precedent. Attempts to re-interpret code sections by altering or inserting words after the fact should not be an accepted practice in

rendering decisions regarding code implementation and compliance to provisions contained in code sections.

In Article 6 of the Plumbing Code, Section 601.1.1 (3) states “The property is served by an existing private potable water system”. In this case the property is the vacant lot. The well, in fact, does exist at this time and has been in use by the owners since it was completed in 2015. The remaining condition in (3) of this section states: “and the water utility has determined that the private water system may continue to be used based on factors such as the type of facility served, the age, condition, and capacity of the private potable water system, and the availability of records regarding the system, changes to the system, or the system demand.”

In this situation the water utility, AW, has specific guidelines by which it is supposed to base their determination for the continued use. However, it is my understanding that under the Laws of the State of Texas regarding an owners rights to ground water below their property, as well as the Austin City Code regarding the lack of authority of AW in cases where there is no actual public water connection on the property, the water utility merely has a “duty” to inform the property owner of pertinent state plumbing codes and laws regarding the private potable water system being used. AW in fact has **no authority** to regulate the continued use of a private water supply in the absence of any actual connection to the public water supply. The denials of our property rights to continue use of our private potable water sources may “constitutes a taking” under Texas law (Bragg v. Edwards Aquifer Authority) and could entitle owners to compensation.

2. The AW Director’s denial (Exhibit C) of our request under the cited section of the plumbing code is arbitrary and “self-serving” and violates the provisions of the Austin City Code (cited above) as well as my water rights under the laws of the State of Texas. *See* Texas Water Code Section 36.002 (Exhibit E page 6).

The Director’s denial of our request is “arbitrary” and unsupported by the Austin City Code language. In his denial letter Director Meszaros states: “The subject well (your well) has not been used to provide private potable water service to any “house or building” located at 3704 Ranch Creek Drive.” There is no such language in exception (3) of the cited code section. It strictly states that “the property is served by an existing private potable water system” period. Nowhere in exemption (3) is “service to a house or building” specified as a qualifying requirement. Property, by definition, is real property which includes vacant land. The Directors words employed as the basis of his denial are not present in the code exemption (3) as a requirement for qualifying under this exemption.

In addition, Director Meszaros further states: "Therefore, your well was not 'existing' prior to the time the public water system began providing service". Again a very interesting distortion of the words contained in exemption (3) of the cited code section. The well does exist today. It is definitely prior to the public water system providing service to the lot in question since it presently has no service. His interpretation that the well must have been in existence in the "early 1980's" prior to the public water system being installed to qualify for this provision is a gross exaggeration of the term "exist" as it is used in the context of exemption (3). Exist means "today" and by no stretch of the imagination can it mean to "pre-exist" something that was installed 35 years ago. Lot 73 does not presently have, nor has it ever had since it was originally plotted, service from the public water system.

The Director's denial is "self-serving" from the stand point that the denial totally benefits AW financially by forcing the appellant to pay the initial "tap fee" prior to obtaining a building permit from the City of Austin and subsequently requiring monthly "connection and user" fees. In addition to these fees the appellant would be subject to provisions of The City Code Chapter 15-12 WATER WELLS. Our health concerns regarding conditions that might now be present, or might develop, in this aging public water distribution system as a result of the asbestos main water line deteriorating over time. This all seems to be of little concern to AW. Their answer to our concerns was simply to allow us to use the present "not to code" tap, pay the tap fee for a 5/8 inch meter, drop in an irrigation meter, install a cross-connection backflow protection device, and have one faucet at that location. We would never have to use the public water for our domestic needs. Instead we could use our **auxiliary water sources** of rain water collection and the water well for domestic purposes. In this scenario AW gets the tap fees since we are required to pay for them in order to obtain our building permit. We never have to actually connect the public water system to the residence. We would end up paying thousands of dollars for a service we never intended to use and, per The City Code provisions cited herein, should never have been required to use in the first place given conditions present as stated in this appeal.



City of Austin | Austin Water

P.O. Box 1088 Austin, TX 78767

AustinWater.org

February 23, 2017

Mr. Michael Rooney
3704 Ranch Creek Drive
Austin, TX 78730

Re: Water Service for Lot 73 of the Glenlake Subdivision Phase 2
3704 Ranch Creek Drive Austin, Texas 78730

Dear Mr. Rooney:

This letter is in response to your request to forgo connection to the City's public potable water system pursuant to Land Development Code ("LDC") Section 25-12-153 (601.1.1) for the above referenced property.

Based on our review of best available information, we have determined that 3704 Ranch Creek Drive is currently a vacant lot with no occupied structures or previous potable water use at the above referenced address and that water service is generally available within 100 feet from the Austin Water Utility's water distribution system. A water service tap is currently located at the site and is not being used.

LDC Section 25-12-153 (601.1.1) requires that "every house or building shall be separately and independently connected to a state licensed public potable water system if any part of the lot or tract that contains the house or building is within 100 feet in horizontal distance (measured on the closest practicable access route) of the public water system."

Connection to the public water system is not required if any of the following apply:

"(1) The property owner has received a written denial of service from the owner or governing body of the public water system.

(2) The property owner has received a written determination from the water utility that it is not feasible for the building to be connected to the potable water system.

(3) The property is served by an existing private potable water system and the water utility has determined that the private potable water system may continue to be used based on factors such as the type of facility served, the age, condition, and capacity of the private potable water system, and the availability of records regarding the system, changes to the system, or the system demand."



EXHIBIT
A

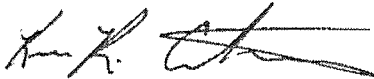
The City of Austin is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable modifications and equal access to communications will be provided upon request.

Per your description and our research, none of these specified conditions apply in your situation. Therefore, we have determined that 3704 Ranch Creek Drive, Lot 73 of the Glenlake Subdivision will need to be connected to the water system in order to comply with the referenced plumbing code requirements.

However, staff will be glad to further discuss the possibility of your use of the existing tap in conjunction with your stated desire to also use rainwater harvesting and a private water well on your property. The use of multiple water sources would require that you comply with other code provisions and service requirements, including but not limited to, appropriate back-flow prevention requirements.

Should you have any questions, please do not hesitate to call me at 512-972-0191.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin R. Critendon', with a stylized flourish at the end.

Kevin R. Critendon, P.E.
Assistant Director, Austin Water

cc: Antonio Canales, Division Manager, Special Services, Austin Water
Bart Jennings, Division Manager, Utility Development Services, Austin Water
Reyna Holmes, P.E., Supervising Engineer, Utility Development Services Austin Water

March 4, 2017

Mr. Greg Meszaros
Director, Austin Water
625 E 10th Street, Suite 800
Austin, Texas 78701

Re: Appeal of staff interpretation contained in letter from Mr. Kevin Critendon dated February 23, 2017 and request for reconsideration under LDC Section 25-12-153 (601.1.1) to forgo Austin Water Service for Lot 73 of the Glenlake Subdivision Phase 2 (3704 Ranch Creek Drive Austin, Texas 78730)

Dear Mr. Meszaros:

This letter is in response to Mr. Kevin Critendon's letter dated February 23, 2017. Michael Rooney and Yvonne Nacu, formally request that you personally reconsider our desire to forgo AW service to our building lot number 73 of the Glenlake Subdivision Phase 2 commonly known as 3704 Ranch Creek Drive. The Basis for our request for this reconsideration lies in the Austin City Code itself. LDC Section 25-12-153 (601.1.1), as cited in Mr. Critendon's letter, clearly states:

"The water system of every house or building shall be separately and independently connected to a state licensed public potable water system if any part of the lot or tract that contains the house or building is with 100 feet in horizontal distance (measured on the closest practicable access route) of the public water system. Connection to the public water system is not required if any of the following apply:

- (1) The property owner has received a written denial of service from the owner or governing body of the public water system.
- (2) The property owner has received a written determination from the water utility that it is not feasible for the building to be connected to the potable water system.
- (3) The property is served by an existing private potable water system and the water utility has determined that the private potable water system may continue to be used based on factors such as the type of facility served, the age, condition, and capacity of the private potable water system and the availability of records regarding the system changes to the system, or the system demand."

Emphasis for terms and phrases in the above citing has been added that we may more easily point out the "codified" basis for our request.

I will refer now to Title 1 of the Austin City Code, specifically Chapter 1-1 – GENERAL PROVISIONS. In Section 1-1-2- GENERAL DEFINITIONS note the initial statement, "Unless a different definition is expressly provided in this Code:"... It is therefore understood one is required to assume terms defined in this section are applied according to the stated definition of the term.

EXHIBIT
B

Furthermore in Section 1-1-3- WORDS AND PHRASES, we are instructed that "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." In addition, "Words and phrases that have acquired a technical or particular meaning whether by definition or otherwise, shall be construed accordingly". Finally in Section 1-1-6-CREATION OF DUTIES; DISCRETION; RIGHTS; CONDITIONS; AND PROHIBITIONS, it is noted the word "Shall" imposes a duty, "May" creates discretionary authority or grants permission, and, "Is not required to", negates a condition precedent.

In view of the above code sections, our position to forgo connecting to AW is clearly supported by the Austin City Code and the language contained therein. Every house or building **shall** be connected to the public potable water system **unless** it meets one of the three stated mitigating conditions delineated in the text of the code. The "property" in question is served by an existing potable water system in the form of 980 foot deep water well drilled in 2015 by a state licensed well driller. Nowhere in condition (3) of the above cited code section does it say house, dwelling, or building served. Condition (3) of the code language only says "the property is served". Presently the property in question is a vacant lot and has been since the subdivision was approved and developed. This well has continually provided a potable water source since being drilled and is operated by utilizing a generator. The well "existed" prior to our application for a residential building permit and we are now requesting that we may continue to use the well as a source of potable water for our proposed residential construction project.

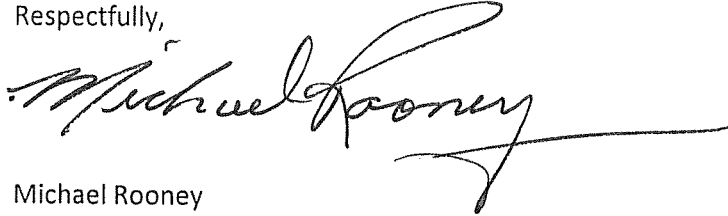
The one remaining provision contained in the code is for the water utility to determine that our private potable water system may continue to be used. This determination by the water utility should be solely based on factors delineated in the code section such as: type of facility to be served (i.e. our proposed residence). The age, condition, and capacity of the private potable water system, and availability of records regarding the system. All the foregoing are readily available and will be provided upon your request.

In summary, Austin City Code mandates connection to the public water system except in the three stated specific circumstances. The first two circumstances give total control to the governing body of the public water system in the form of requiring a written denial letter or, as in the second circumstance, a written letter from the utility determining that it is not feasible for the building to be connected for whatever reason. The third circumstance, under which we submit this request, does provide an option for those who, for their own reasons, do not wish to be connected to the public system and have an existing source of potable water on the property. We would like to believe that the "utility determination" provision contained in this third circumstance will be exercised strictly and solely in evaluating the viability of the existing source of potable water in determining that it may continue to be used for the proposed construction project and not as a means of a unilateral and unsupported means of denial.

Yvonne and I are fully aware that the Glenlake water system is a "legacy" type system and has inherent problems that have been assumed by AW. This situation coupled with Yvonne's medical history is the basis for our desire to provide our own "known" potable water supply. It is our sincere hope you will uphold the Austin City Code and follow all the herein cited provisions and honor our personal desire to forgo connection to AW at this time. It is our understanding as Director you have the authority to honor our request for reconsideration and administratively approve this request under the strict guidelines of the present Austin City Code, all without setting any sort of legal precedent or compromising other current plumbing code sections or utility criteria manual tap design provisions.

In closing, please do us the courtesy to be "specific" regarding any objections you may have in granting our request to forgo connection at this time and provide code references that support any denial of our rights under the Austin City Code sections we have cited in this appeal. We have been customers of the public water utility for most of our lives and believe in the benefits of such a public system. That being said, there are legitimate cases that need a means to forgo service, hence the provision in the code. I sincerely believe this is one of those rare cases. Thank you for your time and consideration in this matter and for all the kind professional consideration shown to us by all the managers and staff at Austin Water Utility.

Respectfully,

A handwritten signature in black ink, reading "Michael Rooney". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Michael Rooney
Yvonne Nacu
3672 Ranch Creek Drive
Austin, TX 78730
512-917-0733

Cc: Antonio Canales, Division Manager, Special Services, Austin Water
Bart Jennings, Division Manager, Utility Development Services, Austin Water
Reyna Holmes, P.E., Supervising Engineer, Utility Development Services, Austin Water
Kevin Critendon, P.E. Assistant Director, Austin Water

Michael Rooney
Yvonne Nacu



City of Austin

Austin Water P.O. Box 1088 Austin, Texas 78767 (512) 972-0101

March 13, 2017

Mr. Michael Rooney and
Ms. Yvonne Nacu
3072 Ranch Creek Drive
Austin, TX 78730

Re: Appeal of staff interpretation contained in letter from Mr. Kevin Critendon dated February 23, 2017 and request for reconsideration under LDC Section 25-12-153 (601.1.1) to forgo Austin Water Services for Lot 73 of the Glenlake Subdivision Phase 2 (3704 Ranch Creek Drive Austin, Texas 78730)

Dear Mr. Rooney and Ms. Nacu:

This letter is in response to your request for an appeal and reconsideration of staff's interpretation related to your request to be exempt from connecting to the City's public potable water system pursuant to Land Development Code ("LDC") Section 25-12-153 (601.1.1) for your property at 3704 Ranch Creek Drive, Austin, Texas 78730.

I have personally reviewed the facts and your request for reconsideration. According to State of Texas Well Report #409897, the water well in question was drilled on or about 9/25/2015. The subject well (your well) has not been used to provide private potable water service to any "house or building" located at 3704 Ranch Creek Drive.

The state licensed public potable water system (the public water system) serving Glenlake Subdivision Phase 2 was installed in the early 1980's prior to the date your well was drilled. Therefore, your well was not "existing" prior to the time this public water system began providing service.

Based on these facts, I concur with the previous conclusion that your well was not "existing" prior to the public water system and that the exception related to "existing private potable water system" does not apply in your case and that connection to the public water system is required under the plumbing code.

Should you have any questions, please contact Mr. Kevin Critendon, P.E., Assistant Director for Austin Water at 512-972-0191.

Sincerely,


Greg Meszoros, Director
Austin Water

cc: Maria Sanchez, Attorney, City of Austin
Kevin Critendon, P.E., Assistant Director, Austin Water
Antonio Canales, Division Manager, Special Services, Austin Water
Bart Jennings, Division Manager, Utility Development Services, Austin Water
Reyna Holmes, P.E., Supervising Engineer, Utility Development Services Austin Water



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EXHIBIT

C

STATE OF TEXAS WELL REPORT for Tracking #409897

Owner: **Michael Rooney** Owner Well #: **No Data**
Address: **3672 Ranch Creek Dr** Grid #: **58-42-1**
Austin, TX 78730
Well Location: **3704 Ranch Creek Dr** Latitude: **30° 21' 24" N**
Austin, TX 78730 Longitude: **097° 50' 51" W**
Well County: **Travis** Elevation: **858 ft. above sea level**

Type of Work: **New Well** Proposed Use: **Domestic**

Drilling Start Date: **9/10/2015** Drilling End Date: **9/25/2015**

	<i>Diameter (in.)</i>	<i>Top Depth (ft.)</i>	<i>Bottom Depth (ft.)</i>
Borehole:	7.875	0	940

Drilling Method: **Air Rotary**

Borehole Completion: **Straight Wall**

	<i>Top Depth (ft.)</i>	<i>Bottom Depth (ft.)</i>	<i>Description (number of sacks & material)</i>
Annular Seal Data:	0	30	Cement 8 Bags/Sacks
	30	618	Bentonite 37 Bags/Sacks
	618	680	Cement 18 Bags/Sacks

Seal Method: **Positive Displacement**

Distance to Property Line (ft.): **65**

Sealed By: **Driller**

Distance to Septic Field or other
concentrated contamination (ft.): **N/A**

Distance to Septic Tank (ft.): **N/A**

Method of Verification: **Tape**

Surface Completion: **Surface Sleeve Installed**

Surface Completion NOT by Driller

Water Level: **No Data**

Packers: **Rubber at 680 ft.**
Plastic at 685 ft.
Rubber at 690 ft.
Plastic at 695 ft.
Rubber at 700 ft.
Plastic at 705 ft.
Rubber at 710 ft.
Plastic at 715 ft.

Type of Pump: **Submersible**

Pump Depth (ft.): **800**

EXHIBIT
D

Well Tests: Jetted Yield: 50+ GPM

Water Quality:

Strata Depth (ft.)	Water Type
740 - 920	TDS 950

Chemical Analysis Made: No

Did the driller knowingly penetrate any strata which
contained injurious constituents?: No

Certification Data: The driller certified that the driller drilled this well (or the well was drilled under the driller's direct supervision) and that each and all of the statements herein are true and correct. The driller understood that failure to complete the required items will result in the report(s) being returned for completion and resubmittal.

Company Information: Whisenant & Lyle Water Services

PO Box 525
Dripping Springs, TX 78620

Driller Name: Martin Lingle

License Number: 54813

Comments: Amended 02/28/16 ~DG Per Request from Hydro Resources

Report Amended on 2/28/2017 by Request #20865

Lithology:
DESCRIPTION & COLOR OF FORMATION MATERIAL

Top (ft.)	Bottom (ft.)	Description
0	5	Brown Limestone
5	10	Brown limestone clay
10	21	Gray limestone
21	23	Brown limestone
23	30	Gray limestone
30	38	Brown tan limestone
38	90	Gray limestone
90	95	Tan limestone
95	200	Gray tan limestone
200	270	Gray limestone
270	300	Brown tan limestone
300	360	Gray limestone
360	420	Tan limestone
420	610	Gray tan limestone

Casing:
BLANK PIPE & WELL SCREEN DATA

Dia (in.)	Type	Material	Sch./Gage	Top (ft.)	Bottom (ft.)
4.5	Blank	New Plastic (PVC)	17	2	820
4.5	Screen	New Plastic (PVC)	17 0.032	820	920
			open hole	920	940

610	640	Gray clay
640	660	Gray tan limestone
660	680	Tan limestone
680	720	Tan red sandstone clay red
720	740	Tan sandstone
740	780	Red sandstone
780	910	Conglomerate
910	920	Black rock

IMPORTANT NOTICE FOR PERSONS HAVING WELLS DRILLED CONCERNING CONFIDENTIALITY

TEX. OCC. CODE Title 12, Chapter 1901.251, authorizes the owner (owner or the person for whom the well was drilled) to keep information in Well Reports confidential. The Department shall hold the contents of the well log confidential and not a matter of public record if it receives, by certified mail, a written request to do so from the owner.

Please include the report's Tracking Number on your written request.

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711
(512) 463-7880

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE E. GROUNDWATER MANAGEMENT

CHAPTER 36. GROUNDWATER CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "District" means any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the commission.

(4) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

(5) "Groundwater" means water percolating below the surface of the earth.

(6) "Groundwater reservoir" means a specific subsurface water-bearing reservoir having ascertainable boundaries containing groundwater.

(7) "Subdivision of a groundwater reservoir" means a definable part of a groundwater reservoir in which the groundwater supply will not be appreciably affected by withdrawing water from any other part of the reservoir, as indicated by known geological and hydrological conditions and relationships and on foreseeable economic development at the time the subdivision is designated or altered.

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) 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 road ditch, 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;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" also has the meaning assigned by Section 11.205.

(9) "Use for a beneficial purpose" means use for:

(A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

(B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or

(C) any other purpose that is useful and beneficial to the user.

(10) "Subsidence" means the lowering in elevation of the land surface caused by withdrawal of groundwater.

(11) "Board" means the board of directors of a district.

(12) "Director" means a member of a board.

(13) "Management area" means an area designated and delineated by the Texas Water Development Board under Chapter 35 as an area suitable for management of groundwater resources.

(14) "Priority groundwater management area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

(15) "Political subdivision" means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a state agency, or a nonprofit water supply corporation created under Chapter 67.

(16) "Loan fund" means the groundwater conservation district loan assistance fund created under Section 36.371.

(17) Repealed by Acts 2005, 79th Leg., Ch. 970, Sec. 18, eff. September 1, 2005.

(18) "Public water supply well" means, for purposes of a district governed by this chapter, a well that produces the majority of its water for use by a public water system.

(19) "Agriculture" means any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

(E) wildlife management; and

(F) raising or keeping equine animals.

(20) "Agricultural use" means any use or activity involving agriculture, including irrigation.

(21) "Conjunctive use" means the combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source.

(22) "Nursery grower" means a person who grows more than 50 percent of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, "grow" means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(23) "River basin" means a river or coastal basin designated as a river basin by the board under Section 16.051. The term does not include waters of the bays or arms originating in the Gulf of Mexico.

(24) "Total aquifer storage" means the total calculated volume of groundwater that an aquifer is capable of producing.

(25) "Modeled available groundwater" means the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108.

(26) "Recharge" means the amount of water that infiltrates to the water table of an aquifer.

(27) "Inflows" means the amount of water that flows into an aquifer from another formation.

(28) "Discharge" means the amount of water that leaves an aquifer by natural or artificial means.

(29) "Evidence of historic or existing use" means evidence that is material and relevant to a determination of the amount of groundwater beneficially used without waste by a permit applicant during the relevant time period set by district rule that regulates groundwater based on historic use. Evidence in the form of oral or written testimony shall be subject to cross-examination. The Texas Rules of Evidence govern the admissibility and introduction of evidence of historic or existing use, except that evidence not admissible under the Texas Rules of Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 1

(31) "Operating permit" as used in this chapter means any type of permit issued by a district that relates to the operation of or production from a water well, which may include authorization to drill or complete a water well if the district does not require a separate permit for drilling or completing a water well.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 1

(31) "Operating permit" means any permit issued by the district for the operation of or production from a well, including a permit to drill

or complete a well if the district does not require a separate permit for the drilling or completion of a well.

Added by Acts 1995, 74th Leg., ch. 933, Sec. 2, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.20, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 966, Sec. 2.29, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1234, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(147), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 970 (H.B. 1763), Sec. 18, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1116 (H.B. 2423), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 18 (S.B. 737), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1233 (S.B. 660), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 308 (S.B. 854), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 415 (H.B. 2767), Sec. 1, eff. June 10, 2015.

Sec. 36.0015. PURPOSE. (a) In this section, "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

(b) In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the

best available science in the conservation and development of groundwater through rules developed, adopted, and promulgated by a district in accordance with the provisions of this chapter.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 4.21, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.30, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 993 (H.B. 200), Sec. 1, eff. September 1, 2015.

→ Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) The groundwater ownership and rights described by this section entitle the landowner, including a landowner's lessees, heirs, or assigns, to:

(1) drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence; and

(2) have any other right recognized under common law.

(b-1) The groundwater ownership and rights described by this section do not:

(1) entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of that landowner's land; or

(2) affect the existence of common law defenses or other defenses to liability under the rule of capture.

[(c) Nothing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by this section.]

(d) This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production