

ADDENDUM “D”

District Regulatory Plan: Phase II (A) **Lone Star Groundwater Conservation District** (Amended March 10, 2009)

A. Purpose of Phase II (A) of District Regulatory Plan

The Lone Star Groundwater Conservation District ("District") is taking the next step in the implementation of its District Regulatory Plan ("DRP") with the adoption of this Phase II (A) of the DRP. In summary, this phase of the DRP does the following three things: (i) it requires certain Large Volume Groundwater Users, as that term is defined in Section B of this document, to submit to the District certain water planning documentation associated with achieving compliance with the District Regulatory Plan, (ii) it sets forth a timetable for such submittal, and (iii) it establishes penalties associated with non-compliance.

In Phase I of the DRP, the District established a benchmark for the reduction of groundwater production within Montgomery County by requiring the total annual groundwater production to be reduced to a level equal to or less than 64,000 acre-feet by January 1, 2015, which has been determined to be the sustainable recharge rate for the groundwater resources within Montgomery County. Currently, total demand for groundwater in Montgomery County is greater than 78,000 acre-feet. By 2015, it is anticipated the total groundwater demand will reach approximately 88,000 acre-feet.

The District recognizes the need for long-term water planning based upon the significant periods of time it takes to bring alternative water supplies on-line on a retail basis. The term “alternative water supplies” refers to sources of water other than groundwater produced within Montgomery County or adjacent counties, except as provided under Section (C)(4)(d), and typically includes surface water or reuse of treated effluent. The process of obtaining new alternative water supplies and constructing the necessary infrastructure to deliver such supplies to the intended water users takes years to complete. Because of these time considerations and the impending groundwater reduction deadline of January 1, 2015, this Phase II (A) of the DRP requires certain specified large volume groundwater users to demonstrate incremental progress towards conversion to alternative water supplies.

During Phase II (A) of the DRP, the District will:

(1) maintain the single county-wide management zone regulatory approach established in Phase I of the DRP; and

(2) require the Large Volume Groundwater Users to submit a Water Resources Assessment Plan ("WRAP") to the District.

The District will use the planning and technical information gathered through the WRAP process to determine the most appropriate regulatory approach for groundwater reductions by new and historic users when it adopts Phase II (B) of the DRP, which may include additional management zone delineations.

While Phase II (A) primarily establishes a detailed planning process for Large Volume Groundwater Users, as defined herein, Phase II (B) will set forth the actual regulatory requirements designed to achieve the District's long-term groundwater management goals. In addition to establishing requirements for reductions in groundwater use, Phase II (B) may also include preliminary requirements, such as the submittal of a Groundwater Reduction Plan, to establish milestones and a schedule for meeting the required groundwater reductions. Persons and entities who produce groundwater in Montgomery County in quantities smaller than the threshold set forth under the definition of "Large Volume Groundwater User," and therefore who are not required to prepare a WRAP under this Phase II (A), should not assume that they will be exempt from regulation or the requirement to reduce groundwater production under Phase II (B) of the DRP.

B. Definition of Large Volume Groundwater User

(1) For purposes of the DRP, the term "Large Volume Groundwater User" is defined to mean any person or entity that, through a single well or a combination of wells, actually produces or is authorized by permit(s) issued by the District to produce 10 million gallons or more of groundwater annually on or after January 1, 2008, except as provided by Subsection (2) of this section.

(2) The term "Large Volume Groundwater User" does not include a person or entity that produces groundwater solely for:

- (a) its own domestic use associated with a single family residence;
- (b) agricultural use, as "agricultural use" is defined by Chapter 36, Water Code; or
- (c) both (a) and (b).

(3) The District expressly reserves the right to amend the definition of "Large Volume Groundwater User," including without limitation expanding the definition to include other groundwater users in the District.

C. Water Resources Assessment Plan

1. Applicability of WRAP Submission Requirement; Exemption for Small Systems under Common Ownership or Operation

Each Large Volume Groundwater User is required to submit Parts I and II of a WRAP to the District by the deadlines set forth below. Part I is the Identification of Current and Projected Water Demand section of the WRAP, and Part II is the Water Supply Plan section of the WRAP.

A Large Volume Groundwater User that owns or operates two or more otherwise independent public water supply systems or commercial operations under separate permits issued by the District that are not tied to a common distribution system shall not be required to submit a WRAP for those independent systems or operations that would not qualify as Large Volume Groundwater User systems or operations if they were not under common ownership or operation by the Large Volume Groundwater User. For example, an investor owned utility that owns numerous separate and distinct public water systems for separate platted subdivisions is not required to submit a WRAP for water use in a particular subdivision that: (1) is authorized under its own permit, (2) is not interconnected to a larger aggregated system, and (3) is permitted for less and produces less than 10,000,000 gallons per year.

2. Authorization for Joint WRAP Submissions

A Large Volume Groundwater User may meet the WRAP submission requirement by participating in a single WRAP submitted on behalf of two or more Large Volume Groundwater Users that includes the required information for all participants. A WRAP jointly submitted by two or more Large Volume Groundwater Users must:

(a) generate the required reduction of groundwater production for the group as a whole;
and

(b) include a written agreement between the participants demonstrating that the person or entity submitting the WRAP is duly authorized to submit the WRAP on behalf of all of the participants.

3. Deadlines for Submission of Parts I and II of the WRAP

(a) Each person or entity who qualifies as a Large Volume Groundwater User as of February 12, 2008 (the date of adoption of this DRP Phase II (A)), shall provide to the District:

(i) a completed Part I of the WRAP on or before September 1, 2008; and

(ii) a completed Part II of the WRAP on or before March 2, 2009.

(b) Each person who through a new permit, permit amendment, or increased groundwater production exceeds the threshold for qualifying as a Large Volume Groundwater User for the first time on a date after February 12, 2008, but before July 1, 2009, shall provide to the District:

(i) a completed Part I of the WRAP on or before the 180th day after the date of such permit or permit amendment approval or such increased use; and

(ii) a completed Part II of the WRAP on or before the 360th day after the date of such permit or permit amendment approval or such increased use.

(c) Beginning July 1, 2009, all persons or entities applying for new permits, permit renewals, or amendments to existing permits that, if approved by the District, will qualify the person or entity as a Large Volume Groundwater User shall accompany the application with a new completed WRAP (both Parts I and II), an amendment to an existing WRAP, or evidence that the application is covered by an existing WRAP already reviewed and approved by the District. Failure to accompany the application with the completed WRAP, WRAP amendment, or evidence shall render the application administratively incomplete, notwithstanding anything to the contrary in the District Rules.

(d) All WRAP Part I and Part II submissions shall be provided to the District in both written hard copy and electronic form at the District office by 5:00 p.m. on the due date.

4. Assumption of Specific Levels of Groundwater Reduction and Supply

(a) Each Large Volume Groundwater User who prepares an individual WRAP shall assume that the District will reduce the groundwater production authorized under its permits issued by the District to no more than 70 percent of the user's total water demand beginning on January 1, 2015. Thus, supply figures for 2015 shall include a groundwater component of no more than 70 percent of the user's total water demand, and a surface water or alternative water supply component for the remaining supply needed to meet total demand. For purposes of projecting water demand and supply needs after 2015 for inclusion in the WRAP, each individual or group submitting a WRAP should assume that increased demand after January 1, 2015, will be met 100 percent by surface water or alternative water supplies for WRAP purposes. Water demand located outside the boundaries of the District shall not be included for purposes of WRAP preparation, including these groundwater reduction and supply assumptions, except to the extent that the demand is supplied by a distribution system actually using groundwater produced in the District.

(b) Notwithstanding Subsection (a) of this section, for WRAPs that contemplate one or more additional groundwater-to-alternative water conversion projects after the initial January 1, 2015, conversion, the WRAP may provide for growth on groundwater between such conversions in a manner that contemplates actual groundwater production exceeding the assumptions set forth in Subsection (a) of this section in some calendar years only if:

(1) the WRAP timely meets or exceeds the initial 70 percent groundwater / 30 percent alternative supply requirement for the January 1, 2015, conversion; and

(2) the overall average groundwater use under the WRAP for the planning period from 2015 to 2045 complies with the assumptions set forth under Subsection (a) of this section.

(c) Notwithstanding Subsection (a) of this section, WRAPs submitted jointly on behalf of two or more Large Volume Groundwater Users may provide for over-conversion to surface or alternative water supplies by some users and under-conversion by others if supply for total demand among all users participating in the WRAP collectively complies with the assumptions set forth under Subsection (a) of this section. For example, the WRAP may provide that some individual WRAP participants remain on 100 percent groundwater if the group as a whole

achieves the required conversion amount for all participants by over-converting some participants. This regional approach to achieving the required conversion maximizes flexibility for all participants and greatly reduces overall cost by reducing the amount of infrastructure that must be built to achieve the required conversion.

(d) Notwithstanding Subsection (a) of this section, a Large Volume Groundwater User may include groundwater produced in a county adjacent to the District as an alternative water supply for purposes of Subsection (a) if the following criteria are met:

(i) the user provides retail water service in a distribution system located both in the District and an adjacent county that is supplied by groundwater or surface water from locations both in the District and the adjacent county;

(ii) the user includes as an element of its WRAP and, by April 1, 2009, actually accomplishes a reduction of groundwater production in the District so that the user's total annual volume of groundwater produced in the District will be reduced by no less than 35% from its 2008 calendar year production in the District, if annualized at the rate of production after April 1, 2009, and thereafter will not ever exceed that total annual volume:

(iii) 100% of groundwater used as an alternative supply in the adjacent county is subject to the surface water conversion requirements of a subsidence district or a groundwater conservation district other than the District that are at least as stringent as the conversion assumptions set forth under Subsection (a); and

(iv) the user commits in writing to the District before April 1, 2009, that it will not ever increase groundwater production in the District above the levels produced in accordance with Paragraph (ii) of this subsection.

(e) Conservation projects are encouraged for all users, but shall be considered in the WRAPs and by the District as a reduction of total demand rather than a supply strategy for DRP purposes, unless they are metered. Measurable reductions in total demand can be achieved through the use of water conservation measures and efficient management practices. Conservation measures and efficient management practices result in the overall reduction of total water demand, which reduces both the need for groundwater and alternative water supplies. The District encourages the use of any conservation measures and efficient management practices that reduce total water demand. While these reductions are not counted as an alternative water supply for WRAP purposes unless they are actually metered alternative water supplies, they will reduce a permittee's overall costs by reducing the amount of alternative water supplies that must be obtained and by reducing ongoing groundwater production costs. Metered alternative water supplies will receive credit as alternative water supplies for purposes of the initial conversion under Subsection (a) of this section regardless of whether such supplies were implemented prior to the date of adoption of Phase II (A) of the DRP.

(f) The District reserves the right to reduce groundwater production under permits granted by the District at levels greater or less than those described for WRAP preparation purposes under Subsection (a) of this section when it adopts Phase II (B) of the DRP or otherwise in the future throughout the county or in individual management zones if the District deems it necessary or appropriate in order to properly manage the groundwater resources of

Montgomery County. The January 1, 2015, 70 percent groundwater / 30 percent alternative water supply assumption for WRAP preparation from Subsection (a) of this section is based upon the January 1, 2015, 64,000 acre-feet total annual groundwater production requirement from Phase I of the DRP, and is not a guarantee of future regulatory action by the District.

5. Components of Part I of the WRAP: Identification of Current and Projected Water Demand

To satisfy the requirement to submit Part I of the WRAP, each Large Volume Groundwater User must provide the following information to the District:

(a) Estimates of population and total water demand (in gallons) for the following year ending dates:

- (1) Current (calendar year of WRAP submission)
- (2) Projected
 - a. 2015
 - b. 2025
 - c. 2035
 - d. 2045

The data must be from the Texas Water Development Board or the Texas State Demographer, unless otherwise agreed upon by the District and the person preparing the WRAP. This component of Part I of the WRAP must include explanations detailing significant projected increases or decreases in total water demand. Public water suppliers should use intended service areas when completing the population and water demand information required by Part I, and include a map of such intended service areas for each of the above years. Water demand located outside the boundaries of the District shall not be included for purposes of WRAP preparation except to the extent that the demand is supplied by a distribution system actually using groundwater produced in the District.

(b) Information about current well capacity including:

- number of wells
- tested well capacity (in gallons per minute)
- date of well installation

(c) Identification of current water supply sources including:

- Annual groundwater use for each of the last five years (in gallons)
- Annual surface water use for each of the last five years (in gallons)
- Quantity of alternative sources of water used to meet water demand in each of the last five years (in gallons) (examples include reuse, treated effluent, or other metered alternative supplies)

(d) Information about groundwater quality issues, if any, that may impact supply, including information regarding any groundwater constituents that exceed primary or secondary drinking water standards under state or federal regulations.

(e) If the WRAP is jointly submitted for two or more Large Volume Groundwater Users, a copy of the written agreement required under Section (C)(2).

* Part I of the WRAP must be signed and sealed by a registered professional engineer in the State of Texas.

6. Components of Part II of the WRAP: Water Supply Plan

To satisfy the requirement to submit Part II of the WRAP, each Large Volume Groundwater User must provide the following information to the District:

(a) descriptions of new water supply sources and strategies to meet projected water demands that comply with the assumptions set forth under Section (C)(4);

(b) description of infrastructure requirements for each new water supply source;

(c) timelines for design and construction of infrastructure projects;

(d) a letter from a surface water or alternative source supplier indicating availability of water and willingness to supply water to meet the Large Volume Groundwater User's demands, as applicable;

(e) description of costs and methods of financing water supply and infrastructure;

(f) preliminary engineering of infrastructure necessary to meet water demands for the January 1, 2015, initial conversion date (for the purposes of the WRAP, "preliminary engineering" means the level of engineering necessary to define the infrastructure of the project, to determine the feasibility and projected construction timeline of the project, and to establish reliable cost estimates; the requirement of preliminary engineering is not intended to include preliminary construction plans for the entire submittal, however, that level of detail could be required for specific components; the District will make the final determination of whether a proposed WRAP meets the definition of preliminary engineering);

(g) conceptual engineering of the infrastructure necessary to met future water demands beyond the January 1, 2015, initial conversion date; and

(h) if the WRAP is jointly submitted for two or more Large Volume Groundwater Users, a copy of the written agreement required under Section (C)(2).

* Part II of the WRAP submitted to the District must be signed and sealed by a registered professional engineer in the State of Texas.

D. District Review; Penalty for Failure to Submit Timely or Complete WRAP

The District shall review all WRAPs to determine compliance with the requirements set forth herein. A person or entity required to submit a WRAP under Phase II (A) of the DRP who fails to provide the District with completed and compliant Parts I or II of the WRAP within the specified deadlines and with all required information shall be subject to enforcement for violation of District Rules, including permit suspension or revocation and the assessment of penalties by the District. The District may assess a Large Volume Groundwater User the following penalties in lieu of or in addition to seeking an injunction or other legal or equitable remedies available to the District:

a. a flat fee civil penalty not to exceed \$500.00 per day for each day of a continuing violation; or

b. a civil penalty not to exceed \$3.00 per thousand gallons of groundwater produced after failing to comply with a WRAP deadline.