

## **Plum Creek Conservation District Mitigation Plan Rules**

### **Purpose:**

The purpose of this mitigation plan is to provide for a means to allow a water well owner or water well user who has been granted legal authority to use the well, and who alleges that his/her , water well has been negatively impacted by the pumping of a neighboring water well, the opportunity to apply for and seek mitigation.

### **General:**

Texas is a State that uses the principle of the “Rule of Capture” of groundwater as a means of allowing groundwater pumping and use. In Texas groundwater is owned by a person who has ownership to the surface of land under which water might be accessed or one who has leased the right to produce groundwater from underneath a particular surface area. There can also be separate ownership of the right to produce groundwater from a surface tract, just as there can be separate ownership of minerals under a particular surface tract of land. There are also groundwater districts that have the obligation to have rules about accessing and producing water. However, a District may not require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner.

Water in the subsurface does not stay in one place but moves from place to place within underground formations without regard to political or surface ownership boundaries. The general legal rules for a surface owner to produce groundwater are not related to the size of the surface area or leased area but that the water produced must be used for a beneficial purpose, produced without a deliberate intent to harm another, and produced in a quantity that does not cause subsidence through negligence.

Texas State law gives many the right to produce groundwater without obtaining a permit from a groundwater district. Two examples are water produced in limited quantities to provide water for domestic and livestock purposes for a residence, or water produced by an oil and gas operator for exploration or development of oil and gas and some other mineral resources. The result of the way Texas law is structured is there is no guarantee that someone with a well producing groundwater will continue to have a usable quantity of water in the geologic formations under a particular tract of land notwithstanding the ownership of water under a particular property. To use one example, if there are multiple small tract surface owners of land, each with a well that is used for domestic and livestock purposes, there is no guarantee that the quantity of water under each separate tract will always be available to a tract because many neighbors pumping from the same source can deplete the supply in a particular zone so not all users of water in that zone will be able to have access to groundwater.

This understanding of Texas Law is necessary for all because of its impacts on the limits of groundwater districts to protect each well owner from addressing all conditions that

might result in water availability problems in any existing well. These Mitigation Rules of Plum Creek Conservation District are structured and drafted to address situations that the District has power to control through its rulemaking.

**Definitions:**

**Area of Inquiry:** An area delineated by the District for the purpose of investigating whether conditions associated with the “Well under Inquiry” are being impacted by other wells in the area. It is not a determination of actual impacts of production from a well/s.

**Board:** means the governing body of the District as prescribed by the District’s enabling legislation.

**Mitigation Assessment Report:** An assessment performed by the District that includes a description of the allegations, a map showing registered, unregistered, and permitted well locations, a listing of landowners within the “Area of Inquiry”, water use and production rate records for registered, unregistered, and permitted wells located in the “Area of Inquiry”, a description of the hydrogeology, a listing of records and evidence, an analysis of the relationship between the “Well Under Consideration”, the “Well Under Investigation” and any other registered, unregistered, or permitted well in the “Area of Inquiry”, and recommended options for mitigation, if any, dependent upon available data.

**Registered Well:** means an exempt well that has been registered with the District.

**Permitted Well:** means a non-exempt well that has been issued a permit or other authorization by the District.

**Well under Inquiry:** means the registered or permitted well that is being assessed for mitigation consideration.

**Well/s under Investigation:** means a well or wells being assessed for adversely impacting a registered or permitted well.

The Plum Creek Conservation District mitigation plan involves a process of eight (8) phases which are (1) Pre-Qualification, (2) Well Examination (3) Data Compilation, (4) Mitigation Meeting, (5) Board Report, (6) Rehearing Request, (7) Final Board Ruling, and (8) Compliance.

**Pre-Qualification:**

A well that is being considered for mitigation must be 1) registered or permitted, 2) located within the boundaries of PCCD, and 3) located in an “Area of Inquiry”. If the well meets these qualifications, then the mitigation process will proceed to the next phase, Well Examination; otherwise, mitigation is discontinued.

### **Well Examination:**

1. The “*Well Under Inquiry*” will be inspected for performance and structural integrity by a licensed well driller and/or pump installer using a standard checklist form developed by PCCD. The inspection will include a downhole camera/video investigation if feasible. The cost of the inspection will be paid by the District only if the well has been determined to be structurally sound; however, if the well has structural issues, then the well owner will be responsible for the costs.
2. If the well has not been drilled, equipped, and/or completed according to PCCD rules and *Texas Administrative Code 16, Chapter 76*, mitigation may be discontinued.
3. A water level reading will be taken and recorded.
4. Total dissolved solids (TDS) and/or other water quality contaminants will be tested for and recorded.
5. A geophysical Log will be run if additional information is required. The cost of the geophysical log will be determined by the PCCD Board.
6. The Mitigation process will proceed to the next phase, Data Compilation, if the well has been determined to be structurally sound; otherwise, mitigation is discontinued.

### **NOTIFICATION LETTER:**

1. A letter will be sent to the “Well under Investigation” landowner notifying them that 1) their well is being investigated for mitigation 2) the mitigation process that will be involved 3) the location of the “Well under Inquiry” and 4) other general information as needed.

### **Data Compilation:**

1. The District will gather information from its records that are pertinent for mitigation purposes.
2. Additional information will also be acquired from other sources if available.
3. The landowner of the “*Well Under Investigation*” will be required to submit information about their well on a form supplied by the District.
4. The landowners in the “Area of Inquiry” will be requested to submit information about their well on a form supplied by the District.
5. All of the information gathered will be documented in a mitigation assessment report and sent to the owner of the “*Well under Inquiry*”, the “*Well Under Investigation*”, and registered and permitted wells within the “Area of Inquiry”.

### **Mitigation Meeting:**

1. Following a 90 day period, a meeting will be scheduled between the “*Well Under Investigation*” landowner, the “*Well Under Inquiry*” landowner and PCCD staff.
2. A summary of the mitigation assessment report will be given by the District.
3. The District will moderate among the parties in order to facilitate a possible mitigation solution.
4. Minutes of the meeting will be taken and distributed to all parties.
5. Additional meetings will be scheduled and held if necessary.
6. Following the mitigation meeting/s, a meeting will be scheduled at a PCCD Board of Directors’ meeting.

### **Board Report:**

1. A summary of the mitigation assessment report will be given by the District.
2. Minutes of the meeting will be distributed to Board members and a report will be given to PCCD Board of Directors as to the outcome of the mitigation meeting.
3. If the parties have not come to an agreement, the Board may elect to either 1) direct the parties to continue trying to resolve any remaining issues and reconvene at a future Board meeting 2) revise the permit or impose pumping restrictions on any well permitted by the District that is found to be contributing to conditions requiring mitigation 3) impose civil penalties if there have been rule infractions or violations of State law 4) declare that mitigation is not necessary at this time, 5) require additional testing be done, and reconvene at a future Board meeting or 4) consider other remedies for mitigation including some combination of other remedies listed. If there is mediation under the auspices of the District, costs of such mediation shall be apportioned at the mediation, with no costs attributed to the District.
4. If the parties have reached a verbal agreement, then the Board may choose to 1) approve the terms in which the parties have agreed upon and draft a legal agreement to be signed 2) include additional terms or 3) direct the parties to reconsider the agreement.
5. If the Board has made a ruling or an agreement has been approved by the Board then mitigation moves to the Compliance phase.

**Rehearing:**

1. Should one or more of the parties disagree with the decision of the Board, they may request a re-hearing by submitting a written request within twenty (20) days following the date of the Board's decision only if there is new valid information that was not included in the assessment report, mitigation meeting minutes or brought forth in the Board meeting.

**Final Ruling:**

1. Following no more than a 60 day period from the mitigation re- hearing, the Board will make A determination that may 1) direct the parties to continue trying to resolve any remaining issues and reconvene at a future Board meeting 2) revise the permit or impose pumping restrictions on any well permitted by the District that is found to be contributing to conditions requiring mitigation 3) impose civil penalties if there have been rule infractions or violations of State law 4) declare that mitigation is not necessary at this time, 5)require additional testing be done, and reconvene at a future Board meeting or 4) consider other remedies for mitigation including some combination of other remedies listed. If there is mediation under the auspices of the District, costs of such mediation shall be apportioned at the meditation, with no costs attributed to the District.

**Compliance:**

The District will ensure that all parties are in compliance with the terms, conditions, and requirements of a mitigation agreement or Board ruling.

- 1) The District will submit a report documenting the completion or progress of the mitigation agreement or Board ruling.