

## **Blanco Pedernales Groundwater Conservation District Processing Protested Permit Applications**

This document summarizes the process for protesting a permit application through a contested case hearing (CCH). Every CCH has three primary parts:

- Preliminary Hearing to determine party status and contestable issues
- Evidentiary Hearing, which is a trial to establish the relevant facts and evidence that ends with a Proposal for Decision (PFD)
- Final Hearing before the Board of Directors

### **From protest filing to preliminary hearing**

Chapter 36 requires each groundwater conservation district (GCD) to limit participation to persons with a personal justiciable interest, rather than to members of the public at large. A person who seeks party status must file a protest and request a contested case hearing by the deadline specified in the public notice. Once a timely protest is filed, the matter becomes a “contested” permit application under the district’s rules, triggering the contested case provisions of Subchapter M and portions of Chapter 2001, Government Code, procedures. The presiding officer (hearing examiner or Administrative Law Judge) at the preliminary hearing will determine a party’s right to participate.

### **Preliminary hearing functions**

At the preliminary hearing, the presiding officer must:

- Decide who qualifies as a party based on the personal justiciable interest standard in section 36.415(b)(2).
- Identify the issues to be addressed in the contested case hearing, consistent with the district’s rules and permitting criteria.
- Address motions on jurisdiction, standing, consolidation, or other threshold matters, and set a procedural schedule (discovery, prefiled testimony, hearing date).

If any of the protests survive the preliminary hearing, the matter will move to the evidentiary hearing stage. Any named party may then demand that the hearing be conducted by the State Office of Hearing Examiners (SOAH), but then must pay the district a deposit sufficient to cover the full cost of the SOAH contract.

### **Evidentiary hearing**

The evidentiary hearing is a trial-type proceeding in which parties have due process rights to present evidence, call and cross-examine witnesses, and make legal arguments. If the district contracts with SOAH, an ALJ presides, applies the district’s substantive rules and applicable Chapter 36 standards, and prepares a proposal for decision (PFD) for the district board.

If the board retains the hearing in-house under its own contested case rules, the board or a designated hearing officer takes evidence and prepares findings and a proposed order under section 36.418 and the district’s rules. In either forum, the hearing record—testimony, exhibits, pleadings, and orders—forms the basis for the ultimate permit decision and any judicial review.

Evidentiary hearings for groundwater-related permits rely heavily on the testimony of expert witnesses, such as hydrogeologists. The evidence must show whether the planned permits will unreasonably affect:

- (A) existing groundwater and surface water resources;
- (B) existing permit holders; or
- (C) wells that are registered with the district and exempt from the requirement to obtain a permit under this chapter or district rules.

The applicant must also prove by a preponderance of evidence that:

1. The proposed use of water is dedicated to any beneficial use;
2. The proposed use of water is consistent with the district's approved management plan;
3. The proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;
4. The applicant has agreed to avoid waste and achieve water conservation; and
5. The applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well-plugging guidelines at the time of well closure.

### **Final decision and post-hearing**

In a SOAH-referred case, section 36.4165 provides that the district's final decision on the permit must be based on the evidentiary record from SOAH and may adopt, modify, or reject the ALJ's proposal for decision, subject to any limits in the statute. The board acts by formal vote to issue the final order, which grants, denies, or conditions the permit and includes findings and conclusions grounded in the record. After the final decision, a person affected by and dissatisfied with the district's rule or order may file suit to challenge its validity under section 36.251 and the district rules. The availability and timing of such judicial review, along with any exhaustion requirements, will turn on the specific district rules and the posture of the contested case.

The purpose of every case is to protect the private property rights of everyone involved. The district is dedicated to ensuring every party receives due process and everyone's equal protection rights are respected.

PLEASE NOTE: As soon as an application is contested, the Board of Directors stop acting as a legislative body and starts acting as an administrative judicial body. The Board members must be treated the same as judges, meaning they may not be provided any information or evidence outside the hearing process. Any such contact, whether to lobby for a specific outcome or make statements about the case, may be considered an ex parte communication. A Director who participates in ex parte communications is prohibited from then voting on any part of the contested matter from that point forward.