

**Clearwater Underground Water Conservation District Meeting**  
**700 Kennedy Court**  
**Belton, TX**  
**Wednesday, February 14, 2024**  
**Minutes – Public Hearing**

The Clearwater Underground Water Conservation District (CUWCD) continued with the evidentiary portion of the public hearing on two applications for drilling permits as described below at 1:30 p.m. on Wednesday, February 14, 2024, in the Sirena Room at Tenroc Ranch located at 5471 Thomas Arnold Road, Salado, Texas 76571.

**Board Members Present:**

Leland Gersbach, President, Pct 1  
Gary Young, Secretary, Pct 2  
Jody Williams, Vice President Pct 3  
Scott Brooks, Director, Pct 4  
James Brown, Director, At-Large

**Absent:**

**Staff:**

Dirk Aaron, General Manager  
Shelly Chapman, Admin Manager  
Tristin Smith, Education/Compliance

**Guests**

Mike Gershon – Presiding Officer (Lloyd Gosselink – Attorneys at Law)  
Cole Ruiz – District Counsel (Lloyd Gosselink – Attorneys at Law)  
Mike Keester - Hydrogeology Consultant (KT Groundwater, LLC)

Pete Sylvester – Pape Dawson  
Sharon Higgins  
Janet Kennedy  
Stephanie Ritter  
Spencer Smith  
Gerry Collier  
Bob Cush  
Eric Allmon  
Chris Henning – Pap Dawson  
Barbara McBurney  
Tere Grace  
Patrick Lynch  
Jim Lively  
Bobby Whitson  
Brian Parker  
James Hering  
Tim Fleischer – Salado Village Voice  
Blake Boyd  
Walter Lesley  
Daniel McBurney  
Bert Henry

Brad Cross – Collier  
Phil Higgins  
Charles Simmons  
John Asbury  
Richard Firth  
Larry Michels  
Ron Lusk  
Teri Stach  
Bryon Thaler  
Brian Crane  
Tom Curb  
Susan Edens  
Ben Lawler  
Lynda Bean  
Debbie Fieber  
Debbie Hering  
Kim Walker  
Joe Yelderman – Baylor  
James Kerby  
Chip Howell

Gretchen Miller – Collier  
Gail Hutcherson  
Hank Crismore  
Danette Pappas  
Brian Saathoff  
Richard Bean  
Paul Otte  
Phil Stach  
Ed McBurney  
Bill Grace  
Jeffri King  
Debra Lively  
Tammy Lawler  
Ruth Parker  
James Fieber  
Elliot Hemstreet – TDT  
Lisa Boyd  
James Bishop  
Jessica Diem  
Dale Christianson

**Public Hearing reconvened with President Leland Gersbach at 1:42 p.m.**

**1. Public comments.**

None

**2. Continue the evidentiary portion of the Public Hearing on the following permit application:**

*a.) Discuss, consider, and take appropriate action, if necessary, on an application submitted by Dr. Gretchen Miller, Ph.D., PE, PG, on behalf of Mr. James Kerby, Jaffe Interests LP (Mustang Springs Development), for two drilling permits for two proposed new public water supply wells to be completed in the Lower Trinity Aquifer (Hosston Layer), with a maximum 4-inch column pipe on a 1,106-acre housing development located on the north side of FM-2843 approximately 6 miles west of the Village of Salado in the Stillhouse Hollow Management Zone. No groundwater production will be authorized with these drilling permits.*

President, Leland Gersbach continued the public hearing at 1:42 p.m. and gave a brief explanation of the application and procedures that would apply to the hearing.

Mr. Gersbach stated, as President of the Board, he would be the presiding officer of the hearing. He introduced Mike Gershon as the co-presiding officer who may be ruling on certain legal issues and advising Leland. Leland confirmed a quorum of the Board was present. He recognized Directors: Scott Brooks, James Brown, Gary Young, and Jody Williams.

Mr. Gersbach commented that this is a formal hearing, and the Board will be taking sworn testimony and hearing from witnesses and scientific experts. He noted that at least one of the parties is being represented by an attorney.

Mr. Gersbach discussed additional procedural issues and the purpose of today's hearing. He reminded the protestants that the applications are for drilling permits. He asked them to bear in mind that they will only be looking at the well-site locations and proposed design of 2 proposed wells, and whether or not the applicant needs the water for a beneficial use. He reminded everyone that the Board will not be making a decision on the amount of water to be produced. The Board will look at the volume of production at a later date, ONLY if the wells are allowed to be drilled, only after Jaffe conducts pump tests and prepares a site-specific hydrogeologic report, and only after an application for an operating permit is filed and another public hearing is held. At that time everyone in the room would have notice of any operating permit application and another opportunity to address the volume of water proposed by Jaffe.

Mr. Gersbach went on to explain that in a contested case hearing, the evidentiary portion of the hearing allows affected parties to present evidence that supports their respective positions. Other affected parties will be given an opportunity to cross-examine.

Mr. Gersbach stated that all persons designated as parties to this hearing will be allotted time to present arguments and evidence supporting their respective positions. At the preliminary hearing some of the parties did testify and will offer testimony today. Mr. Gersbach and Mr. Gershon confirmed the list of protestants who indicated they would testify at today's hearing. Those parties are: James Bishop, Hank Crismore, Tom Curb, Susan Edens, Richard Firth, Bill and Tere Grace (who are represented by attorney, Eric Allmon), Phillip and Sharon Higgins (who will also represent Preston and Un Suk Siple), Phillip and Teri Stach, and Janet Kennedy (Charles Simmons will speak on her behalf).

Mr. Gersbach reminded all parties to keep their comments specifically to the drilling permits before the Board today.

Mr. Gersbach called for a 15-minute break to afford those wishing to make a general public comments time to hand in their form to Dirk Aaron. He also asked that the parties visit with their neighbors about consolidating their comments and perhaps designate one individual to voice their shared concerns. Mr. Gersbach said the hearing will reconvene at 2:10 p.m.

#### **Break 1:55-2:10**

Mr. Gersbach asked everyone to take a seat as he reconvened the evidentiary portion of the hearing at 2:10 p.m.

Mr. Gersbach laid out the order of events for this portion of the hearing. He noted that the applications have undergone administrative, legal, and technical review by District staff, General Counsel, and Geoscience Consultants. He stated that a final decision on the applications is not required today but may be made if the evidentiary portion of this hearing is closed. The final decision will involve the Board acting on the applications by either denying the drilling permit application, granting the permit application as requested, or granting the permit application in part or with any special provisions.

Mr. Gersbach offered time for public comments. He recognized Dr. John Asbury as the only person signed up for general public comments. Dr. Asbury stated he had no conflict of interest here and was neutral on the issue. He offered his concerns, thoughts, and suggestions that might be considered on the issue.

Next, Leland stated that he would take appearances by all parties. He read the list of names determined to be parties to the case that were designated at the preliminary hearings. He began with the list of those not wishing to testify:

<u>Last Name</u>	<u>First Name</u>	<u>Present</u>
Ard	David	Yes
Bean	Lynda	Yes
Bean	Richard	Yes
Bishop	Patricia	No
Cousins	Robert & Glenda	No
Crane	Aaron	No
Fieber	James & Deborah	Yes
Fisher	Kyle & Samantha	No
Griesemer	Aaron	No
Hanby	Charles & Judy	No
Hering	James & Debbie	Yes
Hilliard	Samantha	No
Johnston	Mark & Patti	No
Kennedy	Janet	Yes
King	John & Jeffri	Yes
Lawler	Ben	Yes
Lawler	Tammy	Yes
Lesley	Walter & Lisa	Yes
Lively	Debra	Yes
Long	Kristin	No
Lynch	Patrick & Katrina	Yes
McBurney	Barbara & Edgar	Yes
McBurney	Daniel & Elizabeth	Yes
Michels	Larry	Yes
Monteith	Walter & Cheryl	No
Morin	James & Janice	No
Parker	Brian & Ruth	Yes
Ritter	John & Stephanie	Yes
Siple	Preston & Un Suk	No (rep by Higgins)
Walker	Kim	Yes
Walrath	Jason	No
Weatherholt	Maurice	No
Yost	Karyn	No
Yost	Dennis	No

Next, he read the list of names for those who will testify:

<u>Last Name</u>	<u>First Name</u>	<u>Present?</u>
Allmon	Eric	Yes
Bishop	James	Yes
Crismore	Hank	Yes
Curb	Noel (Tom)	Yes
Edens	Susan	Yes
Frith	Richard	Yes
Grace	Bill & Tere	Yes
Higgins	Phillip & Sharon	Yes (not testifying)
Stach	Phillip	Yes
Stach	Teri	Yes
Kennedy	Janet	Yes

Mr. Gersbach administered oaths to those listed above as well as Dirk Aaron, Mike Keester, Vince Clause, Joe Yelderman, Gretchen Miller, James Kerby, and Pete Sylvester. It was also noted that Walter Lesley wanted to testify. Mr. Gersbach confirmed he took the oath with the others.

Mr. Gersbach proceeded to the review and testimony on the applications. He addressed James Kerby and asked him to lay out his application for the Board. Mr. Kerby introduced himself and turned the presentation over to his experts with Pape Dawson to present on his behalf.

Attorney, Eric Allmon, asked to be recognized. He stated that he was representing the Graces and several other parties. He objected to the narrative and discussed his need to cross-examine the witness. Mr. Gershon overruled the objection. He explained that it is typical to allow testimony and then he will be allowed to ask questions and cross-examine the witnesses. Mr. Allmon accepted the ruling.

Pete Sylvester with Pape Dawson Engineers is the senior project manager for this project. He gave an overview of the project.

Mr. Allmon objected to the map being considered in the presentation. He stated that a request of all plans for the development be submitted in discovery and this map was not provided. Mr. Gershon understood that this was submitted with the application and asked Mr. Aaron if they were a part of the permit file. Mr. Aaron responded that a copy of the plat submitted in the packet was recorded by the Village of Salado. Mike asked if the permit package was available on the District website. Mr. Aaron replied that it has been available on the website prior to November 13, 2023. Mike overruled the objection. Mr. Allmon stated that the figure shown was not in the packet but would trust the General Manager if he said it was. Mr. Aaron was confused if Mr. Allmon was referring to the picture/figure or the data. Mr. Allmon stated it was the figure. Mr. Aaron commented that it is different than the one in the packet but identical with more color and definition. Mr. Sylvester commented that the figure was a cleaned-up version to help clarify for the general public. Mr. Allmon commented that a discovery request was made for all plans, conception, design, etc. and nothing was provided. Mr. Gershon noted that information on the slide in question is in the packet and this appears to be an overlay of several documents in the packet. Mr. Sylvester confirmed that this summary of exhibits was in the original application. Mr. Gershon overruled the objection.

Mr. Sylvester concluded his presentation and stated that this site is in the Georgetown CCN. They have initiated an expedited release to the city of Georgetown from the CCN. Mr. Allmon objects to hearsay. Mr. Gershon sustained the objection and asked Mr. Sylvester to restate his comment. Mr. Sylvester addressed questions and answers from the Board and Mr. Allmon. Mr. Allmon submitted exhibit 1 (a partial copy of the development agreement between the Village of Salado and Kerby Ventures) to be entered in the record. Mr. Kerby would like the entire document to be entered. Mike asked Mr. Kerby to submit that to Dirk. Mr. Allmon continued with questions regarding the agreement and other aspects of the application.

Mr. Gershon asked if any other parties wanted to ask questions of Mr. Sylvester. Richard Frith asked if the applicant had withdrawn their permit for a wastewater plant. Mr. Sylvester deferred to Mr. Kerby. Mr. Curb asked if the applicant was going to get Georgetown to release water claims for that area. Mr. Sylvester replied yes.

Dr. Gretchen Miller with Collier Consulting introduced herself and listed her credentials. She presented the hydrogeology portion of the permit requests filed. She discussed the existing wells on the property and the wells they were asked to plug. The wells have been plugged and plugging reports are being filed.

Dr. Miller presented the overall plan for the project. The new wells will be drilled in the lower Trinity. These will initially be test wells, not fully completed while they are conducting water quality tests. They will decide if they will become permanent wells based on water quality and productivity.

Dr. Miller presented details on new wells and background and geology of the Trinity Aquifer. She stated that the wells will be Public Water System wells regulated by TCEQ. They will apply for an operating permit once TCEQ says the water is ok for use. Dr. Miller stated that the beneficial use of the wells will be to provide water to people in their homes.

Mr. Gershon asked if any members of the Board had questions of Dr. Miller. Mr. Brooks commented that the data from these test wells will be beneficial to the District. Mr. Scott asked Dr. Miller if she would recommend to her client that the wells would be viable without first drilling an exploratory well. She said she would not recommend that. Mr. Brooks clarified the only way to determine if there is suitable water for this project without causing harm to others in the area would be to drill the test well. Dr. Miller agreed.

Mr. Aaron asked Dr. Miller about the pilot wells. He asked if they were going to drill 1 well or 2 wells with temporary casing on the front end. She stated that they asked for 2 wells. Based on driller availability, she commented that they will drill one with a temporary casing and test it. Based on those results, they will determine whether to continue with the other well. Mr. Aaron followed up with a question related to well design being sent to TCEQ for approval prior to completing the wells or are they going to use an alternative method with TCEQ called an "as built"? He asked what their approach would be. Dr. Miller replied that the approach would be based on the status of the CCN. TCEQ requires that the issue to be resolved before applying for a permit for construction. The "as built" method could be denied by TCEQ. Mr. Aaron asked Dr. Miller to discuss water quality issues of the "Doc Curb" well in the same management zone (permitted by CUWCD) and challenges associated with the water quality and how she would advise her client. Dr. Miller described the water quality challenge for this well as having high TDS and the TCEQ drinking water standards. She would likely recommend a reverse osmosis system. This would be an expensive process and time-consuming. Mr. Aaron asked if Dr. Miller had looked at the Victory Rock well now that the hydrogeologic report is done and the well completion report is available and what her thoughts were regarding the lack of production. She is concerned that it is below 20gpm. There are issues that can affect production of the well that have nothing to do with aquifer formation. Mr. Aaron stated the aquifer may be more productive its just the well completion, design, and challenges getting through the layers of the hammet shale. Dr. Miller described some of the challenges to drilling through the hammet shale.

Mr. Gersbach asked about a storage tank for the well and what size it would be. She replied they are required to put in a storage tank. She doesn't know for sure the size since they haven't gotten that far in the design.

Mr. Allmon addressed Dr. Miller. He picked up where Mr. Aaron left off regarding the production of the Victory Rock well. He noted that Dr. Miller indicated the Victory Rock well produced less water than what was anticipated and that could be due to factors that have nothing to do with characteristics of the aquifer. Dr. Miller confirmed that statement and explained how the completion of a well can result in less production than anticipated for reasons that don't have anything to do with the characteristics of the aquifer. Mr. Allmon asked her to explain if the drilling mud used could seep into the formation. Dr. Miller said that it could to a limited extent but everything used in the drilling mud has to be approved for use in a drinking water well by TCEQ. Mr. Allmon asked if material moves into the formation during the drilling process, can it affect the formation? Dr. Miller replied that it might make the production of the well lower but it will not harm water quality. Mr. Allmon asked if Dr. Miller had looked at wells in the Hidden Springs area and how many wells were in the area. Dr. Miller did not know. Mr. Aaron replied there were just over 200 at this time. He also noted that there are no lower Trinity wells in that subdivision. Mr. Allmon entered exhibit 2 ("Applicant Jaffe Interests, LP's objections and responses to protestant Bill and Tere Grace's request for production") into the record. He pointed out #3 on page 5 requesting all plans for the development proposed to be served by the proposed well to include any conceptual plans, infrastructure plans (including water supply infrastructure), roadway plans, engineering plans, and /or construction plans. He asked Dr. Miller to verify the response that the applicant is not currently in possession of the documents responsive to the request. Mr. Gershon asked Dr. Miller if she was familiar with this document. She is not familiar with this particular document. Mr. Allmon asked if there were any plans for water infrastructure since the response says there are no responsive documents and asked how a CCN can be obtained from the PUC when there are no plans for the infrastructure to be installed. Dr. Miller deferred this question to Pape Dawson. Mr. Allmon asked if there were any plans submitted with the application. Dr. Miller replied that is not typically the domain of a groundwater conservation district to evaluate those plans. Mr. Allmon asked if the spacing requirement was being required in this case as if the CCN was being held by the applicant. Dr. Miller said that is what was in Mr. Aaron's analysis. Mr. Allmon asked if the track size would be compliant of the district rules if the application were placed by a person without a CCN. Dr. Miller replied no and explained why. Mr. Gershon

stopped Mr. Allmon's questions stating that Dr. Miller is not equipped to answer questions of law. He noted that Mr. Allmon's position is clear to the Board. Mr. Allmon said he would move on from the questioning of this witness.

Mr. Gershon asked if any other parties had questions for the witness.

James Bishop commented that Dr. Miller mentioned a reverse osmosis scenario for the well. He enquired if any environmental studies have been done on the impact of surface release or injection and how it might affect other well owners. Dr. Miller said that they have not done any studies at this time.

Mr. Gershon asked if there was anything Dr. Miller might like to add. Dr. Miller commented regarding the CCN. She said that they are aware of the regulations and intend to comply with them. This a complex matter. As far as the design of the water system, they do not know what the water quality and supply look like so at this stage they will not look at a design until they have more information.

Hank Crismore addressed Dr. Miller. He asked if they had contracted a well driller yet. Dr. Miller responded that they have not. They will do that when the drilling application is approved. His concern is that someone from outside the area may drill this well and not do it correctly. The residents would then have to deal with the aftermath for the rest of their lives. Dr. Miller understood the concern and stated that Collier Consulting is contracted with Pape Dawson and will supervise the drilling operation and will be on-site to monitor with a number of checks and balances. She explained the process. Mr. Crismore's second concern is a trust issue that the people doing this are going to circumvent the system. He reached out to the company with an interest in purchasing some property and asked where the water would come from. He stated that he was told it would come from the Village of Salado. He questioned that response and was told that they were going to drill a large well. He was then told if that didn't happen, that everyone would be able to drill there own well. He stated that the people he spoke to lied to them or they were unprepared to answer the question.

Mr. Gershon asked Mr. Kerby to come forward to answer questions from the Board. Mr. Gersbach asked Mr. Kerby questions related to the application. Mr. Kerby understands the Board does not have the authority to approve or deny the application for a groundwater production permit for reasons beyond the described elements reflected in Mr. Aaron's executive summary. He understands that this is only a permit to drill two public water supply wells with no approval of production other than what is necessary for drilling the wells and completion of the prescribed aquifer pumping test. Mr. Kerby has also agreed to the installation of a metering device so that monthly usage can be reported and allow district staff to make routine site visits to access water levels and verify meter readings. He understands that as a public water supply entity he will be required to have a conservation plan and drought reduction plan presented with his 2-step operating permit application and that the district will require him to office a copy upon ratification of said plan by TCEQ and or any future amendments. Mr. Gershon asked if the Board had any other questions of Mr. Kerby. There were none.

Mr. Gersbach asked Mr. Kerby to take questions from protestants or to make any additional comments he felt necessary. Mr. Kerby stated that he understands there are many steps to this process. He fully intends to bring in experts and top knowledge to advance this to the highest level.

Tammy Stach addressed Mr. Kerby. She asked what access will there be for inspections with the gates are continually locked? Mr. Kerby replied that the gates are currently locked because of the large equipment on site and to keep game animals in. He also stated that they have never denied anyone asking for access to inspect. Mrs. Stach stated that was not true. There is a lack of trust and transparency with this company.

Ed McBurney asked if the wells are drilled and things go bad, does the applicant have the financial ability to repair the property owner's wells that may be damaged. Can they be required to have some type of insurance or bond?

Dirk Aaron addressed Mr. Kerby by saying there is a step-by-step process should the drilling permit be approved. Before returning to the district that he would obtain a CCN, become a public water supply, and have the legal framework in place before coming back for an operating permit. Mr. Kerby agreed.

**Break: 4:00-4:10**

Dirk Aaron called Consultant, Mike Keester. Mr. Keester introduced himself and stated his credentials. He presented his Hydrogeologic evaluation and summarized the background of the application and proposed wells. He explained the hydraulic conditions of the aquifer and noted that groundwater from the Lower Trinity will not affect the Middle Trinity or the Upper Trinity.

Director, Scott Brooks, commented that using best available data it's hard to predict how water moves in that area of the County. He asked if it would be prudent to obtain more data. Mr. Keester agreed. Mr. Gershon asked what the benefit of a multi-well pump test was. Mr. Keester gave an explanation.

Mr. Gershon asked if there were any other questions for Mr. Keester. Charles Simmons had questions on behalf of Janet Kennedy. Mr. Simmons asked how sure Mr. Keester was of his drawdown levels. Mr. Keester replied that he was confident, and his numbers were conservative values.

Mr. Aaron called Vince Clause with LRE. Mr. Clause is a consultant for the District and has worked on the District's 3-D Model. Mr. Aaron asked him to speak on what the hammet shale is. Mr. Clause introduced himself and listed his credentials. He brought a core sample of the hammet shale as a visual to help understand the makeup of an aquitard. He presented information related to the hammet shale.

Mr. Aaron call Dr. Joe Yelderman. Dr. Yelderman is a geoscientist at Baylor University. He has worked with the District for several years related to groundwater issues. He discussed the confining bed or aquitard that lies between two formations and lets very little water in between the aquifers. Mr. Aaron asked Dr. Yelderman to explain tritium and what that means. Dr. Yelderman explained this.

Walter Lesley questioned Dr. Yelderman. He stated that he has 2 wells in the Edwards Aquifer. His concern is drillers punching holes through the Edwards and draining the aquifer. Dr. Yelderman indicated that wouldn't be a concern. Mr. Lesley also confirmed that both wells are to be drilled into the Lower Trinity.

Dirk Aaron presented his executive summary, assessment, and elements of the applications. The application did not comply with the tack size required in the District Rules. The applicant intends to obtain a CCN before they come back for an operating permit. Mr. Aaron noted that the CCN issue had been sufficiently addressed earlier in the hearing. They have paid all fees required. The water is for beneficial use as a public water supply and will follow TCEQ regulations for public water supply. The applicant has agreed to avoid waste and achieve water conservation. The applicant agreed to protect groundwater quality. Spacing and production limitations have been identified and met. The proposed use of water from these wells will not affect the Middle Trinity wells within the radius. The MAG will not be exceeded.

Mr. Gersbach asked Mr. Aaron to explain the difference between an exempt well and a non-exempt well. Mr. Aaron explained the classification and requirements. The applicant will be required to meter the well and the applicant will be required to participate in the District's water level reporting program. Mr. Brooks asked what oversight will there be to ensure the wells are drilled properly. Mr. Aaron replied if the permits are issued there will be direct communication with the driller and consultants. Director, Gary Young commented that what the Board is looking to vote on are drilling permits only.

Mr. Allmon addressed Mr. Aaron regarding tract size. Mr. Allmon confirmed with Mr. Aaron that one tract is approximately 18.37 acres and the other is 2.74 acres. Mr. Arron commented that tract size was addressed in his executive summary, and the wells did not meet tract size. The applicant however demonstrated sufficiently that they were pursuing a CCN. Without a CCN the tract sizes could not be met unless the applicant provided an encumbrance.

Mr. Allmon submitted exhibit 4 related to spacing and tract size requirements related to District rule 9.5.2. He asked Mr. Aaron what the minimum tract size would be for the Stillhouse Management Zone in the Lower Trinity with a 4" column pipe. Mr. Aaron commented that for this particular rule, it would be a minimum of 20 acres, but the applicant is exempt from the minimum tract size based on the foot-note that states "*The above are exempt from the minimum tract size requirements: 1) a Retail Public Water Utility's Non-exempt New Well if the Well is located within the prescribed boundaries of the Utility's retail water service area that*

*is certificated by the PUC of Texas by the issuance of a CCN.*” Mr. Aaron commented in this instance the applicant meets the tract size because they have initiated and intend to obtain a CCN before an operating permit is approved. Mr. Allmon continued to question the tract size. He commented that the footnote says they are exempt if the well “IS” located within a CCN. These wells are not. Mr. Aaron replied that the applicant has applied for the CCN and it will have to be in place prior to an operating permit being issued. Mr. Allmon asked if this rule applied to a drilling permit. Mr. Aaron stated that it did not, in this case. Mr. Allmon inquired if there was anything in the rules that addressed that bifurcated process. Mr. Aaron said it was standard policy. Mr. Allmon commented that the district is run by rules. He wanted to know where it stated in the rules that the tract size didn’t apply to drilling permits. Mr. Aaron did not have an answer for that. Mr. Gershon interjected that Mr. Allmon was asking some legal questions that he will have an opportunity to address when he puts up his case. Mr. Allmon moved on to further questions. Mr. Allmon referred back to District Rule 1.1 and the definition of a “Retail Public Water Utility” *which means any person, corporation, public utility, water supply corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state, facilities for providing potable water service, or both for compensation.*” He asked Mr. Aaron if this applied to the applicant. Mr. Aaron replied yes. Mr. Allmon asked if the applicant provided any indication that they are operating, maintaining, or controlling a facility providing potable water service. Mr. Aaron replied that the applicant has demonstrated that they intend to be able to do that before they bring an operating permit before the Board. Mr. Allmon commented that the applicant has not provided anything showing they are currently a Retail Public Water Utility. Mr. Aaron responded that Mr. Allmon is correct. Mr. Allmon had no further questions.

Mr. Gershon asked if any of the protestants had any questions.

Mr. Bishop asked if the Board was going to consider the environmental impact at this juncture. Mr. Aaron addressed this concern. If the well comes back with sufficient quantity but water quality requires mitigation, the Board will have to address those concerns when the applicant comes back for an operating permit. The applicant will also have to apply with TCEQ for that type of facility.

Mr. Curb asked Mr. Aaron if the test wells meets the criteria, will these wells be the ones being used for production. Mr. Aaron replied yes.

Mr. Allmon made his opening statement. He commented that this is a 2 step process. He referred to the rules. The rules related to tract size. The rules say what they say and should be applied accordingly. This applicant does not meet the spacing requirement or tract size and does not currently have a CCN. The exemption does not apply because they are not currently a retail public water utility. The rule applies to someone who “IS” a retail public water utility and “HAS” a CCN.

Mr. Allmon called Mr. Crismore and Mr. Stach to testify. They were not available.

Mr. Allmon continued with his closing argument. He referred back to rule 9.5.2 which states the well “IS” located within the boundaries of the CCN (present tense, not future tense) and the applicant “IS” a retail public water utility (present tense, not future tense). He stated that the permit is being issued as if the rules are future tense. Where the rules are plain they need to be followed. For that reason, the permit should be denied.

Mrs. Stach supported what the Attorney presented. She commented that everyone is having to lower their pumps. She was very concerned that so many factors are based on the statement “if things are done properly”. She does not trust that things will be done properly and she and the rest of the community will suffer because of it. She asked the Board to please consider all these concerns when making their decision. Mr. Aaron addressed her concerns.

Mr. Bishop stated that we are fortunate to have a governing body in Clearwater whose duty it is to protect the water resources as well as permit holders. We can't afford to take shortcuts nor fast-track a development. He quoted Chapter 36 of the water code. He urged the Board to consider all the facts before they make a decision on the operating permit.

Dr. Lesley doesn’t know all of the rules. He commented that it’s the district’s job to make sure the district rules are followed.



Mr. Simmons spoke on behalf of Mrs. Kennedy. He presented her concerns related to the application, her concerns with an inaccurate plat of her land, and suggestions for relocating well #1. She has tried to get the plat corrected without any luck. Mr. Kerby has agreed to help resolve the platting issues.

Mr. Curb said he has attended a lot of these meetings on different levels. He commented that his concern is none of the aquifers other than the Edwards are replenishing. The consensus is that people are mining the lower aquifers. The water is going to run out. This particular development is not his problem.

Mr. Gersbach asked if Mr. Kerby would like to offer rebuttal of the testimony of other parties. He did not.

Mr. Gersbach concluded the discussion on the application before the Board for the proposed drilling permit. Seeing that all parties had an opportunity to make their cases, Mr. Gersbach asked if any of the parties contesting the application believe that additional evidence is necessary to be submitted. Hearing none, Mr. Gersbach asked what the wishes of the Board were. Mr. Brooks proposed the Board move to executive session.

The evidentiary portion of the public hearing is adjourned at 6:22 p.m.

Mr. Books moved to go into executive session to confer with legal counsel. Mr. Brown seconded the motion.

The Board convened to executive session at 6:22.

**Executive Session 6:22-7:11**

**The Board reconvened from the executive session at 7:11.**

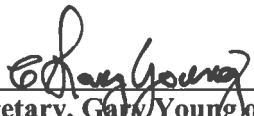
Mr. Gersbach stated that no action was taken during the executive session.

Director, Scott Brooks, moved to approve the drilling permit for Well #2 and Well #1 but with a caveat that the applicant must return to the Board on March 13, 2024, with a properly executed groundwater reservation by encumbering the groundwater rights on the two tracts the applicant owns for the purpose of obtaining 20 acres or more for the second drilling permit for well #1. Vice President, Jody Williams, seconded the motion.

**Motion carried 5-0.**

  
\_\_\_\_\_  
President, Leland Gersbach

**ATTEST:**

  
\_\_\_\_\_  
Secretary, Gary Young or  
Assistant Secretary, Dirk Aaron