

# TEXAS HOUSE OF REPRESENTATIVES

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MAR 23 2009

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### OPINION COMMITTEE



DISTRICT ADDRESS:

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FRANK J. CORTE JR.

March 17, 2009

Honorable Greg Abbott  
Attorney General of Texas  
Post Office Box 12548  
Austin, TX 78711-2548

FILE # ML-46038-09  
I.D. # 46038

**RQ-0790-GA**

Attention: Opinion Committee

Re: Allowable conditions of permit applications submitted to and permits issued by Groundwater Districts created under Chapter 36 of the Texas Water Code.

Ladies and Gentlemen:

I formally request an advisory opinion on the following:

ISSUE:

Whether an underground water district created under Chapter 36 of the Texas Water Code, such as the Kinney County Groundwater Conservation District (KCGCD), may impose requirements on an applicant for a permit or on a permit holder for the use of production of their water rights that is not consistently imposed on all applicants or permit holders.

It as come to my attention that the KCGCD is attempting to impose uneven and apparently inappropriate conditions on the issuance of groundwater permits and permits for drilling wells within the District. Specifically, KCGCD is requiring the following conditions on allowing a permit holder to maintain their permit and to drill a well to access their groundwater:

1. paying legal fees in an ambiguous amount to the District's law firm that are not charged to any other permit applicant or permit holder. These fees are in excess of 100 times the ordinary permit



DISTRICT 122

COMMITTEES: CHAIR-DEFENSE AND VETERANS' AFFAIRS • NATURAL RESOURCES

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fee allowed to be charged by the District's rules;

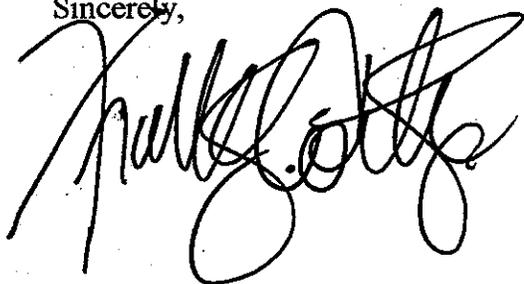
2. paying "future expenses associated with the permits" with no clear indication of what those expenses would be for or the amount that such expenses would total; and
3. participating in the unlawful act of hiring a predetermined engineer/hydrologist as the hydrologist for the District (an act that would violate the Professional Services Procurement Act).

The above fees, costs, and conditions being demanded from a single permit holder are not uniformly imposed on other permit holders within the District, and are not authorized by any District rule or regulation. As you are aware, KCGCD is governed by Chapter 36 of the Texas Water Code. It is my understanding that sections 36.113 and 36.1131 of the Code clearly identify the conditions that may be included in a permit issued by the KCGCD for water rights or for drilling a well. Neither of these sections, nor any rule of the KCGCD, seem to authorize conditions such as those stated above under points 1 through 3 to be imposed as conditions on the application or issuance of a permit. It appears that these conditions have nothing to do with the proposed use of the water, the KCGCD's certified water management plan, waste of the water, or the protection of groundwater quality; and, the three conditions identified appear to have no reasonable nexus to any authorized permit condition provided for in Section 36.113 or 36.1131 of the Texas Water Code. It appears these conditions would constitute a discriminatory burden; and, would be an improper basis for denial of a permit, or as a condition of use of a permit that has already been issued. *See, South Plains Lamesa Railroad, Ltd. v. High Plains Underground Water Conservation Dist. No. 1, 52 S.W.3d 770 (Tex. App. - Amarillo 2001).*

In light of the above circumstance, I am requesting your office to issue an advisory opinion with respect to whether the District may lawfully impose the types of conditions identified in 1 through 3 above on an applicant for a permit or on a permit holder as a condition to receiving a permit or utilizing the permit holder's water rights.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark G. [unclear]". The signature is written in a cursive style with large, sweeping loops.