

**BEFORE THE
HEMPHILL COUNTY UNDERGROUNDWATER CONSERVATION DISTRICT
State of Texas**

**IN THE MATTER OF THE SETTING OF EXPORT FEES FOR THE)
EXPORT OF GROUNDWATER FROM THE HEMPHILL COUNTY)
UNDERGROUND WATER CONSERVATION DISTRICT)**

ORDER ADOPTING EXPORT FEE FOR FISCAL YEAR 2022-2023

ON THIS DAY CAME ON TO BE HEARD before the Board of Directors (“Board”) of the Hemphill County Underground Water Conservation District (“District”) the above-styled matter relative to the establishment of an export fee for groundwater exported from the District. The Board of the District, after having heard, reviewed, and considered relevant evidence, including materials in the Board Packet, and other written materials that may have been brought to the attention of the Board, the presentations of the General Manager of the District, and the presentations of members of the public who may have appeared before the Board, is of the opinion and finds that an order should be issued setting an export fee for the exportation of groundwater from the District. In support of this Order, the Board makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The District is a groundwater conservation district (“GCD”) authorized by its organic act (“Act”)¹ to manage the aquifers within its jurisdiction.
2. The Texas Legislature has authorized GCDs to manage and regulate the exportation of groundwater from a district’s boundaries. *See* TEX. WATER CODE § 36.122. GCDs are also authorized to set reasonable export fees. *Id.* § 36.122(e); and HEMPHILL COUNTY UNDERGROUND WATER CONSERVATION DISTRICT Rules (“HEMPHILL RULES”) § 4.011 (2010).

¹ Act of May 19, 1995, 74th Leg., R.S., § 5, ch. 157, 1995 Tex. Gen. Laws 1007, as amended by Act of May 12, 2017, 85th Leg., R.S., ch. 208, 2017 Tex. Gen. Laws 388, now codified at Chapter 8894, Special District Local Laws Code (TEX. SPEC. DISTR. LOCAL LAWS CODE §§ 8894.001–.0102).

3. Section 36.122 of the Water Code authorizes the District to impose an export fee using one of the following methods: (1) a fee negotiated between the District and the exporter; or (2) a rate not to exceed the equivalent of the District's tax rate per hundred dollars of valuation for each thousand gallons of water exported from the district or 2.5 cents per thousand gallons of water, if the District assesses a tax rate of less than 2.5 cents per hundred dollars of valuation. TEX. WATER CODE § 36.122(e)(2). The HEMPHILL RULES provide that if the Board assesses a tax rate of less than 2.5 cents per hundred dollars of valuation, then it must assess an export fee of 2.5 cents per thousand gallons of water. HEMPHILL RULES § 4.011(b)(2)(B). The HEMPHILL RULES also authorize the District to assess an export fee based on a fee negotiated between the District and the exporter. HEMPHILL RULES § 4.011(b)(1).

4. On this day, August 25, 2022, the Board adopted a tax rate for Fiscal Year ("FY") 2022-2023 (October 1, 2022, through September 30, 2023) of .2.605 cents per hundred dollars of valuation.

5. Section 4.011(b)(3) of the HEMPHILL RULES requires the Board to adopt an export fee rate by no later than October 1st of each year.

6. The District must assess an export fee for all groundwater produced for export from the aquifer within the District that is: (1) actually exported from within the District's boundaries to a place of use outside the District; (2) lost in the operation and maintenance of the export project and not actually exported from within the District's boundaries; and (3) reject water processed in order to produce water of a suitable quality for export and not actually exported. HEMPHILL RULES § 4.011(a).

7. The District may authorize the export fee to be recalculated and assessed based on a fee negotiated between the District and the exporter or a flat rate based on the District's tax rate in accordance with Chapter 36, Water Code, and HEMPHILL RULES § 4.011(b)(1) and (2).

8. The Board has determined that adoption of the export fee rate is reasonably necessary for the administration of the District.

9. It is in the public interest that the Board adopt an export fee for FY 2022-2023.

II. CONCLUSIONS OF LAW

1. The District is a governmental agency and a body politic and corporate.

2. The Texas Legislature has authorized the District to assess a reasonable fee on the export of groundwater from its boundaries.

3. The Board has jurisdiction over the setting of export fees.

4. The setting of any export fee does not authorize any person to export groundwater from the District's boundaries without first having obtained from the District a groundwater exportation permit.

III. ORDERING PROVISION

IT IS, THEREFORE, ORDERED BY THE BOARD OF DIRECTORS OF THE HEMPHILL COUNTY UNDERGROUND WATER CONSERVATION DISTRICT as follows:

1. Unless and until the adoption of an order recalculating the export fee for Fiscal Year 2022-2023 pursuant to Section 4.011 of the District's rules, an export fee for Fiscal Year 2022-2023 is set and shall be assessed at a rate of 2.605 cents per thousand gallons of (1) water actually exported from within the District's boundaries to a place of use outside the District; (2) water lost in the operation and maintenance of the export project and not actually exported from within the District's boundaries; and (3) reject water processed in order to produce water of a suitable quality for export and not actually exported. *See* HEMPHILL RULES § 4.011(a).

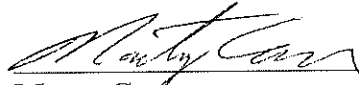
2. The District may recalculate the export fee for Fiscal Year 2022-2023 established herein based on a fee negotiated between the District and the exporter or a flat rate based on the District's tax rate. *See* HEMPHILL RULES § 4.011(b)(1) and (2).

3. The General Manager is directed to take all other steps reasonably necessary and appropriate to implement this Order.

4. This Order continues in effect from its date of adoption through September 30, 2023, unless otherwise rescinded or amended prior to that date.

5. If any provision, section, sentence, clause or phrase of this order is held for any reason to be invalid, such invalid portion shall not affect the validity of the remaining portions of this order.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE HEMPHILL COUNTY UNDERGROUND WATER CONSERVATION DISTRICT TO BE EFFECTIVE THIS 25th DAY OF AUGUST 2022.



Marty Carr
President, Board of Directors
Hemphill County Underground Water
Conservation District

ATTEST:



ELIZABETH LIGHT
Secretary, Board of Directors
Hemphill County Underground Water
Conservation District

APPROVED AS TO FORM:



DREW MILLER
Kemp Smith LLP
General Counsel