

August 23, 2026

VIA EMAIL

Mr. Danny May, Board President
Mr. Clay Brett, Board Vice President
Ms. Galen Johnson, Board Secretary
Mr. Michael Hahn, Board Treasurer
Mr. Steve Dierschke, Director
Mr. Tim Andruss, General Manager
Calhoun County Groundwater Conservation District
1501 E. Mockingbird Lane
Victoria, Texas 77904

**Re: Public Comments Concerning the District's Proposed Rule
Amendments**

Dear Directors and Mr. Andruss:

Synergen Green Energy Inc. ("Synergen") submits these formal public comments regarding the proposed revisions of the Calhoun County Groundwater Conservation District's (the "District's") local rules. Synergen is under an option to purchase approximately 1,600 acres across Calhoun and Jackson Counties and is considering investing over a billion dollars in Calhoun County to develop a green ammonia plant capable of producing over 200,000 metric tons of ammonia. By powering the plant entirely with renewable energy, our industrial process releases oxygen into the environment. The project will create at least 200 jobs, including over 60 permanent jobs, and will provide Calhoun County with substantial tax revenue. Synergen is planning to use brackish groundwater only for its operations and plans to invest millions of dollars to construct water treatment facilities in an effort to preserve freshwater resources for the community's agriculture and public water supply needs.

Several of the proposed revisions to the District's rules, if adopted and implemented as presented, will create significant regulatory uncertainty that will disincentivize our company and likely others from pursuing brackish water, drive away investment from Calhoun County, and ultimately stymie the District's well-intentioned effort to both protect freshwater resources for local residents and encourage industry to produce from deep saline, brackish aquifer zones. Many of the proposed revisions are, at best, ambiguous and counterintuitive, and at worst, out of step with State Law. Synergen believes there is a better way forward for all parties to coexist in harmony.

Texas law is clear that “a landowner owns the groundwater below the surface of the landowner’s land as real property,” and those vested property rights are explicitly recognized by Chapter 36 of the Texas Water Code, subject to reasonable regulation by groundwater conservation districts (citing Texas Water Code § 36.002). State law requires groundwater conservation districts (GCDs) to develop “fair and impartial” rules that “consider all groundwater uses and needs,” including a landowner’s private property right to access groundwater (citing Texas Water Code § 36.101). GCDs must “protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater.” (citing Texas Water Code § 36.0015 and *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814, 833 (Tex. 2012) (“[g]roundwater rights are property rights subject to constitutional protection.”)).

The District’s own rules echo this limitation on its regulatory discretion. The Prologue to the District’s current rules states that they are adopted “to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State of Texas,” and that “under no circumstances and in no particular case may the rules of the district be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law.” Several of the provisions discussed below depart from that standard by imposing bright-line thresholds and automatic penalties untethered to the site-specific hydrogeological data Chapter 36 requires.

As described in greater detail, several of the proposed rule revisions are neither fair, impartial, or reasonable, not science based, nor consistent with the District’s responsibility under state law to consider and protect the use of groundwater for all of the District’s constituents. The rules highlighted below will strip landowners of their ability to access their private property rights without due process that promotes neither the conservation nor protection of the groundwater resources in the District’s jurisdiction. Adoption of these proposed rules will increase stress on the District’s freshwater resources while simultaneously driving away investment, tax revenue, job creation, and other meaningful community benefits.

Serious consequences will stem from the District’s adoption of these proposed rules as currently written. The District’s constituents, and the aquifers they rely on, deserve to have the GCD develop rules that properly incentivize brackish groundwater development while protecting freshwater resources. Synergen strongly urges the District to consider the following alternatives.

CONCERNING PROPOSED RULE REVISIONS

One of the main themes of the District's proposed rules involves revising a bifurcated set of rules governing the production of groundwater: some rules governing the production of groundwater with lower levels of total dissolved solids (TDS), and different rules governing the production of saline, brackish groundwater with higher TDS levels. Synergen understands the District's goal of establishing different rule regimes designed to protect fresh groundwater for local agricultural and municipal production while encouraging industrial operations to produce from brackish aquifer zones. Synergen desires to participate in this effort by developing and using only brackish groundwater for our plant. However, several of the proposed rules will push away good actors and result in the arbitrary restriction of a landowner's ability to access their private property right without due process, all while creating a contrary incentive structure that pushes production towards freshwater aquifers. Developing rules based on site-specific hydrogeologic conditions and best-available science, as required by state law, will allow the District to effectively manage the aquifer and refrain from infringing on a landowner's access to groundwater.

For example, **District Rule 1.1** designates "Deep Saline Special Groundwater Management Zones" as water bearing strata of at least 750 feet in depth below the surface. Any production above 750 feet is governed under the District's rules governing freshwater resources, and any production below 750 feet is governed under the District's rules governing deep saline, brackish groundwater resources. On what (scientific) basis is the minimum depth of 750 feet derived, and - what if a landowner, through drilling a test well and studying the site-specific hydrogeological makeup of the aquifer formations, finds suitable brackish groundwater above the 750-foot threshold established by the District?

Under the District's current proposal, this discovery leaves the landowner in a precarious situation choosing between two poor options. Option 1 involves the landowner producing high salinity, brackish groundwater while being governed under the District's stricter rules for freshwater production that limits the productive capacity of the well. If the chemical makeup of the water doesn't matter and the landowner is going to be arbitrarily regulated by the District's rules for freshwater production, wouldn't it just make more sense to drill a shallower well and produce freshwater rather than brackish groundwater? Doing so would save the landowner the costs of drilling a deeper well and having to invest in water treatment infrastructure to remove the salty brine and the higher energy costs to pump it, and the landowner would still be governed under the same rules framework.

Option 2 involves the landowner drilling beyond 750 feet just to satisfy the District's standard, only to encounter water with high TDS levels, requiring enormous pre-treatment and wastewater brine solutions that make any capital investment

infeasible. If the landowner decides to proceed despite the investment risks, producing water with this level of TDS will actually *increase* groundwater production and create *more* downstream environmental externalities, as TDS levels rise, brackish producers will be forced through this proposed rule to increase the productive capacity of their wells to obtain the same amount of water while generating increasing volumes of brine extract that will ultimately be discharged into the environment. Groundwater regulations cannot be drafted in isolation and require foresight, and this rule creates a zero-sum regulatory trap that repels industrial investment and fails to benefit the greater environment in Calhoun County. This is not an ideal or acceptable option.

The situation described above is not hypothetical, this is exactly what Synergen encountered when drilling our pilot well. In the 1430 ft deep test well, Synergen sampled multiple different layers and found that the TDS levels increased drastically as depth increased. This corroborates the point that the aquifer layers change very quickly from region to region, and to subject industries to adhere to both the TDS restrictions as well as depth are counterproductive and don't serve any purpose. Under the District's proposed rules, industries would be forced into an impossible situation: be governed under stricter rules for a water resource that is chemically different than the water we found, or go deeper to an arbitrary subsurface level to be governed under the corresponding rule framework, only to find that the water is so contaminated that it is financially unviable and environmentally unsustainable to develop. Neither option is a good one, nor do those options achieve the District's desired approach.

The District is obligated under state law to use the best available science in the conservation and development of groundwater, which is defined as basing decisions off "conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question." (citing Texas Water Code § 36.0015). It is neither logical nor reasonable to require prospective permittees to choose between being governed under an inaccurate rules framework or arbitrarily drilling deeper when the geologic formation suggests that effort is unnecessary. It is prudent for the District to consider a different approach, grounded in the best-available science, where permittees are governed under the rules framework that actually corresponds to the chemistry of the water produced and meets segregation criteria, regardless of the depth the permittee encounters either the fresh or brackish groundwater.

There are other proposed rules that fail to take into account the best-available science. **District Rule 2.4(11)** would apply rigid casing requirements for deep saline wells, requiring prospective permittees to drill and seal the wells at much deeper depths than the geologic formations where brackish groundwater may be found. An inflexible, one-sized fits all approach such as this one fails to account for the best-available science and unnecessarily adds substantial costs and complexity to well completion where it

may not be necessary to cement to such depth if there is not a site-specific threat of degrading shallower freshwater.

Similarly, **District Rule 6.4.1(11)** arbitrarily dictates when permit holders can access their private property rights without any basis in modeled or studied data concerning the effects from production. This rule forbids any deep saline permit holder from producing more than 40% of their annual permitted volume within any three-month period, functionally dictating when irrigators, industrial operations, and others can use their permitted production rights. This kind of regulation would reshape the power and role of groundwater conservation districts in the state of Texas, transforming local political subdivisions into economic regulatory authorities with the powers to dictate when private business entities can operate. No one disputes the District's authority to set production limits in furtherance of its obligation to protect and conserve the local groundwater resources, but dictating when the permit holder can and can't use their annual permitted volume, particularly when such limitation is not tied to any site-specific scientific analysis, finds no support in Chapter 36 of the Texas Water Code.

The District's rule amendments also contain several revisions that are ambiguous and create serious regulatory uncertainty. For example, the District's proposed revisions are in plain conflict with each other in District Rule 1.1. Under the definition of "Deep Saline Groundwater Management Zones," the District's proposed rule revisions go beyond the Texas Water Development Board's classification of brackish groundwater by classifying Slightly Saline Groundwater Zones as groundwater strata featuring TDS levels between 2,000 mg/L and 3,000 mg/L. Yet, the District still defines "Slightly Saline Groundwater" as groundwater strata featuring TDS levels between 1,000 mg/L and 3,000 mg/L. Such contradiction leaves impacted constituents to wonder how their private property rights will be impacted by this designation, particularly when many of the proposed rule revisions rely on this definition and the particular TDS threshold established therein.

At a bare minimum, the District must not adopt rule revisions until this critical definition is clarified by the District. Constituents must have the opportunity to fully understand how these proposed rule revisions will impact their ability to produce groundwater. Regulations that impact a citizen's ability to access their private property right demand the upmost clarity, scientific justification, and compelling reasoning. At a bare minimum, the District must ensure that the rules adopted are simple to interpret and adhere to, without being unreasonably prohibitive or discriminatory against industry.

District Rule 6.4(1-3) is plainly ambiguous when trying to understand the effect of these proposals, as it is not clear whether the production limits in this proposed rule apply to *all* permits issued across the entire groundwater management zone or whether those production limits apply exclusively to just a *single individual permit holder* with

sufficient acreage. If the former construction is the intended effect, then the system-wide cap would likely preclude operators like Synergen from obtaining permits in deep saline groundwater aquifers, instead pushing those entities either towards permits in freshwater zones or towards investing in different areas of the state. If this rule is intended to act as a cap on production from all permits in the deep saline aquifer formations, a better approach would involve setting future drawdown targets, akin to desired future conditions, which would allow landowners to produce their private property rights while simultaneously giving the District the ability to monitor and manage the resource with better science and data as conditions evolve. Above all, this rule demands greater clarity so impacted constituents can fully understand consequences of the regulatory regime before it is implemented.

Another confusing proposal is **District Rule 6.4(8-10)**, where the District plans to “reduce the cumulative authorized groundwater production amount of all existing and future production permits for non-historic use with production areas that overlap the production areas of production permits for deep-saline non-historic use” authorizing the reduction of permits by 20%, 10%, and 5%, respectively. The term “production areas” is not defined in this proposal, and the rule as written is not clear which permittees receive the 20%, 10%, and 5% automatic production cuts. As such, there is little regulatory certainty for all existing and future permit holders of the District. This rule subjects permittees to a high level of future uncertainty, pushing every permit applicant to buffer in additional withdrawal capacity from the outset. It is in contravention to what the District would like to achieve. District should provide us with a clear and scientific rationale behind this extremely harsh clause.

If District Rule 6.4(8-10) only cuts back production for freshwater permittees, that kind of regulation would create inevitable conflict with any operator trying to produce from a deep saline, brackish well that may overlap with their freshwater neighbors without any site-specific analysis or scientific justification for such curtailment. If the automatic production cuts apply to deep saline permit holders, then the District would be forcing would-be permittees to automatically reduce their production without any basis in the best-available science. Applicants would be incentivized to apply for more production to account for these standardized cuts in production, which defeats the purpose of managing the aquifer sustainably to the appropriate needs of each landowner. And on top of that, failing to define the term “production areas” leaves all constituents guessing as to what production will be cut by the District and where, thereby reducing the certainty of each landowner’s investment-backed expectations into their groundwater rights.

The proposed rule revisions also establish a complex web of reporting and monitoring requirements that are enforced by extreme penalties, including permit revocation and nearly complete reductions. These requirements add significant cost, complexity, and uncertainty to any project or operation that relies on groundwater

production. The new reporting requirements in **District Rules 6.3, 6.3.2, 6.4 and 6.4.3** require aggregating, sorting, and memorializing thousands of daily monitoring-well data points which increase the likelihood that any deep saline permittee would accidentally expose themselves to clerical errors of reporting. The penalty for this error, as proposed in **District Rule 6.4.4(1.4)**, would be a 99% reduction of permitted production, functionally cutting a permittee off from their ability to access their private property right without any due process or opportunity to cure. Such drastic penalties are completely divorced from reasonable accountability measures and invite serious concerns of overburdensome regulatory overreach. These compounding burdens are not limited to deep-saline permits alone, as discussed further below, the District's proposed elimination of the low-volume reporting exemption in Rule 4.2 and its new multi-agent registration requirements in Rules 3.2 through 3.4 add further administrative cost to every non-exempt well in the District, large and small alike.

PROPOSED ALTERNATIVES

Below are some alternative rule revisions for the District to consider. The rules highlighted in this section fail to account for the best-available science, overstep the authority granted to groundwater conservation districts under state law, create regulatory uncertainty, and disincentivize production from deep saline, brackish formations.

RULE 1.1 - Definition of Deep Saline Special Groundwater Management Zones

Concern: This arbitrary threshold fails to account for situations when landowners find brackish saline water in shallower formations. This proposed rule forgoes the best-available science approach and instead creates an incentive structure for freshwater development.

Proposed Alternative: “DEEP-SALINE SPECIAL GROUNDWATER MANAGEMENT ZONE means a special groundwater management zone designated by the district comprised of water-bearing strata containing saline groundwater with a total dissolved solids concentration greater than 1,000 mg/L, regardless of depth, provided it is geologically isolated from fresh groundwater zones.”

RULE 6.4(1-3) - District-Wide Caps on Production Out of Deep Saline Zones

Concern: Without greater clarity, Rule 6.4 potentially establishes a rigid, county-wide aggregate production limit of 10,000 acre-feet per year (AFY) for production out of Slightly Saline zones and 7,000 AFY for Moderately Saline zones across *all* combined permits. The production limits likely preclude production out of these zones for operators like Synergen and push prospective permittees either to freshwater zones or to different areas of the state.

Proposed Alternatives: “The district shall limit the combined authorized groundwater production amounts of an individual permittee’s production permits, which authorize production of slightly saline groundwater from all deep-saline special groundwater management zones designated by the district, to ten thousand acre-feet (10,000 acre-feet) per year.”

RULE 6.4(4-6) - First 24-Month Restrictions on Production

Concern: This arbitrary restriction on production in the first twenty-four months after obtaining a permit fails to tie the production to any measured data on the effect of production on neighboring wells. This proposed rule forgoes the best-available science approach and unnecessarily ties up a landowner’s ability to access their private property

right. This provision raises two distinct problems. *First*, Rule 6.4(4-6) imposes a rigid, predetermined production ceiling during the first twenty-four months of a permit before any monitoring data exists on that specific permit's actual effect on the aquifer or neighboring wells. This increases drastically the uncertainty for the permit holder, who has based its business case on a certain water intake. *Second*, and separately, the District's proposed rules also authorize the Board to further reduce a permit's production based on subsequently monitored findings. Stacking a fixed, data-blind cap on top of an open-ended, standardless reduction authority creates two layers of uncertainty for a landowner: an arbitrary limit during the very period when a project is starting up, and the prospect of an additional, discretionary cut later with no defined trigger, methodology, or floor. Neither mechanism ties the restriction on production to measured, site-specific data, and this dual exposure unnecessarily impairs a landowner's ability to access their private property right without any showing that actual production is causing unreasonable harm. Additionally, and very importantly, the District must ensure a scientific method is put into place to segregate the effect of the permit holder's pumping from other neighboring well owners; since the effect on the aquifer will be a combined effect of all pumping in the region and not solely due to the permit holder in question. To penalize one without holding others responsible is unfair and discriminatory.

Proposed Alternative: "Rather than a fixed acre-foot ceiling applicable during the first twenty-four (24) months of production, the District shall rely on the monitoring data collected under the permit's approved monitoring plan to determine allowable production levels. Any reduction in a permit's authorized production volume must be supported by documented, site-specific scientific data indisputably demonstrating cause and effect of the unreasonable effect on existing wells or local groundwater resources, and the District shall identify the specific data, methodology, and threshold relied upon before ordering any such reduction. The District should further recognize that a well's drawdown response to pumping does not stabilize within the first twenty-four months of production, published hydrogeologic research confirms that the rate of drawdown is typically more during the initial period of pumping and decelerates and stabilizes only gradually over a much longer timeframe, and that boundary and delayed-drainage effects governing an aquifer's true long-term response frequently do not appear in early-time data. Using the first twenty-four months of production, standing alone, to fix a permanent production ceiling or to justify a reduction in authorized volume is therefore not a scientifically sound basis for regulation. Given the absence of any technical study establishing an appropriate monitoring period for deep-saline zones in Calhoun County, the District should withdraw the twenty-four-month production restriction in Items 4 through 6 of Rule 6.4 in its entirety until it has developed and published the scientific basis for any such time-based restriction."

RULE 6.4(8-10) - Automatic Reductions for Neighboring Permittees

Concern: Rule 6.4(8-10) fails to define "production areas" such that all permittees are left without clarity as to where the District will implement these automatic production cuts. The rule is likewise silent on the timing of the triggering event, it does not specify when, or based on what measurement or monitoring period, an "overlap" is deemed to occur, leaving permittees unable to predict when an automatic reduction might be imposed on their permit. If the rule only cuts back production for freshwater permittees, that kind of regulation would create inevitable conflict with anyone trying to produce a deep saline, brackish well near their freshwater neighbors. And if the automatic production cuts apply to deep saline production, then the District would be forcing would-be permittees to automatically reduce their requested production without any basis in the best-available science. Moreover, deep saline aquifers are geologically isolated from shallow freshwater zones. Penalizing brackish water users in this way is scientifically unbacked and creates artificial conflict between industrial expansion and agricultural preservation.

Proposed Alternative: "Delete Rule 6.4, Items 8 through 10 in their entirety. The automatic, percentage-based production cuts imposed by these items are arbitrary and are not supported by any site-specific or empirical scientific data. Compounded by the undefined scope of 'production areas' and the unspecified timing of the triggering event, permittees are left unable to determine whether, when, or by how much their authorized production may be automatically reduced. "

RULE 6.4(12.8 & 12.12) - Unsupported Tightening of Water-Quality and Subsidence Thresholds

Concern: The District's proposed rules materially tighten several performance-condition thresholds without any accompanying scientific or hydrogeological justification. Rule 6.4(12.8) similarly reduces the maximum specific conductivity permitted at freshwater monitoring wells from 2,300 to 2,000 $\mu\text{S}/\text{cm}$. And Rule 6.4(12.12) now measures the one-foot land subsidence limitation cumulatively across all existing and future deep-saline permits with overlapping production areas, rather than against each individual permittee's own operations meaning a permittee's compliance, and its exposure to curtailment, could turn entirely on a neighboring operator's conduct. None of these changes is accompanied by data explaining why the 2024 thresholds were inadequate to protect the aquifer, which is inconsistent with the District's best-available-science obligation under Section 36.0015.

Proposed Alternative: "The District shall not adopt, or subsequently apply, a boundary total dissolved solids, specific conductivity, or land subsidence threshold under Rule 6.4 that is more restrictive than the corresponding threshold in the District's 2024 rules unless the District publishes, concurrently with the proposed rule, the technical and

scientific basis and supporting data justifying the revised threshold. No permittee's authorized production may be curtailed, penalized, or otherwise adversely affected under Rule 6.4(12.8) or Rule 6.4(12.12) unless the District first establishes, through clear and undisputed scientific evidence specific to that permittee's own wells and production, that the permittee's own production and not the production of any other permittee or third party, caused or materially contributed to the measured exceedance. Absent such individualized, permittee-specific proof of causation, curtailing, penalizing, or otherwise imposing liability on a permittee for a cumulative or aggregate exceedance attributable in whole or in part to another operator's conduct is arbitrary and discriminatory, deprives the permittee of its private property right in groundwater without due process, and is inconsistent with the District's obligation under Sections 36.0015 and 36.101 of the Texas Water Code to adopt fair and impartial rules grounded in the best available science. "

RULE 2.4(11) - Rigid Well Completion and Casing Seal Requirements

Concern: Rule 2.4(11) attempts to apply an inflexible, one-sized fits all approach to casing requirements for deep saline wells. Forcing specialized cementing depths adds substantial complexity to well completion that may be completely divorced from the site's geology. This prescriptive requirement can damage structural well integrity if, for example, the site contains intermittent clay and sand lenses which would compromise casing life and unnecessarily drive up upfront drilling costs. The proper approach would require permit holders and well drillers to follow the state's casing and completion requirements for each well, and then use the best available on-site science to evaluate whether additional casing and completion standards are necessary to ensure zonal isolation at each individual well site.

Proposed Alternative: "If the Board, utilizing site-specific geological data, determines additional well construction improvements are necessary to ensure the integrity of the well and for the protection of groundwater quality in the District, the Board may require applicants to submit an alternative well construction and isolation plan, engineered by a licensed Texas Professional Geoscientist or Engineer, utilizing site-specific geological data to ensure zonal isolation. Well construction requirements should be dynamic and performance based. If an engineering team can prove zonal isolation using modern sealants and advanced logging tools, the rule should not restrict cementing boundaries to rigid chemical contours."

RULE 2.3 - Doubled Well-Spacing Requirements for Deep-Saline Wells

Concern: Rule 2.3 doubles the required offset between a deep-saline well and the boundary of the subject tract, from one-half foot (0.5 feet) to one full foot (1 foot) of separation per gallon per minute of production capacity, while the general well-spacing

ratio in Rule 2.2, applicable to all other wells, remains unchanged. The District has offered no site-specific hydrogeologic basis for singling out deep-saline wells, the very wells the District says it wants to encourage, for a materially stricter siting constraint than every other category of well in the District.

Proposed Alternative: “Restore the well-spacing ratio in Rule 2.3 to one-half foot (0.5 feet) of separation per one gallon per minute (1 GPM) of production capacity, consistent with the general spacing requirement in Rule 2.2, absent site-specific data demonstrating that a larger offset is necessary to prevent interference with an identified neighboring well or wellfield.”

RULE 6.4.1(11) - Restricting Permittees from Freely Producing the Authorized Production Volume

Concern: This rule arbitrarily dictates when permit holders can access their private property rights without any basis in modeled or actual data on the effect of production on neighboring well owners or the aquifer itself. This inflexibility is particularly acute for a facility, like Synergen that are subject to seasonal variability, and by periodic planned-maintenance shutdowns, including a major turnaround approximately every fourth year that make a rigid quarterly ceiling incompatible with reasonable operations, without any corresponding aquifer-health justification, since subsidence and long-term drawdown are driven by annual net extraction and recharge, not short-term seasonal fluctuation.

Proposed Alternative: “Permittees with non-historic, deep-saline permits shall make their best attempt to use no more than forty percent (40%) of their authorized groundwater production volume during any three-month period, but in no circumstance shall the Permittee be authorized to exceed 100% of the authorized annual groundwater production amount in any calendar year.”

RULE 6.4.4(1.4) - Overburdensome Reporting Requirements with Drastic Penalties

Concern: This rule creates an excessive penalty of a 99% reduction in permitted capacity if a permittee fails to comply with the complex set of monitoring and reporting requirements established under District Rules 6.3 and 6.4. There are no due process considerations, no opportunities for a hearing, and no opportunities to cure before the District functionally revokes the permit.

Proposed Alternative: “reduce the volume of groundwater resources that may be produced, from the non-exempt-use wells located on the subject tracts of contiguous ownership of groundwater resources associated with the production permit for deep-saline non-historic use, to twenty-five percent (25%) of the authorized groundwater

production amount upon a finding of the Board that the permittee failed to achieve the performance conditions for eight (8) or more consecutive reporting periods. Before scheduling a hearing to consider reducing the permittee's authorized production, the District shall send two formal written notices to the permittee warning the permittee of the non-compliance violations. The District shall only reduce the permittee's authorized production under this section if the Board determines after a public hearing that the permittee's non-compliance rises to the level of a 25% reduction of authorized production. If the Board makes such determination, the permittee shall be afforded a 90-day opportunity to cure before the District enforces the 25% reduction."

RULE 6.3.3 - Duplicative Curtailment Mechanism for High-Capacity Permits

Concern: Rule 6.3.3 creates a second, independent automatic curtailment mechanism applicable to high-capacity non-historic-use permits generally that reduces production to 50% of the prior reporting period's volume upon any performance-condition failure, separate from and in addition to the deep-saline-specific curtailment cascade in Rule 6.4.4 discussed above. Because a deep-saline permit that is also high-capacity would be subject to both mechanisms for the very same underlying compliance failure, the rules as drafted expose a single permittee to two overlapping, and potentially conflicting, automatic-curtailment regimes triggered by identical conduct. This duplication compounds the due-process concerns raised above regarding Rule 6.4.4(1.4) and should be resolved before adoption.

Proposed Alternative: "Where a production permit for deep-saline non-historic use is also a high-capacity permit subject to Rule 6.3.3, the curtailment provisions of Rule 6.4.4 shall govern to the exclusion of Rule 6.3.3, so that a single compliance failure does not subject the permittee to two independent automatic-curtailment mechanisms."

RULE 6.4.3(1) - Excessive Monitoring Requirements

Concern: Synergen agrees monitoring production is an essential function of ensuring production does not unreasonably affect neighboring well owners or diminish groundwater quality. However, this rule creates an excessive monitoring regime requiring three monitoring wells on a single individual tract, including a monitoring well within three hundred (300) feet of each well producing from deep-saline formations. This requirement adds an enormous and unnecessary cost of production that will not materially affect the data collection efforts. Constructing a dedicated monitoring well next to every production well may increase surface disturbance, Create additional penetrations through freshwater aquifers, increase long-term maintenance requirements, introduce more potential well-integrity risks over the project life, Hence fewer, strategically located & higher-quality monitoring wells may actually reduce environmental risk.

Proposed Alternative: “The permittee shall construct and maintain at least one dedicated aquifer monitoring well for every five deep-saline production wells, based on site-specific hydrogeologic conditions. The monitoring well shall be strategically located to provide representative monitoring of the deepest freshwater aquifer and shall be designed to provide early detection of any adverse changes in groundwater levels or water quality resulting from production operations. The number, location, screened interval(s), monitoring parameters, and sampling frequency of the monitoring well(s) shall be established based on site-specific hydrogeologic data, groundwater flow modeling, and the predicted hydraulic influence of the production well field.”

RULE 6.3(5) & RULE 6.4(6.16) - Overbearing 60% Baseline Data Collection Mandate

Concern: Rules 6.3 and 6.4 automatically treat the failure to collect at least sixty percent (60%) of required hourly, weekly, or quarterly aquifer measurements as a failure to achieve permit performance conditions, with no distinction between deliberate non-compliance and a routine field-instrument gap. Industrial telemetry and downhole sensors are subject to connectivity drops and equipment maintenance in the ordinary course, and a rule that treats any such gap as an automatic, non-negotiable violation forces permittees to divert redundant IT, engineering, and field-contractor resources solely to protect against a data-completeness technicality not because the gap reflects any actual threat to the aquifer.

Proposed Alternative: "Failure to maintain continuous data collection under Rule 6.3 or Rule 6.4 shall not constitute a failure to achieve permit performance conditions if the operator demonstrates instrument failure or environmental disruption and actively executes corrective repair or data remediation protocols within thirty (30) business days of identifying the gap."

RULE 6.3.2(4.2) & RULE 6.4.3 - Over-Regulation via Daily Pumping Total Logs

Concern: Rule 6.3.2 and Rule 6.4.3 require high-capacity and deep-saline operators to monitor and report production volumes as daily totals on a strict quarterly filing schedule. Aggregating and formatting thousands of daily sensor readings into the District's required structure creates ongoing administrative overhead disproportionate to any monitoring benefit, since groundwater conservation districts typically manage aquifer health by tracking net monthly or annual drawdown, not day-by-day production swings. The granularity also increases a permittee's exposure to clerical reporting errors, which under the proposed rules can trigger daily statutory civil penalties for a purely administrative lapse rather than any actual impact to the aquifer.

Proposed Alternative: "Provisions to monitor and report net production volumes as monthly cumulative totals from the subject well, subject well field, or subject well system, to be submitted to the district on an annual basis."

RULE 6.2(14) - Permit Revocation for Clerical Errors

Concern: This rule proposes to revoke the permittee's permit if the permittee fails to complete the District's well registration within 90 days of completion. On top of implementing the reporting and monitoring protocols and working through any initial issues with production, this additional requirement is paired with the extreme punishment of permit revocation if the permittee fails to submit the proper form to the District. In Synergen's case, one clerical error should not result in the complete halt of a billion-dollar investment. There are more appropriate and just remedies available.

Proposed Alternative: "Failure to register a completed well within 120 days shall result in the District initiating a notice of enforcement hearing against the permittee. In no circumstance shall the District invalidate or terminate the underlying production permit before sending the permittee two formal written notices of violation and initiating a public enforcement hearing against the permittee where the permittee is on notice of the District's intent to revoke the underlying production permit."

RULE 6.2(13) - Automatic Permit Surrender for Construction Delays

Concern: In addition to the 90-day well-registration deadline addressed above, Rule 6.2(13) provides that a permittee shall automatically surrender its production permit if construction of a proposed well is not completed within 365 days of permit issuance with no stated cure period, notice requirement, or opportunity for the permittee to be heard before forfeiture. Large-scale capital projects routinely experience delays in contractor scheduling and equipment lead times that are outside the permittee's control. Automatically forfeiting a permit that took months of engineering and regulatory work to obtain over a construction delay, with no opportunity to explain or cure is a disproportionate remedy that places a billion-dollar investment's water rights at risk over administrative timing.

Proposed Alternative: "Failure to complete construction within 365 days of permit issuance shall result in the District issuing a written notice of non-compliance to the permittee. The District shall not deem the permit surrendered unless the permittee fails to complete construction within 60 days of that notice, or fails to demonstrate good cause for an extension, which the General Manager may grant administratively for up to 180 days upon a showing of diligent effort."

RULE 4.3(5) - Expanded, Standardless Discretion to Refer Applications to a Hearing Examiner

Concern: The 2024 rules permitted the Board to refer only applications requesting protection of historic use to a hearing examiner. Proposed Rule 4.3(5) removes that limitation entirely, giving the Board discretion to refer any permit application, including a non-historic-use or deep-saline industrial application like Synergen's, to a hearing examiner, without stating any criteria governing when referral is appropriate. This unbounded discretion introduces uncertainty as to which applications will be diverted to the more adversarial, and more costly and time-consuming, contested-case track, undermining the regulatory predictability that a multi-decade industrial investment requires.

Proposed Alternative: "The Board may refer a permit application to a hearing examiner only where the application presents a genuine, material factual dispute that cannot be resolved on the written record, and the Board's order of referral shall state the specific factual dispute warranting referral."

RULE 6.3(1.1) - Permit Conditions Related to Drawdown

Concern: Rule 6.3(1.1) presupposes that five feet (5 feet) of drawdown in the water table or artesian pressure at the boundary of the subject tract is, by itself, an unreasonable effect on a neighboring well owner or the groundwater resource, a judgment made without any site-specific hydrogeologic analysis of the proposed production. The rule is also unspecific as to the time period and measured duration over which drawdown is to be calculated, leaving applicants unable to determine when they may be out of compliance, and it does not account for contributing causes of the measured drawdown. Critically, drawdown observed at the boundary of any single tract is virtually always the cumulative, combined effect of production from all wells operating in the surrounding area, not the isolated effect of any one permittee's well. Rule 6.3(1.1) nonetheless measures and enforces the 5-foot threshold against each individual permit in isolation, meaning a permittee whose own production causes little, or no measurable drawdown could still be found in violation and subject to curtailment solely because of the combined pumping of its neighbors. Penalizing one permittee for an aggregate, region-wide condition it did not solely, or even primarily, cause is arbitrary and unfairly discriminatory as applied and is inconsistent with the District's obligation to adopt fair and impartial rules under Section 36.101 of the Texas Water Code. More fundamentally, this fixed 5-foot boundary threshold is also inconsistent with the District's own deep-saline-specific drawdown conditions in Rule 6.4(12.4)-(12.7), which impose materially different limits for the identical type of impact, up to ten feet (10 feet) at a neighboring registered well, thirty feet (30 feet) maximum, and twenty feet (20 feet) average, at dedicated fresh-groundwater monitoring wells. Nothing

in the proposed rules states whether Rule 6.3(1.1) or Rule 6.4's deep-saline-specific conditions govern a permit that qualifies as both "high-capacity" and "deep-saline" non-historic use, as Synergen's proposed permit would, leaving permittees exposed to two conflicting drawdown standards for the same measured impact with no way to know which one the District will enforce.

Proposed Alternative: "Where a production permit qualifies as both a high-capacity non-historic-use permit and a deep-saline non-historic-use permit under Rule 6.4, the deep-saline-specific drawdown performance conditions of Rule 6.4(12.4) through (12.7) shall govern in lieu of the boundary drawdown threshold in Rule 6.3(1.1). Before finding any permittee out of compliance with a drawdown-based performance condition, or curtailing, penalizing, or otherwise adversely affecting a permittee's authorized production on that basis, the District shall first determine, using site-specific hydrogeologic modeling and monitoring data, the extent to which the permittee's own production as distinct from the production of other wells, permittees, or third parties operating in the same area, individually caused or materially contributed to the measured drawdown. Where measured drawdown at a boundary or monitoring point results from the cumulative effect of multiple wells or permittees, the District shall apportion responsibility among the contributing operators in proportion to each operator's modeled contribution to the measured drawdown, and no single permittee shall be found in violation, curtailed, or penalized for drawdown attributable to other operators' production. Before adopting a fixed numeric drawdown limitation as a permit condition, the District shall base that limitation on site-specific hydrogeologic data, including the aquifer test analysis required under Rule 6.4.2, demonstrating the level at which drawdown would cause an unreasonable effect on an existing well owner or the District's groundwater resources, and shall clearly specify the time period and methodology used to calculate the limitation so that permittees can reasonably determine compliance."

CONCLUSION

Please understand that we recognize the critical importance of responsibly managing local groundwater resources, and that we embrace it when good science is paired with thoughtful oversight to create workable, logical regulatory frameworks. As drafted, the rules will disincentivize our company and likely many others either from using lower quality brackish water instead of freshwater or from investing in Calhoun County to begin with.

We are hopeful that our comments are well received, as proposed. We stand prepared to undertake a responsible approach to water stewardship for our industrial operations if the rules as drafted are **not adopted** and instead rewritten with greater clarity to better incentivize brackish groundwater production tied to site-specific scientific data, rather than imposing punitive measures on those who would be eager to pivot from freshwater to lower quality groundwater.

To that end, Synergen respectfully requests that the District: (1) publish the underlying technical basis and data supporting each of the numeric thresholds discussed in this letter, consistent with the best-available-science standard of Section 36.0015; (2) commit to defined, predictable permit-review timelines sufficient to support the financing of a project with a multi-decade operating life; and (3) meet with Synergen and its technical advisors in a working session before final adoption to discuss these comments in detail. Synergen appreciates the District's consideration of these comments and looks forward to working collaboratively toward rules that protect the county's groundwater resources while enabling the industrial development those resources can responsibly support.

Sincerely,



Pranav Tanti
President and CEO

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