

ORDER NO. 148

**Hays Trinity Groundwater Conservation District
Hays County, Texas**

**ORDER DETERMINING THAT PROTESTS AND REQUESTS FOR
CONTESTED HEARING WERE UNTIMELY FILED**

Adopted April 12, 2011

WHEREAS, on February 21, 2011, the Board of Directors ("Board") of the Hays Trinity Groundwater Conservation District (the "District") voted to grant an operating permit to Wimberley Springs Partners, Ltd. ("Wimberley Springs"), based upon its application for an operating permit for wells that existed and were operated prior to the District's creation;

WHEREAS, Wimberley Springs filed its application over three years ago, and that application was determined to be administrative complete and processed by the District pursuant to the requirements outlined in the District's Rule 3;

WHEREAS, District staff recommended that Wimberley Springs receive an operating permit to produce up to 250 acre-feet of groundwater per year and a conditional permit to produce an additional 250 acre-feet when aquifer conditions can support this amount;

WHEREAS, Rule 3.2 describes a process leading up to a public hearing for consideration of oral and written comments and requests for a contested hearing;

WHEREAS, Wimberley Springs published public notice of the application in a newspaper of general circulation in the district, and provided public notice by certified mail, return receipt requested, of the application to adjacent landowners with interests that could be affected, as required by District Rule 3.2;

WHEREAS, the District published notice of the recommendation and proposed action, conducted a public hearing on the application, and considered abundant oral comments made by concerned citizens;

WHEREAS, during the public hearing, no speaker indicated an individual interest that would be adversely affected, or sought to protest the permit or seek a contested case hearing;

WHEREAS, the District voted to grant the permit at the conclusion of the public hearing;

WHEREAS, the District Rules allow any interested person to file a formal protest at the public hearing, but only allow the applicant an additional 10-day period after board action to file a protest or a request for a contested hearing, and then only if the Board votes to issue the permit with conditions;

WHEREAS, beginning one week after the public hearing, formal decision, and issuance of a permit for substantially less annual production than used historically and after the expiration of the deadline to file a request for a contested hearing, the District received 11 proposed protests and requests for contested case hearings from various individuals and from the Wimberley Valley Watershed Association, none of which included an explanation for the late filing or a request for an extension of the deadline;

WHEREAS, Wimberley Springs made a motion to determine that the protests and requests for contested case hearing were untimely filed, the proposed protestants filed a response, and the District considered these matters at a public meeting held April 7, 2011;

WHEREAS, the District's record in this proceeding establishes that Wimberley Springs and the District complied with all requirements of the District's rules applicable to applications for and decisions related to operating permits; and

WHEREAS, the Board of Directors has carefully considered the matter and is of the opinion that the filings have not complied with the District's rules requiring that any requests for a contested case hearing or protest be timely filed with the District, and thus each fails to meet this jurisdictional requirement.

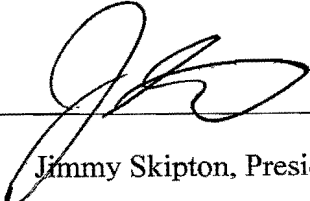
NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE BOARD OF DIRECTORS OF HAYS COUNTY GROUNDWATER CONSERVATION DISTRICT, HAYS COUNTY, TEXAS, THAT:

Section 1: The Board denies all protests and requests for a contested case hearing as untimely filed and affirms the issuance of the permit granted to Wimberley Springs on February 21, 2011. The Board rejects arguments that the decision violates due process rights of the requestors or that the Board's actions, or those of Wimberley Springs, in any way fail to comply with the District's rules.

Section 2: Individuals and the Wimberley Valley Watershed Association shall have 20 days from the date this order and resolution is signed to seek a rehearing of the Board's decision.

Section 3: Effectiveness. This order and resolution and any attachments are to be effective and final 10 days from the date of the President's signature below.

PASSED, APPROVED AND ADOPTED April 12, 2011



Jimmy Skipton, President