January 2, 2020

Hays Trinity Groundwater Conservation District
PO Box 1648
Dripping Springs, TX 78620

RE: Comments in Opposition to latest Proposed Rule 15 (ver 20191111Rule15)

Dear Sirs,;

I submit these comments in opposition to the HTGCD’s latest proposed Rule 15.

I. Rule 15 violates district’s long-standing and unchanged policy prohibiting “special management areas” receiving different treatment/entitlements within the district’s territory

The board has repeatedly adopted and extended resolutions prohibiting the creation of “special management areas” within its territory that would receive different treatment/entitlement. See, RESOLUTION NO. 20150121: “A Resolution Of The Hays Trinity Groundwater Conservation District To Support The Cypress Creek Watershed Protection Plan”; see also Minutes of the August 15, 2018 Special Meeting/Hearing of the Hays Trinity Groundwater Conservation District. Although such resolutions remain in place, the board is now contemplating creation of a special management area that has been exempted from the desired future conditions applicable to all other property owners, exempt well owners, permit holders, customers, and citizens in the district’s territory. To add injury to injury, the stakeholder process was purposefully exclusive and secretive - the board deliberately excluded the rest of the district from participation in the process leading up to the proposal for creation of this special management area and Rule 15.

II. State Law and the District’s own rules prohibit Waste

The undeniable objective of Rule 15 is to artificially preserve or increase flow of water in Cypress Creek. The proponents’ theory is that this can be achieved depriving permit holders (including water utilities) from withdrawing groundwater for beneficial use. The intended purpose for this diversion does not qualify as “Beneficial Use” pursuant to the district’s own definitions. Indeed, the objective appears to constitute unlawful waste.

The district’s definition of “Waste” includes:

E. Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Texas Water Code, Chapter 26, “Water Quality Control.”

See, HTGCD Rule 2.1.
Is there a permit, rule, or order issued by TCEQ authorizing such dumping of groundwater into Cypress Creek? [No.] Because of the purpose [increase creek flow] and presumption [flow is due to groundwater exiting into creek bed] behind Rule 15, the Rule is an [unlawful] attempt to willfully cause, suffer, or allow groundwater to be dumped into a creek or watercourse without authorization from a permit, rule or order issued by TCEQ.

III. Forcing Permit holders to recognize Rule 15 is [unlawful] intentional Waste

This Rule is not designed to “conserve” groundwater but rather to deprive property owners, permit holders, and permit holder customers of beneficial use of water.

The objective of Rule 15 is to artificially preserve or increase the amount of “groundwater” dumped into Cypress Creek, a natural watercourse, i.e., “waste”. The intended use does not constitute beneficial use but rather waste. In order to achieve waste, HTGCD seeks to deny permit holders from withdrawing water for beneficial use. Imposing requirements on permit holders to recognize Rule 15 constitutes forcing permit holders to assist in wasting groundwater – a violation of state law.

IV. Rule 15 violates the HTGCD’s own stated Desired Future Conditions and seeks to deprive property owners, permit holders, customers, exempt well owners, and the public generally of the benefits of the approved Desired Future Conditions without compensation

Desired future conditions are agreed upon at a Groundwater Management Area level. The district’s own desired future conditions reached after negotiation with all participants in GMA9 is a 30 foot drawdown. See, RESOLUTION NO. 20170215-B: “A Resolution Of The Hays Trinity Groundwater Conservation District To For The Adoption Of Desired Future Conditions And Non-Relevant Aquifers In Accordance With Groundwater Management Area 9 Joint Planning”. Desired future conditions are stated with respect to the entire geographic territory of HTGCD.

The district has not formally adopted any new “desired future conditions” (“DFC”). Instead the board seeks to carve out a specific sub-territory and exempt it from the desired future conditions applicable to the remainder of the district. The entire process was transparent only in its obvious objective. This is an attempt to re-define desired future conditions for a sub-territory in a manner inconsistent with the law and procedure governing the establishment of desired future conditions – including a determination of whether such conditions are feasible or possible. See also, “Presentation for the Desired Future Condition Process for Groundwater Management Area 9”.

A legal regulatory framework exists for adopting DFCs. The same framework provides for opponents of a proposed DFC to challenge the DFC via a petition process with the Texas Water Development Board. Proposed Rule 15 is an obvious attempt to create a different DFC for one sub-territory of the district via the rulemaking process and thereby bypassing the regulatory framework which would require the district to prove its rule was achievable – an objective it is not likely to be able to meet in view of prior TWDB rulings concerning GMA9. The district’s use of the rulemaking process in this fashion also deprives citizens of the right to appeal a DFC to the TWDB. The board’s attempts to create a special DFC in this manner is unquestionably capricious and discriminatory.

Unless and until the district adopts new “desired future conditions” in conjunction with GMA9 planning (with such DFCs approved by the Texas Water Development Board), I respectfully submit the board is not free to arbitrarily re-define desired future conditions outside of its existing plan or to utilize rulemaking to bypass the DFC process.
V. HTGCD has not obtained approval from Texas Water Development Board concerning feasibility of Rule objectives

Aside from the issue of unlawful Waste, HTGCD has not sought approval from the Texas Water Development Board concerning the feasibility/obtainability of the Rule or its objectives. As noted above, this is an obvious effort to bypass the Desired Future Conditions process which all the other property owners, citizens, permit holders, etc. are subjected to within the district’s territory. There is nothing special about JWNA that should allow it or its proponents to be excused from the processes or restrictions the rest of the territory is subjected to. It is appalling that the board would seek to deprive constituents of beneficial use of groundwater in an attempt to maintain or increase waste.

VI. HTGCD has not provided any evidence of an achievable objective

None of the evidence provided by HTGCD supports the proposition that any curtailment will achieve any particular goal with respect to the flow rate of Cypress Creek. Permit holders are simply punished with threats of fines unless they cutback production up to 30% if the flow rate falls below 3 cfs. For purposes of rough estimation/discussion 1 cfs can be approximated to 2 acre-feet/day. The Rule 15 table can be approximated as follows:

<table>
<thead>
<tr>
<th>Flow Rate (cfs)</th>
<th>Flow Rate (approx. acre-ft/day)</th>
<th>Curtailment</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;6</td>
<td>12</td>
<td>10%</td>
</tr>
<tr>
<td>&lt;5</td>
<td>10</td>
<td>20%</td>
</tr>
<tr>
<td>&lt;3</td>
<td>6</td>
<td>30%</td>
</tr>
</tbody>
</table>

So in other words, HTGCD is proposing a rule to curtail permit holder groundwater use in an effort to keep the flow rate of Cypress Creek at 12 acre-feet/day. The highest curtailment of 30% occurs when the flow rate is below 6 acre-feet/day.

The flow meter to be utilized for this proposed Rule has been at less than 6 acre-feet/day (i.e., less than 3 cfs) for several months now. What evidence does the district have to show flow rate would be above 6 cfs if no water was withdrawn by permit holders? The district has not established how much curtailment would be required to ensure a 6 cfs flow rate nor whether such flow rate could be sustained in the absence of any withdrawal of water by permit holders.

According to expert testimony in Electro Purification’s permit application in the adjacent Barton Springs Edwards Aquifer Conservation District, the drawdown expected near Jacobs Well will be around 140 feet (exhibit attached) indicating that the HTGCD’s effective objective of zero drawdown in the area is wholly unachievable.

VII. HTGCD is capriciously utilizing its authority over permit holders to control matters outside its jurisdiction, i.e., surface water flow rate

HTGCD has managerial authority over groundwater resources – not surface water resources. The district does not have jurisdiction over surface water and using its authority to deprive permit holders of groundwater in order to control surface water is an improper exercise of the district’s authority.
Conclusion

The board acted in an arbitrary, capricious, and discriminatory manner in the process by which it developed proposed Rule 15 and in the objective Rule 15 seeks to accomplish. The stakeholder process was secretive and exclusive and the outcome was pre-determined. If the board were to support Rule 15, the board would be operating in violation of its own resolutions, its stated desired future conditions, in violation of state law regarding the adoption and implementation of desired future conditions, and in violation of laws prohibiting waste. I respectfully submit the board should reject the latest proposed Rule 15.

If you have any questions, please feel free to contact me at (512) 858-9910.

Sincerely,

DAVIS & ASSOCIATES

William D. Davis
SOAH DOCKET NO. 957-18-4985

IN RE THE APPLICATION OF ELECTRO PURIFICATION LLC FOR WELL MODIFICATION AUTHORIZATION AND PRODUCTION PERMIT

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PREFILED TESTIMONY OF JAMES A. BEACH, P.G.
EXHIBIT 810
SUBMITTED ON APRIL 12, 2019
TTIM Analysis Drawdown Map in Cow Creek
Pumping Rate: 0.5 MGD
Pumping Time: 7 Years

TESPA EXHIBIT 810_002
TESPA-JB_01133
Figure 4

TTIM Analysis Drawdown Map in Cow Creek
Pumping Rate: 2.5 MGD
Pumping Time: 1 Year
TTIM Analysis Drawdown Map in Cow Creek
Pumping Rate: 2.5 MGD
Pumping Time: 30 Years

TESPA Member Wells
- Cow Creek
- Lower Glen Rose
- Unknown Well Depth
- Upper Glen Rose

TESPA EXHIBIT 810_006
TTIM Analysis Drawdown Map in Lower Glen Rose
Pumping Rate: 2.5 MGD
Pumping Time: 7 Years

TESPA EXHIBIT 810_011
TESPA-JB_01142