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February 4, 2020

General Manager
Hays Trinity Groundwater Conservation District
P.O. Box 1648
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Via U.S. Mail and
Email: staff3@haysgroundwater.com

Re: Supplemental Comments on revised proposed Rule 15
by the Dripping Springs Water Supply Corporation

Dear Sir:

These supplemental comments are filed on behalf of Dripping Springs Water Supply Corporation (“DSWSC”) concerning revised Rule 15 published by the Hays Trinity Groundwater Conservation District (“District”). These comments are supplemental to the comments filed with the District dated October 16, 2019, concerning Rule 15 and other proposed rules.

As indicated in the previous comments, DSWSC has undertaken substantial measures to reduce their use groundwater to supply their ever growing customer base. While Rule 15 does not directly apply to DSWSC, the Board of Directors is concerned that the precedent set and the approach taken in Rule 15, if expanded to include the areas within which DSWSC operates, would be unworkable and result in noncompliance, given the utility’s inability to meet the requirements outlined in Rule 15. While DSWSC appreciates the effort to correct some of the previous noted issues with the rule, the proposed rule still contains provisions that are impossible for a utility to comply with.

Monthly Baseline Production Amount

While revised Rule 15.2.2 contains a mechanism to address adjustment of monthly baseline production amounts, the mechanism requires permittees to amend the monthly baseline production amount by filing an amendment application with the District demonstrating that total groundwater demand has increased through the addition of new water utility connections or total groundwater demand has increased through expansion or growth. The mechanism still requires that these monthly baseline production amounts be amended by board action, a process that will, for all utilities that are experiencing growth, require sequential filings by utilities and board action to adjust authorizations. The potential for opposition and contested case hearings is real and potentially uncertain, not to mention costly.

Proposed Rule 15.2.5 obligates each permittee to adopt a drought curtailment implementation plan detailing how the required production curtailments will be achieved. Unfortunately, the rule provides no guidance to permit holders on how the drought curtailment implementation plan should be developed, nor are specific drought curtailment measures specified. DSWSC believes the rule should specify specific actions utilities must take under drought conditions and enforcement should be based upon failure to implement such requirements.

Given the approximately 95 existing permit holders within the District's authority, regulating each individual permit holder through a separate drought curtailment implementation plan promotes non-uniformity, special circumstances and unfair and arbitrary practices when comparing one permit holder to another. The District should implement rules that create clear obligations on the part of permit holders and not leave proposed measures to the individual users.

Demand on utility services is inherently related to rainfall events and drought conditions. Monthly baselines using historical data inevitably will contain months with abundant rainfall, skewing the average down from actual demand during drought. Worse, looking backward in time has the effect of punishing permit holders for all conservation efforts undertaken in previous years and/or incentivizes waste or excessive use to raise annual production amounts for future baseline calculations.

The proposed rule also creates a negative incentive for new permit holders by unnecessarily encouraging excessive use in future years to avoid future penalties and other adverse consequences. The one-year waiver on enforcement will likewise incentivize all permittees to avoid conservation and restrictions so they are better able to meet curtailment standards in the future based upon production during the one-year waiver period.

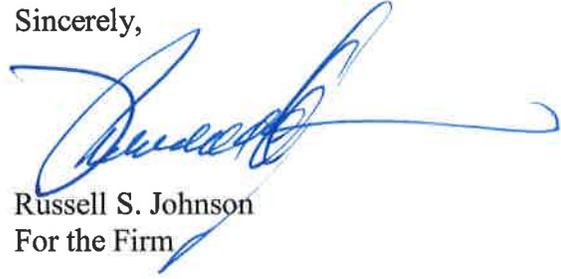
As previously noted, utilities are required by law to supply water to customers at a minimum pressure and utilities have no control or limited enforcement ability in connection with actual use by customers. Imposing on the utility curtailment of authorized production places utilities in the impossible position of attempting to control actual use by the utility, which has neither the staff nor the ability to implement or enforce those restrictions. DSWSC believes that the District should approach drought reductions in the same way most districts throughout the state do. Districts establish, by rule, specific restrictions on use (such as limited days of watering) which can be enforced by the District directly against the end user.

Conclusion

DSWSC is very concerned that the District's modified Rule 15 continues to assume that the water utilities, such as DSWSC, have the ability to actually control demand by its customers. Utilities do not have the authority or the mechanism to exercise such control over demand. Drought measures should specify specific prohibitions on types of use or frequency of use, which can then be enforced by the District against the end user. For these reasons, DSWSC urges the District to not adopt revised Rule 15 until such time as it has been substantially amended to address these concerns.

General Manager
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Sincerely,



Russell S. Johnson
For the Firm

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cc: Mr. Kyle Dannhaus, General Manager (via email)
Dripping Springs Water Supply Corp.