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October 3, 2019

Mr. Rick Broun, Manager  
Hays Trinity Groundwater Conservation District  
P.O. Box 1648  
Dripping Springs, TX 78620

Re: Comments in Opposition to Proposed Rule 15 and Amendments to Rule 13

Dear Mr. Broun:

These comments are submitted on behalf of our client, Wimberley Springs Partners, in opposition to proposed new District Rule 15 and proposed amendments to Rule 13. Wimberley Springs Partners ("WSP") has been and continues to be committed to minimizing groundwater production by use of alternative water sources for needs previously met with groundwater. As a result of its extensive efforts, historic groundwater use has been substantially reduced.

WSP is currently permitted to produce 250 acre feet of groundwater per year from the Trinity Aquifer. This number represents a substantial reduction from historic pumpage prior to creation of the District. As a result of its efforts to reduce groundwater production, usage in calendar year 2017 was 59.27 acre feet, and 40.37 acre feet in 2018. By way of comparison, usage in 2002 was 221.93 acre feet. While some of this reduction can be attributed to abundant rainfall, the primary reduction in usage was achieved through development of alternative supplies for golf course and landscape maintenance throughout the development.

Proposed Rule Amendments Are Unfair to Users Who Have Implemented Conservation

As noted, WSP has undertaken extensive development of alternative supplies to maintain its golf course and development, minimizing groundwater production. The District's proposed amendments to Rule 13.1 and Rule 15 contemplate authorization of production based upon monthly baseline production amounts using calendar year 2017.

Calendar year 2017 was a year in which the region received above average rainfall, particularly during high usage months from April through October. By establishing 2017 as the benchmark for proposed reductions, the District has deliberately chosen a year that is not representative of even average demand. More importantly, it sets users who have established and implemented conservation strategies in a worse position than those users who have implemented no conservation. The District rules should achieve the opposite goal. The provision allowing additional pumping authorization for permittees who implemented water conservation measures is limited to measures implemented in calendar year 2017. This is an arbitrary date and punishes users who implemented conservation prior to 2017.

### Proposed Rule 15 Will Result in Uncompensated Takings of Groundwater Rights

Rule 15 establishes a permanent prohibition on the issuance of new and amended permits from the middle Trinity Aquifer in the designated zone which will result in a taking of the property rights of landowners who own that groundwater resource. Article XVII, Section 1 of the Texas Constitution prohibits uncompensated takings of private property.

Existing users like Wimberley Springs Partners likewise will suffer uncompensated takings of their real property groundwater rights when substantial portions of their existing authorizations cannot be used. Worse, as written, the rules seem to require monthly pumping to never exceed 2017 monthly production amounts. The system ignores vested rights, permit authorizations and historical investment-backed expectations.

### Basing Proposed Reductions on 2017 Monthly Usage is Inherently Arbitrary

The District's proposed rule can be summarized as establishing drought curtailments from a baseline not on permitted authorized production, but rather the arbitrarily selected calendar month usage in 2017. This "monthly baseline production amount" is discriminatory and arbitrary for several reasons. First, it punishes users who have implemented conservation strategies prior to 2017. It further ignores weather variability and imposes restrictions arbitrarily. For instance, August of 2017 was an extraordinarily wet month (9.75 inches). In future drought years, the user's baseline authorization for August will be based upon usage reflective of a wet month, not a dry month. Such a scheme is inherently unreasonable.

### Aggregation of Wells Should Be Allowed

Proposed Rule 15.1.2.3 prohibits aggregation of wells permitted under a single permit. District rules have always recognized the right to aggregate pumping by a single permit holder with multiple wells and the rules should continue to so allow aggregation. Well usage among wells can vary for a variety of reasons and in fact represent the reason multiple wells are owned. Eliminating this flexibility serves no useful or legitimate purpose and is inherently arbitrary.

### The District's Proposed Penalty in Rule 15.2.4 Exceeds the District's Authority

The District has proposed a penalty of \$5.00 per thousand gallons over the "adjusted monthly baseline production amount" improperly retroactively punishes behavior based upon 2017 usage. The District's authority to impose penalties is laid out in Chapter 36. The District's approach to penalties appears to exceed and be inconsistent with legislative authorization. Worse, the proposed amount is extraordinarily excessive. The proposed penalty of \$5.00 per thousand gallons substantially exceeds even retail potable water rates charged by retail utilities in the area.

Mr. Rick Broun, Manager  
Hays Trinity Groundwater Conservation District  
October 3, 2019  
Page 3

10/3/2019 10:00 AM  
10/3/2019 10:00 AM  
10/3/2019 10:00 AM

Using 2017 as the Benchmark is Inherently Unfair

As previously noted, calendar year 2017 was unusually wet. Water demand, particularly for users producing water for outdoor uses varies considerably depending upon rainfall. By selecting an extraordinarily wet year as the baseline and then parsing that year into monthly increments, with no regard to the weather, is inherently arbitrary and restrictive. Effective and meaningful drought reduction rules can be implemented that are fair and reasonable. The District's proposed rules are neither.

Conclusion

Wimberley Springs Partners has and will continue to support the District's efforts to strike a balance in groundwater management to address impacts on surface flows. However, the District's proposed rule amendments are subject to challenge, will result in uncompensated takings, will unconstitutionally restrict the rights of the regulated community and are arbitrary and deliberately skewed to retroactively restrict previously exercised groundwater rights. The District should withdraw proposed amendments to Rule 13 and Rule 15 and adopt an approach to managing groundwater production that fairly balances the interests of all stakeholders in the area.

Sincerely,



Russell S. Johnson

RSJ/kk