

DAVIS & ASSOCIATES

Capital IP

bdavis@capital-ip.com

WWW.CAPITAL-IP.COM

P.O. BOX 1093
DRIPPING SPRINGS, TEXAS 78620
(512) 858-9910 (TEL)
(512) 858-2357 (FAX)

September 23, 2019

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

RE: Comments in Opposition to Proposed Rule 15

Dear Mr. Broun,

I submit these comments in opposition to the HTGCD's 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 by depriving permit holders (including water utilities) from withdrawing groundwater for beneficial use. The purpose 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

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 in order to unjustifiably benefit creek-front property owners

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”. 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"](#).

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.

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.

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 refrain from supporting proposed Rule 15.

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

Sincerely,
DAVIS & ASSOCIATES

William D. Davis