



Trinity Edwards Springs
Protection Association

September 23, 2019

Re: TESPAs comments on JWGMZ Proposed Rules

Dear HTGCD Board of Directors,

The Trinity Edwards Springs Protection Association (TESPA) thanks you for the opportunity to submit comments regarding proposed rules creating a groundwater management zone around Jacob's Well (JWGMZ). We encourage you to adopt Rule 15, with the additional comments provided by the Wimberley Valley Watershed Association, which we support.

TESPA would like to stress that you not only have the legal authority under Section 36.116(d)(1)&(2) of the Water Code to adopt rules creating the JWGMZ, you have the *responsibility* under Section 36.0015 of the Water Code to do so. Section 36.116(d)(1)&(2) of the Water Code provides you with the authority to adopt rules to protect unique hydrogeological portions of the aquifer that you regulate. Through this section, the Legislature wisely recognized that not all aquifers are the same, and that even within the same aquifer, there can be unique hydrogeological characteristics that warrant specific protections. The statute states:

For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

- (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or
- (2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

There is no place within the Hays Trinity Groundwater Conservation District that is more unique or more important than Jacob's Well. And through thorough scientific analysis utilizing the best available science, hydrogeologists have determined the hydrogeologic and geographic area that contribute flow to Jacob's Well, science which is the basis for the District to adopt a groundwater management zone. The District has both the science and the regulatory tools and legal authority supporting adoption of rules creating a groundwater management zone to protect springflow from Jacob's Well. Given this, TESPAs maintains that the failure to adopt Rule 15 would be inconsistent with the District's purpose under Section 36.0015 of the Water Code – which is to use the best available science to conserve and preserve groundwater and to protect property rights.

Because the current proposed rules do not completely prevent a landowner within the JWGMZ from accessing groundwater beneath his or her property, the rules strike a balance between fulfilling the District's responsibility to protect groundwater resources and to protect property rights. Unfortunately, many groundwater conservation districts are fearful of being sued by a disgruntled landowner who may argue that a District's permitting decision or a District's rules restricting groundwater production amount to a taking of private property. However, it is important to recognize that although Chapter 36 of the Water Code states that "a landowner owns the groundwater below the surface of the landowner's land as real property," Chapter 36 also clarifies this ownership right by stating that groundwater ownership **"does not affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122."** Consequently, the Water Code places your authority to regulate groundwater production, such as through the adoption of Rule 15, above a landowner's ownership rights in groundwater.

Respectfully,



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