

TCEQ DOCKET NO. 2022-0940-MWD

APPLICATION BY THE CITY OF	§	BEFORE THE
DRIPPING SPRINGS FOR A	§	TEXAS COMMISSION ON
MAJOR AMENDMENT TO	§	ENVIRONMENTAL QUALITY
TPDES PERMIT NO. WQ0014488001	§	

**HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT'S
REQUEST FOR A CONTESTED CASE HEARING ON THE APPLICATION BY THE
CITY OF DRIPPING SPRINGS FOR A MAJOR AMENDMENT TO
TPDES PERMIT NO. WQ0014488001**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ):

The Hays Trinity Groundwater Conservation District (District) requests a contested-case hearing on the City of Dripping Springs (City) Application for a Major Amendment to Land Application Permit No. WQ001448001.

I. INTRODUCTION

The City's proposed land application site is an ecologically sensitive location both because it is located on karst formations of the Trinity Aquifer and adjacent to Onion Creek, which provides significant recharge to the Trinity and Edwards Aquifers. Those aquifers serve as the primary water supply for many in the region as acknowledged by Onion Creek Segment No. 1427's designated uses of "Aquifer Protection" and "Public Drinking Water Supply." Onion Creek is immediately adjacent to the City's proposed land application site and is an ecologically unique and environmentally sensitive Hill Country stream that currently exceeds fishable/swimmable quality. The sensitive environment in this unique hydrogeologic setting, the regional dependence on groundwater for drinking water supply, and the known interaction between surface water and groundwater are extraordinary circumstances that will be affected by the City's application. The

TCEQ may not issue a permit unless it minimizes possible contamination of surface water and groundwater. The land application site, Onion Creek, and the potentially impacted portions of the Trinity Aquifer are within the boundaries of the District.

As discussed below, the City's proposed major amendment to Permit No. WQ0014488001 will have an adverse effect on the interests of the District and District is an affected person entitled to a contested case hearing.

II. HEARING REQUEST REQUIREMENTS ARE SATISFIED

This request is timely filed, based solely on the District's timely-filed comments, provides the required contact information, explains the District's location relative to the proposed land application site, identifies the District's justiciable interests, and requests a contested case hearing. 30 TEX. ADMIN. CODE §§ 55.201, 55.203, and 55.209.

A. The District is an Affected Person

The District is an "affected person" entitled to a contested case hearing on the issues raised in its timely-submitted request for a contested case hearing, which has not been withdrawn. Local governments such as the District, with authority under state law over issues raised by an application may be considered affected persons under 30 TEX. ADMIN. CODE § 55.203(b). Moreover, the District has interests related to legal rights, duties, privileges, powers, or economic interests affected by the City's application and is an affected person under 30 TEX. ADMIN. CODE § 55.203(a).

1. The District is a "local government"

The District is a groundwater conservation district created pursuant to Chapter 8843, Special District Local Laws Code (enabling legislation) and confirmed by the voters within the

District. The District has the powers, duties, authority, and responsibilities provided by Chapter 36 of the Texas Water Code and by the District's enabling legislation.

2. The District's Authority

The District has authority over issues contemplated in the application.

The District was established for the purpose of providing for the conservation, preservation, protection, recharging, and prevention of waste of groundwater and of groundwater reservoirs within the District's boundaries, including the Trinity Aquifer. TEX. WATER CODE § 36.0015.

3. Location and Distance Relative to the Proposed Land Application and the Personal Justiciable Interest of the District

The proposed land application site is within the District's jurisdictional boundaries within Hays County. The proposed land application of municipal wastewater will have an impact on groundwater resources regulated by and within the District.

The Trinity Aquifer, and more specifically the Middle Trinity Aquifer, is increasingly being used throughout the District. The proposed land application site is underlain by the Upper Glen Rose member of the Trinity Aquifer.

Onion Creek is an important hydrologic link between these two major Central Texas aquifers. Onion Creek flows through the District and provides significant recharge within the District to both the Trinity and Edwards Aquifers. A flow study of Onion Creek reveals flow losses in Onion Creek along a creek reach underlain by the Upper Glen Rose member of the Trinity Aquifer.¹ These losses combined with other hydrogeological and geochemical data indicates Onion Creek provides recharge to the Middle Trinity Aquifer.

¹ Surface Water and Groundwater Interactions along Onion Creek, Central Texas (Hunt, et al.) South Texas Geological Bulletin 2017. http://bseacd.org/uploads/HuntEtAl_2016.pdf.

Onion Creek recharge that has impaired water quality or induces chemical changes in water in the aquifers is inconsistent with the District's legislatively mandated mission of protecting the aquifers. The District's powers under Chapter 36 of the Texas Water Code and under its rules include, among other things, authority to prohibit persons from harmfully altering the character of groundwater by activities on the surface of the ground that will cause or allow pollutants or other deleterious matter to enter groundwater from the surface or recharge features. TEX. WATER CODE §§ 36.001, 36.101, and 36.102. The District has a statutory obligation to protect recharge quality under Texas Water Code Chapter 36.

The District's interest in the surface and groundwater resources is reasonably related to the activities associated with and regulated by the TCEQ in its consideration of the City's TPDES permit application. 30 TEX. ADMIN. CODE § 55.203(c)(2).

4. Issues Raised by the Application

The impact of the proposed land application on groundwater is contemplated by the application. For example, under the Commission's siting criteria, the Commission may not issue a permit for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of groundwater. In making this determination, the Commission may consider the groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions. 30 TEX. ADMIN. CODE § 309.12.

Clearly, the application potentially impacts groundwater issues that the District has authority over under state law. The District has a personal justiciable interest in the issues raised in the application.

In short, the District is an “affected person.”

B. The District has raised disputed issues of fact that are grounds for referring the application to SOAH.

The District submitted written comments prior to the March 28, 2022 public meeting. The District’s comments and request for contested case hearing were timely filed and have not been withdrawn. 30 TEX. ADMIN. CODE §55.201(d)(4).

III. CONCLUSION

Because the District filed a timely written request for a contested case by an affected person based on issues raised in timely-filed written comments that have not been withdrawn, the Commission should grant the District a contested-case hearing.

Respectfully submitted,

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ATTORNEY FOR HAYS TRINITY
GROUNDWATER CONSERVATION
DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties by e-mail on this 29th day of August 2022 as follows:

TCEQ Executive Director

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Save Our Springs Alliance, Inc.

Bill Bunch: bill@sosalliance.org

I further certify that a true and correct copy of the foregoing document was served on the following parties by first class mail on this 29th day of August 2022 as follows:

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/s/ Gregory M. Ellis

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